

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E N:

KARIN VISTOLI

Plaintiff

- and -

HAVENTREE BANK ALSO KNOWN AS BANQUE HAVENTREE

Defendant

**PROCEEDING COMMENCED UNDER THE *CLASS PROCEEDINGS ACT, 1992***

**SETTLEMENT AGREEMENT**

**RECITALS**

- A. **WHEREAS** the Statement of Claim in the Action alleges, among other things, that the Defendant breached certain legislation and/or the terms of its contracts with the Settlement Class Members in connection with the involuntary and/or automatic renewal of mortgages;
- B. **AND WHEREAS** the Defendant has denied, and continues to deny, each and all of the claims and allegations made by Plaintiff and/or the Settlement Class Members, including that the Plaintiff and/or the Settlement Class Members have suffered any harm or damage whatsoever, and all claims and allegations of wrongdoing or liability against the Defendant arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Action, or otherwise;
- C. **AND WHEREAS** the Plaintiff and Defendant 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 Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Defendant;
- D. **AND WHEREAS** the Plaintiff and Class Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims

asserted in the Action, the legal and factual defences thereto, and the applicable law, that: (i) it is in the best interests of the Settlement Class to enter into this Settlement Agreement in order to avoid the uncertainties of litigation and to ensure that the benefits reflected herein, including the amount to be paid by the Defendant under this Settlement Agreement, are obtained for the Settlement Class; and (ii) the Settlement set forth in this Settlement Agreement is fair, reasonable, and in the best interests of the Class the Plaintiff seeks to represent;

E. **AND WHEREAS** the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted, or that could have been asserted, against the Releasees by the Plaintiff and the Settlement Class in the Action, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;

F. **AND WHEREAS** counsel for the Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations and a full-day mediation with mediator Joel Wiesenfeld, resulting in this Settlement Agreement;

G. **AND WHEREAS** as a result of these settlement discussions, negotiations and mediation, the Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiff, both individually and on behalf of the Settlement Class the Plaintiff seeks to represent, subject to approval of the Court;

H. **AND WHEREAS** the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the Settlement Class she seeks to represent;

I. **AND WHEREAS** the Parties therefore wish to and hereby finally resolve, without admission of liability, all claims that were or could have been asserted against the Releasees in the Action;

J. **AND WHEREAS** the Parties consent to certification of the Action as a class 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;

K. **AND WHEREAS** the Plaintiff asserts that she is an adequate class representative for the Class she seeks to represent and will seek to be appointed representative plaintiff in the Action;

L. **AND WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement in the Court;

**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 Action be settled and dismissed with prejudice and without costs, subject to the approval of the Court, on the following terms and conditions:

#### **SECTION 1: DEFINITIONS**

For the purposes of this Settlement Agreement only, including the recitals and schedules hereto, the following definitions apply:

(1) **“Action”** means the action styled *Vistoli v Haventree Bank, also known as Banque Haventree*, Ontario Superior Court of Justice Court File No. CV-20-00651976-00CP;

(2) **“Administration Expenses”** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiff, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notice and the costs and professional fees of the Claims Administrator, but excluding Class Counsel Fees;

(3) **“Approved Claims”** means Claims assessed by the Claims Administrator pursuant to the Distribution Protocol, and, after the conclusion of all requests for reconsideration, approved by the Claims Administrator for payment from the Trust Account and identified in the Successful Claims Report;

(4) **“Claim”** means a request for benefits under this Settlement Agreement made by a Claimant by filing a Claim Form with the Claims Administrator in accordance with the procedure in this Settlement Agreement and the Distribution Protocol;

- (5) **“Claimant”** means any Settlement Class Member who files a Claim Form pursuant to the terms of this Settlement Agreement;
- (6) **“Claims Administrator”** means Epiq Class Action Services Canada Inc., or such other persons or third party claims administration company agreed to by the Parties and appointed by the Court to deliver notices in accordance with the Notice Plan, to administer the claims process in accordance with the Distribution Protocol, and to carry out any other duties required under this Settlement Agreement or as ordered by the Court;
- (7) **“Claim Form”** means a form for the written Claim from a Claimant seeking benefits from the Settlement in accordance with this Settlement Agreement and the Distribution Protocol;
- (8) **“Class Counsel”** means Landy Marr Kats LLP and McKenzie Lake Lawyers LLP;
- (9) **“Class Counsel Fees”** means the amount awarded to Class Counsel as approved by the Court for legal fees, disbursements, and the taxes thereon;
- (10) **“Class Period”** means the period between January 1, 2011 and the Effective Date;
- (11) **“Common Issue”** means: Did the Defendant breach any legislation and/or the terms of its contracts with the Settlement Class Members, including the duty of good faith and honest contractual performance, in connection with the involuntary and/or automatic renewal of mortgages?;
- (12) **“Court”** means the Ontario Superior Court of Justice;
- (13) **“Contributing Parties”** means the Defendant and the Defendant’s insurer;
- (14) **“Date of Execution”** means the date on which the Parties have fully executed this Settlement Agreement;
- (15) **“Distribution Protocol”** means the distribution and claims process plan detailing how the Settlement Amount and accrued interest shall be distributed, in whole or in part, attached as **Schedule “A”** to this Settlement Agreement;
- (16) **“Effective Date”** means the later of:
- (a) thirty (30) days after the date on which the Court issues the Settlement Approval Order; or

- (b) the date of disposition of any appeals from the Settlement Approval Order (if such an appeal lies) or the expiry of any applicable appeal periods if no appeal is initiated;
- (17) **“Settlement Approval Order”** means the order described in Section 2.4 herein, being the order of the Court approving this Settlement Agreement and dismissing the Action without costs and with prejudice, which shall be substantially in the form attached to this Settlement Agreement as **Schedule “I”** or as fixed by the Court;
- (18) **“Honourarium”** means an honourarium payment to the Plaintiff;
- (19) **“Notice Approval and Certification Order”** means the order described in Section 2.3 herein, being the order made by the Court approving the Notice of Certification and Settlement Approval Hearing and Notice Plan, appointing Epiq Class Action Services Canada, Inc. as the Claims Administrator, and setting the Opt-Out and Objection Deadlines, which shall be substantially in the form attached to this Settlement Agreement as **Schedule “H”** or as fixed by the Court;
- (20) **“Notice of Certification and Settlement Approval Hearing”** means the short-form and long-form notices substantially in the form attached hereto as **Schedules “B” and “C”** advising Settlement Class Members (i) of a hearing in which the Court will consider whether to approve the Settlement, and of their entitlement to file objections to the Settlement, and (ii) of the certification of the Action for settlement purposes and their entitlement to opt out on or before the Opt-Out Deadline;
- (21) **“Notice of Settlement Approval”** means a notice substantially in the form attached hereto as **Schedule “D”** advising Settlement Class Members that the Court has approved the Settlement and advising of the claims process;
- (22) **“Notice Plan”** means the plan substantially in the form attached hereto as **Schedule “E”** to disseminate the Notice of Certification and Settlement Approval Hearing and Notice of Settlement Approval to the Settlement Class;
- (23) **“Other Actions”** means actions or proceedings, excluding the Action, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date;

(24) **“Objection Deadline”** means the first business day that is sixty (60) days after the Notice of Certification and Settlement Approval Hearing is first disseminated;

(25) **“Opt-Out Deadline”** means the first business day that is sixty (60) days after the Notice of Certification and Settlement Approval Hearing is first disseminated;

(26) **“Parties”** means the Defendant and the Plaintiff;

(27) **“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;

(28) **“Released Claims”** means any and all manner of claims, including Unknown Claims, causes of action, cross-claims, counter-claims, charges, liabilities, demands, judgments, suits, obligations, debts, setoffs, rights of recovery, or liabilities for any obligations of any kind whatsoever (however denominated), whether class or individual, in law or equity or arising under constitution, statute, regulation, ordinance, contract, or otherwise in nature, for fees, costs, penalties, fines, debts, expenses, counsel fees, and damages, whenever incurred, and liabilities of any nature whatsoever (including joint and several), known or unknown, suspected or unsuspected, asserted or unasserted, choate or inchoate, which the Releasers ever had, now have, or hereafter can, shall or may have, representatively, derivatively, or in any other capacity, against the Released Parties arising from or relating in any way to any conduct alleged or that could have been alleged in and arising from the factual predicate of the Action or any amended pleading therein, from the beginning of time until the Effective Date, which shall be deemed to include but not be limited to the Defendant’s mortgage auto-renewal practices;

(29) **“Released Party”** or **“Released Parties”** means Releasees;

(30) **“Releasees”** means, jointly and severally, individually and collectively, the Defendant and its past, present and future, direct and indirect parents (including holding companies), owners, subsidiaries, divisions, predecessors, successors, affiliates, associates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and each of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, legal or other representatives, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs,

executors, administrators, insurers, spouses, family law claimants, creditors and assigns of each of the foregoing (whether or not they object to the settlement set forth in the Settlement Agreement and whether or not they make a claim for payment from the Settlement Fund);

(31) **“Releasors”** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective, successors, heirs, executors, administrators, insurers, assigns, beneficiaries, trustees, agents and legal or other representatives;

(32) **“Rules”** means the *Rules of Civil Procedure*, RRO 1990, Reg 194, as amended;

(33) **“Settlement Agreement”** or **“Settlement”** means this agreement, as executed by the Parties and/or their representatives, including the recitals and the attached schedules, resolving all issues in the Action as approved by the Court;

(34) **“Settlement Amount”** means CAD \$1,500,000, inclusive of payment of Approved Claims, Administration Expenses, Honourarium, Class Counsel Fees, interest and all applicable taxes;

(35) **“Settlement Approval Hearing”** means the hearing at the Court to approve the Settlement of the Action, this Settlement Agreement, and Class Counsel Fees;

(36) **“Settlement Class”** means all Persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by the Defendant were involuntarily and/or automatically renewed, and who paid any amount of interest, costs and fees as a result;

(37) **“Settlement Class Member”** means a member of the Settlement Class;

(38) **“Successful Claims Report”** bears the meaning ascribed to it in paragraph 17 of the Distribution Protocol;

(39) **“Trust Account”** means a guaranteed investment product, 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*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of the Claims Administrator, once appointed, for the benefit of the Settlement Class Members, as provided for in this Settlement Agreement; and

(40) **“Unknown Claims”** means any and all Released Claims against the Releasees which Releasors do not know or suspect to exist in his, her, or its favour as of the Effective Date, which

if known by the Releasors or Releasees might have affected his, her, or its decision(s) with respect to the Settlement. The Releasors and Releasees may hereafter discover facts other than or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims. Nevertheless, the Plaintiff and the Releasees shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Settlement Approval Order shall have, fully, finally, and forever settled and released, any and all Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. The Plaintiff and the Releasees acknowledge, and Settlement Class Members shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for and was a key element of the Settlement Agreement.

## **SECTION 2: SETTLEMENT APPROVAL**

### **2.1 Court Approval Required**

(1) It is understood and agreed that Court approval of the Notice of Certification and Settlement Approval Hearing, Notice of Settlement Approval, Notice Plan, and this Settlement Agreement and Distribution Protocol are required.

### **2.2 Best Efforts**

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

### **2.3 Motion Seeking Approval of Notice and Certification**

(1) As soon as practicable after the Date of Execution, the Plaintiff shall file a motion in the Court for the Notice Approval and Certification Order approving the Notice of Certification and Settlement Approval Hearing described in Section 8.1(1) and certifying the Action for settlement purposes.

(2) The Notice Approval and Certification Order approving the Notice of Certification and Settlement Approval Hearing described in Section 8.1(1) and certifying the Action for settlement purposes shall be substantially in the form attached hereto as **Schedule "H."**



## **2.4 Motion Seeking Approval of the Settlement**

(1) The Plaintiff shall file a motion before the Court for the Settlement Approval Order approving this Settlement Agreement as soon as practicable after:

(a) the Notice Approval and Certification Order referred to in Section 2.3(1) has been granted; and

(b) the Notice of Certification and Settlement Approval Hearing described in Section 8.1(1) has been published.

(2) The Settlement Approval Order seeking approval of this Settlement Agreement shall be substantially in the form attached hereto as **Schedule “I.”**

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

## **2.5 Motion Materials**

(1) The Parties agree to file motion materials, as necessary, with respect to the motions identified in Sections 2.3 and 2.4 above, and counsel shall act reasonably and in good faith in preparing the contents of such motion materials.

## **2.6 Pre-Motion Confidentiality**

(1) Until the motion required by Section 2.3 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 Defendant and Class Counsel, as the case may be, except as stated in Section 2.6(2) and as required for the purposes of financial reporting and the preparation of financial records (including tax returns and financial statements); pursuant to regulatory requirements; as necessary to give effect to its terms; or as otherwise required by law.

(2) Upon the Date of Execution, Class Counsel may disclose the existence and terms of this Settlement Agreement to the Court.

## **SECTION 3: SETTLEMENT BENEFITS**

### **3.1 Payment of Settlement Amount**

(1) The Contributing Parties, or either of them, shall pay the Settlement Amount to the Claims Administrator, for deposit into the Trust Account, within forty-five (45) days of the Notice Approval and Certification Order approving the Notice of Certification and Settlement Approval Hearing

described in Section 8.1(1) and certifying the Action for settlement purposes, or as directed by the Court.

(2) The payment of the Settlement Amount shall be made by wire transfer. At least ten (10) days prior to the Settlement Amount becoming due, the Claims Administrator will provide, in writing, the following information necessary to complete the wire transfers: 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.

(4) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs. For clarity, the Settlement Amount will be used to pay the Approved Claims, the Administration Expenses, the Honourarium, Class Counsel Fees, interest and all applicable taxes in accordance with this Agreement in full and final settlement of the Action.

(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 or the Action, including, but not limited to, legal fees or costs of notice.

(6) The Claims Administrator shall maintain the Trust Account as provided for in this Settlement Agreement.

(7) 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 that accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. The Claims Administrator 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 Contributing Parties 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 terminated, in which case, the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Defendant, which, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Claims Administrator.

#### **SECTION 4: TERMINATION OF SETTLEMENT AGREEMENT**

##### **4.1 Right of Termination**

(1) The Plaintiff and the Defendant shall, in their respective discretions, have the right to terminate the Settlement set forth in this Settlement Agreement by providing written notice of their election to do so ("Termination Notice") to the other Parties hereto within thirty (30) days of the date on which:

- (a) the Court declines to certify the Action for the purposes of the Settlement Agreement;
- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (c) the Court approves this Settlement Agreement in a materially modified form;
- (d) the Court issues a settlement approval order that is not substantially in the form attached hereto as **Schedule "I"**; or
- (e) any order approving this Settlement Agreement made by the Court does not become a Settlement Approval Order.

(2) The Defendant shall, in its sole discretion, have the right to terminate the Settlement set forth in this Settlement Agreement by providing a Termination Notice to the Plaintiff within thirty

(30) days of the date on which the number of opt outs of consent certification for settlement purposes exceeds 50 putative Settlement Class Members.

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

(4) Any order, ruling, or determination made by any court with respect to:

(a) Class Counsel Fees;

(b) the Distribution Protocol; or

(c) the Honourarium

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 Action as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, that has not been decided shall proceed;

(b) any order certifying the Action as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and the Parties shall be estopped from asserting otherwise;

(c) any prior certification of the Action 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 Action or any other litigation;

(d) any order dismissing the Action against the Defendant shall be set aside and declared null and void and of no force or effect; and

(e) within ten (10) days of such termination having occurred, the Claims Administrator and Class Counsel shall return or destroy all documents or other materials provided by the Defendant under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Defendant and, to the extent that the Claims Administrator or Class Counsel has disclosed any documents or information provided by the Defendant to any other Person, shall recover and destroy such documents or information. The Claims Administrator and Class Counsel shall each provide counsel to the Defendant with a written certification by the Claims Administrator or Class Counsel of such return or destruction within ten (10) days of such termination having occurred.

#### **4.3 Return of Settlement Amount Following Termination**

(1) If the Settlement Agreement is terminated, the Claims Administrator, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Contributing Parties the amount of the Settlement Amount, plus all accrued interest thereon and less any costs incurred with respect to the Notice of Certification and Settlement Approval Hearing required by Section 8.1(1), such costs in total not to exceed thirty thousand Canadian dollars (CAD \$30,000).

#### **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 3.2(3), 4.1, 4.2, 4.3, 4.4, 6.1, 6.2, 7.1(3), and 8.1(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 3.2(3), 4.1, 4.2, 4.3, 4.4, 6.1, 6.2, 7.1(3), and 8.1(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) The obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition of: (i) the Action; and (ii) any and all Released Claims.

(2) Upon the Effective Date, subject to Section 5.3, each of the Releasors: (i) shall be deemed to have, and by operation of the Settlement Approval Order shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Released Parties, regardless of whether such Releasor executes and delivers a proof of claim and release form; (ii) shall forever be enjoined from prosecuting in any forum any Released Claim against any of the Released Parties; and (iii) agrees and covenants not to sue any of the Released Parties on the basis of any Released Claims or to assist any third party in commencing or maintaining any suit against any Released Party related in any way to any Released Claims.

## **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 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 of the Releasors shall not then or thereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim, or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For greater certainty and without limiting the generality of the foregoing, each of 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 Action**

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

## **5.5 Releases a Material Term**

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

## **SECTION 6: EFFECT OF SETTLEMENT**

### **6.1 No Admission of Liability**

(1) The Plaintiff 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. Furthermore, 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, 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 wrongdoing or liability by the Releasees or any one of them, or of the truth of any of the claims or allegations contained in the Action, or any other pleading filed by the Plaintiff.

### **6.2 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 or offered as evidence in any pending or future 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 7: CERTIFICATION FOR SETTLEMENT ONLY**

### **7.1 Certification Solely for the Purposes of Settlement**

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

(2) The Plaintiff agrees that, in the motion for certification of the Action as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that she will seek to define is the Common Issue and the only class that she will assert is the Settlement Class.

(3) The Defendant retains all of its objections, arguments, and defences with respect to class certification, and reserves all rights to contest class certification, if the Settlement set forth in this Settlement Agreement does not receive the Court's approval, if the Court's approval is reversed or

vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to close. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Settlement Agreement does not receive the Court's approval, if the Court's approval is reversed or vacated on appeal, if this Settlement Agreement is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to close, this agreement as to certification of the Settlement Class becomes null and void *ab initio*, and this Settlement Agreement or any other settlement-related statement may not be cited regarding certification of the Settlement Class, or in support of an argument for certifying a class for any purpose related to the Action.

## **SECTION 8: NOTICE TO SETTLEMENT CLASS**

### **8.1 Notice Required**

- (1) The proposed Settlement Class shall be given a notice of the certification of the Action for settlement purposes and of the Settlement Approval Hearing at which the Court will be asked to approve the Settlement Agreement and Class Counsel Fees (the Notice of Certification and Settlement Approval Hearing) in accordance with the Notice Plan attached as **Schedule "E."**
- (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.
- (3) If the Settlement Agreement is approved, the Settlement Class shall be given a notice advising of the Court's approval and the claims process (the Notice of Settlement Approval) in accordance with the Notice Plan attached as **Schedule "E."**

### **8.2 Form and Distribution of Notice**

- (1) The Notice Plan will provide for the distribution of the Notice of Certification and Settlement Approval Hearing and the Notice of Settlement Approval, both of which will be mutually agreed upon by the Parties and approved by the Court.
- (2) Any other notice to the Settlement Class or proposed Settlement Class, including the notice described in Section 8.1(2), 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 notice, the notice shall be in a form ordered by the Court.



(3) Such notice 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 notice, the notice shall be disseminated by a method ordered by the Court.

## **SECTION 9: ADMINISTRATION AND IMPLEMENTATION**

### **9.1 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.

### **9.2 Information and Assistance**

(1) Subject to the privacy, bank secrecy and other laws, regulations, and policies of any Canadian or foreign jurisdiction, including an order of the Court compelling such production, the Defendant will make best efforts to provide to the Claims Administrator a list in electronic format of the names, addresses, and email addresses of Settlement Class Members who can be reasonably identified based on records that the Defendant has in its possession, custody, or control.

(2) In providing this information to the Claims Administrator, the Defendant makes no representation or admission that Settlement Class Members whose names, addresses, and/or email addresses appear on the list are Settlement Class Members and makes no representation as to the accuracy or completeness of the information. Any information provided pursuant to this provision shall be maintained as confidential by the Claims Administrator and used only for the purposes of:

- (a) providing Settlement Class Members with notice in accordance with Section 8 of this Agreement;
- (b) providing Settlement Class Members with instructions about the process they may follow should they choose to receive subsequent notices or communications in the Action and/or participate in the settlement administration process; and
- (c) to facilitate the claims administration process with respect to this Settlement Agreement.

(3) The information required by Section 9.2(1) shall be delivered to the Claims Administrator within forty-five (45) days of the Date of Execution.

(4) The Defendant makes no representation regarding, and shall bear no liability with respect to, the accuracy of documents or information described in this Section 9.2, nor does it represent that it has, can, or will produce a complete set of any such documents or information. A failure to produce a complete set of any such documents or any inaccuracy in such documents or information shall not constitute a breach or violation of this Settlement Agreement.

(5) The Claims Administrator shall treat any information received from the Defendant pursuant to this Settlement Agreement as highly confidential.

(6) The Claims Administrator shall furnish evidence of the data security systems and procedures in place to protect confidentiality to counsel for the Defendant.

(7) If this Settlement Agreement is terminated, all information provided by the Defendant pursuant to Section 9.2(1) shall be dealt with in accordance with Section 4.2(1)(e) and no record of the information so provided shall be retained by the Claims Administrator in any form whatsoever.

(8) The Defendant shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 9.2.

## **SECTION 10: DISTRIBUTION OF THE SETTLEMENT AMOUNT AND CY-PRÈS DESIGNATION**

### **10.1 Distribution Protocol**

(1) The Settlement Amount shall be paid as follows:

- (a) first, to satisfy the Class Counsel Fees in the amount approved by the Court;
- (b) second, to pay the Administration Expenses and applicable taxes;
- (c) third, to pay the Honourarium of CAD \$15,000, subject to the approval of the Court;  
and
- (d) fourth, the Settlement Amount will then be distributed to Settlement Class Members with Approved Claims in accordance with the Distribution Protocol attached hereto as **Schedule "A"**; and

- (e) fifth, any excess or remaining amount of the Settlement Amount will be donated to a *cy-près* recipient in accordance with this Settlement Agreement and the Distribution Protocol attached hereto as **Schedule “A.”**

## **10.2 Cy-Près Designation**

- (1) The maximum possible recovery per Settlement Class Member will be CAD \$5,000. If the number of claims submitted through the claims administration process would result in a pro-rata distribution of greater than CAD \$5,000 per Settlement Class Member, the excess amount will be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

## **10.3 No Responsibility for Administration or Fees**

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

# **SECTION 11: CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

## **11.1 No Liability for Fees**

- (1) The Defendant shall not be liable for any fees, disbursements, or taxes of any of Class Counsel's, the Plaintiff's, or Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

## **11.2 Costs of Notice**

- (1) The Claims Administrator shall pay the costs of the notice required by Section 8 and any costs of translation required by Section 13.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notice or translation.

## **11.3 Court Approval of Class Counsel Fees**

- (1) Class Counsel may seek the Court's approval of Class Counsel Fees contemporaneously with seeking approval of this Settlement Agreement. The Defendant shall take no position on the quantum of Class Counsel Fees sought by Class Counsel on the motion.
- (2) Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account within thirty (30) days after the Effective Date. No Class Counsel Fees shall be paid from the Trust Account until after the Effective Date.

#### **11.4 Administrative Expenses**

(1) Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date and as they come due.

### **SECTION 12: OPT OUTS AND OBJECTIONS**

#### **12.1 Opt Outs**

(1) At the motion in which Court approval of the Notice of Certification and Settlement Approval Hearing is sought, the Parties agree to seek Court approval of an opt-out process for the Settlement Class that includes the following terms:

- (a) an opt-out form from a putative member of the Settlement Class will not be effective unless it is signed, sent by email or regular mail, addressed to the Claims Administrator, and postmarked on or before the Opt-Out Deadline;
- (b) a putative member of the Settlement Class who has delivered an opt-out form to the Claims Administrator may withdraw his/her/their opt-out form before the Opt-Out Deadline by advising the Claims Administrator, in writing, that he/she/they wish(es) to withdraw his/her/their opt-out form; and
- (c) the Claims Administrator shall serve on the Parties and file with the Court, within ten (10) days of the expiry of the Opt-Out Deadline, an affidavit listing all Persons who have opted out of the Settlement Class, if any.

(2) The Parties acknowledge that any putative member of the Settlement Class who does not submit a properly completed opt-out form to the Claims Administrator before the Opt-Out Deadline shall be deemed to be a Settlement Class Member, shall be bound by this Settlement Agreement, and in order to be eligible for any benefits from this Settlement Agreement, must submit a Claim for Settlement benefits in accordance with this Settlement Agreement and the Distribution Protocol.

(3) The Parties acknowledge that any putative member of the Settlement Class who submits an opt-out form on or before the Opt-Out Deadline in accordance with this Settlement: (1) is no longer a Settlement Class Member; (2) may not receive any benefits under this Settlement

Agreement or the Distribution Protocol; and (3) may bring his/her/their lawsuit against the Defendant, as the case may be, at his/her/their own expense and subject to any limitation period.

## **12.2 Objections**

(1) At the motion in which Court approval of the Notice of Certification and Settlement Approval Hearing is sought, the Parties agree to seek Court approval of a process for submitting objections. The Parties will seek approval of an objection process in which any Settlement Class Member who wishes to object to the fairness, reasonableness, or adequacy of this Settlement, including the Distribution Protocol, will be required to submit to the Claims Administrator, by email or by regular mail, on or before the Objection Deadline, a written objection, signed by the objector and containing the following information:

- (a) the objector's full name, mailing address, telephone number, and email address (if available);
- (b) a statement that the objector meets the criteria for membership in the Settlement Class;
- (c) a written statement of all factual and legal grounds for the objection accompanied by any legal support for such objection;
- (d) copies of any papers, briefs, or other documents upon which the objection is based;
- (e) a statement setting out whether the objector intends to appear at the Settlement Approval Hearing; and
- (f) a statement setting out whether the objector intends to appear at the Settlement Approval Hearing through counsel, and if so, identifying any counsel representing the objector who intends to appear at the Settlement Approval Hearing.

(2) The objection process that the Parties agree to propose will provide that upon the expiry of the Objection Deadline, the Claims Administrator will deliver copies of each objection to Class Counsel and counsel for the Defendant and shall file them with the Court.

## SECTION 13: MISCELLANEOUS

### 13.1 Motions for Directions

- (1) Class Counsel or the Defendant may apply to the Court 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.

### 13.2 Releasees Have No Liability for Administration

- (1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

### 13.3 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,” “hereto,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

### 13.4 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*, the act may be done on the next day that is not a holiday.

### **13.5 Ongoing Jurisdiction**

(1) The Court shall exercise jurisdiction with respect to the implementation, administration, interpretation, and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Settlement Class Members, and Defendant attorn to the jurisdiction of the Court for such purposes only and for no other purpose.

### **13.6 Governing Law**

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

### **13.7 Entire Agreement**

(1) This Settlement Agreement constitutes the entire agreement between 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.

### **13.8 Amendments**

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

### **13.9 Binding Effect**

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

### **13.10 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 an electronic signature shall be deemed an original signature for the purposes of executing this Settlement Agreement.

### **13.11 Negotiated Agreement**

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of whom 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.

### **13.12 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les Parties reconnaissent qu'elles ont exigé et consenti à ce que la présente Entente de règlement et tous les documents connexes soient rédigés en anglais.*

### **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 understands 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 Party identified above his or her signature and his or her law firm.

### **13.17 Notice**

- (1) 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 in the Action:**

Vadim Kats  
LANDY MARR KATS LLP  
2 Sheppard Avenue East, Suite 900  
Toronto, ON M2N 5Y7  
Tel: 416-221-9343  
Email: vkats@lmklawyers.com

Emily Assini  
McKENZIE LAKE LAWYERS LLP  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2  
Tel: 519-672-5666  
Email: emily.assini@mckenzielake.com

#### **For the Defendant:**

Lara Jackson  
CASSELS BROCK & BLACKWELL LLP  
Bay Adelaide Centre – North Tower  
Suite 3200, 40 Temperance Street  
Toronto, ON M5H 0B4  
Tel: 416-869-2907  
Email: ljackson@cassels.com

**13.18 Date of Execution**

(1) The Parties have executed this Settlement Agreement on the dates shown below.

**KARIN VISTOLI** on her own behalf and on behalf of the Settlement Class, by her counsel:

Date: \_\_\_\_\_

Signature of Authorized Signatory: *Vadim Kats*  
Landy Marr Kats LLP  
Class Counsel

Date: \_\_\_\_\_ February 12, 2024 \_\_\_\_\_

Signature of Authorized Signatory: *Amjassin*  
McKenzie Lake Lawyers LLP  
Class Counsel

**HAVENTREE BANK ALSO KNOWN AS BANQUE HAVENTREE** by its counsel, Cassels Brock & Blackwell LLP.

Date: \_\_\_\_\_ February 14, 2024 \_\_\_\_\_

Signature of Authorized Signatory: *Lara Jackson*  
Cassels Brock & Blackwell LLP

## SCHEDULE "A" – DISTRIBUTION PROTOCOL

### Definitions

1. All defined terms in the Settlement Agreement are applicable to this Distribution Protocol. In addition, the following definitions apply in this Schedule:
  - (a) **"Claim Form"** means the Claim Form substantially in the form attached to the Settlement Agreement as **Schedule "G"** that, when completed and submitted to the Claims Administrator on or before the Claims Deadline, constitutes a Settlement Class Member's Claim for benefits under this Settlement Agreement;
  - (b) **"Claims Deadline"** means the date by which Settlement Class Members must submit a complete and valid Claim Form to the Claims Administrator, which, subject to Section 13.4 of the Settlement Agreement, shall be nine (9) months from the date on which the Notice of Settlement Approval is first disseminated;
  - (c) **"Excluded Claim"** means a Claim by a Person who has previously settled claims against the Defendant and has executed a release in favour of the Defendant in relation to matters that are the subject of the Action;
  - (d) **"Settlement Class List"** means the list described in Section 9.2(1) of the Settlement Agreement, prepared by the Defendant and provided to the Claims Administrator in electronic format, providing the names, addresses, and email addresses of Settlement Class Members; and
  - (e) **"Settlement Payment"** means the Settlement benefits sent via cheque by the Claims Administrator to a successful Claimant with an Approved Claim.

### Claims Process and Distribution to Claimants with Approved Claims

2. Any Settlement Class Member who wishes to claim a Settlement Payment from the Settlement Agreement shall deliver to or otherwise provide the Claims Administrator with a completed and signed Claim Form on or before the Claims Deadline. If the Claims Administrator does not receive a completed Claim Form from a Settlement Class Member by the Claims Deadline, then the Settlement Class Member shall not be eligible for any Settlement Payment whatsoever.
3. The Claims Administrator shall review each Claim Form for completeness and shall advise a Claimant, no later than twenty (20) business days after receipt of the Claim Form, if his/her/their Claim Form is incomplete. The Claimant shall complete the Claim Form within the later of (i) thirty (30) days from the date that the Claims Administrator advises him/her/them that his/her/their Claim Form is incomplete; or (ii) the Claims Deadline.
4. The Claim Form requires the Claimant to provide the following identifying information:
  - (a) the Settlement Class Member's full name, current mailing address, telephone number, and email address (if available);
  - (b) the mailing address that was subject to the mortgage agreement; and

- (c) the mortgage number for the mortgage that was subject to the mortgage agreement and involuntarily and/or automatically renewed.

5. The Claim Form also requires the Claimant to provide a written confirmation by the Claimant acknowledging that the Claimant's mortgage agreement with the Defendant was involuntarily and/or automatically renewed and that the renewal resulted in incurred interests, fees, and costs to the Claimant.

6. If a Claim is being submitted on behalf of a Claimant by his/her/their estate or another Person designated to act on behalf of the Claimant, the person completing the Claim shall explain on the Claim Form why he/she/they has/have the authority to act on the Claimant's behalf, and shall attach a copy of any Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document(s) establishing that authority.

7. If a Claimant submits more than one Claim Form, the Claims Administrator will treat them as one Claim Form.

8. The Settlement Class List will be provided to the Claims Administrator by the Defendant within forty-five (45) days of the Date of Execution. The Claims Administrator shall review each Claim Form and verify, within twenty (20) business days of receipt of the Claim, that the Claimant is eligible to claim for a Settlement Payment as follows:

- (a) for a Person claiming as a Settlement Class Member, the Claims Administrator shall be satisfied that (i) the Person is listed in the Settlement Class List; (ii) the Person did not opt out of the Action; and (iii) the Claim is not otherwise an Excluded Claim;
- (b) for a Person making a Claim on behalf of a Settlement Class Member or a Settlement Class Member's estate, the Claims Administrator shall be satisfied that (i) the Person has legal authority to act on behalf of the Settlement Class Member or the Settlement Class Member's estate in respect of financial affairs; (ii) the Person or estate on whose behalf the Claim is submitted is listed on the Settlement Class List; (iii) the Person or estate did not opt out of the Action; and (iv) the Claim is not otherwise an Excluded Claim;
- (c) if a Claim Form is submitted by or on behalf of a Person who is not on the Settlement Class List, the Claims Administrator shall deliver the Claim Form to counsel for the Defendant and the Defendant shall make best efforts to review the Claim Form and determine whether the Person was inadvertently excluded from the Settlement Class List and:
  - (i) if the Defendant determines that the Person should be included on the Settlement Class List, counsel for the Defendant shall advise the Claims Administrator and update the Settlement Class List to include the Claimant;
  - (ii) if the Person should not be included on the Settlement Class List, counsel for the Defendant shall notify the Claims Administrator, and the Person shall not be added to the Settlement Class List;
- (d) if a determination is made by the Claims Administrator that a Person who has submitted a Claim Form is not eligible for a Settlement Payment for the reasons

set out in paragraph (a) or (b) above, the Claims Administrator shall send out a notice, with a copy of the notice and Claim Form to counsel for the Defendant and Class Counsel, advising the Person who submitted the Claim Form of this determination, within ten (10) business days of the Claims Administrator's determination of ineligibility; and,

- (e) the Defendant shall make best efforts to assist the Claims Administrator in determining whether any Claims are Excluded Claims.

9. The quantum of the Settlement Payments to Claimants with Approved Claims shall not exceed CAD \$5,000 per Claimant. The quantum of the Settlement Payments to Claimants with Approved Claims will be determined as follows:

- (a) if, after satisfying the Class Counsel Fees in the amount approved by the Court, the Honourarium in the amount approved by the Court, Administration Expenses, interest and all applicable taxes, the amount remaining in the Trust Account is sufficient to pay each Claimant with an Approved Claim CAD \$5,000, each Claimant with an Approved Claim shall be paid a Settlement Payment in that amount; or
- (b) if, after satisfying the Class Counsel Fees in the amount approved by the Court, the Honourarium in the amount approved by the Court, Administration Expenses, interest and all applicable taxes, the amount remaining in the Trust Account is not sufficient to pay each Claimant with an Approved Claim CAD \$5,000, the quantum of the Settlement Payment to all Claimants with Approved Claims shall be reduced *pro rata* (i.e., adjusted downward such that each Claimant with an Approved Claim receives an equivalent share of the amount remaining in the Trust Account).

10. If a Settlement Class Member is unable to execute a Claim Form due to lack of legal capacity, a Claim Form may be executed by the Public Guardian and Trustee as authorized to act on behalf of the Settlement Class Member or by any other legally recognized guardian.

11. No documents submitted to the Claims Administrator by any Claimant will be returned to the Claimant.

12. The claims process is intended to be expeditious, cost effective, and user friendly, and to minimize the burden on Claimants. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume the Claimants to be acting honestly and in good faith. The Claims Administrator shall nonetheless require that each Claimant meet the requirements set out in the Settlement Agreement and this Distribution Protocol in respect of each Claim.

13. Where a Claim Form contains minor omissions or errors, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.

14. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Claims Administrator believes that the Claim is fraudulent, the Claims Administrator shall disallow the Claim in its entirety.

15. Where the Claims Administrator disallows a Claim in its entirety under paragraph 14, the Claims Administrator shall send to the Claimant, at the Claimant's mailing or email address as

indicated in the Claim Form, a notice advising the Claimant of the decision and that he/she/they may make a request for reconsideration to the Claims Administrator within twenty-one (21) days of the date of the notice advising of the disallowance of the Claim in its entirety (see "Reconsiderations" at paragraphs 21 to 27 below).

### **Settlement Payments by the Claims Administrator**

16. As soon as possible after (i) all timely Claim Forms have been processed; (ii) the time to request a reconsideration has expired; and (iii) all requests for reconsideration have concluded, the Claims Administrator shall review its determinations and shall allocate amounts to successful Claimants from the amount remaining in the Trust Account subject to the following limitations:

- (a) there will be no Settlement Payment for an Excluded Claim;
- (b) Settlement Payments shall not exceed CAD \$5,000 per Claimant;
- (c) if, after satisfying the Class Counsel Fees in the amount approved by the Court, the Honourarium in the amount approved by the Court, Administration Expenses, interest and all applicable taxes, the amount remaining in the Trust Account is sufficient to pay each Claimant with an Approved Claim CAD \$5,000, each Claimant with an Approved Claim shall be paid a Settlement Payment in that amount; and
- (d) if, after satisfying the Class Counsel Fees in the amount approved by the Court, the Honourarium in the amount approved by the Court, Administration Expenses, interest and all applicable taxes, the amount remaining in the Trust Account is not sufficient to pay each Claimant with an Approved Claim CAD \$5,000, the quantum of the Settlement Payment to all Claimants with Approved Claims shall be reduced *pro rata*.

17. Upon completion of paragraph 16 above, the Claims Administrator shall prepare, and deliver to counsel for the Defendant and Class Counsel, a Successful Claims Report advising the Defendant and Class Counsel of the Approved Claims and the Settlement Payment amount to be paid to each successful Claimant.

18. Within sixty (60) days of completion of the Successful Claims Report, the Claims Administrator shall make, from the Trust Account, Settlement Payments on account of the Approved Claims by mailing the individual Settlement Payment cheques to the successful Claimants at the mailing addresses indicated in the Claim Forms.

19. If, for any valid reason, a cheque is not cashed by a Claimant six (6) months after the date of the cheque, the Claimant shall forfeit the right to the Settlement Payment and the funds shall be returned to the Trust Account in accordance with paragraph 30 of this Distribution Protocol.

20. Thirty (30) days prior to the expiry of the six- (6-) month period described in paragraph 19 above, the Claims Administrator shall:

- (a) provide counsel for the Defendant and Class Counsel with a list of the Claimants who have not cashed their Settlement Payment cheques; and

- (b) send the Claimant a further letter (copied to Class Counsel) and attempt to contact the Claimant by telephone advising him/her/them that he/she/they has/have thirty (30) days to cash the Settlement Payment cheque.

## **Reconsiderations**

21. A Person who has submitted a Claim Form under the Settlement Agreement and Distribution Protocol is only entitled to notice of, and reconsideration, by the Claims Administrator, of, (i) a decision to disallow a Claim in its entirety under paragraph 14; and/or, (ii) a determination of ineligibility under paragraph 8. All other determinations of the Claims Administrator are final, and there is no further appeal or review of any decision of the Claims Administrator whatsoever to the Claims Administrator, Court, or any other court or tribunal.

22. For greater certainty, other than a decision to disallow a Claim in its entirety under paragraph 14, or a determination of ineligibility under paragraph 8, all decisions of the Claims Administrator, including those relating to, *inter alia*, any claims assessment, the quantum of the Settlement Payments awarded to each successful Claimant, the late delivery of any Claim, or any other matter relating to the claims process are final, and the Parties expressly agree that these decisions may not be appealed to or put before the Court or any other court or tribunal for any review or a determination.

23. The request for reconsideration shall identify that a request for reconsideration is being made (i) because the Claim was disallowed in its entirety under paragraph 14, or (ii) because a determination of ineligibility was made under paragraph 8, and shall concisely state, in no more than one (1) page, the basis for the request. The Person requesting the reconsideration shall provide any relevant evidence, documents, or materials with the request for reconsideration. Any request for reconsideration must be received by the Claims Administrator within twenty-one (21) days of the date of the notice advising of the disallowance of a Claim in its entirety or the determination that the Claim is ineligible. If no request for reconsideration is received by the Claims Administrator within this time period, the Person submitting the Claim Form shall be deemed to have accepted the determination of the Claims Administrator, and the determination shall be final and binding and not subject to further appeal or review by any court or other tribunal.

24. No materials submitted to the Claims Administrator by any Person making a request for reconsideration will be returned to that Person.

25. Where a timely request for reconsideration is filed with the Claims Administrator in accordance with paragraph 23 above, the Claims Administrator shall advise counsel for the Defendant and Class Counsel of the request and conduct a review of the request for reconsideration. The Claims Administrator must issue its decision on the reconsideration to the Person who submitted the Claim, counsel for the Defendant, and Class Counsel within fourteen (14) days of receipt of the request for reconsideration.

26. Following its determination on a request for reconsideration, the Claims Administrator shall advise the Person submitting the Claim of its determination of the request for reconsideration. In the event the Claims Administrator reverses or modifies its decision, the Claims Administrator shall send a notice specifying the revision to the disallowance or decision to the mailing or email address as indicated in the Claim Form.

27. The determination of the Claims Administrator in response to a request for reconsideration is final and binding and is not subject to further review by or appeal to any court or other tribunal.

### **Cy-Près Distribution**

28. As stated above, the maximum Settlement Payment per successful Claimant is CAD \$5,000.

29. If the number of Approved Claims would result in a *pro-rata* distribution of greater than CAD \$5,000 per successful Claimant, the excess amount in the Trust Account shall be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

30. Any funds returned to the Trust Account from uncashed cheques, as described in paragraph 19 above, and any funds otherwise remaining in the Trust Account after satisfying all Approved Claims shall be donated to the *cy-près* recipient mentioned in paragraph 29 above.



## SCHEDULE "B": NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING (SHORT FORM)

### HAVENTREE MORTGAGE RENEWAL CLASS ACTION: NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

Please read this Notice carefully – your legal rights may be affected.

A proposed nationwide Settlement has been reached in a class action lawsuit against Haventree Bank ("Haventree"): *Vistoli v Haventree Bank*, Ontario Superior Court of Justice Court File No. CV-20-00651976-00CP. The lawsuit alleges, and Haventree denies, that Haventree breached certain legislation and/or the terms of its contracts with Settlement Class Members in connection with the involuntary and/or automatic renewal of certain mortgages without the Settlement Class Members' consent, resulting in additional interest, costs and fees. Haventree denies any liability whatsoever, and the Court did not decide who was right. The Parties have instead decided to settle the lawsuit.

#### Who are Settlement Class Members in the Proposed Settlement?

All persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by Haventree were involuntarily and/or automatically renewed, and who paid any amount of additional interest, costs or fees as a result.

#### What benefits are available to Settlement Class Members under the Proposed Settlement?

Haventree and its insurer have agreed to pay an all-inclusive Settlement Amount of \$1,500,000 to pay successful Settlement Class Member claims as well as certain fees and expenses, including Class Counsel Fees in an amount to be approved by the Court. The quantum of the payments to Settlement Class Members with Approved Claims will not exceed \$5,000 per Claimant. After satisfying all Approved Claims, any excess or remaining amount of the Settlement Amount will be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

**SETTLEMENT APPROVAL HEARING:** The proposed Settlement must be approved by the Court to become effective. The Court will decide whether or not to approve the Settlement on [date] at [time] EST virtually over Zoom at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, ON M5G 1R7. Class Counsel's legal fees may also be approved at the Settlement Approval Hearing. Check the Claims Administrator's website ([settlement website]) or Class Counsel's websites (● and <https://www.mckenzielake.com/haventree-automatic-mortgage-agreement-renewals/>) regularly after the Settlement Approval Hearing to see if the Settlement has been approved. You can also provide your email address to the Claims Administrator or Class Counsel to be notified by email if the Settlement is approved.

#### YOUR LEGAL RIGHTS AND OPTIONS:

- If the Court approves the Settlement, you can **participate** by submitting a Claim for Settlement benefits. If you wish to participate, you are not required to do anything until after the Settlement is approved.
- You can **object** to the proposed Settlement and attend the Settlement Approval Hearing to present that objection. If you wish to object, you must submit a signed written objection statement to the Claims Administrator on or before [the Objection Deadline].
- You can **exclude** yourself from the Settlement (**opt out**), in which case, you will not be eligible to receive any Settlement benefits. If you wish to exclude yourself from the Settlement and preserve your legal rights against Haventree, you must submit a signed and completed Opt-Out Form to the Claims Administrator on or before [the Opt-Out Deadline]. A copy of the Opt-Out Form can be obtained from [settlement website] or by reaching out to Class Counsel at the telephone numbers or email addresses below.

To obtain more information, visit the Claims Administrator online at [settlement website]. You may also contact Class Counsel at [email address] or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or [email address] or 1-844-672-5666 (McKenzie Lake Lawyers LLP).

This Notice was approved by order of the Ontario Superior Court of Justice. This is not a solicitation from a lawyer.

## **SCHEDULE “C”: NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING (LONG FORM)**

Haventree Automatic Mortgage Agreement Renewals Class Action

### **NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING**

**If you had a mortgage held by Haventree Bank that was involuntarily and/or automatically renewed, you may benefit from a class action settlement.**

**PLEASE READ THIS NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED REGARDLESS OF WHETHER OR NOT YOU ACT.**

- The purpose of this Notice is to inform you of a proposed settlement in *Vistoli v Haventree Bank*, Ontario Superior Court of Justice, Court File No. CV-20-00651976-CP (the “Action”); and the certification of the Action for settlement purposes only.
- This lawsuit alleges, among other things, that Haventree Bank, also known as Banque Haventree, (“Haventree”) breached certain legislation and/or the terms of its contracts with Settlement Class Members in connection with the involuntary and/or automatic renewal of certain mortgages, resulting in additional interest, costs and fees. None of the allegations against Haventree have been proven and Haventree has not been found liable for any of the claims raised in this lawsuit. The Parties have instead proposed a Settlement in order to avoid lengthy litigation (the “Settlement”).
- Persons situated in Canada, including their heirs, estates, executors, trustees or personal representatives, whose mortgages held by Haventree were involuntarily and/or automatically renewed, and who paid any amount of additional interest, costs, and fees as a result are each known as “Settlement Class Members” and are collectively the “Settlement Class.” Settlement Class Members may be entitled to Settlement benefits if they submit a valid and timely Claim that is approved pursuant to the claims process described in this Notice and approved by the Court.
- Please note that Settlement Payments will be made for Approved Claims only if the Court approves the Settlement and the Settlement becomes effective. The date and time of the Settlement Approval Hearing is subject to modification by the Court; so, please check [\[settlement website\]](#) regularly for updates.

#### **Potential Settlement Benefits:**

Under the proposed Settlement, Haventree and its insurer have agreed to pay an all-inclusive Settlement Amount of \$1,500,000 to pay the successful Claims of Settlement Class Members, an Honourarium to the Representative Plaintiff, and certain fees and expenses, including Class Counsel Fees in an amount to be approved by the Court.

The quantum of the payments to Settlement Class Members with Approved Claims will not exceed \$5,000 per Claimant, but could be less than that amount per Claimant.

After satisfying all Approved Claims, any excess or remaining amount of the Settlement Amount will be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

### **Settlement Approval Hearing:**

The proposed Settlement must be approved by the Court to become effective. The Court will decide whether or not to approve the Settlement on [date] at [time] EST virtually over Zoom at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, ON M5G 1R7.

Class Counsel's legal fees may also be approved at the Settlement Approval Hearing.

### **Your Legal Rights and Options:**

- If the Court approves the Settlement, you can **participate** by submitting a Claim for Settlement benefits. If you wish to participate, you are not required to do anything until after the Settlement is approved.
- You can **object** to the proposed Settlement and attend the Settlement Approval Hearing to present that objection. If you wish to object, you must submit a signed written objection statement to the Claims Administrator, by mail or email, on or before [the Objection Deadline].
- You can **exclude** yourself from the Settlement (**opt out**), in which case, you will not be eligible to receive any Settlement benefits. If you wish to exclude yourself from the Settlement and preserve your legal rights against Haventree, you must submit a signed and completed Opt-Out Form to the Claims Administrator, by mail or email, on or before [the Opt-Out Deadline]. A copy of the Opt-Out Form can be obtained from [settlement website] or by reaching out to Class Counsel at the telephone numbers or email addresses below.

For specific information on how to submit an Opt-Out Form or the process to submit an objection, or to obtain more information, please visit the Claims Administrator online at [settlement website] or reach out to Class Counsel at [email address] or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or [email address] or 1-844-672-5666 (McKenzie Lake Lawyers LLP).

Your legal rights and options—**and the deadlines to exercise them**—are explained in more detail in this Notice. Please read this Notice carefully.

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**BASIC INFORMATION**

**1. Why did I receive this Notice?**

You are receiving this Notice because Haventree’s records indicate that you may be a Settlement Class Member, meaning a Person situated in Canada (including his/her/their heirs, estates, executors, trustees or personal representatives) whose mortgage held by Haventree was involuntarily and/or automatically renewed, and who paid any amount of interest, costs and fees as a result. You may be eligible to receive a cash payment if the proposed Settlement is approved and you submit a valid and timely Claim to the Claims Administrator.

You have a right to know about the proposed Settlement and your options before the Court decides whether to approve the proposed Settlement. This Notice explains the class action lawsuit, the proposed Settlement, your legal rights, what Settlement benefits are available, who is eligible for Settlement benefits, and how to make a Claim for those Settlement benefits. Please read this entire Notice carefully.

**2. What is this lawsuit about?**

The individual who filed this lawsuit is referred to as the “Representative Plaintiff,” and the company she sued, Haventree, is called the “Defendant” (the Representative Plaintiff and the Defendant are, together, the “Parties”). The Representative Plaintiff alleges that Haventree breached certain legislation and/or the terms of its contracts with Settlement Class Members in connection with the involuntary and/or automatic renewal of certain mortgages without the Settlement Class Members’ consent, resulting in additional interest, costs and fees. Haventree denies all of the allegations against it. None of the allegations against Haventree have been proven and Haventree has not been found liable for any of the claims raised in this lawsuit. The Parties have instead agreed to settle the lawsuit. The terms of the proposed Settlement are summarized in this Notice. You can read the Settlement Agreement at [[settlement website](#)].

Approval of the proposed Settlement is being sought in the Ontario Superior Court of Justice (the “Court”).

**3. Why is there a Settlement?**

The Parties have agreed to the proposed Settlement to avoid the cost and risk of further litigation, including potential trials, and to provide Settlement Class Members with reasonable Settlement benefits without the delay and uncertainty of trial. The proposed Settlement does not mean that Haventree broke any laws or did anything wrong, and the Court did not decide which side was right. Haventree denies all of allegations made in the lawsuit.

The Parties entered into a Settlement Agreement. The Representative Plaintiff and the lawyers representing her (called “Class Counsel”) believe that the proposed Settlement is fair, reasonable, and in the best interests of the Settlement Class.

This Notice summarizes the essential terms of the proposed Settlement. The Settlement Agreement, including its schedules, describe in greater detail the rights and obligations of all the Parties and is available at [settlement website]. If there is any conflict between this Notice and the Settlement Agreement, the Settlement Agreement governs.

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

### **4. How do I know if I am part of the proposed Settlement?**

You are a Settlement Class Member if you are a person situated in Canada (including his/her/their heirs, estates, executors, trustees or personal representatives) (i) whose mortgage held by Haventree was involuntarily and/or automatically renewed, and (ii) who paid any amount of interest, costs and fees as a result. Not all Settlement Class Members are eligible to receive Settlement benefits. Some exceptions apply (see below).

### **5. Who is excluded from the proposed Settlement?**

Only Settlement Class Members who meet certain criteria are eligible to submit Claims in the proposed Settlement. You are excluded from making a Claim in the proposed Settlement if:

- (a) you are not a Settlement Class Member under the terms of the Settlement Agreement; and/or
- (b) you previously settled claims against Haventree and executed a release in favour of Haventree in relation to matters that are the subject of this Action.

### **6. What should I do if I am still not sure whether I am included?**

If you are not sure whether you are included in the Settlement Class, you can ask for free help by emailing the Claims Administrator at [email] for more information.

## **SETTLEMENT BENEFITS – WHAT YOU GET**

### **7. What does the proposed Settlement provide?**

Under the proposed Settlement, Haventree and its insurer will pay \$1,500,000 to settle the Action. This amount will be used to pay the successful Claims of Settlement Class Members, an Honourarium to the Representative Plaintiff, Administration Expenses, Class Counsel Fees in an amount to be approved by the Court, interest, and all applicable taxes.

Under the proposed Settlement, Settlement Class Members may be eligible for a Settlement Payment, provided that they submit a valid and timely Claim. The quantum of the payments to Settlement Class Members with Approved Claims will not exceed \$5,000 per Claimant, but could be less than that amount per Claimant.

After satisfying all Approved Claims, any excess or remaining amount of the Settlement Amount will be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

## HOW YOU GET A SETTLEMENT PAYMENT – SUBMITTING A CLAIM

### 8. How do I make a Claim?

**The claims process has not yet begun.** If the proposed Settlement is approved by the Court at the Settlement Approval Hearing to be held on [date], you may make a Claim by filling out the Claim Form and submitting it to the Claims Administrator, by mail or email, on or before the deadline to submit a Claim (9 months from the date on which the Notice of Settlement Approval is first disseminated).

If the Court approves the proposed Settlement, you can contact the Claims Administrator by email ([email address]) to request a copy of the Claim Form or obtain a copy from [settlement website] or Class Counsel.

Please keep a copy of your completed Claim for your own records. Your completed Claim Form, and any other documents you submit with it, will not be returned to you.

If you fail to submit a Claim Form on or before the deadline to submit a Claim, you will not get paid. Sending in a Claim Form late will be the same as doing nothing.

### 9. If my Claim is successful, when will I receive my Settlement Payment?

In general, Approved Claims will be paid after the Claims Deadline, which will be published after the date of the Court order giving final approval to the Settlement. If there are appeals, the date will be later. When the date becomes known it will be posted at [settlement website].

The Settlement must be approved by the Court to become effective. The Settlement Approval Hearing will take place on [date] at [time] by EST virtually over Zoom at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, ON M5G 1R7. Please see Question 19 below for further information about the Settlement Approval Hearing.

The Settlement Approval Hearing may be rescheduled without further notice. To obtain updated scheduling information, see the settlement website at [settlement website].

You may continue to check on the progress of the Settlement by visiting the settlement website ([settlement website]) or by reaching out to Class Counsel at [email address] or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or [email address] or 1-844-672-5666 (McKenzie Lake Lawyers LLP).

### 10. Who will review my Claim?

Epiq Class Action Services Canada, Inc. (the “Claims Administrator”) has been appointed by the Court to administer the Settlement and the claims process. Once you submit a Claim, it will be reviewed by the Claims Administrator and if the Claim is valid, the Claims Administrator will send you your Settlement Payment directly.

### 11. What if my Claim is found to be incomplete?

The Claims Administrator will review each Claim Form for completeness. If your Claim Form is found to be incomplete, the Claims Administrator will let you know within twenty (20) business days of receiving your Claim Form. You will then have an opportunity to complete the Claim Form within the later of (i) thirty (30) days from the date that the Claims Administrator advises you that your Claim Form is incomplete; or (ii) the Claims Deadline.

## 12. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself in writing (opt out) from the Settlement Class, as described in the answer to Question 13, you will be part of the Settlement Class bound by the Settlement if the Settlement is approved by the Court. That means that you can't sue, continue to sue, or be part of any other lawsuit against Haventree or other related entities or individuals (listed in the Settlement Agreement, which you can view at [\[settlement website\]](#)) about the legal issues in this case relating to your mortgage held by Haventree. It also means that all of the Court's orders will apply to you and legally bind you.

If you have any questions about the scope of the legal claims you give up by staying in the Settlement Class, you may view Section 5 of the Settlement Agreement (available at [\[settlement website\]](#)) or you can contact Class Counsel:

**Landy Marr Kats LLP**  
2 Sheppard Ave E, Suite 900  
Toronto, ON M2N 5Y7  
Tel: 416-221-9343 ext. 250  
Email: ●

**Mckenzie Lake Lawyers LLP**  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2  
Tel: 1-844-672-5666  
Email: ●

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want to receive any benefits from the Settlement, and you want to keep your legal rights, if any, to sue Haventree on your own about the legal issues in this case, then you must take steps to exclude yourself from (opt out of) the Settlement Class.

### 13. How do I get out of the proposed Settlement?

**The deadline to exclude yourself or opt out of the Settlement Class is [\[the Opt-Out Deadline\]](#).**

To exclude yourself from the Settlement, you must submit a signed and completed Opt-Out Form to the Claims Administrator, by mail or email, on or before [\[the Opt-Out Deadline\]](#). The Opt-Out Form is available at [\[settlement website\]](#) or by contacting Class Counsel.

If you exclude yourself or opt out of the Settlement Class, you will not have any rights as a Settlement Class Member under the Settlement; you will not receive any payment under the Settlement; you will not be bound by any further orders or judgments in the Action; and you will keep the right to sue on your claims at your own expense.

### 14. If I don't exclude myself, can I sue for the same thing later?

No. Unless you exclude yourself (opt out), you give up the right to sue Haventree, and other related entities or individuals for the claims that this Settlement resolves.



If you have a pending lawsuit against Haventree, or other related entities or individuals, speak to your lawyer in that lawsuit immediately. You must exclude yourself from the Settlement Class to continue your own lawsuit if it concerns the same legal issues in this case.

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in this case?**

The law firms representing the Settlement Class are listed below.

**Landy Marr Kats LLP**  
2 Sheppard Ave E, Suite 900  
Toronto, ON M2N 5Y7  
Tel: 416-221-9343 ext. 250  
Email: ●

**Mckenzie Lake Lawyers LLP**  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2  
Tel: 1-844-672-5666  
Email: ●

You will not be charged for contacting these lawyers. If you want to be represented by your own lawyer, you may hire one at your own cost.

### **16. How will the lawyers representing the Settlement Class be paid?**

At the Settlement Approval Hearing, Class Counsel will ask the Court for approval of the payment of their fees and other expenses out of the \$1,500,000 Settlement Amount. It will be up to the Court to approve or determine the amount that Class Counsel will receive from the \$1,500,000 Settlement Amount. The Court may award less than the amount requested by Class Counsel. You may continue to check on the progress of Class Counsel's request for fees and expenses by visiting [\[settlement website\]](#).

## **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you don't agree with the Settlement or some part of it.

### **17. How do I tell the Court if I do not like the proposed Settlement?**

If you are a Settlement Class Member, you can object to the proposed Settlement if you don't like it or any part of it. You can give the Court reasons why you think the Court should not approve the proposed Settlement. The Court will consider your views.

If you want to object to the proposed Settlement, you must do so in writing. You may also appear at the Settlement Approval Hearing, either personally or through your own legal counsel, at your own expense.

To object, you must deliver a signed written objection statement to the Claims Administrator, by mail ([\[address\]](#)) or email ([\[email address\]](#)), on or before [the [Objection Deadline](#)]. Your signed written objection statement must include the following:

- (a) your full name, mailing address, telephone number, and email address (if available);
- (b) a statement that you meet the criteria for membership in the Settlement Class;
- (c) a written statement of all factual and legal grounds for your objection accompanied by any legal support for such objection;
- (d) copies of any papers, briefs, or other documents upon which your objection is based;
- (e) a statement setting out whether you intend to appear at the Settlement Approval Hearing; and
- (f) a statement setting out whether you intend to appear at the Settlement Approval Hearing through counsel, and if so, identifying any counsel representing you who intends to appear at the Settlement Approval Hearing.

Objections must be sent by mail or email to the Claims Administrator on or before **[the Objection Deadline]**. Objections submitted after this date will not be considered.

If you want to speak at the Settlement Approval Hearing, you must indicate that you intend to do so in your written objection statement. You can hire a lawyer to appear on your behalf at your own expense or you may appear yourself. If you do not state your intention to appear in your written objection statement, or you do not submit an objection in accordance with the applicable deadlines and specifications, you will waive all objections and can be barred from speaking at the Settlement Approval Hearing.

### **18. What is the difference between objecting and opting out?**

Objecting is simply telling the Court that you don't like something about the proposed Settlement. You can object to the proposed Settlement only if you stay in the Settlement Class.

Opting out (excluding yourself) is telling the Court that you do not want to be part of the Settlement Class and the proposed Settlement. If you opt out (exclude yourself), you have no basis to object because the proposed Settlement no longer affects you.

## **THE SETTLEMENT APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, subject to the requirements above, but you don't have to.

### **19. When and where will the Court decide whether to approve the proposed Settlement?**

The Settlement Approval Hearing will take place on **[date]** at **[time]** by EST virtually over Zoom at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, ON M5G 1R7.

The Zoom call-in details will be posted on **[settlement website]** a few days prior to the Settlement Approval Hearing.

At this Settlement Approval Hearing, the Court will consider whether the proposed Settlement is fair, reasonable, and in the best interests of the Settlement Class. If there are objections, the Court will consider them. The Court will listen to Settlement Class Members who have asked to speak at the Settlement Approval Hearing. The Court may also decide how much to pay Class Counsel. After the Settlement Approval Hearing, the Court will decide whether to approve the proposed Settlement. We do not know how long this decision will take.

The Settlement Approval Hearing may be rescheduled without further notice to you. It is recommended that you periodically check [\[settlement website\]](#) for updated information.

## **20. Do I have to attend the Settlement Approval Hearing?**

No, you do not need to attend the Settlement Approval Hearing, but you are welcome to attend at your own expense.

Settlement Class Members do not need to appear at the Settlement Approval Hearing or take any other action to indicate their approval of the proposed Settlement. Class Counsel will answer any questions that the Court may have.

If you submit an objection, you do not need to appear at the Settlement Approval Hearing to talk about it. As long as you have mailed your signed written objection statement on time, the Court will consider it. You may also attend or pay your own lawyer to attend, but it is not necessary.

## **IF YOU DO NOTHING**

### **21. What happens if I do nothing at all?**

If the Court approves the proposed Settlement and you do nothing at all, you will not receive any Settlement Payment from the proposed Settlement. In order to receive a Settlement Payment, you must submit a valid and timely Claim Form. Unless you exclude yourself (opt out), you won't be able to start a lawsuit, continue a lawsuit, or be part of any other lawsuit against Haventree, or other related entities or individuals, about the legal issues in this case.

However, even if you take no action, you will keep your right to sue Haventree for any other claims not resolved by the proposed Settlement, subject to any applicable limitation periods.

## **GETTING MORE INFORMATION**

### **22. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement, which you can view at [\[settlement website\]](#).

Neither the Parties nor their counsel make any representation regarding the tax effects, if any, of receiving any benefits under the proposed Settlement. Consult your tax advisor for any tax questions you may have.

### **23. How do I get more information?**

The court offices will be unable to answer any questions about the matters in this Notice. If you have any questions regarding the proposed Settlement or about the class action lawsuit in general, more information is available at [\[settlement website\]](#), by emailing the Claims Administrator ([\[email address\]](#)), or by contacting Class Counsel directly:

**Landy Marr Kats LLP**  
2 Sheppard Ave E, Suite 900  
Toronto, ON M2N 5Y7  
Tel: 416-221-9343 ext. 250  
Email: ●

**Mckenzie Lake Lawyers LLP**  
140 Fullarton Street, Suite 1800  
London, ON N6A 5P2  
Tel: 1-844-672-5666  
Email: ●

Website: <https://thetorontolawyers.ca/class-actions/haventree-bank/>

Website:  
<https://www.mckenzielake.com/haventree-automatic-mortgage-agreement-renewals/>

## SCHEDULE "D": NOTICE OF SETTLEMENT APPROVAL

### HAVENTREE MORTGAGE RENEWAL CLASS ACTION: NOTICE OF SETTLEMENT APPROVAL

**Please read this Notice carefully. Your legal rights may be affected regardless of whether or not you act.**

#### Who is this Notice for?

This Notice is for all persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by Haventree Bank (also known as Banque Haventree) were involuntarily and/or automatically renewed, and who paid any amount of interest, costs, and fees as a result ("Settlement Class Members"). You may be eligible for benefits under the Settlement.

#### What is the purpose of this Notice?

This Notice is to inform you that the Ontario Superior Court of Justice has approved the nationwide Settlement reached in a class action lawsuit against Haventree Bank, also known as Banque Haventree, ("Haventree"). The lawsuit alleges, and Haventree denies, that Haventree breached certain legislation and/or the terms of its contracts with Settlement Class Members in connection with the involuntary and/or automatic renewal of certain mortgages, resulting in additional interest, costs and fees. Haventree denies any liability whatsoever and has not been found liable for any of the claims advanced in the lawsuit. The Parties have instead reached a voluntary Settlement. The Settlement was approved on [date].

#### What is available under the Settlement?

Under the Settlement, Haventree and its insurer will pay \$1,500,000 to settlement the lawsuit. This amount will be used to pay the successful Claims of Settlement Class Member as well as certain fees and expenses, including Class Counsel Fees in the amount approved by the Court.

Settlement Class Members may be eligible for a Settlement Payment, provided that they submit a valid and timely Claim. The quantum of the payments to Settlement Class Members with Approved Claims will not exceed \$5,000 per Claimant, but could be less than that amount per Claimant.

After satisfying all Approved Claims, any excess or remaining amount of the Settlement Amount will be donated to a *cy-près* recipient to be jointly agreed to by the Parties and approved by the Court.

#### How do I make a Claim?

The period for submitting a Claim begins on ●, 2024 and runs until ●. During that period, you may make a Claim by filling out the Claim Form and submitting it to the Claims Administrator, by mail (at the address listed on the Claim Form) or email (at the email address listed on the Claim Form), on or before [the deadline to submit a Claim (9 months from the date on which the Notice of Settlement Approval is first disseminated)].

Please keep a copy of your completed Claim Form for your own records.

If you fail to submit a Claim Form on or before [the deadline to submit a Claim (9 months from the date on which the Notice of Settlement Approval is first disseminated)], you will not get paid. Sending in a Claim Form late will be the same as doing nothing.

**To obtain more information, visit the Claims Administrator online at [settlement website]. You may also contact Class Counsel at [email address] or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or [email address] or 1-844-672-5666 (McKenzie Lake Lawyers LLP).**

**This Notice was approved by order of the Ontario Superior Court of Justice. This is not a solicitation from a lawyer.**

## **SCHEDULE “E”: NOTICE PLAN**

1. Capitalized terms used in this Notice Plan have the meanings ascribed to them in the Settlement Agreement.
2. The short-form and long-form Notice of Certification and Settlement Approval Hearing, the Notice of Settlement Approval, the Opt-Out Form, and the Claim Form will be made available in both English-language and French-language versions. Where these documents are to be posted on a website or published through digital media, both the English-language and French-language versions will be posted or published. The French-language versions will also be forwarded to any Settlement Class Member who requests them.

### **Notice of Certification and Settlement Approval Hearing**

3. The Notice of Certification and Settlement Approval Hearing shall first be published within forty-five (45) days of the Notice Approval and Certification Order, and shall thereafter be distributed as follows:
  - (a) the Claims Administrator and Class Counsel shall post the short-form and long-form Notice of Certification and Settlement Approval Hearing, the Opt-Out Form, and the Settlement Agreement on their websites;
  - (b) the Claims Administrator shall send the short-form Notice of Certification and Settlement Approval Hearing by email directly to all Settlement Class Members who have an email address listed on the Settlement Class List provided to the Claims Administrator by the Defendant;
  - (c) the Claims Administrator shall send the short-form Notice of Certification and Settlement Approval Hearing by regular mail directly to all Settlement Class Members who have a mailing address, but not an email address, listed on the Settlement Class List provided by the Defendant;
  - (d) the Claims Administrator shall publish the short-form Notice of Certification and Settlement Approval Hearing through the Google Display Network and on Facebook, blogTO, and MobileSyrup for a period of 60 days, optimizing the publications to increase the number of views;
  - (e) Class Counsel shall maintain a support line to provide assistance to Settlement Class Members or other Persons who make inquiries on their own behalf or on behalf of Settlement Class Members;
  - (f) Class Counsel shall send the short-form Notice of Certification and Settlement Approval Hearing by email directly to Settlement Class Members who have provided their email address to Class Counsel;
  - (g) the Claims Administrator and Class Counsel shall forward copies of short-form and long-form Notice of Certification and Settlement Approval Hearing, the Opt-Out

Form, and the Settlement Agreement to any Settlement Class Member who requests them; and

- (h) Class Counsel will forward the short-form and long-form Notice of Certification and Settlement Approval Hearing to The Canadian Bar Association Class Action Database with a request that they be posted online.

#### **Notice of Settlement Approval**

- 4. The Notice of Settlement Approval shall first be published within forty-five (45) days of the Settlement Approval Order, and shall thereafter be disseminated as follows:
  - (a) the Claims Administrator and Class Counsel shall post the Notice of Settlement Approval, Settlement Approval Order, and the Claim Form on their websites;
  - (b) the Claims Administrator shall send the Notice of Settlement Approval and the Claim Form by email directly to all Settlement Class Members who have an email address listed on the Settlement Class List provided by the Defendant;
  - (c) Settlement Class Members may register their email address on the Claims Administrator's website, and the Claims Administrator will send the Notice of Settlement Approval and the Claim Form by email directly to the email addresses provided;
  - (d) the Claims Administrator shall publish the Notice of Settlement Approval through the Google Display Network and on Facebook, blogTO, and MobileSyrup for a period of 60 days, optimizing the publications to increase the number of views;
  - (e) Class Counsel shall send the Notice of Settlement Approval and the Claim Form by email directly to Settlement Class Members who have provided their email address to Class Counsel;
  - (f) the Claims Administrator and Class Counsel shall forward copies of the Notice of Settlement Approval and the Claim Form to any Settlement Class Member who requests them; and
  - (g) Class Counsel will forward the Notice of Settlement Approval to The Canadian Bar Association Class Action Database with a request that it be posted online.

## SCHEDULE "F": OPT-OUT FORM

*Vistoli v Haventree Bank, also known as Banque Haventree,*  
Ontario Superior Court of Justice Court File No. CV-20-00651976-00CP

### OPT-OUT FORM

**Instructions: This is not a registration form or a claim form. Fill out and submit this form by mail or email to [email address] ONLY IF YOU WISH TO BE EXCLUDED FROM THIS CLASS ACTION AND PROPOSED SETTLEMENT. DO NOT USE THIS FORM IF YOU WANT TO PARTICIPATE IN THE CLASS ACTION AND PROPOSED SETTLEMENT.**

#### 1. Settlement Class Member Identification

Provide the following information about the person (i.e., the Settlement Class Member) submitting this Opt-Out Form, or, if applicable, on whose behalf you are submitting this Opt-Out Form:

Last Name:	First Name:	Middle Initial:	
Current Mailing Address:		Apt. Number:	
City:	Province:	Postal Code:	Country:
Phone Number:		Email Address (if available):	
Name at the Time Settlement Class Member Entered into Mortgage Agreement with Haventree Bank (if different than above):			
Residential Address Subject to the Mortgage Agreement:			Apt. Number:
City:	Province:	Postal Code:	
Mortgage Number:			



**2. Representative Identification (complete this section only if you are submitting this Opt-Out Form on behalf of a Settlement Class Member who is deceased or for another reason)**

If you are submitting this Opt-Out Form as a representative on behalf of a Settlement Class Member, please provide the following personal identification information (about you) **and attach a copy of the Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document(s) establishing your authority to act on this person’s behalf:**

YOU ARE SUBMITTING THIS OPT-OUT FORM ON BEHALF OF SOMEONE WHO IS:				
<input type="checkbox"/> DECEASED <input type="checkbox"/> OTHER REASON (Identify: _____)				
Representative’s Last Name:		Representative’s First Name:		Representative’s Relationship to Settlement Class Member:
Representative’s Mailing Address:				Apt./Suite Number:
City:	Province/State:	Postal Code:	Code/Zip	Country:
Representative’s Phone Number:	Representative’s Email Address:			Representative’s Law Firm Name (if applicable):

**Note: This Opt-Out Form will be invalid unless signed personally by the Settlement Class Member except where the Settlement Class Member is deceased or legally incapacitated.**

**3. I Wish to Opt Out**

Check **only** the applicable box below to confirm your intention to opt out of this class action and the proposed Settlement.

- I am a person situated in Canada whose mortgage held by Haventree Bank was involuntarily and/or automatically renewed, and I paid an amount of interest, costs, and fees as a result. I understand that by opting out, I will not be eligible to receive any payment under the proposed Settlement.
- I am the representative of the above-identified Settlement Class Member whose mortgage held by Haventree Bank was involuntarily and/or automatically renewed, and who paid an amount of interest, costs, and fees as a result. I am signing this Opt-Out Form on that Settlement Class Member’s behalf to **EXCLUDE** that Settlement Class Member from this class action, the proposed Settlement, and any benefits that may be obtained under the proposed Settlement. I understand that by submitting this Opt-Out Form, the Settlement Class Member will not be eligible to receive any payment under the proposed Settlement. [Note: For this Opt-Out Form to be valid, you must attach a copy of the Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document establishing your authority to act on the Settlement Class Member’s behalf.]

#### 4. Signature & Date

\_\_\_\_\_      \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Signature of Settlement Class Member (or Representative)      YYYY      MM      DD

If you wish to opt out of the proposed Settlement, you **MUST** submit your signed and completed Opt-Out Form to the Claims Administrator by mail or email **on or before [Opt-Out Deadline]**.

**Attn: Haventree Mortgage Renewals Class Action Claims Administrator  
c/o Epiq Class Action Services Canada, Inc.  
P.O. Box 507 STN B  
Ottawa, ON K1P 5P6  
Email: ●**

If you have questions before submitting this form, contact Class Counsel at **[email address]** or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or **[email address]** or 1-844-672-5666 (McKenzie Lake Lawyers LLP).

## SCHEDULE "G": CLAIM FORM

*Vistoli v Haventree Bank, also known as Banque Haventree,*  
Ontario Superior Court of Justice Court File No. CV-20-00651976-00CP

### **HAVENTREE MORTGAGE RENEWAL CLASS ACTION SETTLEMENT:** **CLAIM FORM**

**Private & Confidential**

**Please read this Claim Form carefully and complete it in full. Failure to fully complete this Claim Form and/or sign it will result in your Claim being rejected. Once completed and signed, submit this Claim Form to the Claims Administrator on or before [deadline to submit a Claim Form (9 months from the date on which the Notice of Settlement Approval is first disseminated)].**

#### **INSTRUCTIONS**

1. This Claim Form is for Settlement Class Members who wish to claim a Settlement Payment under the Settlement Agreement. **"Settlement Class Members"** means all persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by Haventree Bank (also known as Banque Haventree) were involuntarily and/or automatically renewed, and who paid any amount of interest, costs, and fees as a result.
2. All Claim Forms will be reviewed and assessed by the Claims Administrator appointed by the Court. Once you have completed it, send this Claim Form to the Claims Administrator. All Claim Forms must be sent/postmarked on or before [deadline to submit a Claim Form (9 months from the date on which the Notice of Settlement Approval is first disseminated)]. After that date, it will be too late for your Claim to be considered.
3. **Keep a copy of your completed Claim Form for your records.**
4. Your Claim Form is confidential and will only be used for the claims process.
5. There are two ways to submit this Claim Form to the Claims Administrator:
  - (a) by email to [email address]; or
  - (b) by mail sent to the following address:

**Attn: Haventree Mortgage Renewals Class Action Claims Administrator  
c/o Epiq Class Action Services Canada, Inc.  
P.O. Box 507 STN B  
Ottawa, ON K1P 5P6.**

If you submit your Claim by email, keep the email. If you submit your Claim by mail, write down the date you put the Claim Form in the mailbox. Keep that date with your copy.

6. Ask for help if you do not understand this Claim Form. You can ask someone that you trust for help. You can also email the Claims Administrator ([email address]) or reach out to Class Counsel at [email address] or 416-221-9343 ext. 250 (Landy Marr Kats LLP) or [email address] or 1-844-672-5666 (McKenzie Lake Lawyers LLP).
7. If the Claims Administrator has any questions regarding your Claim after it is submitted, you will be notified by email or mail. You must respond promptly to any request by the Claims Administrator for additional information. If you do not respond, the Claims Administrator will be unable to process your Claim and you will not get paid.
8. You must notify the Claims Administrator if your address or contact information changes after you submit this Claim Form. If you do not, you may not receive your Settlement Payment.
9. **CLAIMS DEADLINE: Your Claim Form must be submitted to the Claims Administrator by [deadline to submit a Claim Form (9 months from the date on which the Notice of Settlement Approval is first disseminated)].**

## 1. YOUR INFORMATION

Provide the following information about the person submitting this Claim, or, if applicable, on whose behalf you are submitting this Claim. You must notify the Claims Administrator if this information changes after you submit this Claim Form.

Last Name:		First Name:		Middle Initial:	
Address:				Apt. Number:	
City:	Province:	Postal Code:		Country:	
Phone Number:			Email Address (if available):		

## 2. INFORMATION ABOUT YOUR HAVENTREE MORTGAGE AGREEMENT

Please provide the following information about your mortgage held by Haventree Bank:

Name at the Time Settlement Class Member Entered into Mortgage Agreement with Haventree Bank (if different than above):		
Residential Address Subject to the Mortgage Agreement:		Apt. Number:
City:	Province:	Postal Code:
Mortgage Number:		
Check <b><u>only</u></b> the applicable box below:		
<input type="checkbox"/> I am a person situated in Canada whose mortgage held by Haventree Bank was involuntarily and/or automatically renewed, and I paid an amount of interest, costs, and fees as a result.		
<input type="checkbox"/> I am the representative of the above-identified Settlement Class Member whose mortgage held by Haventree Bank was involuntarily and/or automatically renewed, and who paid an amount of interest, costs, and fees as a result. [Note: For this Claim Form to be valid, you must attach a copy of the Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document establishing your authority to act on the Settlement Class Member's behalf.]		

## 3. REPRESENTATIVE IDENTIFICATION (only complete this section if you are submitting this Claim Form on behalf of a Settlement Class Member who is deceased or for another reason)

If you are submitting this Claim Form as a representative on behalf of a Settlement Class Member, provide the following information about yourself **and attach a copy of the Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document(s) establishing your authority to act on this person's behalf:**

Representative's Full Name:		
Representative's Street Address:		Suite/Apt Number (if any):
City:	Province/Territory:	Postal Code:

Representative's Phone Number:	Representative's Email Address:
Representative's Law Firm Name (if applicable):	

In the space below, please explain why you have the authority to submit this Claim Form on the Class Member's behalf:

**I have attached a copy of the Certificate of Appointment of Estate Trustee, Continuing Power of Attorney for Property, or other document(s) establishing my authority to act on the Class Member's behalf.**

**4. WRITTEN CONFIRMATION**

By signing below and submitting this Claim Form, I confirm that the information that I have provided is true to the best of my knowledge.

\_\_\_\_\_  
Today's Date (YYYY/MM/DD)

\_\_\_\_\_  
Signature of Settlement Class Member (or Representative)

\_\_\_\_\_  
Printed Name of Settlement Class Member (or Representative)

**5. PRIVACY STATEMENT**

All personal information provided by or on behalf of the Settlement Class Member to the Claims Administrator or its agent(s) will be handled in accordance with applicable privacy laws. Such information will be collected, used, and retained solely for the purposes of administering the Settlement Agreement. The information provided will be treated as private and confidential and will not be disclosed without the express written consent of the Settlement Class Member or his/her/their counsel, except in accordance with the Settlement Agreement, Settlement Approval Order, and/or other orders of the Ontario Superior Court of Justice.

**6. SIGNATURE & DATE**

By submitting a Claim in this Settlement, I hereby acknowledge that:

- (a) I am a member of the Settlement Class;
- (b) I am bound by and subject to the terms of the Settlement Agreement and the Settlement Approval Order, including the releases set forth therein; and
- (c) if I have issued and served on Haventree Bank, or other related entities or individuals, my own individual lawsuit, proceeding, action, or application about the legal issues in this case (“Individual Claim”), and did not opt out of the Settlement Class, my Individual Claim may be dismissed with prejudice and without costs as provided in the Settlement Agreement.

By signing below, I declare under penalty of perjury that I am a Settlement Class Member or a representative of a Settlement Class Member as disclosed in section 3 above, and that the information provided and submitted in this Claim Form is true and correct to the best of my knowledge. I understand that this Claim Form may be subject to audit, verification, and review by the Claims Administrator, the Defendant, and/or Class Counsel. I also understand that if the information contained in this Claim Form is believed or found to be fraudulent, I will not receive any payment. I agree to participate in the Settlement.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Settlement Class Member (or Representative)

\_\_\_\_\_  
Printed Name of Settlement Class Member (or Representative)

## **7. REMINDER CHECKLIST**

- I have reviewed this Claim Form for completeness and correctness.**
- I have signed and dated this Claim Form.**
- I have given the written confirmation in section 4.**
- I have attached the document(s) requested by section 3, if applicable.**
- I have made a copy and kept a copy of this Claim Form for my records.**



**SCHEDULE “H”: NOTICE APPROVAL AND CERTIFICATION ORDER**

Court File No. CV-20-00651976-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) ..... THE .....  
JUSTICE AKBARALI ) DAY OF ....., 2024

B E T W E E N:

KARIN VISTOLI  
Plaintiff/Moving Party

and

HAVENTREE BANK, also known as BANQUE HAVENTREE  
Defendant/Responding Party

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Notice Approval and Certification)**

**THIS MOTION**, made by the Plaintiff, for an Order (1) certifying this Action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 for settlement purposes only; (2) approving the form and content of the short- and long-form notices of certification and settlement approval hearing (the “Notice of Certification and Settlement Approval Hearing”); (3) approving the Notice Plan for disseminating such notice; and (4) approving the procedures for opting out of the Settlement Class and objecting to the proposed Settlement Agreement was heard this day by judicial videoconference at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**ON READING** the materials filed by the Parties, including the settlement agreement between them, dated ● (the “Settlement Agreement”), a copy of which is attached to this Order as Appendix “A,” and on hearing the submissions of counsel for the Plaintiff and counsel for the Defendant;

**AND ON BEING ADVISED** (1) that the Defendant consents to this Order; and, (2) that Epiq Class Action Services Canada, Inc. consents to being appointed as Claims Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order and unless otherwise defined in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;

2. **THIS COURT ORDERS** that this Action is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, for settlement purposes only;

3. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons situated in Canada (including their heirs, estates, executors, trustees or personal representatives) whose mortgages held by the Defendant were involuntarily and/or automatically renewed, and who paid any amount of interest, costs and fees as a result.

4. **THIS COURT ORDERS** that Karin Vistoli is hereby appointed as the Representative Plaintiff on behalf of the Settlement Class;

5. **THIS COURT ORDERS** that Landy Marr Kats LLP and McKenzie Lake Lawyers LLP are hereby appointed as Class Counsel in this Action;

6. **THIS COURT ORDERS** that this Action is certified as a class proceeding, for settlement purposes only, on behalf of the Settlement Class in respect of the following common issue:

Did the Defendant breach any legislation and/or the terms of its contracts with the Settlement Class Members, including the duty of good faith and honest contractual performance, in connection with the involuntary and/or automatic renewal of mortgages?

7. **THIS COURT ORDERS** that Epiq Class Action Services Canada, Inc. is appointed as Claims Administrator to deliver the Notice of Certification and Settlement Approval Hearing in accordance with the Notice Plan and to perform the duties and responsibilities set out in the Settlement Agreement and any other related duty or responsibility as ordered by this Court;
8. **THIS COURT ORDERS** that Settlement Class Members shall be given notice of the Settlement Approval Hearing, the certification of this Action, and the opt-out and objection processes in substantially the forms set out in Appendix “B” to this Order and in the manner set out in Appendix “C” to this Order;
9. **THIS COURT DECLARES** that the dissemination of the Notice of Certification and Settlement Approval Hearing as set out in the Notice Plan is the best notice practicable under the circumstances, constitutes sufficient notice to all Settlement Class Members entitled to notice, and satisfies the requirements of notice under sections 17 through 22, inclusive, of the *Class Proceedings Act, 1992*, SO 1992, c 6;
10. **THIS COURT ORDERS** that the costs and fees of the Claims Administrator, including the costs associated with disseminating and publishing the Notice of Certification and Settlement Approval Hearing, shall be paid out of the Settlement Amount in accordance with the terms of the Settlement Agreement;
11. **THIS COURT ORDERS AND AUTHORIZES** the Defendant to provide the Claims Administrator with the names, addresses, and email addresses (if available) of Settlement Class

Members for the purposes of providing Settlement Class Members with notice and facilitating the claims administration process pursuant to the Settlement Agreement and Distribution Protocol;

12. **THIS COURT ORDERS** that all information provided to the Claims Administrator by or about Settlement Class Members as part of the Notice Plan or administration of the Settlement Agreement shall be collected, used, and retained by the Claims Administrator and its agent(s) pursuant to the applicable privacy laws and solely for the purposes of providing notice of the settlement and administering the Settlement Agreement. The information provided shall be treated as private and confidential and shall not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Approval and/or orders of this Court;

13. **THIS COURT ORDERS** that the form and content of the Opt-Out Form, substantially in the form attached to this Order as Appendix “D,” are hereby approved;

14. **THIS COURT ORDERS** that Settlement Class Members may opt out of this Action by following the opt-out process set out in the Settlement Agreement and Notice of Certification and Settlement Approval Hearing, by no later than the Opt-Out Deadline, being sixty (60) days after the Notice of Certification and Settlement Approval Hearing is first disseminated;

15. **THIS COURT ORDERS** that all Settlement Class Members who do not validly opt out of this Action by the Opt-Out Deadline shall be bound by the terms of the Settlement Agreement, if it is approved by this Court, and may not opt out of this Action in the future;

16. **THIS COURT ORDERS** that any Person who opts out of this Action in accordance with the provisions for doing so in the Settlement Agreement, the Notice of Certification and Settlement

Approval Hearing, and paragraph 14 of this Order shall be excluded from the Settlement Class and the Action;

17. **THIS COURT ORDERS** that a Settlement Class Member who wishes to file with the Court an objection to the Settlement Agreement must submit to the Claims Administrator, on or before the Objection Deadline, a written objection statement, signed by the objector and containing the following information: (i) the objector's full name, mailing address, telephone number, and email address (if available); (ii) a statement that the objector meets the criteria for membership in the Settlement Class; (iii) a written statement of all factual and legal grounds for the objection accompanied by any legal support for such objection; (iv) copies of any papers, briefs, or other documents upon which the objection is based; (v) a statement setting out whether the objector intends to appear at the Settlement Approval Hearing; and (vi) a statement setting out whether the objector intends to appear at the Settlement Approval Hearing through counsel, and if so, identifying any counsel representing the objector who intends to appear at the Settlement Approval Hearing;

18. **THIS COURT ORDERS** that any putative member of the Settlement Class who elects to opt out of the Action in accordance with the provisions of the Settlement Agreement, the Notice of Certification and Settlement Approval Hearing, and paragraph 14 of this Order may not also object to the Settlement Agreement and that any such objection received therefrom shall be deemed withdrawn;

19. **THIS COURT ORDERS** that the motion for approval of the Settlement Agreement (the Settlement Approval Hearing) will be heard on [date] at [time] EST virtually over Zoom at the

Ontario Superior Court of Justice, 330 University Avenue, Toronto, ON M5G 1R7. At the Settlement Approval Hearing, the Representative Plaintiff will seek the following orders:

- (a) an order approving the Settlement Agreement, the content and manner of notice to the Settlement Class of such approval, the Claim Form;
- (b) an order approving the Honourarium;
- (c) an order approving Class Counsel Fees; and
- (d) any other order that the Court may deem appropriate;

20. **THIS COURT ORDERS** that the date and time of the Settlement Approval Hearing set forth in the Notice of Certification and Settlement Approval Hearing are subject to adjournment by the Court without further notice to Settlement Class Members;

21. **THIS COURT ORDERS** that Class Counsel must file their motion materials in support of approval of the Settlement Agreement and corresponding Settlement, the Honourarium, and Class Counsel Fees no less than seven (7) days before the Settlement Approval Hearing;

22. **THIS COURT ORDERS** that if the Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes only, shall be set aside and declared null and void and of no force or effect without the need for any further order of this Court;

23. **THIS COURT ORDERS** that any party affected by this Order may apply to the Court for further directions; and

24. **THIS COURT ORDERS** that in the event of a conflict between this Order and the terms of the Settlement Agreement, this Order shall prevail.

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**The Honourable Justice Akbarali**

KARIN VISTOLI  
Plaintiff/Moving Party

-and- HAVENTREE BANK, also known as BANQUE HAVENTREE  
Defendant/Responding Party

Court File No. CV-20-00651976-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER**  
**(Notice Approval and Certification)**

**LANDY MARR KATS LLP**

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Lawyers for the Plaintiff/Moving Party



**SCHEDULE "I": SETTLEMENT APPROVAL ORDER**

Court File No. CV-20-00651976-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) ..... THE .....  
JUSTICE AKBARALI ) DAY OF ....., 2024

B E T W E E N:

KARIN VISTOLI  
Plaintiff/Moving Party

and

HAVENTREE BANK, also known as BANQUE HAVENTREE  
Defendant/Responding Party

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Settlement Approval)**

**THIS MOTION**, made by the Plaintiff, for an Order approving the Settlement Agreement entered into with the Defendant was heard this day by judicial videoconference at the Ontario Superior Court of Justice, 330 University Avenue, Toronto, Ontario, M5G 1R7.

**AND WHEREAS** this Court approved the Notice Plan attached as Schedule "E" to the Settlement Agreement by Order dated ●;

**ON READING** the materials filed by the Parties, including the Settlement Agreement between them, dated ● (the "Settlement Agreement"), a copy of which is attached to this Order as Appendix "A";

**AND ON READING** the ● written objections filed;

**AND ON HEARING** the submissions of counsel for the Plaintiff and counsel for the Defendant, and the submissions of any objectors;

**AND ON BEING ADVISED** that the deadline for opting out of the Action has passed, and ● persons validly and timely exercised the right to opt out;

**AND ON BEING ADVISED** that the opt-out threshold contained in the Settlement Agreement was not exceeded, and therefore that the corresponding termination right provided in Section 4.1(2) of the Settlement Agreement was not triggered;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and that there were ● objections to the Settlement Agreement;

**AND ON BEING ADVISED** (1) that the Plaintiff and Defendant consent to this Order; and (2) that Epiq Class Action Services Canada, Inc. consents to continuing as Claims Administrator;

1. **THIS COURT ORDERS** that for the purposes of this Order and unless otherwise defined in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order;

2. **THIS COURT DECLARES** that:

- (a) the Claims Administrator has completed the dissemination of the Notice of Certification and Settlement Approval Hearing in accordance with the Notice Plan; and
- (b) the Opt-Out Deadline and Objection Deadline were ●;

3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon the Defendant in accordance with the terms thereof, and upon each member of the Settlement Class who did not validly opt out of the Action, including those persons who are mentally incapable, and that the requirements of rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, RRO 1990, Reg 194, are dispensed with in respect of the Action;

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 s 27.1 of the *Class Proceedings Act, 1992*, SO 1992, c 6 and shall be implemented and enforced in accordance with its terms and the terms of this Order;

6. **THIS COURT ORDERS** that the benefits set forth in the Settlement Agreement are provided in full satisfaction of the obligations of the Defendant under the terms of the Settlement Agreement;

7. **THIS COURT ORDERS** that, upon the Effective Date, this Order incorporates and gives effect to the releases in favour of the Releasees provided for in Section 5 of the Settlement Agreement;

8. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member, whether or not he/she/they submit(s) a Claim or otherwise receive(s) a Settlement Payment in accordance with the Distribution Protocol, shall be deemed to have consented to the dismissal as against the Releasees of any other actions he/she/they commenced in connection with claims relating to or arising out of the Action (“Other Actions”), without costs and with prejudice;

9. **THIS COURTS 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;

10. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member, whether or not he/she/they submit(s) a Claim or otherwise receive(s) a Settlement Payment in accordance with the Distribution Protocol, has released and shall be conclusively deemed to have forever and absolutely released the Releasees from all claims relating to or arising out of the Action with respect to the involuntary and/or automatic renewal of his/her/their mortgage held by the Defendant, except for any Claimant’s entitlement to be paid in respect of an Approved Claim pursuant to the terms of the Settlement Agreement and Distribution Protocol;

11. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Canada or elsewhere, on his/her/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, in respect of any claim relating to or arising out of the Action with respect to the

involuntary and/or automatic renewal of his/her/their mortgage held by the Defendant, except for any Claimant's entitlement to be paid in respect of an Approved Claim pursuant to the terms of the Settlement Agreement and Distribution Protocol;

12. **THIS COURT ORDERS** that neither the Settlement Agreement, including all provisions therein and its schedules, nor any action taken under the Settlement Agreement, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the Parties of the truth of any fact alleged or the validity of any claim or defence asserted in the Action, or in any other litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of the Parties except as may be required to enforce or give effect to the Settlement and the Settlement Agreement;

13. **THIS COURT ORDERS** that Epiq Class Action Services Canada, Inc. is appointed as Claims Administrator to deliver the Notice of Settlement Approval in accordance with the Notice Plan, to administer the claims process in accordance with the Distribution Protocol, and to perform any other related duty or responsibility as ordered by this Court, as required by the Settlement Agreement, or as agreed to in writing by the Parties and Epiq Class Action Services Canada, Inc.;

14. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval, substantially in the form attached as Appendix "B" to this Order, are hereby approved;

15. **THIS COURT ORDERS** that the Notice of Settlement Approval shall be disseminated in accordance with the Notice Plan, a copy of which is attached to this Order as Appendix "C";

16. **THIS COURT ORDERS** that the dissemination of the Notice of Settlement Approval as set out in the Notice Plan is the best notice practicable under the circumstances, constitutes sufficient notice to all Settlement Class Members entitled to notice, and satisfies the requirements of notice under sections 17 through 22 of the *Class Proceedings Act, 1992*, SO 1992, c 6;

17. **THIS COURT ORDERS** that the Administration Expenses, including the costs associated with disseminating the Notice of Settlement Approval, shall be paid out of the Settlement Amount in accordance with the terms of the Settlement Agreement;

18. **THIS COURT ORDERS AND AUTHORIZES** the Defendant to provide the Claims Administrator with the names, mailing addresses and email addresses (if available) of Settlement Class Members for the purposes of disseminating the Settlement Approval Notice and otherwise implementing the Settlement Agreement;

19. **THIS COURT ORDERS** that all information provided to the Claims Administrator, or its agent(s), by or about Settlement Class Members as part of the Notice Plan or administration of the Settlement Agreement shall be collected, used, and retained by the Claims Administrator, or its agent(s) and vendors of record, pursuant to the applicable privacy laws and solely for the purposes of providing the Notice of Settlement Approval and administering the Settlement Agreement. The information provided shall be treated as private and confidential and shall not be disclosed without the express written consent of the relevant Settlement Class Member or his/her/their counsel, except in accordance with this Order, the Settlement Agreement, and any other order of this Court;

20. **THIS COURT ORDERS** that the form and content of the Claim Form, substantially in the form attached as Appendix “D” to this Order, are hereby approved;

21. **THIS COURT ORDERS** that in order to receive the Settlement Payment set out in the Distribution Protocol, Settlement Class Members must submit a Claim Form to the Claims Administrator on or before the deadline to submit a Claim Form, which is nine (9) months after the day on which the Notice of Settlement Approval is first disseminated;

22. **THIS COURT ORDERS** that, upon the Effective Date, the Action is hereby dismissed as against the Defendant without costs and with prejudice;

23. **THIS COURT ORDERS** that for the purposes of the administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role, and that the Parties acknowledge and attorn to the jurisdiction of this Court for the purposes 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;

24. **THIS COURT ORDERS** that any Party may bring a motion to this Court at any time for directions with respect to the implementation or interpretation of the Settlement Agreement on notice to all other Parties;

25. **THIS COURT ORDERS** that if the Case Management Judge originally assigned in this Action is, for any reason, unable to fulfill any of the duties set out in the Settlement Agreement or this Order, another Judge of the Court shall be appointed in her stead;

26. **THIS COURT ORDERS** that, other than that which has been provided in the Settlement Agreement, no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement;

27. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order shall be declared null and void and of no force or effect without the need for any further order of this Court but with notice to the Settlement Class;

28. **THIS COURT ORDERS** that in the event of a conflict between this Order and the terms of the Settlement Agreement, this Order shall prevail;

29. **THIS COURT ORDERS** that there shall be no costs of this motion.

---

**The Honourable Justice Akbarali**



KARIN VISTOLI  
Plaintiff/Moving Party

-and- HAVENTREE BANK, also known as BANQUE HAVENTREE  
Defendant/Responding Party

Court File No. CV-20-00651976-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Settlement Approval)**

**LANDY MARR KATS LLP**

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**Vadim Kats** (LSO # 43095K)  
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