

SETTLEMENT AGREEMENT

Between

TOM SAVAS and CODY ARMSTRONG

REPRESENTATIVE PLAINTIFFS

and

**THE CITY OF NORTH BATTLEFORD, HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF SASKATCHEWAN and SASKATCHEWAN WATER
CORPORATION**

DEFENDANTS

WHEREAS the Representative Plaintiffs *et al.* commenced an Action in the Saskatchewan Court of Queen's Bench, being Q.B. No. 1512 of 2003, Judicial Centre of Saskatoon;

AND WHEREAS the Parties to this Agreement wish to settle any and all issues among themselves in any way relating to the Infant Class in the Action;

AND WHEREAS based on the analyses of the facts and law applicable to the claims of the Infant Class, and having regard to the burdens and expense in conducting litigation of the Action, including the risks and uncertainties associated with trials and appeals, the Representative Plaintiffs and Plaintiffs' Counsel have concluded that this Agreement provides substantial benefits to the Infant Class and that it is fair, reasonable and in the best interests of Class Members;

AND WHEREAS the Defendants, while denying liability and wrongdoing, and while asserting the existence of good and valid defences to the Action, have concluded that this Agreement is desirable in order to avoid the uncertainty, delay and expense of litigation, and to resolve completely the Claims of all Class Members;

AND WHEREAS the Defendants assert that the Action would not be appropriately certified absent this Agreement;

AND WHEREAS the Defendants reserve the right to contest the Certification of the Action as against the Adult Class;

AND WHEREAS the Public Guardian and Trustee must be satisfied that the Settlement Amount, the Compensation Grid and any agreement relating to costs or fees is fair and in the best interests of Class Members who continue to be infants;

AND WHEREAS the Representative Plaintiffs and Defendants intend that Certification of the Infant Class for settlement purposes shall be sought in the Court;

AND WHEREAS neither this Agreement nor any step taken to carry out this Agreement, nor any document relating to this Agreement is or may be construed or used as an admission by or against the Defendants for the truth of any allegations or claims or regarding liability or the certifiability of the Action herein as a class action, or as a waiver of any applicable legal right or benefit, other than as expressly stated herein. Further, neither this Agreement nor any document relating to or action taken to carry out this Agreement shall be offered, tendered or received in evidence in any action or proceeding against the Defendants or the Class Members, or any of them, in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of this Agreement or to seek Court approval of the Agreement;

NOW THEREFORE, subject to the approval of the Court, the Parties agree that the Action, and in particular all claims contemplated, asserted and unasserted, and raised either directly or indirectly or arising or in any way connected with the consumption by Class Members of water contaminated with *cryptosporidium parvum* that was supplied by the City of North Battleford between March 20 and April 25, 2001, is settled on the following terms and conditions:

I. DEFINED TERMS

1. For the purposes of the within Agreement, the following definitions apply:

- a. **“Act”** means *The Class Actions Act*, SS 2001, c C-12.01;
- b. **“Action”** means Q.B. No. 1512 of 2003 in the Saskatoon Court of Queen’s Bench, as it relates to the Infant Class;
- c. **“Administrator”** means Bruneau Group Inc. or such other claims administrator appointed by the Court to administer the Claims of Class Members;
- d. **“Administration Agreement”** means the agreement attached as Schedule “K” to this Agreement, entered into between the Defendants and the Administrator to govern the administration of the Settlement;
- e. **“Agreement”** means this Settlement Agreement duly executed by the Parties, including appendices, as amended or supplemented from time to time;
- f. **“Appeal Period”** means the 30-day period following the Court Approval Date;
- g. **“Certification”** means certification of the Action pursuant to sections 6 and 8 of the Act;
- h. **“Claim”** means an application in the prescribed form by a member of the Infant Class pursuant to the process described in this Agreement;
- i. **“Claim Category”** means each category of Eligible Claimants as prescribed in the Compensation Grid;
- j. **“Claim Form”** means the form attached as Schedule “I” to this Agreement;
- k. **“Claims Deadline”** means the date six (6) months following the Opt Out Deadline;

- l. **“Claimant”** means a Class Member who submits a Claim;
- m. **“Class Member”** means a member of the Infant Class, and **“Class Members”** means members of the Infant Class;
- n. **“Compensation”** means the amounts to be paid to Eligible Claimants pursuant to the Compensation Grid;
- o. **“Compensation Grid”** means the grid attached as Schedule “A” to this Agreement that details the criteria for Compensation of Eligible Claimants;
- p. **“Court Approval Date”** is the date on which the Court grants the Settlement Approval and Certification Order;
- q. **“Counsel”** means Plaintiffs’ Counsel and Defendants’ Counsel;
- r. **“Counsel Fee”** means the fees, disbursements and all taxes awarded to Plaintiffs’ Counsel pursuant to this Agreement or by the Court;
- s. **“Court”** means the Court of Queen’s Bench of Saskatchewan;
- t. **“Cryptosporidiosis”** means an infection caused by the parasite *cryptosporidium parvum*;
- u. **“Defendants’ Counsel”** means: Stevenson Hood Thornton Beaubier LLP for the City of North Battleford; and the Ministry of Justice for the Government of Saskatchewan and Saskatchewan Water Corporation;
- v. **“Effective Date”** means the day following the expiration of the Appeal Period, if no appeals have been taken from the Settlement Approval and Certification Order, or if any appeals have been taken therefrom, the date upon which such appeals are finally resolved in such manner as to permit the consummation of the Settlement in accordance with the terms and conditions of this Agreement;
- w. **“Eligible Claimant”** means a Class Member who submits a Claim with Supporting Documentation that meets the criteria for Compensation pursuant to the Compensation Grid;
- x. **“Eligible Claim”** means a Claim that meets the criteria for payment of Compensation pursuant to the Compensation Grid;
- y. **“Infant Class”** means the class of persons who:
 - i. contracted *cryptosporidiosis* or symptoms of *cryptosporidiosis* as a result of consuming contaminated water supplied by the City of North Battleford between March 20 and April 25, 2001; and
 - ii. who were under the age of 18 years at the time of such consumption;
- z. **“Litigation Plan”** means a plan for the advancement of litigation of the Action in the form attached as Schedule “E” to this Agreement;
- aa. **“Notice of Settlement Approval and Certification”** means the Notice in the form attached as Schedule “F” to this Agreement;
- bb. **“Notice Period”** means the period of time between the date the Notice of Settlement Approval is transmitted to Class Members and the Opt Out Deadline;

- cc. **“Notice Plan”** means a plan for the transmission to Class Members of any notice or notices required pursuant to section 21 of the Act, in the form attached as Schedule “D” to this Agreement;
- dd. **“Opt Out”** means the act by which a Claimant may exclude themselves from the operation of this Agreement pursuant to section 18 of the Act;
- ee. **“Opt Out Deadline”** means the date 42 days following the date upon which the Notice of Settlement Approval and Certification is transmitted to Class Members;
- ff. **“Opt Out Form”** means the form attached as Schedule “H” to this Agreement;
- gg. **“Parties”** means the Representative Plaintiffs and Defendants in the Action;
- hh. **“Plaintiffs’ Counsel”** means Cuelenaere Kendall Katzman & Watson LLP;
- ii. **“Preliminary Approval Notice”** means the form of notice attached as Schedule “B”;
- jj. **“Preliminary Approval Order”** means the Order of the Court in the form attached as Schedule “C” to this Agreement, approving the Preliminary Approval Notice;
- kk. **“Representative Plaintiffs”** means Tom Savas and Cody Armstrong;
- ll. **“Settlement”** means the settlement as prescribed in this Agreement;
- mm. **“Settlement Amounts”** means payments made to Eligible Claimants pursuant to the Compensation Grid;
- nn. **“Settlement Approval and Certification Hearing”** means the Court hearing at which the Settlement Approval and Certification Order will be sought;
- oo. **“Settlement Approval and Certification Order”** means an Order of the Court certifying the Action as a class action and approving the Settlement on the terms and conditions set out in this Agreement, in the form attached as Schedule “G”;
- pp. **“Settlement Fund”** means the fund established by the Defendants to make payment to Eligible Claimants pursuant to this Agreement;
- qq. **“Supporting Documentation”** means the documentation prescribed in the Compensation Grid to support a Claim.

II. COURT APPROVAL - PRELIMINARY APPROVAL

2. Promptly after the execution of this Agreement, Plaintiffs’ Counsel shall make application to the Court for the Preliminary Approval Order. Plaintiffs’ Counsel is responsible for the contents of any such application and the Preliminary Approval Notice.

3. Plaintiffs’ Counsel shall transmit the Preliminary Approval Notice to Class Members within 14 days of receiving the Preliminary Approval Order.

4. The Preliminary Approval Notice shall set out the circumstances in which objectors to this Agreement may make objection thereto. A Class Member who objects to the fairness, reasonableness or adequacy of this Agreement must do so by filing a statement of written objection that describes the nature of the objection within 42 days of the Preliminary Approval

Notice having been transmitted to Class Members, and may appear in person to make argument of objection at the Settlement Approval and Certification Hearing.

5. Any statement of written objection received within the time period specified in Article 4 shall be filed with the Court in advance of the Settlement Approval and Certification Hearing.

III. COURT APPROVAL - CERTIFICATION ORDER

6. Forty-two (42) days after transmitting the Preliminary Approval Notice to Class Members, the Plaintiffs' Counsel shall apply to the Court for the Settlement Approval and Certification Order, in which the Court will be requested to, among other things:

- i. approve the Settlement as specified in Schedule "A", subject to the terms and conditions of this Agreement;
- ii. approve the Notice Plan;
- iii. approve the Litigation Plan;
- iv. approve the Notice of Settlement Approval and Certification; and
- v. certify the Action as a class action.

7. For the purposes of Article 6, Plaintiffs' Counsel shall develop the Notice Plan, the Litigation Plan, the Notice of Settlement Approval and Certification and the Settlement Approval and Certification Order, and shall make all necessary changes to same, as directed by the Court.

8. The Defendants shall reimburse Plaintiffs' Counsel for all costs incurred to publish any and all notices required to give effect to this Agreement.

9. The Settlement Approval and Certification Order shall, *inter alia*, order and declare that the Class Members have fully released the Defendants, in the form attached as Schedule "J".

10. Subject to Court approval, Plaintiffs' Counsel shall promptly transmit to Class Members the Notice of Settlement Approval and Certification as directed by the Court.

IV. OTHER APPROVALS

11. **THIS PARAGRAPH HAS INTENTIONALLY BEEN LEFT BLANK**

V. EFFECT OF NON-APPROVAL BY THE COURT

12. If the Settlement Approval and Certification Order is not granted by the Court, or if the Court does not certify the within Action as a class action, or if the Court does not approve the discontinuance of the Action as it relates to the Infant Class, then:

a. The Agreement shall be null and void and shall have no force or effect, and no Party to the Agreement shall be bound by any of its terms except the terms of this Article; and

b. The Agreement and all of its provisions and all negotiations, all documents and information exchanged in furtherance of settlement, and all statements and proceedings relating to it, and the fact of its existence and any of its terms, shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before the Agreement and negotiations in respect of it. For clarity and without limitation, this Agreement is without prejudice to the rights of each Party to seek or oppose certification of the Action should the Settlement or the Agreement not be approved by the Court.

13. **THIS PARAGRAPH HAS BEEN INTENTIONALLY LEFT BLANK**

VI. TERM AND TERMINATION

14. This Agreement shall continue for 18 months from the execution thereof or until termination pursuant to its terms, whichever is earliest.

15. In the event of termination, this Agreement shall have no further force or effect, save and except for this Article or any other article that by its terms is intended to survive this Agreement, which shall survive termination, and all negotiations, statements and proceedings relating to this

Agreement shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately prior to the execution of this Agreement.

16. In the event of termination of this Agreement, the Settlement Fund in its entirety shall, if necessary, be returned to the Defendants.

17. Other than termination in the circumstances as otherwise prescribed herein, this Agreement shall terminate upon either of:

- a. the Settlement Fund being fully depleted through payment of Settlement Amounts to Eligible Claimants; or
- b. repayment to the Defendants of the remaining, residual amounts in the Settlement Fund upon full payment from the Settlement Fund to all Eligible Claimants who do not Opt Out and apply within the Claims Deadline.

VII. CLASS

18. For greater certainty, the Agreement settles the Action and releases the Defendants only as regards the Infant Class. No other class of persons may make a Claim under this Agreement. This Agreement does not affect the rights, claims, interests, demands or positions of the members of any other class of persons, nor is it in any way a waiver of any right, claim, interest, demand or position, whether procedural, constructive or substantive, that the Defendants may assert at law against any other class of persons.

VIII. APPLICATION PROCESS

19. The Administrator shall process the Claims as per this Agreement.

20. The Administrator will assess all Claims and authorize payment of Settlement Amounts from the Settlement Fund to Eligible Claimants. All assessments made by the Administrator are final and are not subject to reassessment, review or appeal.

21. Class Members who wish to make a Claim pursuant to this Agreement must file a Claim Form postmarked no later than the end of business on the Claims Deadline day, failing which Class Members are not entitled to Compensation.

22. Claimants must submit Claim Forms to the Administrator at 390 Rideau St., Box 20187, Ottawa, ON K1N 9P4 postmarked on or before the Claims Deadline. The Administrator shall accept every Claim Form that is postmarked on or before the Claims Deadline.

23. The Administrator shall reject any Claim Form not postmarked on or before the Claims Deadline.

24. The Settlement Fund shall be administered by the Administrator, who shall have all responsibility for payments made therefrom.

25. Claimants must obtain and provide all Supporting Documentation required pursuant to the Compensation Grid that reasonably satisfies the Administrator that they are Eligible Claimants.

26. Administration of the Settlement shall be subject to reasonable audit and review by Counsel for the purposes of determining that all Parties are complying with the terms of this Agreement. Upon request of one of the Parties, the Administrator shall provide an accounting for amounts disbursed from the Settlement Fund to the date of the accounting.

27. The Administrator shall provide the Parties with a final accounting upon termination of this Agreement.

28. Any concerns that arise over the administration of the Settlement pursuant to this Agreement shall be resolved pursuant to the terms of the Administration Agreement.

29. Payment of all reasonable fees, taxes and disbursements related to the administration of the Claims process, including to the Administrator, is the sole responsibility of the Defendants.

IX. OPTING OUT

30. A Class Member may Opt Out of the operation of this Agreement on or before the Opt Out Deadline using the Opt Out Form.

31. Any Class Member who Opts Out shall not be bound by any further orders or judgments entered in this Action, and shall be excluded from operation of this Agreement, including that they shall not be entitled to Compensation pursuant to the terms thereof. This does not derogate from any rights they may have independent of this Agreement and the Action.

32. If a Class Member does not file an Opt Out Form on or before the Opt Out Deadline, the Class Member shall be deemed to have accepted the terms and conditions of this Agreement, and shall be able to make a Claim pursuant to the terms thereof.

33. All Class Members who do not Opt Out, or who rescind an Opt Out, shall be bound by this Agreement and all related Court orders, and shall be forever barred from commencing any

proceeding against the Defendants for any claim related to the Action, regardless of whether they make a Claim.

34. This Agreement shall be terminated immediately if 30 or more Class Members file an Opt Out Form prior to the Opt Out Deadline without rescinding said Form pursuant to Articles 35 or 36.

35. Any Class Member who files an Opt Out Form may rescind same at any time prior to the Claims Deadline by clear notice in writing. Any Class Member who rescinds an Opt Out Form is deemed to have accepted the terms and conditions of this Agreement, and shall be able to make a Claim pursuant to its terms.

36. Any Class Member who submits both an Opt Out Form and a Claim Form shall be deemed to have rescinded that Class Member's Opt Out Form and to have accepted the terms and conditions of this Agreement, and shall be able to make a Claim pursuant to its terms.

37. Any Opt Out Form that is rescinded prior to the Opt Out Deadline shall not count towards the number of Class Members opting out for the purposes of Article 34.

X. COMPENSATION

38. The Defendants shall together constitute a Settlement Fund in the amount of \$3,300,000, subject to the terms of this Agreement.

39. The Defendants have agreed, subject to the terms and conditions of this Agreement, including Schedule "A", to make payments to Eligible Claimants as outlined below.

40. The Claims of the Eligible Claimants shall be paid in accordance with the Compensation Grid.

41. Payments made under Category 1 of the Compensation Grid are governed by the parameters prescribed therein. In the event that the total payments for all Eligible Claims under Categories 2 through 8 of the Compensation Grid exceed the amount available for distribution, the payments to the Eligible Claimants shall be reduced *pro rata*.

42. In the event that the amount payable to Eligible Claimants is lower than the amount available for distribution from the Settlement Fund, the remaining, residual amounts shall be returned to the Defendants.

XI. COUNSEL FEE

43. Counsel acknowledge that the Counsel Fee is awarded at the discretion of the Court and must be approved by the Court.

44. Subject to the approval of the Court, Plaintiffs' Counsel shall be entitled to reasonable legal fees in an amount equivalent to 20% of the Settlement Amounts, plus applicable taxes, to be paid out of the Settlement Fund. This figure is inclusive of all past, current and future time for all Plaintiffs' Counsel, but is exclusive of disbursements.

45. Within 30 days of the Certification Order the Defendants shall pay to Plaintiffs' Counsel the amount of \$21,000.00 as payment for disbursements incurred up to January 23, 2014. Moreover, the Defendants shall be responsible for all reasonable disbursements from January 23, 2014, provided the disbursement is relevant to the substantiation of an Eligible Claim.

46. Plaintiffs' Counsel further acknowledge that, for greater clarity, all fees, other than those for reasonable disbursements and fees of the Administrator incurred to date as agreed to by Defendants' Counsel, are considered to be paid out of the Settlement Fund.

47. No Plaintiffs' Counsel, or anyone employed by or with Plaintiffs' Counsel, may directly or indirectly participate in or be involved in or in any way assist with respect to any action commenced by Class Members who Opt Out with respect to any other action related to the claims which were or could have been asserted in the Action as defined herein. Moreover, no Plaintiffs' Counsel or anyone employed by or with Plaintiffs' Counsel may divulge any information obtained in the course of the proceedings referred to in the preamble herein or in the preparation thereof or related to the proceeding referred to in the preamble, to anyone for any purpose.

XII. DISCONTINUANCE

48. Forthwith following the Effective Date, Plaintiffs' Counsel shall file with the Court a Discontinuance of Claim to discontinue the Action as regards the Infant Class and shall provide proof of same to Defendants' Counsel.

XIII. NO ADMISSION OF LIABILITY

49. The Plaintiffs acknowledge that the aforesaid Agreement duly entered into by the Defendants does not amount to an admission of liability by the Defendants and that such liability is denied and shall not constitute, and shall never be used by the Plaintiffs, as an admission of, or evidence in respect of any issue or fact or law which may hereafter come into issue between the

Parties and any other matter whatsoever, including, without limitation, any matter arising out of or in any way connected with the Action, including, without limiting the foregoing, any matter relating to those who were over the age of 18 at all material times.

XIV. NOTIFICATIONS

50. Any notification, request, instruction or other document to be given by any Party to any other Party to this Agreement (otherwise than notices approved by the Court) shall be in writing and:

- a. If to the Defendants, jointly to the attention of the Defendants' Counsel:

Stevenson Hood Thornton Beaubier LLP
500, 123 – 2nd Ave. S.
Saskatoon, Saskatchewan
S7K 7E6

Ministry of Justice
900, 1874 Scarth Street
Regina, Saskatchewan
S4P 4B3

- b. If to the Plaintiffs or Class Members, to the Plaintiffs' Counsel:

Cuelenaere Kendall Katzman & Watson LLP
500, 128 – 4th Ave. S.
Saskatoon, Saskatchewan
S7K 1M8

XV. ENTIRE AGREEMENT

51. The Agreement, together with the preambles and the attached schedules, constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersede all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto pertaining to the subject matter hereof. There are no other warranties or representations between the Parties in connection with the subject matter hereof except as specifically set forth herein.

52. For greater clarity, the attached Schedules "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K" form part of this Agreement.

53. The headings in this Agreement are for convenience only, and do not form part of the Agreement.

54. In this Agreement, words in the singular include the plural and words in the plural include the singular.

55. The Agreement may not be changed, modified or amended except in writing as signed by all Parties and, if required, approved by the Court. The Parties contemplate that certain of the schedules may be modified by subsequent agreement prior to dissemination to the Infant Class if approved by the Court.

56. Plaintiffs' Counsel and Defendants' Counsel represent that they are unaware of any other pending litigation involving the subject of this Settlement.

XVI. APPLICABLE LAW

57. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Saskatchewan.

XVII. ONGOING AUTHORITY

58. The Court shall retain exclusive jurisdiction over this Agreement to ensure that all Settlement Amounts are properly paid, and to interpret and enforce the terms, conditions and obligations of this Agreement except as provided for herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, each of the parties has caused this Agreement in Settlement of the Action to be executed on their behalf by their authorized counsel of record, effective as of the 27 day of September, 2016.

DEFENDANTS' COUNSEL

CITY OF NORTH BATTLEFORD



Stevenson Hood Thornton Beaubier LLP

**GOVERNMENT OF SASKATCHEWAN and
WATER SECURITY AGENCY**



Government of Saskatchewan

PLAINTIFFS' COUNSEL



Cuelenaere Kendall Katzman & Watson LLP