

**CHEMOTHERAPY DILUTION CLASS ACTION**

**ONTARIO AND NEW BRUNSWICK**

**SETTLEMENT AGREEMENT**

Made as of [August 4, 2016](#)

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| <p>LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">- and -</p> <p>MEZENTCO SOLUTIONS INC. c.o.b as MARCHESE HOSPITAL SOLUTIONS, MEZENTCO INC., c.o.b. AS MARCHESE HEALTH CARE and MEDBUY CORPORATION</p> <p style="text-align: right;">Defendants</p> | <p style="text-align: center;">PROVINCE OF ONTARIO</p> <p style="text-align: center;">Ontario Superior Court of Justice<br/>Windsor, Ontario</p> <p style="text-align: center;">Court File No.: CV-13-19436</p> |
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## PREAMBLE

The Representative Plaintiffs, Lisa Arlene Hunt, Ryan Wesley Hunt, Tina Marie Wells, Pamela Worts, Kevin Worts, the Estate of Cher-Lynn Boudreault and John Chesley Prince (together, the “**Plaintiffs**”), the defendants Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions and Mezentco Inc., c.o.b. as Marchese Health Care (together, “**Mezentco**”), and the defendant Medbuy Corporation (“**Medbuy**”) (together the “**Defendants**”), and Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and and Regional Health Authority B (Saint John Regional Hospital) (together, the “**Hospitals**”) (collectively, the “**Parties**”), hereby enter into this agreement providing for the settlement of actual and potential claims arising out of or relating to, without limitation, the compounding, dispensing, supply and labelling of gemcitabine and cyclophosphamide (the “**Chemotherapy Drugs**”) from February 6, 2012, to and including April 2, 2013 (the “**Class Period**”), pursuant to the terms and conditions set out herein and subject to the approval of the Ontario Superior Court of Justice (the “**Ontario Court**”) (the “**Settlement Agreement**”).

## RECITALS

**A. WHEREAS** the Plaintiffs commenced a proceeding under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6 (the “**Act**”), Court File No. CV-13-19436, against Mezentco (the “**Class Action**”), and subsequently added Medbuy as a Defendant to the Class Action;

**B. AND WHEREAS** the Class Action alleges that the negligence of Mezentco and Medbuy caused and/or contributed to approximately 1200 cancer patients in Ontario and New Brunswick, all receiving cancer treatment at one or more of the Hospitals (the “**Class Members**”) receiving lower than intended dosages of the Chemotherapy Drugs during the Class Period (the “**Dosing Incident**”) as further defined below;

**C. AND WHEREAS** the Class Action asserts claims on behalf of the Class Members and their family members who were entitled to claim pursuant to the *Family Law Act*, R.S.O. 1990, F.3 (the “**Family Class Members**”);

**D. AND WHEREAS** the provincial health insurers of Ontario and New Brunswick, being the Ontario Health Insurance Plan (“**OHIP**”) and New Brunswick Medicare (“**Medicare**”), respectively, may assert subrogated claims against Mezentco, Medbuy and the Hospitals in relation to or arising from the Dosing Incident or the matters that were the subject of the Class Action;

**E. AND WHEREAS** the Class Action has not yet been certified pursuant to section 5 of the Act, and Mezentco and Medbuy have not served a Statement of Defence;

**F. AND WHEREAS** Mezentco and Medbuy deny the allegations made in the Class Action, have not conceded or admitted any liability, deny that any damages are payable, and have defences to all of the claims in the Class Action;

**G. AND WHEREAS** the Hospitals agree to be made a party to the Class Action for the sole purpose of participating in this Settlement Agreement, and agree to not raise a limitation defence to oppose their addition for that sole purpose;

**H. AND WHEREAS** the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members and Family Class Members in any way arising from or relating to the Dosing Incident in Ontario and New Brunswick, known or unknown;

**I. AND WHEREAS** the Parties have engaged in extensive, arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

**J. AND WHEREAS** the Plaintiffs and Plaintiffs' counsel, namely McKenzie Lake Lawyers LLP and Sutts Strosberg LLP ("**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 Plaintiffs' claims, and having regard to the burden and expense of prosecuting the Class Action, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class Members and Family Class Members they represent;

**K. AND WHEREAS** despite their belief that they are not liable in respect of the allegations made in the Class Action and have good defences thereto, Mezentco, Medbuy and the Hospitals are entering into this Settlement Agreement in order to achieve a final resolution of all current and potential claims asserted against them by the Plaintiffs on behalf of the Class Members and the Family Class Members, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that Mezentco, Medbuy and the Hospitals would not have entered into this Settlement Agreement were it not for the foregoing;

**L. AND WHEREAS** the Parties therefore wish to, and hereby do, fully and finally resolve, without admission of liability on the part of the Defendants or the Hospitals, the Class Action;

**M. AND WHEREAS** Mezentco, Medbuy and the Hospitals, in entering into the Settlement Agreement, intend to resolve and release all claims between and amongst themselves arising from or relating to the events that are the subject of the Class Action, including all claims for contribution and indemnity;

**N. AND WHEREAS** for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to the certification of a class, defined below, in the Class Action;

**O. AND WHEREAS** Mezentco, Medbuy and the Hospitals expressly reserve their rights to contest certification of other related or unrelated proceedings in Ontario and New Brunswick and assert that the action herein would not be appropriately certified in the absence of the Settlement Agreement and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

**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 are hereby acknowledged, it is hereby agreed by the Parties that the Class Action be settled and that the Parties shall consent to the Court(s)' Order(s) finally approving the settlement in Ontario, on the following terms and conditions:

## ARTICLE 1: DEFINITIONS

1.1 For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (a) **Account** means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum;
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notice and the fees and expenses of the Claims Administrator but excluding Class Counsel Fees;
- (c) **Chemotherapy Drugs** means gemcitabine and/or cyclophosphamide, prepared, combined, mixed, compounded, packaged, labelled and/or sold to the Hospitals by Mezentco during the Class Period;
- (d) **Claims Administrator** means the entity appointed by the Ontario Court to administer the Settlement Agreement pursuant to the terms outlined in Schedule “A” herein;
- (e) **Class Action** means Lisa Arlene Hunt *et al.* v. Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions *et. al.*, Court File No.: CV-13-19436;
- (f) **Class Counsel** means McKenzie Lake Lawyers LLP and Sutts Strosberg LLP;
- (g) **Class Counsel Fees** means the fees, disbursements, costs, HST, and/or other applicable taxes or charges of Class Counsel;
- (h) **Class or Class Members** means all persons, or their estates, who attended at the Hospitals for treatment during the **Class Period** and who were administered **Chemotherapy Drugs** affected by the **Dosing Incident**;
- (i) **Class Period** means the period commencing on February 6, 2012, to and including April 2, 2013;
- (j) **Conditional Certification** means the certification of the Class Action for the purpose of settlement approval, notice approval and the commencement of an opt-out period;
- (k) **Costs** means a payment toward Class Counsel Fees;
- (l) **Defendant(s)** means Mezentco and/or Medbuy;

- (m) ***Dosing Incident*** means the lower than prescribed dosages of Chemotherapy Drugs delivered to **Class Members** during the Class Period;
- (n) ***Effective Date*** means the date on which the right to terminate the Settlement Agreement has expired and the orders approving, recognizing and/or enforcing this Settlement Agreement have become Final Orders, whichever is later;
- (o) ***Eligible Class Members*** has the meaning set out in article 3.4;
- (p) ***Family Class or Family Class Members*** means the living partner, spouse, children, grandchildren, parents, grandparents or siblings of a **Class Member**;
- (q) ***Final Order*** means the final judgment, approval, entered by the Ontario Court in respect of the certification of the Class Action as a class proceeding and in respect of this Settlement Agreement, and the expiration of the time to appeal or to seek permission to appeal such final judgment or approval, without any appeal being taken, or if an appeal from any of the above is taken, the affirmance of such final judgment, approval order in its/their entirety, without modification, by the Ontario Court;
- (r) ***Hospitals*** means Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and Regional Health Authority B (Saint John Regional Hospital);
- (s) ***Medbuy*** means Medbuy Corporation;
- (t) ***Mezentco*** means Mezentco Solutions Inc. c.o.b as Marchese Hospital Solutions, and Mezentco Inc. c.o.b. as Marchese Health Care;
- (u) ***Ontario Court*** means the Ontario Superior Court of Justice;
- (v) ***Opt-Out*** means a person who would have been a **Class Member** except for his/her timely and valid request for exclusion. Such exclusion will be by the timely submission of an Opt-Out Form as attached hereto as Schedule “B”;
- (w) ***Opt-Out Notice*** means the Notice published pursuant to Schedule “H”, advising **Class Members** of the pending Settlement Approval hearing date and the opt-out and objection deadlines;
- (x) ***Opt-Out Notice Administrator*** means the entity appointed by the Ontario Court to publish the Opt-Out Notice and create the Opt-Out Report pursuant to the terms outlined in Schedule “A” herein;
- (y) ***Parties*** means the Plaintiffs, Mezentco, Medbuy and the Hospitals;
- (z) ***Plaintiffs*** means Lisa Arlene Hunt, Ryan Wesley Hunt, Tina Marie Wells, Pamela Worts, Kevin Worts, the Estate of Cher-Lynn Boudreault and John Chesley Prince;

- (aa) **Provincial Health Insurers** means the Ontario and New Brunswick health insurance plans, namely OHIP and Medicare, respectively;
- (bb) **Released Claims** means any and all manner of claims, demands, actions, suits and causes of action alleged or which could have been asserted in the Class Action, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, including for damages whenever incurred and liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyer fees that the Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against any or all of the Releasees, whether known or unknown, relating in any way to any act or omission by the Releasees prior to the execution of this Settlement Agreement concerning the Dosing Incident;
- (cc) **Releasees** means, jointly and severally, Mezentco, Medbuy and the Hospitals, and their respective present and former partners, subsidiaries, affiliates, officers, directors, employees, physicians, pharmacists, insurers, agents, lawyers, servants, representatives, and assigns, and their affiliated, predecessor, successor and related companies;
- (dd) **Releasors** means, jointly and severally, individually and collectively, the **Class Members** who are not Opt-Outs and their **Family Class Members**, and their Representative Claimants, and the Provincial Health Insurers;
- (ee) **Representative Claimants** means personal representatives, executors, administrators, heirs, assigns and trustees of **Class Members**;
- (ff) **Settlement Agreement** or **Settlement** means this agreement, including the Recitals and Schedules hereto; and
- (gg) **Settlement Amount** means \$2,375,000.

## ARTICLE 2: CONDITION PRECEDENT, COURT APPROVAL

- 2.1 Subject to Article 6 below, this Settlement Agreement shall be null and void and of no force or effect, unless: (a) the Ontario Court approves this Settlement Agreement; (b) the Order so given has become a Final Order; and (c) the Effective Date has occurred.
- 2.2 Motions for Approval
  - (a) The Plaintiffs shall first file a motion before the Ontario Court for an order:
    - (i) adding the Hospitals as parties to the Class Action for settlement purposes only;

- (ii) conditionally certifying the Class Action;
  - (iii) that Cancer Care Ontario and the New Brunswick Cancer Network provide contact information for Class Members to the Opt-Out Notice Administrator, for the purposes of providing the Opt-Out/Settlement Approval Hearing Notice,
  - (iv) approving the Opt-Out/Settlement Approval Hearing Notice; and
  - (v) approving the dissemination plan thereof, the publication of which will trigger an opt-out period
- (the “Conditional Certification”);
- (b) Cancer Care Ontario and the New Brunswick Cancer Network will be given notice of the first motion;
  - (c) The Plaintiffs shall file a second motion, following the end of the opt-out period, for approval of this Settlement Agreement (“Approval Hearing”);
  - (d) The Orders referred to in paragraph 2.2(a) and (c) shall be in a form substantially similar to those attached hereto as Schedules “D” and “E”, as agreed upon by Class Counsel and counsel for Mezentco, Medbuy and the Hospitals, and approved by the Ontario Court.

### **ARTICLE 3: SETTLEMENT BENEFITS**

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

- (a) Contingent on the dismissal, as against Mezentco, Medbuy and the Hospitals, of the claims of the Eligible Class Members and Family Class Members, and on the approval of the Settlement Agreement in Ontario, Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) have agreed to pay the Settlement Amount as follows:
  - (i) a total of \$75,000 towards costs of notice and claims administration, with Mezentco responsible for \$37,500 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$37,500 of that amount;
  - (ii) a total of \$100,000 to the Provincial Health Insurers, in full satisfaction of any subrogated claims that could be asserted against Mezentco, Medbuy and the Hospitals in relation to or arising from the Dosing Incident and the matters that were the subject of the Class Action, with Mezentco responsible for \$50,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$50,000 of that amount;



- (iii) a total of \$400,000 towards Class Counsel Fees, with Mezentco responsible for \$200,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$200,000 of that amount; and
  - (iv) the remainder, \$1,800,000, towards *pro-rata* payments to Eligible Class Members and any further Class Counsel Fees, with Mezentco responsible for \$900,000 of that amount, and Medbuy on its own behalf and on behalf of the Hospitals responsible for \$900,000 of that amount.
- (b) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amount set forth in paragraph 3.1(a) above as follows:
- (i) Within 15 days of the date of the Conditional Certification, Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the Claims Administrator for costs of the Notice and related claims administration in accordance with s. 3.1(a)(i) above;
  - (ii) Within 15 days of obtaining the Final Order required or contemplated by the terms of this Settlement Agreement;
    - (A) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amounts payable under s. 3.1(a)(ii) to the Claims Administrator for distribution to the Provincial Health Insurers in amounts as outlined in Schedule “F”; and
    - (B) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay to the Claims Administrator for the benefit of Eligible Class Members the amounts payable under s. 3.1(a)(iv); and
    - (C) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) will pay the amounts payable under s. 3.1(a)(iii) to Sutts Strosberg LLP in trust towards Class Counsel Fees.
- (c) The Claims Administrator will invest the monies in a bankers acceptance issued by a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the monies are not paid when due they will accrue interest until paid at a rate of 5% per annum.
- (d) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) shall have no obligation in any circumstance or for any reason to pay any amount in addition to the Settlement Amount pursuant to or in furtherance of this Settlement Agreement or otherwise.

- (e) The Claims Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Ontario Court made on notice to or on consent of the Parties.
- (f) Mezentco and Medbuy (on its own behalf and on behalf of the Hospitals) agree to pay the Settlement Amount in accordance with the specific requirements of this Settlement Agreement, in full satisfaction of the releases described in paragraph 4.1, below.

### 3.2 *Cy Pres* Distribution

- (a) Any portion of the Class Member payment referenced in paragraph 3.1(a)(iv) that is not claimed by or distributed to Eligible Class Members may be paid out on a *cy-pres* basis to a qualified donee selected by the Plaintiffs and approved by the Ontario Court.

### 3.3 Non-Monetary Benefits

- (a) Mezentco and Medbuy shall each file an affidavit for or in connection with the Settlement Approval attesting to the steps that each have taken to ensure that the issues or concerns giving rise to the Dosing Incident have been satisfactorily addressed.

### 3.4 Claims

- (a) Eligible Class Members:
  - (i) An Eligible Class Member is a Class Member, who is not an Opt-Out;
  - (ii) Payments to Eligible Class Members will be made on a *pro-rata* basis, after Class Counsel Fees have been determined (“Class Member Amount”);
  - (iii) For greater certainty Family Class Members will receive no monetary award under this proposed settlement.
- (b) Provincial Health Insurers:
  - (i) Payments to OHIP and Medicare will be made pursuant to Schedule “F”.

### 3.5 Taxes and Interest

- (a) All interest earned on the Settlement Amount shall become and remain part of the Account.
- (b) Class Counsel shall bear all risks related to the investment of the Settlement Amount in the Account.

- (c) All funds held by the Claims Administrator shall be deemed and considered to be in *custodial legis* of the Ontario Court, and shall remain subject to the jurisdiction of the Ontario Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Ontario Court.
- (d) Class Counsel, jointly and severally, hereby indemnifies, defends and holds harmless Mezentco, Medbuy and the Hospitals from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Class Counsel or by the Claims Administrator with respect to the Settlement Amount or funds in the Account not strictly in accordance with the provisions of this Settlement Agreement, or any order of the Ontario Court.
- (e) All taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount, shall be the sole responsibility of the Claims Administrator. The Claims Administrator in consultation with Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the 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 Account.
- (f) Mezentco, Medbuy and the Hospitals shall have no responsibility to make any tax filings relating to the Account and shall have no responsibilities to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account.

#### **ARTICLE 4: RELEASES AND DISMISSALS**

##### 4.1 Releases

- (a) Upon the Effective Date, the Releasers forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. For the consideration provided herein, the Releasers agree not to make any claim or take, commence or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity (including, without limitation, any regulators, health care professionals, health care providers, health care facilities, pharmacies, or other distributors of the Chemotherapy Drugs) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O. 1990, c N.1 or other comparable provincial legislation and any amendments thereto, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.
- (b) Upon the Effective Date, the Releasees forever and absolutely release, acquit, and discharge each other from the Released Claims and from any other claims,

demands, actions, suits and causes of action, including claims for contribution and indemnity or otherwise, relating in any way to any act or omission by the Releasees, whether known or unknown, concerning the Dosing Incident or any act or omission asserted, alleged or referenced or which could have been asserted, alleged or referenced in the Class Action, and agree not to make or continue any other claim, or take, commence or continue any proceeding against any other person, corporation or entity (including, without limitation, any regulator, health care professionals, health care providers, health care facilities, pharmacies, or other distributors of the Chemotherapy Drugs) which might claim damages and/or contribution and indemnity and/or any other relief under the provisions of the *Negligence Act*, R.S.O. 1990, c. N.1 or other comparable legislation and any amendments thereto, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees;

- (c) The Parties intend that the Settlement Agreement will be approved by the Ontario Court and will result in the dismissal of all claims asserted or which could have been asserted by Class Members and Family Class Members on the terms set forth herein;
- (d) Orders will be sought at the Approval Hearing which shall include a term releasing the claims of the Provincial Health Insurers generally and in the following form:
  - (i) In consideration of the payments made to the Provincial Health Insurers set out in the Settlement Agreement, the Provincial Health Insurers will be deemed to release and forever discharge Mezentco, Medbuy and the Hospitals from any and all actions, causes of action, suits, debts, accounts, bonds, covenants, claims and demands whatsoever, known or unknown, that were asserted or which could have been asserted by or on behalf of any Class Member and Family Class Members relating to the Dosage Incident.
- (e) Without limiting any other provision herein, each Eligible Class Member and Family Class Member who did not Opt-Out whether or not he/she receives a payment, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts and demands whatsoever, known or unknown, that were or could have been asserted in the litigation that is the subject of this Settlement Agreement.
- (f) The Parties agree that each Eligible Class Member and Family Class Member, whether or not he/she receives a payment, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other

forum, directly, representatively or derivatively, asserting against Mezentco, Medbuy and/or the Hospitals or Releasees, any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

#### 4.2 Dismissal of Class Action

- (a) The Parties shall, on consent, as part of the motion for approval of the Settlement Agreement in the Ontario Court, request to dismiss the Class Action with prejudice as against Mezentco, Medbuy and the Hospitals, without costs.

### ARTICLE 5: OPTING-OUT

#### 5.1 Procedure

- (a) The procedure for opting-out of the Class Action, including timing and notice requirements and the information required from the person seeking to opt-out, shall be agreed to by the Parties and approved by the Ontario Court, substantially in the form as set out in Schedule “B” hereto.

#### 5.2 Opt-Out Notice

- (a) Class Counsel shall, as part of the motion for Conditional Certification, submit a notice in a form that is mutually agreed by the Parties and approved by the Ontario Court, substantially similar to Schedule “D” hereto, which shall include, *inter alia*, information regarding opting-out. This notice shall require that on a date 30 days prior to the Settlement Approval Hearing (the “**Opt-Out Deadline**”), claimants who do not want to participate in the Settlement Agreement must submit a timely and valid request for exclusion from Class Membership using the Opt-Out Form (Schedule “B”).

#### 5.3 Opt-Out Report

- (a) Within fifteen (15) days after the expiration of the Opt-Out Deadline, Mezentco, Medbuy, the Hospitals and Class Counsel shall be provided with a report from the Opt-Out/Notice Administrator, advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form (“**Opt-Out Report**”). [

### ARTICLE 6: TERMINATION OF SETTLEMENT AGREEMENT

#### 6.1 Right to Terminate

- (a) If more Class Members opt-out of the proceedings than provided for in a confidential agreement entered into by the Parties contemporaneously with the

execution of this Settlement Agreement (and which shall be deemed to be part of this Settlement Agreement), Mezentco, Medbuy and/or the Hospitals may, at their sole option, terminate this Settlement Agreement. For greater certainty, only opt outs by Class Members, not including related deemed Family Class Member opt outs, will be taken into consideration for the purpose of this Article.

## 6.2 Manner of Termination

- (a) If Mezentco, Medbuy and/or the Hospitals exercise their right to terminate this Settlement Agreement pursuant to paragraph 6.1(a), they shall give written notice of the termination to Class Counsel no later than 10 days after the receipt of the Opt-Out Report.

## 6.3 Effect of Termination

- (a) In the event of termination of the Settlement Agreement, all parties shall be restored to their respective positions immediately prior to the date on which this Settlement Agreement was signed by all Parties. Any order adding the Hospitals as Parties and any order made for purposes of settlement shall be rescinded on consent. All statutes of limitations and/or repose for all claims asserted shall be deemed to have been tolled from the date of the signature of this Settlement Agreement by all parties until the date of reinstatement and reactivation, or for such longer period as the law may provide without reference to this Settlement Agreement.
- (b) The Parties further agree that any certification for the purposes of settlement shall be without prejudice to any position that any of the Parties may later take on any issue in the Class Action, and that Mezentco's, Medbuy's and the Hospitals' consent to certification for the purposes of settlement shall not constitute and shall not be deemed or construed as any admission on the part of Mezentco, Medbuy and the Hospitals that the Class Action, or any other putative class proceeding, is appropriate for trial as a class proceeding.

## 6.4 Not Approved by the Ontario Court

- (a) If this Settlement Agreement is not approved by the Ontario Court:
  - (i) Subject to paragraph 6.4(b) below, it shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms, with the sole exception of the agreements and commitments contained in Article 10, which shall survive; and
  - (ii) All negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

- (b) The Parties expressly reserve all of their respective rights to the extent that the Ontario Court does not approve this Settlement Agreement.

## **ARTICLE 7: DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### 7.1 Settlement Payments

- (a) The Settlement Amount shall be held by the Claims Administrator in trust for the benefit of Eligible Class Members and, after the Effective Date, shall be paid in accordance with this Settlement Agreement and its schedules, subject to approval by the Ontario Court.
- (b) The amount being paid to OHIP and Medicare, pursuant to paragraph 3.1(a)(ii) shall be held by the Claims Administrator in trust for the benefit of OHIP and Medicare and, after the Effective Date, shall be paid in accordance with the Schedule “F” hereto, subject to approval by the Ontario Court.
- (c) The Claims Administrator shall administer payments to Eligible Class Members in accordance with paragraph 3.4(a) of this Settlement Agreement.

### 7.2 Monies in the Account

- (a) In no event shall Mezentco, Medbuy or the Hospitals have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account, including, but not limited to, the costs and expenses of such investment, distribution, use, and administration. In no event shall Mezentco, Medbuy or the Hospitals have any responsibility, financial obligations, or liability whatsoever with respect to Administration Expenses and/or Class Counsel Fees except as otherwise provided for in Article 3 of this Settlement Agreement.

## **ARTICLE 8: LEGAL FEES AND DISBURSEMENTS**

### 8.1 Motion to Approve Fees and Disbursements

- (a) Class Counsel will bring a motion to the Ontario Court for approval of Class Counsel Fees at the same time as the Approval Hearing. Such Fees and disbursements are awarded at the discretion of the Ontario Court after hearing from counsel for the Parties. Mezentco, Medbuy and the Hospitals will not take any position with respect to the amount of Fees requested by Class Counsel.
- (b) Class Counsel will apply the monies payable by Mezentco, Medbuy and the Hospitals towards Costs in respect of fees and disbursements approved by the

Ontario Court. Any legal fees and/or disbursements awarded to Class Counsel as approved by the Ontario Court in excess of the amount listed in paragraph 3.1(a)(iii) will come from the Settlement Amount and not from Mezentco, Medbuy and/or the Hospitals.

- (c) Class Counsel Fees may be paid out of the Account only after Class Counsel obtains Ontario Court approval.
- (d) Eligible Class Members and Family Class Members who have retained, or who retain lawyers, to assist them in respect of payments from this Settlement, shall be responsible for the legal fees and expenses of such lawyers.

## **ARTICLE 9: ADMINISTRATION AND IMPLEMENTATION**

### 9.1 Mechanics of Administration

- (a) 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 Ontario Court on motion brought by the Parties, or any of them.

### 9.2 Notices Required

- (a) The Class Members and Family Class Members shall be given notice of:
  - (i) the Conditional Certification, the opt-out period, and the approval hearing date at which the Ontario Court will be asked to approve the Settlement Agreement;
  - (ii) any termination of the Settlement Agreement;
- (b) Class Counsel acknowledge that all notices and the plan for their dissemination must be approved by the Ontario Court. No notices shall be disseminated anywhere until such time as they are approved by the Ontario Court.
- (c) Notice to Family Class Members shall be deemed to have been given either by the general publications, as set out in Schedule “H” and/or the direct mailing to Class Members as set out in Schedule “H”. This direct mailing to Class Members shall be deemed to be notice to their respective Family Class Members;
- (d) If the costs of notice, plus the costs of claims administration exceed the monies as set out in paragraph 3.1(a)(i), the difference will be paid from the Settlement Amount.



## **ARTICLE 10: NO ADMISSION OF LIABILITY**

### 10.1 No Admission of Liability Generally

- (a) The Parties agree that, whether or not this Settlement Agreement is approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussion and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the Class Action or in any other pleading filed by the Plaintiffs.
- (b) The Parties further agree that, whether or not this Settlement Agreement is approved or terminated, neither this Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

### 10.2 Releasees Have No Liability for Administration

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

## **ARTICLE 11: MISCELLANEOUS**

11.1 Best Efforts: the Parties shall use their best efforts to effectuate this Settlement Agreement.

### 11.2 Motions for Directions

- (a) The Plaintiffs, Class Counsel, Claims Administrator, Mezentco, Medbuy and the Hospitals may apply to the Ontario Court for directions in respect of the interpretation, implementation, and administration of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement, including applications to the Ontario Court for directions, shall be on notice to the Parties.

### 11.3 Timing

- (a) Class Counsel will make their best efforts to bring the motions to approve the form of Notice being provided to the Class Members and Family Class Members and to approve the Settlement Agreement as soon after the execution of the Settlement Agreement as possible.

### 11.4 Headings, etc. in this Settlement Agreement

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

#### 11.5 Governing Law and Ongoing Jurisdiction

- (a) The Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.
- (b) The Ontario Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

#### 11.6 Entire Agreement

- (a) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations or promises other than as contained, or referred to, in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- (b) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Ontario Court.

#### 11.7 Binding Effect

- (a) Once the Settlement Agreement is approved by the Ontario Court, this Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Eligible Class Members and Family Class Members, the Releasers, Mezentco, Medbuy and the Hospitals, the Releasees, Class Counsel and the Claims Administrator.

#### 11.8 Survival

- (a) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

#### 11.9 Counterparts

- (a) 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

electronically scanned or facsimile signature shall be deemed an original signature for the purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, facsimile or other electronic form provided that it is duly executed.

#### 11.10 Negotiated Agreement

- (a) This Settlement Agreement has been the subject of negotiations and discussions among the Parties, 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 or not contained in the previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### 11.11 Dates

- (a) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Ontario Court.

#### 11.12 Language

- (a) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en Anglais.

#### 11.13 French Translation

- (a) A French translation of this Settlement Agreement, all Schedules hereto, and all notices pursuant to this Settlement Agreement shall be prepared by the Opt-Out Notice Administrator and paid from the amount stated in paragraph 3.1(a)(i), and made available to Class Members upon request. In case of any conflicting interpretations, the English version shall prevail.

#### 11.14 Confidentiality

- (a) When the notice that the Class Action has been conditionally certified is first disseminated in accordance with Schedule “H”, Class Counsel will publish a press release, (Schedule “G”). Class Counsel will be permitted to respond to inquiries from the media for the purpose of explaining the settlement and claims process.
- (b) The Parties agree that no public statements shall be made regarding the Class Action or the Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding the Class Action will indicate clearly that the Settlement has been negotiated, agreed and approved by the Ontario Court without any admission or

finding of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Class Action, all of which are specifically denied by Mezentco, Medbuy and the Hospitals.

- (c) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Class Action or the manner in which the Settlement was conducted. The Parties agree that any public statements that are inconsistent with the terms of this Settlement Agreement could cause irreparable harm, including harm to the business and reputation of Mezentco, Medbuy and the Hospitals.

#### 11.15 Recitals

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

#### 11.16 Schedules

- (a) The Schedules annexed hereto form part of this Settlement Agreement.

#### 11.17 Acknowledgements

- (a) Each of the Parties hereby affirms and acknowledges that:
  - (i) 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;
  - (ii) 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 the Party's counsel;
  - (iii) He/she or the Party's representative, fully understands each term of the Settlement Agreement and its effects, and
  - (iv) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) or any other Party with respect to the first Party's decision to execute this Settlement Agreement.

#### 11.18 Authorized Signatures

- (a) Each of the undersigned represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

11.19 Notice

- (a) 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 representative for the Party to whom notice is being provided, as identified below:

**For Plaintiffs and Class Counsel:**

Michael J. Peerless

Harvey T. Strosberg, Q.C.

**McKenzie Lake Lawyers LLP**

**Sutts Strosberg LLP**

140 Fullarton Street  
Suite 1800  
London, Ontario N6A 5P2

600-521 Goyeau Street  
Windsor, Ontario N9A 6V4

Tel: (519) 667-2644

Tel: (519) 561-6228

Fax: (519) 672-2674

Fax: (519) 561-6203

Email:  
peerless@mckenzielake.com

Email: harvey@strosbergco.com

**For Medbuy:**

Eric Hoaken

**Lax O'Sullivan Lisus Gottlieb LLP**

145 King Street West  
Suite 2750  
Toronto, ON M5H 1J8

Tel: (416) 645-5075

Fax: (416) 598-3730

Email: ehoaken@counsel-toronto.com

**For Mezentco:**

Malcolm N. Ruby

Dominic T. Clarke

**Gowlings WLG**

1 First Canadian Place  
Suite 1600  
Toronto, Ontario M5X 1G5

**Blaney McMurtry, LLP**

2 Queen Street East  
Suite 1500  
Toronto, Ontario M5C 3

Tel: (416) 862-4314

Tel: (416) 593-3968

Fax: (416) 863-3614

Fax: (416) 593-5437

Email:  
malcolm.ruby@gowlings.com

Email: dclarke@blaney.com

**For London Health Sciences Centre:**

Anita Varjacic

**Rogers Partners LLP**

100 Wellington Street West  
Suite 500, PO Box 255  
Toronto, Ontario M5K 1J5

Tel: (416) 594-4522

Fax: (416) 416-9100

Email:  
anita.varjacic@rogerspartners.com

**For Windsor Regional Hospital, Lakeridge Health, Peterborough Regional Health Centre, and Regional Health Authority B (Saint John Regional Hospital):**

Barry Glaspell

**Borden Ladner Gervais LLP**

Scotia Plaza  
40 King Street West  
Toronto, ON M5H 3Y4

Tel: (416) 367-6104

Fax: (416) 361-7051

Email: bglaspell@blg.com

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

LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE

Per:



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McKenzie Lake Lawyers LLP

Per:

---

Sutts Strosberg LLP

Lawyers for the Plaintiffs

MEDBUY CORPORATION

Per:

---

Lax O'Sullivan Lissus Gottlieb LLP

Lawyers for the Defendant Medbuy Corporation

LONDON HEALTH SCIENCES CENTRE

Per:

---

Rogers Partners LLP

Lawyers For London Health Sciences Centre

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

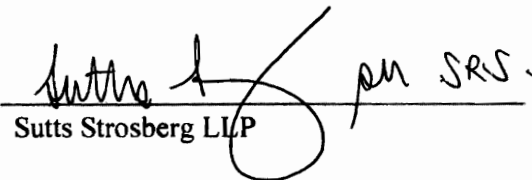
LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE

Per:

---

McKenzie Lake Lawyers LLP

Per:

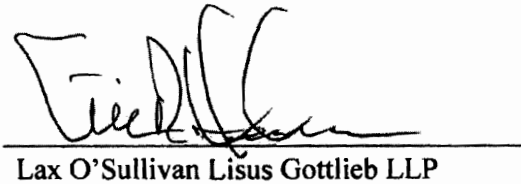


Sutts Strosberg LLP

Lawyers for the Plaintiffs

MEDBUY CORPORATION

Per:



Lax O'Sullivan Lissus Gottlieb LLP

Lawyers for the Defendant Medbuy Corporation

LONDON HEALTH SCIENCES CENTRE

Per:

---

Rogers Partners LLP

Lawyers For London Health Sciences Centre



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

LISA ARLENE HUNT, RYAN WESLEY HUNT, TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN BOUDREAULT and JOHN CHESLEY PRINCE

Per:

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McKenzie Lake Lawyers LLP

Per:

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Sutts Strosberg LLP

Lawyers for the Plaintiffs

MEDBUY CORPORATION

Per:

---

Lax O'Sullivan Lissus Gottlieb LLP

Lawyers for the Defendant Medbuy Corporation

LONDON HEALTH SCIENCES CENTRE

Per:



---

Rogers Partners LLP

Lawyers For London Health Sciences Centre

WINDSOR REGIONAL HOSPITAL,  
LAKERIDGE HEALTH, PETERBOROUGH  
REGIONAL HEALTH CENTRE, and  
REGIONAL HEALTH AUTHORITY B (Saint  
John Regional)

Per:



\_\_\_\_\_  
Borden Ladner Gervais LLP

Lawyers for Windsor Regional Hospital,  
Lakeridge Health, Peterborough Regional Health  
Centre, and Regional Health Authority B (Saint  
John Regional Hospital)

MEZENTCO SOLUTIONS INC. c.o.b as  
MARCHESE HOSPITAL SOLUTIONS,  
MEZENTCO INC., c.o.b. AS MARCHESE  
HEALTH CARE and MEDBUY  
CORPORATION

Per:

\_\_\_\_\_  
Gowlings WLG

Per:

\_\_\_\_\_  
Blaney McMurtry, LLP

Lawyers for the Defendant Mezentco

WINDSOR REGIONAL HOSPITAL,  
LAKERIDGE HEALTH, PETERBOROUGH  
REGIONAL HEALTH CENTRE, and  
REGIONAL HEALTH AUTHORITY B (Saint  
John Regional)

Per:

---

Borden Ladner Gervais LLP

Lawyers for Windsor Regional Hospital,  
Lakeridge Health, Peterborough Regional Health  
Centre, and Regional Health Authority B (Saint  
John Regional Hospital)

MEZENTCO SOLUTIONS INC. c.o.b as  
MARCHESE HOSPITAL SOLUTIONS,  
MEZENTCO INC., c.o.b. AS MARCHESE  
HEALTH CARE and MEDBUY  
CORPORATION

Per:



---

Gowlings WLG

*(Malcolm Ruby)*

Per:



---

Blaney McMurtry, LLP

*(Dariusz Czerwinski)*

Lawyers for the Defendant Mezentco

1428067v6

## SCHEDULE "A"

### **NOTICE AND CLAIMS ADMINISTRATION PROCEDURES**

#### **A. OVERVIEW OF ADMINISTRATION**

1. The procedures set forth herein are for the administration of the Notices and Settlement Agreement and for the payment to Eligible Class Members, Provincial Health Insurers and Class Counsel Fees, pursuant to the Settlement Agreement. These procedures shall be implemented by the Opt-Out Notice/Claims Administrator, subject to the ongoing authority and supervision of the Ontario Court.
2. The Opt-Out Notice/Claims Administrator may adopt additional policies and procedures for the administration of the Settlement Agreement that are consistent with the Settlement Agreement (including these Administration Procedures). These Notice and Claims Administration Procedures may not be modified or amended except by, but may be modified or amended by, an instrument in writing executed by the Parties, subject, in the case of any material modification or material amendment, to the approval thereof by the Ontario Court. Without limitation of the foregoing, the Notice/Claims Administrator may, with the consent of the Parties, deviate in any particular instance from the terms of these Administration Procedures if such deviation, if set forth in a formal modification or amendment to the Settlement Agreement, would not require the approval of the Ontario Court as specified in the preceding sentence.
3. The Opt-Out Notice/Claims Administrator shall implement the Settlement Agreement so as to provide payments to Eligible Class Members in a timely and efficient manner, and to minimize, to the extent reasonably practicable, the administration and other transaction costs associated with the implementation of the Settlement Agreement.
4. The Opt-Out Notice/Claims Administrator shall provide copies of any written communication to or from the Opt-Out Notice/Claims Administrator relating in any way to the Settlement Agreement to the Parties. Any counsel entitled to receive copies of such written communication under this provision may waive that entitlement by so advising the Opt-Out Notice/Claims Administrator.
5. All defined terms are as defined in the Settlement Agreement or herein. All calculations of time and deadlines pursuant to these Notice and Claims Administration Procedures shall be calculated in accordance with the Ontario *Rules of Civil Procedure* which are available at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) as Regulation 194 to the *Courts of Justice Act* R.S.O. 1990, c. C.43.

## **B. ROLES IN SETTLEMENT ADMINISTRATION**

### **Role of the Opt-Out Notice/Claims Administrator**

6. As provided for in the Settlement Agreement, the Opt-Out Notice/Claims Administrator shall be selected by the Parties and appointed by the Ontario Court, and shall be responsible for (i) dissemination of the Opt-Out/Approval Hearing and Approval Notices, and (ii) holding, investing and disbursing funds in the Account in accordance with the terms of the Settlement Agreement.
7. The Opt-Out Notice/Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon monies held from time to time in the Account.
8. Disbursement of any monies out of the Account shall only be made in accordance with the Settlement Agreement and these Notice and Claims Administration Procedures, or upon directions issued by the Ontario Court.
9. In addition (and without limitation), the Opt-Out Notice/Claims Administrator shall be responsible for:
  - (a) providing adequately trained, supervised and monitored personnel in such reasonable numbers as are required for the performance of its duties within reasonable timeframes;
  - (b) providing a French translation of the Settlement Agreement and all schedules hereto;
  - (c) setting up and maintaining a system for the handling of queries from Class Members and Family Class Members in both English and French, including a bilingual toll-free telephone line and web site;
  - (d) forwarding payment to Eligible Class Members;
  - (e) reporting as required by the Settlement Agreement (including these Notice and Claims Administration Procedures) including the provision of the Opt-Out Report, and reporting to the Parties with respect to the implementation of the Settlement Agreement generally, and, as to the total amount of money distributed, the amount of money remaining in the Account, the interest accrued;
  - (f) co-ordinating with the Parties, and holding administrative conference calls to advise them of the progress of the administration of the Settlement Agreement, as needed; and
  - (g) such other duties and responsibilities as the Ontario Court may, from time to time, direct.
10. The Opt-Out Notice/Claims Administrator shall employ persons, both English and French-speaking, with appropriate experience and/or provide appropriate training, so as to communicate effectively with all Class Members and Family Class Members.

11. The Opt-Out Notice/Claims Administrator shall establish a bilingual toll-free call centre for the assistance of Class Members and Family Class Members and to provide Eligible Class Members with information on the status of their payment.
12. The Opt-Out Notice/Claims Administrator shall establish a bilingual website (the “Website”) for the assistance of Class Members and Family Class Members.
13. All written communications from the Opt-Out Notice/Claims Administrator to Class Members shall be delivered by email or by regular Canada Post mail.
14. The Opt-Out Notice/Claims Administrator shall act according to the terms of the Settlement Agreement and these Notice and Claims Administration Procedures, and shall sign and adhere to a confidentiality agreement with respect to their work under the Settlement Agreement.

**C. PAYMENT SCHEDULE FOR APPROVED CLAIMS**

15. Eligible Class Members will receive an equal share of the Class Member Amount (prorated based on any further Class Counsel Fees approved by the Court). The Claims Administrator shall distribute these payments in accordance with the Settlement Agreement along with a “Letter Of Final Resolution And Payment”, which letter shall advise of any pro-rata reduction as a result of the payment of further Class Counsel Fees, as approved by the Ontario Court.
16. If any Eligible Class Member payment is returned to the Claims Administrator, the Claims Administrator will make best efforts to ascertain the reason for the returned payment (i.e. will conduct searches for updated Class Member contact information or confirm the reason for the return of payment with the Eligible Class Member and advise the Parties accordingly).
17. Following a period of 6 months after the payments have been issued, any un-cashed cheques will be cancelled and the monies distributed pursuant to Article 3.2 of the Settlement Agreement.

**D. MISCELLANEOUS**

**Extension of Deadlines**

18. The Parties jointly may from time to time in their absolute discretion extend any of the periods or deadlines prescribed herein relating to the administration or processing of claims, either generally or in relation to particular Class Members.
19. No failure of the Opt-Out Notice/Claims Administrator to meet any deadline for the administration, processing, evaluation or adjudication of claims shall give rise to any Class Member becoming entitled to receive any benefits pursuant to the Settlement

Agreement, or any liability of the Claims Administrator to any Opt-Out Notice/Class Member.

### **Privacy of Communications**

20. Any personal information provided by or regarding any Class Member or Family Class Member, or such information otherwise obtained pursuant to the Settlement Agreement (including these Notice and Claims Administration Procedures) shall be kept confidential and shall not be disclosed except to appropriate persons to the extent necessary to provide payments pursuant to the Settlement Agreement or as otherwise expressly provided in the Settlement Agreement and the Schedules thereto. All Class Members and Family Class Members shall be deemed to have consented to the disclosure of this information for these purposes.

### **Notice**

21. Where this Schedule requires the Opt-Out/Notice Claims Administrator to provide notice or any other communication or document to a Party (other than, for the avoidance of doubt, to post a document to the Website), such notice, communication or document shall, unless otherwise requested by a Party in any particular instance, be provided to such Party in writing, by email.

### **Settlement Agreement**

22. In the event of any conflict between these Notice and Claims Administration Procedures, on the one hand, and the provisions of the Settlement Agreement, the provisions of the Settlement Agreement shall prevail.

SCHEDULE "B"

**OPT-OUT FORM**

**This is NOT a Claim Form. This Form EXCLUDES you and members of your family from participating in the Settlement Agreement. DO NOT fill-out this Form if you wish to participate in the Settlement Agreement.**

A class action lawsuit was commenced in Ontario alleging that the Defendants' negligence in the packaging and labelling of Chemotherapy Drugs caused and/or contributed to approximately 1200 cancer patients in Ontario and New Brunswick receiving lower than intended dosages of the Chemotherapy Drugs (gemcitabine and cyclophosphamide), ("Dosing Incident"), at Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and Regional Health Authority B (Saint John Regional Hospital) (the "Hospitals"), between February 6, 2012 and April 2, 2013 ("Class Period").

The Ontario Court will be asked to certify this class action, for settlement purposes, against Mezentco, Medbuy and the Hospitals for the following class:

- (a) The "Class Members" being all persons, or their estates, who attended at the Hospitals for treatment during the Class Period and who were administered Chemotherapy Drugs affected by the Dosing Incident; and
- (b) The "Family Class Members" being the living partner, spouse, children, grandchildren, parents, grandparents or siblings of a Class Member.

If you want to opt out of the Class (in which case you cannot participate in the Settlement), this Opt-Out Form must be completed, signed, sent and postmarked by regular mail or fax, **no later than [DATE]** to the Opt-Out Notice Administrator at the address listed at the end of this Opt-Out Form. No further opportunity to opt out will be provided without a further order of the Court.

No person may opt out a minor or a mentally incapable individual without permission of the Court after notice to the Children's Lawyer and/or Public Guardian and Trustee, as applicable. If a Class Member opts out, his or her Family Class Members will be deemed to have opted out. Family Class Members cannot opt-out unless the Class Member does so as well. If a Class Member is deceased, his or her estate trustee has the right to opt out.

**Please read the entire form and follow the instructions carefully.**

**I. Personal Information:** Please provide the following information about yourself, or, if you are filing this Opt-Out Form as the legal representative of a Class Member, please provide the following information about the Class Member.



a. Current name and other names (e.g., maiden names, married names) used by the Class Member for the past ten years (last name first, followed by first name and middle initial):

Prefix:  Mr.  Mrs.  Miss  Ms.  Dr.

\_\_\_\_\_  
First Name Middle Name

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
Prior Last Name

\_\_\_\_\_  
Relationship to Class Member (*i.e.*, spouse or child) Date of Birth (Day/Month/Year)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City Province /Territory Postal Code

( ) ( )  
\_\_\_\_\_  
Daytime Phone Number Evening Phone Number e-mail address

Language Preference:

English  French

**II. Legal Representative Information (if applicable):** If you are filing this Opt-Out Form as the legal representative of a Class Member (e.g. as the executor of his or her estate), please provide the following information about *yourself* and attach a copy of your court approval or other authorization to represent the Class Member.

\_\_\_\_\_  
Last Name First Name Middle Initial

\_\_\_\_\_  
Street Address

|  |                      |                |
|--|----------------------|----------------|
| City   | Province /Territory  | Postal Code    |
| ( )  | ( )                  |                |
| Daytime Phone Number                                   | Evening Phone Number | e-mail address |
| Type of Legal Representative (e.g. executor, guardian) |                      |                |

Please attach a copy of a court order or other official document(s) demonstrating that you are the duly authorized legal representative of the Class Member and check the box below describing the Class Member's status:

- minor (court order appointing guardian or property or custody order, if any, or sworn affidavit of the person with custody of the minor);
- a mentally incapable person (copy of a continuing power of attorney for property, or a Certificate of statutory guardianship);
- Certificate of Appointment as Estate Trustee.

**III. Lawyer Information (if applicable):** If you or the Class Member have hired a lawyer in connection with a claim arising from the Class Member's Dosing Incident at the Hospitals during the Class Period, please provide the following information about the lawyer:

Law Firm Name \_\_\_\_\_

Lawyer's Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Province \_\_\_\_\_

Postal Code \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

Law Society Number \_\_\_\_\_

**IV. Acceptance and Acknowledgement**

**I have read the foregoing and understand that by opting out, I will never be eligible to receive any compensation pursuant to the Settlement Agreement with Mezentco, Medbuy and/or the Hospitals. I further understand that if I am the Class Member, all my Family Class Members who might otherwise make a claim for compensation pursuant to the Settlement Agreement are deemed to have opted out as well.**

---

Date signed

Signature

(Class Member or Executor, Administrator, or Personal Representative)

---

Print Name

If you have questions about using or completing this Form, contact your lawyer or call the Opt-Out Notice Administrator's Information Line at **[insert number]**

**[insert]**

THE INFORMATION CONTAINED IN THIS FORM WILL REMAIN CONFIDENTIAL

## SCHEDULE "C"

### Opt-Out/Approval-Hearing Notice

#### NOTICE OF COURT HEARING FOR SETTLEMENT APPROVAL

*HUNT et al. v. MEZENTCO SOLUTIONS INC., et. al.*  
*(Chemotherapy Dilution Dosing Incident Class Action)*

Read this notice carefully as it may affect your rights.

#### Who is the Notice For:

You are a Class Member in this class action if you were one of the more than 1200 cancer patients, or their estates, who underwent chemotherapy treatment at Windsor Regional Hospital, London Health Sciences Centre, Lakeridge Health, Peterborough Regional Health Centre and the Regional Health Authority B (Saint John Regional Hospital) ("Hospitals"), between February 6, 2012 and April 2, 2013 ("Class Period"). You are a Family Class Member if you are a living partner, spouse, child, grandchild, parent, grandparent or sibling of a Class Member.

#### What is the Action About:

The Class Action lawsuit alleges that the negligence of Mezentco Solutions Inc., cob Marchese Hospital Solutions, Mezentco Inc., cob Marchese Health Care and MedBuy Corporation (collectively, the "Defendants") caused Class Members to receive lower than intended dosages of the chemotherapy drugs cyclophosphamide and/or gemcitabine (the "Dosing Incident").

#### Proposed Settlement:

The Plaintiffs have entered into a proposed Settlement Agreement with the Defendants and Hospitals. This Settlement requires court approval before it can become effective.

The Settlement represents a resolution of disputed claims, and the Defendants and Hospitals do not admit any wrongdoing or liability in connection with the Class Action. If approved by the Court, this Settlement Agreement fully and finally resolves the Class Action against the Defendants and Hospitals.

According to the Settlement Agreement, the Defendants and Hospitals will collectively pay \$2,375,000, including legal fees and expenses, and expenses to administer the settlement, to settle the claims of Class Members and Family Class Members as well as the Ontario and New Brunswick provincial health insurers:

- up to \$1,800,000 for payments to Class Members, divided equally among all Class Members who do not opt-out;
- \$0 for payments to Family Class Members;
- \$100,000 to Ontario and New Brunswick Provincial Health Insurers;
- \$75,000 towards costs of Notice and Claims Administration; and
- \$400,000 towards class counsel fees and disbursements

Under the Settlement Agreement, the Defendants have agreed to also provide the Ontario Court with affidavits attesting to the steps they have taken to ensure the issues and concerns giving rise to the Dosing Incident have been satisfactorily addressed.

## Settlement Approval Hearing

The Settlement must be approved by the Ontario Court before it can come into effect. The Ontario Court will determine if the Settlement is fair and reasonable and in the best interests of the Class on **XXXX, XX, 2016, at Xa.m. at [Court House]**.

Class Members and Family Class Members who do not oppose the settlement need not appear at the hearing or take any other action at this time. All Class Members and Family Class Members who have not opted out have the right to present their arguments to the court if they oppose the settlement by making a written submission postmarked no later than **[date]** to the Administrator identified below. If no written submission is filed, you may not be entitled to participate, through oral submissions or otherwise, in the settlement approval hearing.

If a Class Member or Family Class Member wishes to make an objection to the approval of the Settlement Agreement, they must forward their written statement to: **[X]**, no later than **[DATE]**.

The written objection should include the following information:

1. The individual's name, address, telephone number, fax number and e-mail address.
2. A description of the reasons that the individual believes that he or she is a member of a class described above.
3. A brief statement of the nature of and reasons for the objection.
4. Whether he or she intends to appear at the Court hearing in person or through a lawyer and if through a lawyer, the lawyer's name, address, telephone number, fax number and e-mail address.

## Opting-Out

Class Members who want to participate in the Settlement are automatically included and should not file the Opt-Out Form discussed below.

If you do not wish to make a claim in, or be bound by the Settlement Agreement, you must opt-out of the lawsuit. To opt-out, you must complete an opt-out form, which can be obtained by contacting: **[X]** or downloaded at: **www. [website]**.

This form must be returned to **[X]** no later than **[DATE]**. No further opportunity to opt-out will be provided.

An individual who opts-out will not be eligible to participate in the Settlement. Any right to pursue a claim in a separate proceeding will not be affected. The Defendants and Hospitals have reserved all of their arguments based on statutes of limitation, prescription or repose for Class Members and Family Class Members who opt-out of the Settlement.

No person may opt out a minor or a mentally incapable individual without permission of the Court after notice to the Children's Lawyer and/or Public Guardian and Trustee, as applicable.

If a Class Member opts out, his or her Family Class Members will be deemed to have opted out also. The Family Class Members of any Class Member cannot opt-out unless the Class Member does so as well. If a Class Member is deceased, his or her estate trustee has the right to opt-out.

## Additional Information:

If approval is granted, and the Settlement Agreement is not terminated, payments to Class Members will follow (except all payments to minors will be paid into Court).

Questions for Class Counsel should be directed by email or telephone to: **[X]**

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between this notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

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SCHEDULE "D"

ONTARIO ORDER FOR CONDITIONAL CERTIFICATION

Court File No. CV-13-19436

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
 )  
JUSTICE ) OF , 2016

B E T W E E N :

**LISA ARLENE HUNT, RYAN WESLEY HUNT,  
TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-  
LYNN BOUDREAULT and JOHN CHESLEY PRINCE**

Plaintiffs

and

**MEZENTCO SOLUTIONS INC. c.o.b as MARCHESE HOSPITAL SOLUTIONS  
MEZENTCO INC. c.o.b. as MARCHESE HEALTH CARE  
and MEDBUY CORPORATION**

Defendants

Proceedings under the *Class Proceedings Act*, 1992

**ORDER**

**THIS MOTION** made by the Plaintiffs for an order, *inter alia*, conditionally certifying this class proceeding for the purposes of settlement only, approving the form and content of the notice that will advise Class Members and Family Class Members of the Settlement approval hearing of this matter, as well as the manner of publication of such notice and other ancillary relief, was heard at the Court House, 245 Windsor Avenue, Windsor, Ontario.

**AND UPON READING** the materials filed, including the motion record for conditional certification, and the Settlement Agreement and on hearing the submissions of Plaintiffs' Counsel, counsel for the Defendants, and counsel for the Hospitals, and upon being advised that:

- (a) The Parties, by their counsel, have entered into a Settlement Agreement (“Settlement Agreement”);
- (b) The Settlement Agreement seeks to resolve this action and all the claims that were or could have been asserted against the Defendants and the Hospitals;
- (c) ● consents to being appointed as Opt-Out Notice Administrator (“Administrator”) to disseminate this notice, pursuant to this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order the definitions set out in the Settlement Agreement attached hereto as Schedule “A” apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that leave is granted adding the Hospitals as parties to this action, for settlement purposes only. The style of cause is to be amended to read as follows:

Court File No. CV-13-19436

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

LISA ARLENE HUNT, RYAN WESLEY HUNT,

TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-LYNN

BOUDREAUULT and JOHN CHESLEY PRINCE

Plaintiffs

and

MEZENTCO SOLUTIONS INC. c.o.b as MARCHESE HOSPITAL SOLUTIONS

MEZENTCO INC. c.o.b. as MARCHESE HEALTH CARE

and MEDBUY CORPORATION and WINDSOR REGIONAL HOSPITAL, LONDON HEALTH SCIENCES CENTRE, LAKERIDGE HEALTH, PETERBOROUGH REGIONAL HEALTH CENTRE AND REGIONAL HEALTH AUTHORITY B (SAINT JOHN REGIONAL HOSPITAL).

Defendants

Proceedings under the *Class Proceedings Act, 1992*

3. **THIS COURT ORDERS** that this action be and is hereby conditionally certified as a class proceeding for settlement purposes only;

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

All persons, or their estates, who attended at the Hospitals for treatment during the Class Period and who were administered Chemotherapy Drugs affected by the Dosing Incident.

5. **THIS COURT ORDERS** that the Family Class is defined as:

The living partner, spouse, children, grandchildren, parents, grandparents or siblings of a Class Member.

6. **THIS COURT ORDERS** that Lisa Arlene Hunt, Tina Marie Wells, Pamela Worts and the Estate of Cher-Lynn Boudreault be and are hereby appointed as the representative plaintiffs for the Class;

7. **THIS COURT ORDERS** that Ryan Wesley Hunt, Kevin Worts and John Chesley Prince be and are appointed as the representative plaintiffs for the Family Class Members;

8. **THIS COURT ORDERS** that the following issue is common to the Class:



Did the Defendants cause or contribute to the Dosing Incident experienced by the Class Members at one or more of the Hospitals?

9. **THIS COURT ORDERS** that the motion for settlement approval shall be heard on XXXX, at the court house, 245 Windsor Avenue, Windsor, Ontario (“Approval Hearing”);
10. **THIS COURT ORDERS** that Cancer Care Ontario and the New Brunswick Cancer Network will provide the Administrator with the contact information for Class Members for the purposes of providing the Settlement Approval Hearing/ Opt-Out Notice;
11. **THIS COURT ORDERS** that the form and content of the Settlement Approval Hearing/Opt-Out Notice, substantially in the form attached as Schedule “B”, is hereby approved.
12. **THIS COURT ORDERS** that the Opt-Out Form be and is hereby approved substantially in the form attached hereto as Schedule “C”.
13. **THIS COURT ORDERS** that the proposed manner of publishing the Settlement Approval Hearing/Opt-Out Notice substantially as described in Schedule “D” be and is hereby approved (the “Notice Plan”).
14. **THIS COURT ORDERS** that the Settlement Approval Hearing/Opt-Out Notice and Notice Plan constitute fair and reasonable notice to the Class and Family Class of the hearing in which the Plaintiffs will seek approval of the Settlement Agreement, the right to opt-out of this litigation, and the right of Class Members and Family Class Members to object to the approval of the Settlement, and satisfies the requirements of sections 17, 19-21 and 29 of the *Class Proceedings Act*.

15. **THIS COURT ORDERS** that all Class Members who wish to opt out of the action, and thereby preserve their claims, if any, must elect not to participate in the Settlement Agreement and must mail a fully-completed and executed Opt-Out Form to the Hearings Notice Administrator which must be received or postmarked within thirty (30) days following first publication of the Settlement Approval Hearing/Opt-Out Notice (Schedule B to this Order). No further opportunity to opt out of this action will be provided. Opt-Outs shall not be entitled to participate or have the opportunity to participate in the future in this action, shall not be entitled to any payments under the Settlement Agreement, and shall not be entitled to appear at any hearing or object to the settlement of this action or the Settlement Agreement.

16. **THIS COURT ORDERS** that if a Class Member opts out, the related Family Class Members shall be deemed to have also opted out of this class action.

17. **THIS COURT ORDERS** that a Family Class Member may not opt out of this class action unless the related Class Member has validly and timely opted out.

18. **THIS COURT ORDERS** that no person may opt out a minor or mentally incapable Class Member without the permission of the Court after notice to the Children's Lawyer and/or the Public Guardian and Trustee, as the case may be.

19. **THIS COURT ORDERS** that ● is appointed as Administrator to carry out the Notice Plan and to receive any Opt-Out Forms submitted, as well as to carry out the other functions, roles and responsibilities contemplated in the Settlement Agreement, subject always to the terms and conditions of the Settlement Agreement, including the further Order of this Court, as contemplated therein.

20. **THIS COURT ORDERS** that the Settlement Approval Hearing/Opt-Out Notice shall be given to Class Members and Family Class Members in the manner described in the Notice Plan as soon as practicable.

21. **THIS COURT ORDERS** that, within twenty (20) days after the expiration of the opt-out period, the Opt-Out Notice Administrator shall report to Class Counsel, by affidavit, and advise as to the names and addresses of any Opt-Outs, the reasons for their opting out, if known, and a copy of all information provided by that Opt-Out (including a copy of the Opt-Out Form executed and delivered by such Opt-Out).

22. **THIS COURT ORDERS** that Class Members and Family Class Members may submit written objections to the approval of the Settlement Agreement before the deadline set out in the Hearing/Opt-Out Notice to the Administrator, who shall file all such submissions with the Court prior to the Approval Hearing. Class Members or Family Class Members (or their counsel) who do not file a written objection and indicate that they (or their counsel) intend to appear at the Approval Hearing may not be entitled to appear and raise any objection at the Approval Hearing, at the Court's discretion.

23. **THIS COURT ORDERS** that the Administrator shall provide copies of all objections received to Class Counsel no later than 21 days prior to the Settlement Approval Hearing.

24. **THIS COURT ORDERS** that the costs and fees of the Opt-Out Notice Administrator payable pursuant to the Settlement Agreement shall be paid by the Defendants and if the Settlement Agreement is approved shall be treated as partial payment of the Administration Amount.

25. **THIS COURT ORDERS** that if the Settlement Agreement is terminated in accordance with its terms, then, without restricting the application of the provisions of the Settlement Agreement:

- (a) this Order, including the certification of this action as a class proceeding for settlement, shall be set aside and be of no further force or effect and without prejudice to any party, and this action shall be decertified as a class proceeding pursuant to section 10 of the CPA without prejudice to the Plaintiffs' ability to reapply for certification and the Defendants' ability to oppose such application for certification; and
- (b) all negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before the Settlement Agreement was executed.

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Justice Verbeem  
Ontario Superior Court of Justice

SCHEDULE "E"

SETTLEMENT APPROVAL ORDER

Court File No. CV-13-19436

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) , THE DAY  
JUSTICE ) OF , 2016

B E T W E E N :

**LISA ARLENE HUNT, RYAN WESLEY HUNT,  
TINA MARIE WELLS, PAMELA WORTS, KEVIN WORTS, The Estate of CHER-  
LYNN BOUDREAULT and JOHN CHESLEY PRINCE**

Plaintiffs

and

**MEZENTCO SOLUTIONS INC. c.o.b as MARCHESE HOSPITAL SOLUTIONS  
MEZENTCO INC. c.o.b. as MARCHESE HEALTH CARE  
MEDBUY CORPORATION and WINDSOR REGIONAL HOSPITAL, LONDON  
HEALTH SCIENCES CENTRE, LAKERIDGE HEALTH, PETERBOROUGH  
REGIONAL HEALTH CENTRE AND REGIONAL HEALTH AUTHORITY B (SAINT  
JOHN REGIONAL HOSPITAL)**

Defendants

Proceedings under the *Class Proceedings Act*, 1992

**ORDER**

**THIS MOTION** made by the Plaintiffs for an order, *inter alia*, approving the Settlement Agreement, dated August 4, 2016, attached to this Order as Schedule "A" (the "Settlement

Agreement”), approving Class Counsel Fees and dismissing this action, was heard at the Court House, 245 Windsor Avenue, Windsor, Ontario.

**AND UPON READING** the materials filed, including the Settlement Agreement and on hearing the submissions of Counsel:

1. **THIS COURT ORDERS** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the settlement as set forth in this Order and in the Settlement Agreement, including the Settlement Amount and Class Counsel Fees are fair, reasonable and in the best interests of the Class and Family Class.
3. **THIS COURT ORDERS** that the settlement of this action on the terms set forth in the Settlement Agreement be and is hereby approved pursuant to section 29 of the *Class Proceedings Act*.
4. **THIS COURT ORDERS** that the Settlement Agreement in its entirety (including its preambles, recitals and schedules) forms part of this Order, and has the full force and effect of an Order of this Court.
5. **THIS COURT ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms and is valid and binding on (a) the Plaintiffs, (b) all Eligible Class Members and Family Class Members, including persons who are minors or are under a disability, as defined in the Rules of Civil Procedures (“*Rules*”), and (c) the Defendants and (d) the Hospitals.
6. **THIS COURT ORDERS** that the need for service of notice of this or any further or subsequent steps in these proceedings on the Office of the Children’s Lawyer or Public Guardian and Trustee, as well as all other requirements in Rule 7 of the Rules, are hereby dispensed with.
7. **THIS COURT ORDERS** that any payments to minors under the Settlement Agreement shall be paid into Court.

8. **THIS COURT ORDERS** that this Order constitutes the full and final resolution of all Released Claims connected with the Dosing Incident, including, without limitation, all claims and causes of action raised by the Plaintiffs and all other Releasors.
9. **THIS COURT ORDERS** that each Plaintiff and all other Releasors shall be deemed to have released and do hereby release each Releasee from any and all Released Claims as set out in Article 4 of the Settlement Agreement.
10. **THIS COURT ORDERS** that the Releasors are forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, asserting against any Releasee any Released Claims.
11. **THIS COURT ORDERS** that in consideration of the payment of the Provincial Health Insurers amount to be made by the Defendants in accordance with the Settlement Agreement, effective automatically upon payment to Her Majesty the Queen in Right of Ontario and New Brunswick (including without limitation the Ministries of Health, as well as all other departments, ministries and agents), the Provincial Health Insurers shall be deemed to have, and do hereby fully and forever, and irrevocably and unconditionally, release each Releasee from any and all claims connected with the Dosing Incident, which the Provincial Health Insurers may have ever had or asserted, may then have or assert, or at any time thereafter can, shall or may have or assert, against such Releasees, whether directly, indirectly, derivatively, as subrogee or in any other capacity.
12. **THIS COURT ORDERS** that each Releasor shall consent and shall be deemed to have consented to the dismissal as against the Releasees of each proceeding he/she/it has commenced, without costs and without prejudice.
13. **THIS COURT ORDERS** that upon the date of this Order, any other proceeding by a Releasor in Ontario shall be and is hereby dismissed without costs and with prejudice.
14. **THIS COURT ORDERS** that the Defendants shall pay the Settlement Amount within 15 days of this Order and upon payment of the Settlement Amount, the within action shall be dismissed against the Defendants and the Hospitals without costs and with prejudice.

15. **THIS COURT ORDERS** that the Claims Administrator shall execute their obligations as set out in the Settlement Agreement and Schedules thereto.

16. **THIS COURT ORDERS** that for the purposes of the enforcement of this Order, this Court will retain jurisdiction and the Parties and Class attorn to the jurisdiction of this Court for these purposes.

17. **THIS COURT ORDERS** that the Defendants and Hospitals have no liability whatsoever with respect to the administration of the Settlement Agreement.

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Justice Verbeem  
Ontario Superior Court of Justice



SCHEDULE "F"

**Provincial Health Insurers Amount – Distribution**

| <b>Province</b> | <b>Percentage</b> | <b>Amount</b> |
|-----------------|-------------------|---------------|
| Ontario         | 80%               | \$80,000      |
| New Brunswick   | 20%               | \$20,000      |

## SCHEDULE "G"

### Press Release

## **MEDIA ADVISORY**

For Immediate Release – [DATE]

## **SETTLEMENT REACHED IN CHEMOTHERAPY DOSING INCIDENT CLASS ACTION**

**WINDSOR, ONTARIO** – A settlement has been reached which resolves the claims of Class Members and Family Class Members in respect of the diluted chemotherapy incident at various Ontario and New Brunswick Hospitals, between February 4, 2012 and April 2, 2013.

A class action was brought on behalf of individuals who alleged that the negligence of Mezentco Solutions Inc., cob Marchese Hospital Solutions, Mezentco Inc., cob Marchese Health Care and MedBuy Corporation caused approximately 1200 cancer patients in Ontario and New Brunswick to receive lower than intended dosages of the cancer drugs cyclophosphamide and/or gemcitabine.

The allegations made in the lawsuits have not been proven in court and the court has not taken any position as to the truth or merits of the claims or defences asserted by either side. The Settlement represents a resolution of the disputed claims, and the Defendants and Hospitals do not admit any wrongdoing or liability in connection with the Class Action.

The settlement is for C\$2,375,000.00, and includes payments to Class Members, Provincial Health Insurers, payments towards legal costs, and payments for notice and claims administration.

According to Michael Peerless of McKenzie Lake Lawyers LLP, co-counsel for the plaintiffs "While these were difficult and protracted negotiations, the defendants and hospitals should be commended for dealing with this issue in a fair and considered manner."

According to Harvey T. Strosberg, Q.C. of Sutts Strosberg LLP, co-counsel for the plaintiffs: "This is not a good settlement. Given the circumstances, this is an excellent settlement" ..

Further information for class members is available at the website <http://www.mckenzielake.com/xxxxxxx>.

For further information:

Please contact Sharon Strosberg at (519)561-6294 (sharon@strosbergco.com) or Sabrina Lombardi at (519) 667-2645 (lombardi@mckenzielake.com) for further enquiries.

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