

**CANADIAN E-BOOK CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of May 8, 2014

Between

WAYNE VAN TASSEL, NANCY JEAN ADAMS and ANTOINE PONTBRIAND

(collectively, the "Plaintiffs")

and

**HACHETTE BOOK GROUP CANADA LTD., HACHETTE BOOK GROUP,
INC., HARPERCOLLINS CANADA LIMITED, HARPERCOLLINS
PUBLISHERS, L.L.C., MACMILLAN PUBLISHERS, INC., PENGUIN GROUP
(USA) LLC (formerly PENGUIN GROUP (USA), INC.), PENGUIN CANADA
BOOKS, INC., and SIMON & SCHUSTER CANADA, a division of CBS
CANADA HOLDINGS CO.**

(collectively, the "Settling Defendants")

TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS	3
SECTION 2 - SETTLEMENT APPROVAL.....	11
2.1 Best Efforts.....	11
2.2 Motions Certifying the National Proceeding, Authorizing the Quebec Proceeding and Approving Notice.....	11
2.3 Motions for Approval of Settlement.....	11
2.4 Discontinuance Order.....	12
SECTION 3 - SETTLEMENT BENEFITS.....	12
3.1 Payment of Settlement Amount.....	12
3.2 Taxes and Interest.....	13
3.3 Cooperation.....	13
SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST	14
4.1 Distribution Protocol	14
4.2 No Responsibility for Administration or Fees.....	15
SECTION 5 – OPTING-OUT	15
5.1 Procedure.....	15
5.2 Opt-Out Report.....	16
SECTION 6 - RELEASES, DISMISSAL AND TRANSACTION HOMOLOGATION	16
6.1 Release of Releasees	16
6.2 Covenant Not To Sue	16
6.3 No Further Claims	17
6.4 Disposition of the Canadian Proceedings.....	17
6.5 Claims Against Other Entities Reserved.....	17
SECTION 7 - BAR ORDER AND OTHER CLAIMS	17
7.1 Bar Order - Ontario.....	17
7.2 Quebec.....	20
SECTION 8 - EFFECT OF SETTLEMENT	20
8.1 No Admission of Liability	20
8.2 Agreement Not Evidence.....	21
8.3 No Further Litigation	21
SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY.....	22
9.1 Settlement Classes and Common Issue.....	22
9.2 Certification and Authorization Without Prejudice.....	22
SECTION 10 - NOTICE TO NATIONAL SETTLEMENT CLASS	23
10.1 Notice Required.....	23
10.2 Dissemination of Notice.....	23
SECTION 11 - ADMINISTRATION AND IMPLEMENTATION.....	23

11.1 Mechanics of Administration.....	23
SECTION 12 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES	23
SECTION 13 - TERMINATION OF SETTLEMENT AGREEMENT	24
13.1 Right of Termination	24
13.2 If Settlement Agreement is Terminated	26
13.3 Allocation of Monies in the Trust Account Following Termination.....	26
13.4 Survival of Provisions After Termination.....	26
SECTION 14 - MISCELLANEOUS	27
14.1 Releasees Have No Liability for Administration	27
14.2 Motions for Directions.....	27
14.3 Headings, etc.....	27
14.4 Computation of Time	28
14.5 Ongoing Jurisdiction	28
14.6 Governing Law	28
14.7 Entire Agreement.....	28
14.8 Amendments	28
14.9 Binding Effect	29
14.10 Counterparts	29
14.11 Interpretation.....	29
14.12 Language.....	29
14.13 Transaction	30
14.14 Recitals	30
14.15 Schedules	30
14.16 Notice.....	30
14.17 Acknowledgements.....	32
14.18 Authorized Signatures.....	32
14.19 Date of Execution.....	33
SCHEDULE A.....	35
SCHEDULE B.....	36
SCHEDULE C.....	37
SCHEDULE D.....	38

**CANADIAN E-BOOK CLASS ACTION
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RECITALS

A. WHEREAS the Plaintiffs have commenced the Canadian Proceedings in the Courts and allege that the Defendants, including the Settling Defendants, participated in the Alleged Conspiracy, and the Plaintiffs claim class-wide damages as a result of the Alleged Conspiracy, as well as equitable relief;

B. AND WHEREAS the Settling Defendants expressly deny that they have engaged in the Alleged Conspiracy or other unlawful conduct and believe that they are not liable in respect of the Alleged Conspiracy or at all, and believe they have good and reasonable defences in respect of the claims advanced in the Canadian Proceedings;

C. AND WHEREAS, despite their belief that they are not liable in respect of the Alleged Conspiracy and that they have good and reasonable defences in respect of the claims advanced in the Canadian Proceedings, the Settling Defendants have negotiated and entered into this Agreement to avoid the further expense, inconvenience, and burden of litigating the Canadian Proceedings and any other present or future litigation arising out of the facts that gave rise to them, to avoid the risks inherent in uncertain, complex and protracted litigation and to achieve final resolutions of all claims asserted or which could have been asserted against the Settling Defendants and the Releasees by the Plaintiffs on their own behalf and on behalf of the Settlement Classes in relation to the Alleged Conspiracy, as it relates to the sales of E-Books in Canada during the Settlement Class Period;

D. AND WHEREAS counsel for the Settling Defendants and other Releasees have engaged in extensive arm's-length settlement discussions and negotiations with Class Counsel in respect of this Agreement;

E. AND WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes;

F. AND WHEREAS as part of this resolution, the Settling Defendants have each agreed to make a settlement payment for the benefit of the Settlement Classes;

G. AND WHEREAS as part of this resolution, the Settling Defendants have agreed to cooperate with the Plaintiffs and Class Counsel as particularized in this Agreement;

H. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount and the cooperation the Settling Defendants have agreed to render or make available to the Plaintiffs and/or Class Counsel pursuant to this Agreement, as well as the attendant risks of litigation in light of the potential defences that would be asserted by the Settling Defendants;

I. AND WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the proposed disposal of the Canadian Proceedings against the Settling Defendants, the value of the Settlement Amount and the cooperation to be provided by the Settling Defendants, the burdens and expense associated with prosecuting the Canadian Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Settlement Classes;

J. AND WHEREAS the Plaintiffs and the Settlement Classes intend to fully and completely settle and resolve the claims advanced in the Canadian Proceedings as against the Settling Defendants and the other Releasees, as they relate to the sales of E-Books in Canada during the Settlement Class Period, on the Effective Date pursuant to this Agreement;

K. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a nation-wide basis, without admission of liability, the Canadian Proceedings as against the Settling Defendants and the other Releasees, as they relate to the sales of E-Books during the Settlement Class Period;

L. AND WHEREAS for the purposes of settlement only and contingent on approval of the Approval Courts as provided for in this Agreement, the Parties have consented to

authorization of the Quebec Proceeding as a class proceeding and certification of the National Proceeding as a national class proceeding;

M. AND WHEREAS for the purposes of settlement only and contingent on approval by the Approval Courts as provided for in this Agreement, the Parties have consented to the Approval Orders and the Discontinuance Order;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Canadian Proceedings against the Settling Defendants be settled and discontinued (in the case of the BC Proceeding), dismissed (in the case of the National Proceeding) and settled by way of homologated transaction (in the case of the Quebec Proceeding) with prejudice and without costs, subject to the approval of the Approval Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

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

- (1) **Administration Expenses** mean 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 Agreement, including the costs of notices, translations, claims administration, and any amount owing to the Fonds d'aide aux recours collectifs of the Province of Quebec, but excluding Class Counsel Fees.
- (2) **Agreement** means this national settlement agreement, including the recitals and schedules.
- (3) **Alleged Conspiracy** means the alleged unlawful conspiracy by the Defendants, including the Settling Defendants, to fix, maintain, increase or control the price of E-Books sold by them in Canada, contrary to Part VI of the *Competition Act*, the common law and the Civil Code of Quebec.
- (4) **Apple** means the Defendant Apple Inc.

- (5) **Approval Courts** mean the Ontario Court and the Quebec Court.
- (6) **Approval Orders** means orders of the Ontario Court and Quebec Court in the forms attached as Schedule A approving this Agreement, declaring it to be binding upon all Settlement Class Members, dismissing the National Proceeding and homologating the transaction in the Quebec Proceeding against the Settling Defendants, with prejudice and without costs.
- (7) **BC Court** means the Supreme Court of British Columbia.
- (8) **BC Plaintiff** means the plaintiff in the BC Proceeding.
- (9) **BC Proceeding** means the proceeding commenced by Wayne Van Tassel in the form of an action filed in the BC Court (Vancouver Registry), Court File No. S-122529, on April 5, 2012.
- (10) **Canadian Proceedings** mean the National Proceeding, the Québec Proceeding and the BC Proceeding.
- (11) **Certification and Authorization Orders** means the order of the Ontario Court in the form attached as Schedule B certifying the National Proceeding as a national class proceeding and the judgment of the Quebec Court in the form attached as Schedule B authorizing the Quebec Proceeding as a class proceeding, in each case as against the Settling Defendants only, for the purpose of giving effect to and implementing this Agreement, and approving a Notice of Certification, Authorization and Settlement Approval Hearing.
- (12) **Claims Administrator** means a Person proposed by Class Counsel and appointed by the Approval Courts to administer the Agreement, including any claims process, in accordance with the provisions of this Agreement and any Distribution Protocol, and any employees of such Person.
- (13) **Class Counsel** means Branch MacMaster LLP, Sutts Strosberg LLP, Law Office of Andrew J. Morganti, and Sylvestre Fafard Painchaud SENCRL.

(14) **Class Counsel Fees** means the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel, including without limitation any applicable GST, PST, HST or QST.

(15) **Common Issue** means: Did the Settling Defendants, or any of them, conspire with each other or others to fix, maintain, increase or control the price of E-Books in Canada during the Settlement Class Period?

(16) **Courts** mean the Ontario Court, the Québec Court and the BC Court.

(17) **Defendant(s)** means, individually or collectively, the individuals or entities now or in the future named as a defendant in the Canadian Proceedings.

(18) **Discontinuance Order** means the order made by the BC Court in the form attached as Schedule C discontinuing the BC Proceeding as against the Settling Defendants with prejudice and without costs.

(19) **Distribution Protocol** means the plan to be developed by Class Counsel for holding or distributing the Net Settlement Amount and accrued interest, in whole or part, which may include holding the Net Settlement Amount in trust pending resolution of the Canadian Proceedings, as approved by the Approval Courts on notice to the Settling Defendants.

(20) **Document** means any paper, computer or electronic record, or other material within the scope of Rule 1.03(1) and Rule 30.01(1) of the Ontario *Rules of Civil Procedure* and any copies, reproductions or summaries of the foregoing, including microfilm copies and computer images.

(21) **E-Book(s)** means an electronically formatted book designed to be read on a computer, a handheld device, or other electronic devices capable of visually displaying E-Books. For purposes of this Agreement, the term E-Book does not include (1) an audio book, even if delivered and stored digitally; (2) a standalone specialized software application or "app" sold through an "app store" rather than through an E-Book store (e.g., through Apple Inc.'s "App Store" rather than through its "iBookstore" or "iTunes") and not designed to be executed or read by or through a dedicated E-Book reading

device; or (3) a media file containing an electronically formatted book for which most of the value to consumers is derived from audio or video content contained in the file that is not included in the print version of the book.

(22) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Approval Orders and the Discontinuance Order have expired or the Approval Orders and the Discontinuance Order, as applicable, are affirmed upon a final disposition of all appeals.

(23) **eRetailer** means any Person that lawfully sells or seeks to lawfully sell E-Books to consumers in Canada, or through which a Defendant under an agency agreement sells E-Books to consumers, excluding Persons whose primary business is book publishing.

(24) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing.

(25) **Hachette** means Hachette Book Group Canada Ltd. and Hachette Book Group, Inc.

(26) **Harper Collins** means HarperCollins Canada Limited and HarperCollins Publishers L.L.C.

(27) **Macmillan** means Holtzbrink Publishers LLC d/b/a Macmillan and Macmillan Publishers, Inc.

(28) **National Proceeding** means the proceeding commenced by Nancy Jean Adams in the form of a Notice of Action filed in the Ontario Court (Windsor Registry), Court File No. CV-12-17511, on February 23, 2012.

(29) **National Settlement Class** means all Persons in Canada who purchased E-Books during the Settlement Class Period, except the Excluded Persons, Persons who are included in the Quebec Settlement Class, and Persons who validly Opt-Out of the National Settlement Class in accordance with the Certification Order.

(30) **Net Settlement Amount** means the amount remaining from the Settlement Amount plus any interest that accrues thereon after deduction of Class Counsel Fees, Administration Expenses and any other amounts that may be approved by the Ontario Court.

(31) **Non-Settling Defendant** means Apple, any Settling Defendant that has terminated this Agreement pursuant to its terms, and any future Defendant that is not one of the Settling Defendants or a Releasee.

(32) **Notice of Certification, Authorization and Settlement Approval Hearing** means the form or forms of notice attached hereto as Schedule D, or such other form or forms as may be agreed to by the Plaintiffs and the Settling Defendants and approved by the Approval Courts, which informs the Settlement Classes of: (i) the principal elements of this Agreement, including the procedure to be followed by the members to prove their claims, (ii) the certification of the National Proceeding as a national class proceeding and the authorization of the Quebec Proceeding as a class proceeding, (iii) the dates and locations of the Settlement Approval Hearings, and (iv) the right to present arguments to the Approval Courts.

(33) **Notice of Distribution** means any form or forms of notice as may be approved by the Approval Courts, which informs the Settlement Classes of the manner of distribution of the Net Settlement Amount including any claims process by which Settlement Class Members may apply to obtain compensation from the Net Settlement Amount.

(34) **Notices** mean the Notice of Certification, Authorization and Settlement Approval Hearings, the Notice of Distribution, and any other notice that may be issued pursuant to an order of the Approval Courts.

(35) **Ontario Court** means the Ontario Superior Court of Justice.

(36) **Ontario Plaintiff** means the plaintiff in the National Proceeding.

(37) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification, Authorization and Settlement Approval Hearing is first

published and ending sixty (60) days thereafter, or such other date agreed upon by the Parties and ordered by the Approval Courts.

(38) **Penguin** means Penguin Group (USA) LLC (formerly Penguin Group (USA), Inc.) and Penguin Canada Books, Inc.

(39) **Parties** mean the Plaintiffs, the Settlement Class Members and the Settling Defendants.

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

(41) **Plaintiffs** mean the plaintiffs in the Canadian Proceedings.

(42) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Courts would have apportioned to the Releasees.

(43) **Quebec Court** means the Superior Court of Quebec.

(44) **Quebec Plaintiff** means the petitioner in the Quebec Proceeding.

(45) **Quebec Proceeding** means the proceeding commenced by Antoine Pontbriand, in the form of an application for authorization (la Requête pour obtenir l'autorisation d'exercer un recours collectif) filed in the Quebec Superior Court, Court File No. 500-06-000595-120 (Montreal) on February 24, 2012.

(46) **Quebec Settlement Class** means all individuals resident in Quebec and all legal Persons in Quebec established for a private interest, partnership or association in the Province of Quebec which at all times since February 24, 2013 have had no more than fifty persons bound to it by contact of employment or under its direction or control, who purchased E-Books during the Settlement Class Period except Excluded Persons,

Persons who are in the National Settlement Class and Persons who validly Opt-Out of the Quebec Settlement Class in accordance with the Authorization judgment.

(47) **Released Claims** mean any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, for damages of any kind, including without limitation compensatory, punitive or other damages, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the end of the Settlement Class Period, in respect of the Alleged Conspiracy as it relates to the sales of E-Books in Canada during the Settlement Class Period which was alleged (or which could have been alleged) in the Canadian Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with the Alleged Conspiracy or any other alleged unlawful or anti-competitive conduct connected with the sale of E-Books in Canada during the Settlement Class Period. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to E-Books, or relating to the sale of E-Books after the end of the Settlement Class Period.

(48) **Releasees** mean, jointly and severally, individually and collectively, the Settling Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated or otherwise related, and all of their respective past, present and future officers, directors, employees, agents, shareholders, members and managers, attorneys, trustees, servants and representatives (subject to such particular inclusions or exclusions of

individuals as may be specified in writing by the Settling Defendants in their sole discretion prior to the Effective Date); and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants and any affiliates of the Non-Settling Defendants.

(49) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, predecessors, successors, heirs, executors, administrators, insurers, and assigns.

(50) **Settlement Amount** means the total sum of CDN \$3.175 million comprised of each Settling Defendant's respective Settlement Amount Share.

(51) **Settlement Amount Share** means the sum of CDN \$635,000 to be paid by each of the Settling Defendants.

(52) **Settlement Approval Hearings** means the hearings of the motions to be brought by the Ontario Plaintiff in the Ontario Court and the Quebec Plaintiff in the Quebec Court for the Approval Orders.

(53) **Settlement Classes** mean the National Settlement Class and the Quebec Settlement Class.

(54) **Settlement Class Member(s)** means, individually or collectively, any member or members of the National Settlement Class or the Quebec Settlement Class.

(55) **Settlement Class Period** means the period of time extending from April 1, 2010 up to and including the last day of the Opt-Out Period;

(56) **Settling Defendants** means, individually or collectively, Hachette, HarperCollins, Macmillan, Penguin and Simon Schuster.

(57) **Simon & Schuster** means Simon & Schuster Canada, a division of CBS Canada Holdings Co.

(58) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class Members.

(59) **US Court** means the United States District Court, Southern District of New York.

(60) **US Proceedings** mean the proceedings commenced in the US Court entitled *United States of America v. Apple, Inc. et al.*, 12-cv-02826-DLC (S.D.N.Y.), and *In Re Electronic Books Antitrust Litigation*, 11-md-02293-DLC (S.D.N.Y.).

SECTION 2- SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this Agreement, including securing the Certification and Authorization Orders, Approval Orders and Discontinuance Order in accordance with this Agreement.

2.2 Motions Certifying the National Proceeding, Authorizing the Quebec Proceeding and Approving Notice

(1) At a time mutually agreed to by the Plaintiffs and the Settling Defendants after this Agreement is executed, and which is as soon as practicable, the Ontario Plaintiff and the Quebec Plaintiff shall each bring a motion or application before their respective Approval Courts for Certification and Authorization Orders.

(2) The Certification and Authorization Orders shall be substantially in the forms set out in Schedule B to this Agreement.

2.3 Motions for Approval of Settlement

(1) Following receipt of the Certification and Authorization Orders and the expiration of the Opt-Out Period and at a time mutually agreed to by the Plaintiffs and the Settling Defendants which is as soon as practicable, the Ontario Plaintiff and the Quebec Plaintiff each shall bring a motion or application before their respective Approval Court for Approval Orders approving this Agreement, dismissing the National Proceeding and

homologating the transaction in the Quebec Proceeding, respectively, as against the Settling Defendants with prejudice and without costs.

(2) The Approval Orders shall be substantially in the forms set out in Schedule A to this Agreement.

2.4 Discontinuance Order

(1) Following receipt of the Certification and Authorization Orders and the expiration of the Opt-Out Period, the BC Plaintiffs shall bring an application before the BC Court seeking the Discontinuance Order.

(2) The Discontinuance Order shall be substantially in the form set out in Schedule C to the Agreement.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Within forty-five (45) days of the execution of this Agreement by the Parties, each of the Settling Defendants shall pay its Settlement Amount Share to Class Counsel to be held in the Trust Account in accordance with the terms of this Agreement.

(2) The obligation of each Settling Defendant in respect of the Settlement Amount is only to pay its respective Settlement Amount Share. However, it is a material term of this Agreement that the Plaintiffs have the right to terminate this Agreement if the Settlement Amount is not paid in full.

(3) Class Counsel shall maintain the Trust Account as provided for in this Agreement. Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Agreement or in accordance with an order of the Approval Courts, obtained with notice to the Settling Defendants, after all appeal rights in respect of the Approval Orders have either lapsed or been exhausted.

3.2 Taxes and Interest

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

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Agreement is terminated in respect of one or more Settling Defendants, in which case the interest earned on the Settlement Amount Share in the Trust Account attributable to such terminating Settling Defendant shall be paid to such Settling Defendant(s) who, in such case, shall be responsible for the payment of all taxes on such interest.

3.3 Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Agreement, the Settling Defendants agree to provide the following cooperation to Class Counsel.

(2) Each Settling Defendant will produce to the Canadian Plaintiffs the documents produced by them or their related corporate entities to the US Department of Justice, Attorneys General, and private class counsel in the US Proceedings along with a production log (if one already exists) in the same form produced in these matters, with no additional processing required. The production and use of such documents will be subject to the same or substantially similar terms as the protective order issued with

respect to these documents in the US Proceedings. Upon a request by the Canadian Plaintiffs, which will not occur more than 6 months before a scheduled trial date, if any, the Settling Defendants will provide for the authentication of any business records in this production pursuant to a single request made to each of the Settling Defendants.

(3) It is understood that the Canadian Plaintiffs may motion the US Court to permit them to intervene into the US Proceedings for the purposes of becoming parties to the US protective order and confidentiality agreement in order to obtain copies of the deposition transcripts and other discovery exchanged between the parties in the US Proceedings. The Settling Defendants will not oppose any such application, provided that it accords with the terms set out in this Agreement. Class Counsel agree to provide copies of their application materials requesting copies of documents and/or transcripts to counsel for the Settling Defendants no less than two (2) weeks in advance of the application.

(4) The Settling Defendants' obligation to cooperate as set out in this section 3.3 shall not be affected by the release provisions contained in section 6 of this Agreement.

(5) Nothing in this Agreement shall alter any evidentiary rights the Plaintiffs may possess pursuant to the Courts' usual rules of procedure in relation to the Settling Defendants as non-parties to the Canadian Proceedings.

SECTION 4 - DISTRIBUTION OF SETTLEMENT AMOUNT AND INTEREST

4.1 Distribution Protocol

(1) At a time solely within the discretion of Class Counsel, including in conjunction with the Settlement Approval Hearings or at a later date when the claims advanced against a Non-Settling Defendant are resolved by settlement or court order, the Ontario Plaintiff and the Quebec Plaintiff will seek an order by motion on notice to the Settling Defendants from their respective Approval Courts approving a Distribution Protocol. Approval of this Agreement is not conditional on the approval of any particular form of Distribution Protocol, or the timing of same.

(2) The Settling Defendants acknowledge and agree that:

(a) the Plaintiffs, under the supervision of the Approval Courts, shall be solely

- responsible for the preparation of the Distribution Protocol;
- (b) on notice to the Settling Defendants, but subject only to approval by the Approval Courts (provided that the Settling Defendants may make submissions to the Approval Courts regarding the Distribution Protocol only insofar as they are directly affected), the Distribution Protocol may provide for distribution of the Net Settlement Amount and any accrued interest to Settlement Class Members either directly or indirectly (cy-pres), may use credits or gift certificates as part of the distribution; and
 - (c) the total number of E-books purchased by each Settlement Class Member does not need to be a factor in such distribution.

4.2 No Responsibility for Administration or Fees

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

(2) Notwithstanding section 4.2(1), if requested by the Plaintiffs for purposes of the Distribution Protocol, the Settling Defendants will facilitate an introduction to the eRetailers Kobo, Amazon, Google and Sony.

SECTION 5 – OPTING-OUT

5.1 Procedure

(1) A Person may opt-out of the National Proceeding or the Quebec Proceeding by sending a signed opt-out request form by pre-paid mail, courier or fax to Class Counsel at an address and coordinates to be identified in the Notice of Certification, Authorization and Settlement Approval Hearing.

(2) Opt-out requests must contain:

- (a) a statement requesting that the Person opting out be excluded from the relevant Settlement Class; and
 - (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of E-Books in Canada during the Settlement Class Period.
- (3) An opt-out request will only be effective if the executed opt-out request is postmarked or faxed on or before the end of the Opt-Out Period.
- (4) Opt-out request forms will be available on the websites of Class Counsel, and can also be obtained by mail, email or fax by contacting Class Counsel, or as otherwise ordered by an Approval Court.

5.2 Opt-Out Report

- (1) Within twenty-one (21) days of the end of the Opt-Out Period, Class Counsel shall notify the Settling Defendants of each Person, if any, who has opted out of the National Proceeding and Quebec Proceeding.

SECTION 6 - RELEASES, DISMISSAL AND TRANSACTION HOMOLOGATION

6.1 Release of Releasees

- (1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

6.2 Covenant Not To Sue

- (1) Notwithstanding section 6.1(1), for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to sue or make any claim in any way or, either directly or indirectly, to threaten, commence, participate in, encourage, facilitate, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released

Claims.

6.3 No Further Claims

(1) The Releasors shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claims (including those which relate to or arise from the Alleged Conspiracy as it relates to the sale of E-Books in Canada during the Settlement Class Period), except for the continued prosecution of the Canadian Proceedings against a Non-Settling Defendant.

6.4 Disposition of the Canadian Proceedings

(1) Upon the Effective Date, the National Proceeding shall be dismissed and the Quebec Proceeding shall be settled by homologation of transaction, with prejudice and without costs as against the Settling Defendants.

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

6.5 Claims Against Other Entities Reserved

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

SECTION 7 - BAR ORDER AND OTHER CLAIMS

7.1 Bar Order - Ontario

(1) Subject to section 6.2, the Ontario Plaintiff shall seek an order from the Ontario Court providing for the following:

- (a) All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Canadian Proceedings by the Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person excluded in writing from the definition of Releasees; (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against a Non-Settling Defendant; and (iii) a claim in respect of a Person who has validly and timely opted-out of the Settlement Classes) are barred, prohibited and enjoined in accordance with the terms of this section.
- (b) If a Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
- (i) the National Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendant that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and
 - (ii) the Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Canadian Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Canadian Proceeding, and any determination by the Courts in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.

- (c) The Non-Settling Defendant may, on motion to the Ontario Court brought on at least sixty (60) days' notice to the Settling Defendants, and not unless and until the National Proceeding against the Non-Settling Defendant has been certified and all appeal rights have been exhausted or expired, seek an order in the National Proceeding for the following:
- (i) documentary discovery and an affidavit of documents in accordance with the Ontario *Rules of Civil Procedure* from any of the Settling Defendants;
 - (ii) oral discovery of a representative of any of the Settling Defendants;
 - (iii) leave to serve a request to admit on any of the Settling Defendants in respect of factual matters; and/or
 - (iv) the production of a representative of any of the Settling Defendants to testify at trial.
- (2) The Settling Defendants retain all rights to oppose such motion(s) brought under section 7.1(1)(c) and shall not by the terms hereof be deemed to have agreed or acknowledged that any Non-Settling Defendant is entitled to such relief.
- (3) A Non-Settling Defendant may serve the motion(s) referred to in section 7.1(1)(c) on any of the Settling Defendants by service on counsel of record for that Settling Defendant in the National Proceeding.
- (4) To the extent that an order described in section 7.1(1)(c) is granted and discovery is provided by a Settling Defendant to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall also promptly be provided by the Settling Defendant to Class Counsel and the other Settling Defendants.

7.2 Quebec

The Plaintiff in the Quebec Proceeding shall seek an order from the Quebec Court providing for the following:

- (a) the Plaintiff in Quebec and the Quebec Settlement Class members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendant with respect to the facts and deeds of the Settling Defendants;
- (b) the Quebec Plaintiff and the Quebec Settlement Class members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendant;
- (c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendants or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) that any future right by the Non-Settling Defendant to examine on discovery a representative of the Settling Defendants will be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants reserve their right to oppose such an examination under the *Code of Civil Procedure*.

SECTION 8 - EFFECT OF SETTLEMENT

8.1 No Admission of Liability

(1) The Plaintiffs and the Settling Defendants expressly reserve all of their rights if this Agreement is not approved, is terminated or otherwise fails to take effect for any reason. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this 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 Settling Defendants or by any Releasee, or of the truth of any of the claims or allegations contained in the Canadian Proceedings or any other pleading filed by the Plaintiffs or any other Person.

8.2 Agreement Not Evidence

(1) Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, Documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

8.3 No Further Litigation

(1) No Class Counsel may hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Alleged Conspiracy or Released Claims except for the continued prosecution of the Canadian Proceedings against the Non-Settling Defendant.

(2) Section 8.3(1) of this Agreement shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia (the "LSBC") to breach his or her obligations under Rule 4.7 of the LSBC's Professional Conduct Handbook by refraining from participation or involvement in any claim or action in a British Columbia court. This section shall not affect or render inoperative any other section or provision of this Agreement.

(3) No Plaintiff, no Settlement Class Member, nor any Class Counsel may divulge to any Person or use for any purpose any information, including, without limitation, any

Documents provided pursuant to section 3.3, obtained in the course of the Canadian Proceedings or the negotiation and preparation of this Agreement, except as otherwise expressly permitted under this Agreement, if such information is otherwise publicly available, or as otherwise ordered by a court in Canada.

SECTION 9 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

9.1 Settlement Classes and Common Issue

(1) The Parties agree that the National Proceeding and the Quebec Proceeding shall be certified or authorized solely for purposes of settlement of the Canadian Proceedings against the Settling Defendants and the approval of this Agreement by the Approval Courts.

(2) The Plaintiffs agree that, for settlement purposes, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the National Settlement Class and the Quebec Settlement Class in the National Proceeding and the Quebec Proceeding, respectively. The Plaintiffs acknowledge that the Settling Defendants agree to the definition of the Common Issue for purposes of settlement only.

9.2 Certification and Authorization Without Prejudice

(1) In the event that this Agreement is not finally approved, is terminated in accordance with its terms or otherwise fails to take effect, this Agreement shall, subject to an agreement by the Parties to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Canadian Proceedings or any other litigation.

SECTION 10 - NOTICE TO NATIONAL SETTLEMENT CLASS

10.1 Notice Required

- (1) The proposed Settlement Classes shall be given the following Notices: (i) Notice of Certification, Authorization and Settlement Approval Hearing; (ii) Notice of Distribution; and (iii) any other notice that may be required by the Approval Courts or the BC Court.
- (2) All Notices will be provided to the Settling Defendants for their approval as to form and content no less than two (2) weeks before any motion for approval to an Approval Court or the BC Court.

10.2 Dissemination of Notice

- (1) The Ontario Plaintiff and the Quebec Plaintiff shall on a motion to their respective Approval Courts on notice to the Settling Defendants, seek approval of the plan for the dissemination of Notices in the form attached hereto as Schedule D.

SECTION 11 - ADMINISTRATION AND IMPLEMENTATION

11.1 Mechanics of Administration

- (1) The mechanics of the implementation and administration of this Agreement and the Distribution Protocol shall be approved by the Approval Courts on a motion brought by Class Counsel on notice to the Settling Defendants.

SECTION 12 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Except as provided in section 12(2), the Releasees shall not be liable for any fees, disbursements or taxes, including but not limited to Class Counsel Fees and Administration Expenses and including any fees, disbursements or taxes of the Plaintiffs' or any Settlement Class Member's respective lawyers, experts, advisors, agents, or representatives.

- (2) Class Counsel may pay subject to approval from the Approval Courts, the costs of the Notices referred to in section 10.1 and translation of this Agreement from the Trust Account as incurred.
- (3) Class Counsel may on notice to the Settling Defendants seek the Approval Courts' approval of Class Counsel Fees and Administration Expenses contemporaneous with seeking the Approval Orders, or at such other time as they shall determine in their sole discretion. Class Counsel may also seek the Approval Courts' approval to hold and/or use the Settlement Amount in whole or part for prosecution of the Canadian Proceedings against Non-Settling Defendants and/or for provision of indemnification to the Plaintiffs for adverse costs awards in lieu of third party funding.
- (4) Except as provided in section 12(2), any Administration Expenses and Class Counsel Fees may only be paid out of the Trust Account after the Effective Date.
- (5) The failure of an Approval Court to approve a request for Class Counsel Fees or Administration Expenses has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for termination of the Agreement.

SECTION 13 - TERMINATION OF SETTLEMENT AGREEMENT

13.1 Right of Termination

- (1) The Plaintiffs or each Settling Defendant may terminate this Agreement as it relates to it in the event that:
 - (a) any Approval Court declines to grant a Certification Order or Authorization Order substantially in the form attached as Schedule B in the National Proceeding or the Quebec Proceeding or if any such Certification Order or Authorization Order is overturned or reversed in whole or in part on appeal;
 - (b) any Approval Court declines to grant the Approval Orders substantially in the form of Schedule A or if any such Approval Order is overturned or reversed in whole or in part on appeal;

- (c) the Discontinuance Order in substantially the form of Schedule C obtained in accordance with this Agreement is not approved by the BC Court or is overturned or reversed in whole or in part on appeal; or
 - (d) the total number of E-books purchased during the Settlement Class Period by Persons who opt-out of the National Proceeding and the Quebec Proceeding exceeds 10% of total number of E-books sold by the Settling Defendants during the Settlement Class Period.
- (2) In addition, and as provided in section 3.1(2) of this Agreement, the Plaintiffs have the right to terminate this Agreement if the Settlement Amount is not paid in full within 45 days of the execution of this Agreement by the Parties.
- (3) To exercise a right of termination under section 13.1(1), a terminating party shall deliver a written notice of termination pursuant to section 14.16 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties except as provided for in sections 13.1(4) and 13.1(5).
- (4) The exercise of a right of termination by one Settling Defendant shall only terminate this Agreement as between the Plaintiffs and that Settling Defendant and shall have no force or effect as against the other Settling Defendants and shall not terminate this Agreement or otherwise impact the rights and obligations of the Plaintiffs and the other Settling Defendants who have not terminated this Agreement.
- (5) If more than one Settling Defendant elects to terminate this Agreement or if the Settlement Amount is not paid in full, the Plaintiffs will have the option, at their sole discretion, to:
- (a) terminate the Agreement in full as between all Parties, or
 - (b) agree that the Agreement is terminated only as between the Plaintiffs and those Settling Defendants who exercised the right of termination or who failed to pay their Settlement Amount Share, and that the terminations

shall not impact the rights and obligations of the Plaintiffs and the other Settling Defendants who did not terminate this Agreement or who paid their Settlement Amount Share.

13.2 If Settlement Agreement is Terminated

(1) If this Agreement is not approved, is terminated by the Plaintiffs or all of the Settling Defendants in accordance with its terms or otherwise fails to take effect for any reason, all orders made in respect of this Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.

(2) If this Agreement is terminated by or in relation to some but not all of the Settling Defendants in accordance with its terms, all orders made in respect of this Agreement shall be amended so that they are of no force and effect as against those Settling Defendants who have terminated this Agreement or in relation to whom this Agreement was terminated.

(3) The Plaintiffs and the Settling Defendants who have terminated this Agreement or against whom this Agreement was terminated shall negotiate in good faith to determine a new timetable if the Canadian Proceedings are to continue against those Settling Defendants who have terminated this Agreement or against whom this Agreement was terminated.

13.3 Allocation of Monies in the Trust Account Following Termination

(1) If this Agreement is terminated as it relates to some or all of the Settling Defendants, Class Counsel shall pay to each such terminating Settling Defendant its Settlement Amount Share plus all accrued interest thereon, less a proportionate share of all costs of the Notices and translations incurred to the date of such payment, within thirty (30) days of receipt of a termination notice pursuant to section 13.1(3).

13.4 Survival of Provisions After Termination

(1) If this Agreement is terminated or otherwise fails to take effect for any reason, the

provisions of sections 3.2(3), 8.1, 8.2, 9.2, 12(1), 12(2) and 13 and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

SECTION 14 - MISCELLANEOUS

14.1 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of this Agreement or the Distribution Protocol.

14.2 Motions for Directions

(1) The Settling Defendants or the Plaintiffs may apply to the Approval Courts for directions in respect of the interpretation, implementation and administration of this Agreement.

(2) The Settling Defendants or the Plaintiffs may apply to the Approval Courts for directions in respect of any Distribution Protocol.

(3) All motions contemplated by this Agreement shall be on notice to the Plaintiffs and the Settling Defendants.

14.3 Headings, etc.

(1) In this Agreement:

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

14.4 Computation of Time

- (1) In the computation of time in this Agreement, except where a contrary intention appears,
- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

- (1) The Approval Courts jointly shall retain exclusive jurisdiction over this Agreement and the Parties hereto (including the Settlement Class Members), Class Counsel Fees and Administration Expenses.

14.6 Governing Law

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

14.7 Entire Agreement

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

14.8 Amendments

- (1) This Agreement may not be modified or amended except in writing and on consent of all Parties hereto and the modifications or amendments shall only be

effective if the Approval Courts approve any such material modification or amendment made after the Approval Orders have been granted.

14.9 Binding Effect

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

14.10 Counterparts

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

14.11 Interpretation

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

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English; les parties reconnaissent avoir consenti à ce que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, the Class Counsel shall prepare a French translation

of this Agreement including the Schedules and may recoup the costs of translation from the Trust Account. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall prevail.

14.13 Transaction

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

14.14 Recitals

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

14.15 Schedules

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

14.16 Notice

(1) Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

FOR THE PLAINTIFFS AND FOR CLASS COUNSEL:

Heather Rumble Peterson

Ward Branch

SUTTS STROSBERG LLP

BRANCH MACMASTER LLP

600 – 251 Goyeau Street

1410 - 777 Hornby Street

Windsor, ON N9A 6V4

Vancouver, BC V7G 3E2

Tel: 519-561-6216

Tel: 604-654-2966

Fax: 519-258-9527

Fax: 604-684-3429

Email:

Email: wbranch@branmac.com

hpeterson@strosbergco.com

Andrew Morganti

Normand Painchaud

LAW OFFICE OF ANDREW J.

SYLVESTRE FAFARD PAINCHAUD

MORGANTI

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Email:
amorgani@morgantilegal.com

SENCRL

740 Avenue Atwater
Montreal, QC H4C 2G9
Tel: 514-937-2881 Ext. 228
Fax: 514-937-6529
Email: n.painchaud@sfpadvocats.ca

FOR THE SETTLING DEFENDANTS:

**For Hachette Book Group
Canada Ltd. and Hachette Book
Group, Inc.:**

Linda M. Plumpton

TORYS LLP

79 Wellington Street W
Suite 3000, Box 270, TD Centre
Toronto, ON M5K 1N2
Tel: 416-865-8193
Fax: 416-865-7380
Email: lplumpton@torys.com

**For Holtzbrink Publishers LLC
d/b/a Macmillan and Macmillan
Publishers, Inc.:Michael Eizenga**

BENNETT JONES LLP

3400 One First Canadian Place
PO Box 130
Toronto, ON M5X 1A4
Tel: 416-777-4879
Fax: 416-863-1716
Email:
eizengam@bennetjones.com

**For HarperCollins Canada Limited
and HarperCollins Publishers,
LLC.:**

Katherine L. Kay

STIKEMAN ELLIOTT LLP

5300 Commerce Court West

199 Bay Street
Toronto, ON M5L 1B9
Tel: 416-869-5507
Fax: 416-947-0866
Email: kkay@stikeman.com

**For Penguin Group (USA), LLC
and Penguin Canada Books, Inc.:**
David Kent

McMILLAN LLP

Brookfield Place, Suite 440
181 Bay Street
Toronto, ON M5J 2T3
Tel: 416-865-7143
Fax: 416-865-7048
Email: david.kent@mcmillan.ca

**For Simon & Schuster Canada, a
division of CBS Canada
Holdings Co.:**

Mahmud Jamal

OSLER, HOSKIN & HARCOURT
LLP

1 First Canadian Place
Box 50
Toronto, ON M5X 1B8
Tel: 416-862-6764
Fax: 416-862-6666
Email: mjamal@osler.com

14.17 Acknowledgements

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

14.18 Authorized Signatures

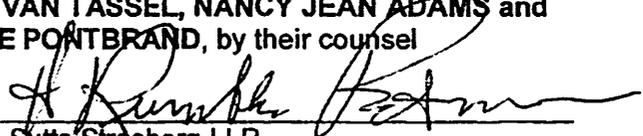
- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.

14.19 Date of Execution

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

**WAYNE VAN TASSEL, NANCY JEAN ADAMS and
ANTOINE PONTBRAND, by their counsel**

By:


Sutts Strosberg LLP

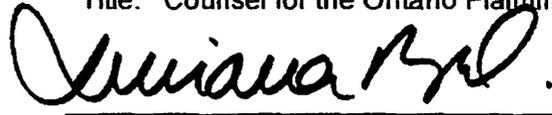
Title: Counsel for the Ontario Plaintiff

By:

Law Offices of Andrew J. Morganti

Title: Counsel for the Ontario Plaintiff

By:


Branch MacMaster LLP

Title: Counsel for the BC Plaintiff

By:

Sylvestre Fafard Painchaud

Title: Counsel for the Quebec Plaintiff

**HACHETTE BOOK GROUP CANADA LTD. AND
HACHETTE BOOK GROUP, INC., by their counsel**

By:

Torys LLP

**HARPERCOLLINS CANADA LIMITED AND
HARPERCOLLINS PUBLISHERS, LLC., by their
counsel**

By:

Stikeman Elliot LLP

14.19 Date of Execution

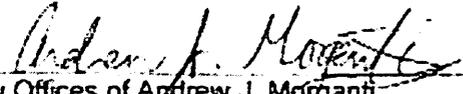
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**WAYNE VAN TASSEL, NANCY JEAN ADAMS and
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By:

Sutts Strosberg LLP
Title: Counsel for the Ontario Plaintiff

By:


Law Offices of Andrew J. Morganti
Title: Counsel for the Ontario Plaintiff

By:

Branch MacMaster LLP
Title: Counsel for the BC Plaintiff

By:

Sylvestre Fafard Painchaud
Title: Counsel for the Quebec Plaintiff

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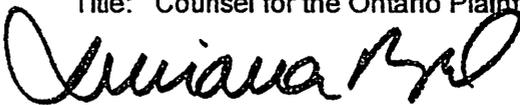
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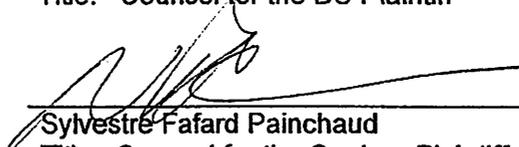
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**WAYNE VAN TASSEL, NANCY JEAN ADAMS and
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By: _____
Sutts Strosberg LLP
Title: Counsel for the Ontario Plaintiff

By: _____
Law Offices of Andrew J. Morganti
Title: Counsel for the Ontario Plaintiff

By:  _____
Branch MacMaster LLP
Title: Counsel for the BC Plaintiff

By:  _____
Sylvestre Fafard Painchaud
Title: Counsel for the Quebec Plaintiff

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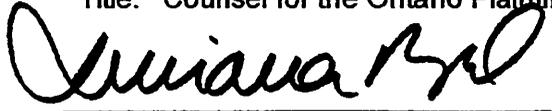
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Sutts Strosberg LLP
Title: Counsel for the Ontario Plaintiff

By: _____
Law Offices of Andrew J. Morganti
Title: Counsel for the Ontario Plaintiff

By: 
Branch MacMaster LLP
Title: Counsel for the BC Plaintiff

By: _____
Sylvestre Fafard Painchaud
Title: Counsel for the Quebec Plaintiff

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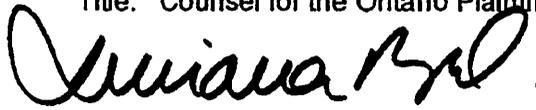
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**WAYNE VAN TASSEL, NANCY JEAN ADAMS and
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By: _____
Sutts Strosberg LLP
Title: Counsel for the Ontario Plaintiff

By: _____
Law Offices of Andrew J. Morganti
Title: Counsel for the Ontario Plaintiff

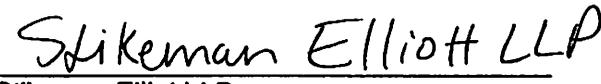
By:  _____
Branch MacMaster LLP
Title: Counsel for the BC Plaintiff

By: _____
Sylvestre Fafard Painchaud
Title: Counsel for the Quebec Plaintiff

**HACHETTE BOOK GROUP CANADA LTD. AND
HACHETTE BOOK GROUP, INC., by their counsel**

By: _____
Torys LLP

**HARPERCOLLINS CANADA LIMITED AND
HARPERCOLLINS PUBLISHERS, LLC., by their
counsel**

By:  _____
Stikeman Elliot LLP
per D. Royal

HOLTZBRINK PUBLISHERS LLC d/b/a MACMILLAN
and MACMILLAN PUBLISHERS, INC., by their
counsel

By: Bennett Jones LLP
Bennett Jones LLP *per [signature]*

PENGUIN GROUP (USA) LLC and PENGUIN
CANADA BOOKS, INC., by their counsel

By: _____
McMillan LLP

SIMON & SCHUSTER CANADA, a division of CBS
Canada Holdings Co., by its counsel

By: _____
Osler, Hoskin & Harcourt LLP

**HOLTZBRINK PUBLISHERS LLC d/b/a MACMILLAN
and MACMILLAN PUBLISHERS, INC., by their
counsel**

By: _____
Bennett Jones LLP

**PENGUIN GROUP (USA) LLC and PENGUIN
CANADA BOOKS, INC., by their counsel**

By: McMillan LLP
McMillan LLP *per D Kent*

**SIMON & SCHUSTER CANADA, a division of CBS
Canada Holdings Co., by its counsel**

By: _____
Osler, Hoskin & Harcourt LLP

HOLTZBRINK PUBLISHERS LLC d/b/a MACMILLAN
and MACMILLAN PUBLISHERS, INC., by their
counsel

By: _____
Bennett Jones LLP

PENGUIN GROUP (USA) LLC and PENGUIN
CANADA BOOKS, INC., by their counsel

By: _____
McMillan LLP

SIMON & SCHUSTER CANADA, a division of CBS
Canada Holdings Co., by its counsel

By: Osler Hoskin & Harcourt per
Osler, Hoskin & Harcourt LLP *Wfand.*

SCHEDULE A

Schedule A

Draft ON and QC Orders Approving Agreement

Court File No. CV-12-17511

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable) , the day
Justice Patterson) of , 2014

Between:

NANCY JEAN ADAMS

Plaintiff

and:

APPLE INC., HACHETTE BOOK GROUP CANADA LTD.,
HACHETTE BOOK GROUP, INC., HARPERCOLLINS CANADA LIMITED,
HARPERCOLLINS PUBLISHERS, INC., MACMILLAN PUBLISHERS, INC.,
PENGUIN GROUP (USA) LLC (formerly, PENGUIN GROUP (USA), INC.), PENGUIN
CANADA BOOKS, INC., and,
SIMON & SCHUSTER CANADA, a division of CBS CANADA HOLDINGS CO.

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**ORDER
(SETTLEMENT APPROVAL)**

THIS MOTION made by the Plaintiff, Nancy Jean Adams, for an order approving the Agreement made between the Plaintiff and others, and the Defendants Hachette Book Group Canada Ltd., Hachette Book Group Inc., HarperCollins Canada Limited, HarperCollins Publishers, LLC, Macmillan Publishers, Inc., Penguin Group (USA) LLC (formerly, Penguin Group (USA), Inc.), Penguin Canada Books Inc., and Simon & Schuster Canada, a division of CBS Canada Holdings Co. (collectively, the "Settling Defendants"), dated ♦ (the "Agreement") was heard this <date> at ♦ Ontario.

ON READING the pleadings and materials filed in relation to this motion, including the Agreement between the Plaintiff and the Settling Defendants (collectively, the "Settling Parties") and the <affidavits in support of approval motion>;

AND WHEREAS the deadline for opting out of the National Proceeding has passed and no National Settlement Class Member has validly opted out;

AND WHEREAS the deadline for objecting to the Agreement has passed, and there have been no written objections to the Agreement and no National Settlement Class Member appeared to object to the Agreement;

AND ON HEARING submissions of counsel for the Settling Parties;

AND ON BEING ADVISED that the Settling Parties consent to this Order;

AND ON BEING ADVISED that the non-settling defendant, Apple, Inc. ("Apple") takes no position on this Order;

1. THIS COURT ORDERS AND DECLARES that, except to the extent they are modified by this Order, the definitions set out in the Agreement which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order.
2. THIS COURT DECLARES that the Agreement is fair, reasonable and in the best interests of the National Settlement Class.
3. THIS COURT ORDERS that the Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms and the terms of this Order.
4. THIS COURT ORDERS AND DECLARES that the Agreement is incorporated by reference into and forms part of this Order.
5. THIS COURT ORDERS that in the event of a conflict between this Order and the Agreement, this Order shall prevail.
6. THIS COURT ORDERS AND DECLARES that this Order, including the Agreement, is binding upon each member of the National Settlement Class who does not validly opt out of the National Proceeding, including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the National Proceeding.

7. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims.
8. THIS COURT ORDERS that, each Releasor shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of the Released Claims, except for the continuation of the Canadian Proceedings against a Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the National Proceeding.
9. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, any member of the National Settlement Class who has not validly opted out shall be deemed to have consented to the dismissal without costs of any action or proceeding he, she or it has commenced in Canada or elsewhere, against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of the Released Claims, except for the continuation of the Canadian Proceedings against a Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the National Proceeding.
10. THIS COURT ORDERS AND DECLARES that, upon the Effective Date, any action or proceeding brought in Ontario by any member of the National Settlement Class who has not validly opted out of the National Proceeding shall be dismissed without costs against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of the Released Claims, except for the continuation of the Canadian Proceedings against a Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the National Proceeding.
11. THIS COURT ORDERS AND DECLARES that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those members of the National Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
12. THIS COURT ORDERS AND DECLARES that each member of the National Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

13. THIS COURT ORDERS AND DECLARES that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the National Proceeding by the Non-Settling Defendant or any other Person or party (excepting (i) a claim by a Releasee against any Person excluded in writing from the definition of Releasees, (ii) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against a Non-Settling Defendant, and (iii) a claim in respect of a Person who has validly and timely opted-out of the National Settlement Class) are barred, prohibited and enjoined.

14. THIS COURT ORDERS AND DECLARES that, if, in the absence of paragraph 13 above, the Ontario Court determines that there is a right of contribution, indemnity or other claims over, whether in equity or in law, by statute or otherwise:
 - (a) the National Settlement Class shall not be entitled to claim or recover from any Non-Settling Defendant that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s.36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise; and

 - (b) the Ontario Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the National Proceeding, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the National Proceeding, and any determination by the Ontario Court in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.

15. THIS COURT ORDERS AND DECLARES that subject to paragraph 16 hereof, a Non-Settling Defendant may, on motion to the Ontario Court brought on at least sixty (60) days' notice to the Settling Defendants, and not unless and until the National Proceeding against the Non-Settling Defendant has been certified and all appeal rights have been exhausted or expired, seek an order in the National Proceeding for the following:
 - (a) documentary discovery and an affidavit of documents in accordance with the *Ontario Rules of Civil Procedure* from any of the Settling Defendants;

 - (b) oral discovery of a representative of any of the Settling Defendants;

- (c) leave to serve a request to admit on any of the Settling Defendants in respect of factual matters; and/or
 - (d) the production of a representative of any of the Settling Defendants to testify at trial.
16. THIS COURT ORDERS AND DECLARES that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 15 of this Order, and shall not be deemed to have agreed or acknowledged that any Non-Settling Defendant is entitled to such relief.
 17. THIS COURT ORDERS AND DECLARES that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 15 above on any of the Settling Defendants by service on counsel of record for that Settling Defendant in the National Proceeding.
 18. THIS COURT ORDERS AND DECLARES that, to the extent that an order pursuant to paragraph 15 above is made and discovery is provided by a Settling Defendant to a Non-Settling Defendant, a copy of all discovery provided, whether oral, or documentary in nature, shall also promptly be provided by the Settling Defendant to Class Counsel and to the other Settling Defendants.
 19. THIS COURT ORDERS AND DECLARES that, for purposes of administration and enforcement of this Order and the Agreement, the Ontario Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of the Ontario Court and attorn to the jurisdiction of the Ontario Court solely for the purpose of implementing, administering and enforcing the Agreement and this Order and subject to the terms and conditions set out in the Agreement and this Order.
 20. THIS COURT ORDERS that ♦ be and is appointed as the Claims Administrator.
 21. THIS COURT ORDERS AND DECLARES that except as provided herein, this Order does not affect any claims or causes of action that any member of the National Settlement Class has or may have against the Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the National Proceeding.
 22. THIS COURT ORDERS AND DECLARES that no Releasee shall have any responsibility or liability relating to the administration of the Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account.
 23. THIS COURT ORDERS AND DECLARES that, subject to the provisions of the Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Agreement, shall be held in trust for the benefit of the Settlement Classes, pending further order of the Approval Courts.

24. THIS COURT ORDERS AND DECLARES that the terms of this Order shall not be effective unless and until the Agreement is approved by the Quebec Court and the BC Proceeding has been discontinued, and shall have no force and effect if such approval and discontinuance are not both obtained.
25. THIS COURT ORDERS AND DECLARES that in the event that the Agreement is terminated by the Plaintiff or all of the Settling Defendants in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) all orders made in respect of the Agreement, including this Order, shall be set aside as of the date made and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future; and
 - (b) each party to the National Proceeding shall be restored to their respective position in the National Proceeding as it existed immediately prior to the execution of the Agreement.
26. THIS COURT ORDERS AND DECLARES that if the Agreement is terminated by or, as it relates to some but not all of the Settling Defendants in accordance with its terms, all orders made in respect of the Agreement, including this Order, shall be retroactively amended so that they are of no force and effect as against the Settling Defendants who have terminated the Agreement.
27. THIS COURT ORDERS AND DECLARES that if the Agreement is terminated as it relates to some or all of the Settling Defendants, Class Counsel shall repay to each such terminating Settling Defendant its Settlement Amount Share plus all accrued interest thereon, less a proportionate share of all costs of the Notices and translations incurred to the date of such repayment, within thirty (30) days of receipt of a termination notice pursuant to section 13.1(3) of the Agreement.
28. THIS COURT ORDERS AND DECLARES that on notice to the Approval Courts, but without further order of the Approval Courts, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions in the Agreement.
29. THIS COURT ORDERS AND DECLARES that, except as aforesaid, upon the Effective Date, the National Proceeding be and is hereby dismissed against the Settling Defendants without costs and with prejudice.

Date <>

THE HONOURABLE JUSTICE PATTERSON

Schedule A

Draft ON and QC Orders Approving Agreement

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

N°: 500-06-000595-120

ANTOINE PONTBRIAND
Plaintiff

vs.

APPLE INC.

HACHETTE BOOK GROUP INC.

HACHETTE BOOK GROUP CANADA INC.

HARPERCOLLINS PUBLISHERS INC.

HARPERCOLLINS CANADA LTD.

MACMILLAN PUBLISHERS INC.

PENGUIN GROUP (USA) INC.

PEARSON CANADA INC. (PENGUIN
GROUP CANADA)

SIMON & SCHUSTER CANADA, a division
of CBS CANADA HOLDINGS CO.

Defendants

JUDGMENT APPROVING A SETTLEMENT AGREEMENT

THIS JUDGMENT is made pursuant to a motion for the approval of a proposed settlement agreement (the "Agreement") between Plaintiff Antoine Pontbriand and others and Defendants Hachette Book Group Canada Ltd., Hachette Book Group Inc., HarperCollins Canada Limited, HarperCollins Publishers, LLC, Macmillan Publishers, Inc., Penguin Group (USA), Inc., Penguin Canada Inc. c.o.b.a. Penguin Group (Canada), and Simon & Schuster Canada, a division of CBS Canada Holdings Co. (collectively, the "Settling Defendants");

ON READING the motions and exhibits filed, including the Agreement between the Plaintiff and the Settling Defendants (collectively, the "Settling Parties");

AND WHEREAS the deadline for objecting to the Agreement has passed, and there have been no written objections to the Agreement and no Quebec Settlement Class Member appeared to object to the Agreement;

AND ON HEARING submissions of counsel for the Settling Parties;

AND ON BEING ADVISED that the Settling Parties consent to this Order;

AND ON BEING ADVISED that the non-settling defendant, Apple, Inc. ("Apple") takes no position on this Order:

- 1- Except to the extent they are modified by this Order, the definitions set out in the Agreement which is attached as Schedule "A" to this Order, apply to and are incorporated into this Order;
- 2- THIS COURT DECLARES that the Agreement is fair, reasonable and in the best interests of the Quebec Settlement Class.
- 3- THIS COURT ORDERS that the Agreement is hereby approved and shall be implemented and enforced in accordance with its terms and the terms of this Order;
- 4- THIS COURT ORDERS that in the event of a conflict between this Judgment and the Agreement, this Judgment shall prevail;
- 5- THIS COURT ORDERS AND DECLARES that the Agreement is incorporated by reference into and forms part of this Order;
- 6- THIS COURT ORDERS AND DECLARES that, upon the Effective Date, any action or proceeding brought in Quebec by any member of the Quebec Settlement Class who has not validly opted out of the Quebec Proceeding shall be dismissed against the Releasees, without costs and with prejudice;
- 7- THIS COURT ORDERS AND DECLARES that this Order, including the Agreement, is binding upon each member of the Quebec Settlement Class who does not validly opt out of the Quebec Proceeding;
- 8- THIS COURT ORDERS AND DECLARES that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever, finally and absolutely released the Releasees from the Released Claims;
- 9- THIS COURT ORDERS that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in

Quebec or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or against any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of the Released Claims, except for the continuation of the Canadian Proceedings against a Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the Quebec Proceeding;

10- THIS COURT ORDERS AND DECLARES that:

- a) the Plaintiff and the Quebec Settlement Class members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendant with respect to the facts and deeds of the Settling Defendants;
- b) the Plaintiff and the Quebec Settlement Class members shall henceforth only be able to claim and recover damages, including punitive damages, attributable to the conduct of and/or sales by the Non-Settling Defendant;
- c) any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Settling Defendants or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- d) any future right by the Non-Settling Defendant to examine on discovery a representative of the Settling Defendants will be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants reserve their right to oppose such an examination under the *Code of Civil Procedure*.

11- THIS COURT ORDERS AND DECLARES that the Settling Defendants retain all rights to oppose motion(s) brought under paragraph 10 d) of this Judgment, and shall not be deemed to have agreed or acknowledged that any Non-Settling Defendant is entitled to such relief;

12- THIS COURT ORDERS AND DECLARES that the Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 10 d) above on any of the Settling Defendants by service on counsel of record for that Settling Defendant in the Quebec Proceeding;

13- THIS COURT ORDERS AND DECLARES that, to the extent that a Judgment pursuant to paragraph 10 d) above is made and discovery is provided by a Settling Defendant to the Non-Settling Defendant, a copy of all discovery provided, whether oral, or documentary in nature, shall also promptly be provided by the Settling Defendant to Class Counsel and to the other Settling Defendants;

14- THIS COURT ORDERS AND DECLARES that, for purposes of administration and enforcement of this Judgment and the Agreement,

the Quebec Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of the Quebec Court and attorn to the jurisdiction of the Quebec Court solely for the purpose of implementing, administering and enforcing the Agreement and this Judgement and subject to the terms and conditions set out in the Agreement and this Judgment;

- 15- THIS COURT ORDERS that ♦ be and is appointed as the Claims Administrator;
- 16- THIS COURT ORDERS AND DECLARES that except as provided herein, this Judgement does not affect any claims or causes of action that any member of the Quebec Settlement Class has or may have against the Non-Settling Defendant or named or unnamed co-conspirators who are not Releasees in the Quebec Proceeding;
- 17- THIS COURT ORDERS AND DECLARES that no Releasee shall have any responsibility or liability relating to the administration of the Agreement or the Distribution Protocol or the administration, investment, or distribution of the Trust Account;
- 18- THIS COURT ORDERS AND DECLARES that, subject to the provisions of the Agreement, the Settlement Amount, plus accrued interest less any monies paid out pursuant to the Agreement, shall be held in trust for the benefit of the Settlement Classes, pending further Judgment of the Approval Courts;
- 19- THIS COURT ORDERS AND DECLARES that the terms of this Judgment shall not be effective unless and until the Agreement is approved by the Ontario Court and the BC Proceeding has been discontinued, and shall have no force and effect if such approval and discontinuance are not both obtained;
- 20- THIS COURT ORDERS AND DECLARES that in the event that the Agreement is terminated by or, as it relates to the Plaintiff or all of the Settling Defendants in accordance with its terms or otherwise fails to take effect for any reason:
 - (a) all orders made in respect of the Agreement, including this Judgment, shall be set aside as of the date made and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future; and
 - (b) each party to the Quebec Proceeding shall be restored to their respective position in the Quebec Proceeding as it existed immediately prior to the execution of the Agreement.
- 21- THIS COURT ORDERS AND DECLARES that if the Agreement is terminated by or as it relates to some but not all of the Settling Defendants in accordance with its terms, all orders and Judgments made in respect of the Agreement, including this

Judgment, shall be retroactively amended so that they are of no force and effect as against the Settling Defendants who have terminated the Agreement;

- 22- THIS COURT ORDERS AND DECLARES that if the Agreement is terminated as it relates to some or all of the Settling Defendants, Class Counsel shall repay to each such terminating Settling Defendant its Settlement Amount Share plus all accrued interest thereon, less a proportionate share of all costs of the Notices and translations incurred to the date of such repayment, within thirty (30) days of receipt of a termination notice pursuant to section 13.1(3) of the Agreement;
- 23- THIS COURT ORDERS AND DECLARES that on notice to the Approval Courts, but without further Judgment of the Approval Courts, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions in the Agreement;
- 24- THIS COURT ORDERS AND DECLARES that the levies of the *Fonds d'aide au recours collectif* shall be paid to it pursuant to the law;
- 25- THIS COURT ORDERS AND DECLARES that the Agreement is a transaction as per the Quebec civil Code, and that such transaction be and is hereby homologated; and
- 26- THIS COURT ORDERS AND DECLARES that this Judgment is without costs and with prejudice.

SCHEDULE B

Schedule B

Certification and Pre-Approval Notice Orders

Court File No. CV-12-17511

The Honourable) , the day
Justice Patterson) of , 2014

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Between:

NANCY JEAN ADAMS

Plaintiff

and:

APPLE INC., HACHETTE BOOK GROUP CANADA LTD.,
HACHETTE BOOK GROUP, INC., HARPERCOLLINS CANADA LIMITED,
HARPERCOLLINS PUBLISHERS, INC., MACMILLAN PUBLISHERS, INC.,
PENGUIN GROUP (USA) LLC (formerly PENGUIN GROUP (USA), INC.),
PENGUIN CANADA BOOKS, INC. and
SIMON & SCHUSTER CANADA, a division of CBS CANADA HOLDINGS CO.

Defendants

Proceedings under the *Class Proceedings Act*, 1992

**ORDER
(CERTIFICATION AND PRE-APPROVAL NOTICE)**

THIS MOTION made by the Plaintiff, Nancy Jean Adams, for an order certifying this action as a class proceeding for settlement purposes only as against the Defendants Hachette Book Group Canada Ltd., Hachette Book Group Inc., HarperCollins Canada Limited, HarperCollins Publishers, LLC, Macmillan Publishers, Inc., Penguin Group (USA) LLC (formerly Penguin Group (USA), Inc.), Penguin Canada Books, Inc., Simon & Schuster Canada, a division of CBS Canada Holdings Co., (collectively, the "Settling Defendants") and for an order approving the form of Notice of Certification and

Settlement Approval Hearings (the "Pre-Approval Notice") and the means by which the Pre-Approval Notice will be disseminated (the "Plan of Dissemination"), was heard on <> at ♦ Ontario.

ON READING the pleadings and materials filed and on hearing the submissions of counsel for the Plaintiff and for the Settling Defendants;

AND ON BEING ADVISED THAT the Plaintiff has entered into an Agreement with the Settling Defendants (collectively, the "Settling Parties") dated <> (the "Agreement");

AND ON BEING ADVISED that the Settling Parties consent to this Order;

AND ON BEING ADVISED that the non-settling defendant, Apple, Inc. ("Apple"), takes no position on this motion;

1. THIS COURT ORDERS that, except to the extent that they are modified by this Order, the definitions set out in the Agreement, which is attached as **Schedule "A"** to this Order, apply to and are incorporated into this Order.
2. THIS COURT ORDERS that the National Proceeding is certified as a class proceeding as against the Settling Defendants for settlement purposes only.
3. THIS COURT ORDERS that the National Settlement Class is defined as:
All persons in Canada who purchased E-Books during the Settlement Class Period, except the Excluded Persons, Persons who are included in the Quebec Settlement Class, and Persons who validly opt-out of the National Settlement Class in accordance with this Order.
4. THIS COURT ORDERS that Nancy Jean Adams is appointed as the representative plaintiff for the National Settlement Class.
5. THIS COURT ORDERS that the following issue is common to the National Settlement Class:
Did the Settling Defendants, or any of them, conspire with each other or others to fix, maintain, increase or control the price of E-Books in Canada during the Settlement Class Period?
6. THIS COURT ORDERS that Sutts Strosberg LLP is appointed as the Opt Out Administrator.

7. THIS COURT ORDERS that any member of the National Settlement Class who wishes to opt-out of the National Proceeding must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to the Opt Out Administrator, postmarked or faxed on or before the end of the Opt Out Period.
8. THIS COURT ORDERS that any member of the National Settlement Class who has validly opted-out of the National Proceeding is not bound by the Agreement and will not be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the continuing action against the Non-Settling Defendant.
9. THIS COURT ORDERS that any member of the National Settlement Class who has not validly opted-out of the National Proceeding is bound by the Agreement.
10. THIS COURT ORDERS that the hearing to approve the Agreement shall take place on <date>.
11. THIS COURT ORDERS that the Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedule "B"**.
12. THIS COURT ORDERS that the Plan of Dissemination is hereby approved in the form attached hereto as **Schedule "C"**.
13. THIS COURT ORDERS that the Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination.
14. THIS COURT ORDERS that this Order, including, without limiting the generality of the foregoing, the certification of the National Proceeding against the Settling Defendants and the definitions of the National Settlement Class, Settlement Class Period and Common Issue, is without prejudice to any position any Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the National Proceeding should be certified as a class proceeding as against a Non-Settling Defendant. For greater certainty, this Order, the Ontario Court's reasons in support of this Order and the certification of the National Proceeding against any Settling Defendants for settlement purposes only are not binding on and shall have no effect on the Ontario Court's ruling in the continuing prosecution of the National Proceeding or any other proceeding as against a Non-Settling Defendant. Notwithstanding the foregoing, the Non-Settling Defendant may not rely, cite or refer to all or any part of this Order or any reasons given by the Ontario Court in support of this Order, and may not assert a deficiency in the notice plan and /or opt-out process set out in this Order, as a basis to oppose the Plaintiff's motion to approve the Agreement, including without limitation as a basis to oppose the proposed bar order contained in the Agreement.

Date: <>

THE HONOURABLE JUSTICE
PATTERSON

Schedule B

Certification and Pre-Approval Notice Orders

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

N°: 500-06-000595-120

ANTOINE PONTBRIAND
Petitioner

vs.

APPLE INC.

HACHETTE BOOK GROUP INC.

HACHETTE BOOK GROUP CANADA INC.

HARPERCOLLINS PUBLISHERS INC.

HARPERCOLLINS CANADA LTD.

MACMILLAN PUBLISHERS INC.

PENGUIN GROUP (USA) INC.

PEARSON CANADA INC. (PENGUIN
GROUP CANADA)

SIMON & SCHUSTER CANADA, a division
of CBS CANADA HOLDINGS CO..

Respondents

**JUDGMENT AUTHORIZING A CLASS ACTION AND
APPROVING A NOTICE OF HEARING
ON APPROVAL OF A SETTLEMENT AGREEMENT**

THIS JUDGMENT is made pursuant to (i) an amended motion for the authorization of a class action by Plaintiff Antoine Pontbriand in the context of a settlement agreement between Plaintiff and others and the Respondents Hachette Book Group Canada Ltd., Hachette Book Group Inc., HarperCollins Canada Limited, HarperCollins Publishers, LLC, Macmillan Publishers, Inc., Penguin Group (USA), Inc., Penguin Canada Inc. c.o.b.a. Penguin Group

(Canada), and Simon & Schuster Canada, a division of CBS Canada Holdings Co. (collectively, the "Settling Defendants") and, (ii) a motion for the approval of the form of a Notice of Hearing on Approval of Settlement Agreement (the "Pre-Approval Notice") and the means by which the Pre-Approval Notice will be disseminated (the "Plan of Dissemination") as regards the proposed settlement agreement between Plaintiff and others and the Settling Defendants;

ON READING the motions and exhibits filed and on hearing the submissions of counsel for the Plaintiff and for the Settling Defendants;

AND ON BEING ADVISED THAT the Plaintiff has entered into a settlement agreement with the Settling Defendants (collectively, the "Settling Parties") dated <> (the "Agreement");

AND ON BEING ADVISED that the Settling Parties consent to this Judgment;

AND ON BEING ADVISED that the non-settling defendant, Apple, Inc. ("Apple") takes no position on this Judgment;

Class Action Authorization

- 1- THIS COURT ORDERS that, except to the extent that they are modified by this Judgment, the definitions set out in the proposed Agreement, which is attached as **Exhibit R-1** to this Judgment, apply to and are incorporated into this Judgment;

Authorisation

- 2- In the context of the R-1 proposed Agreement, this Court is satisfied that the criterias of paragraphs a) to d) of section 1003 C.p.c. are met, namely;
 - a) the recourses of the members raise the following identical, similar or related question of law and fact:

"Did the Settling Defendants, or any of them, conspire with each other or others to fix, maintain, increase or control the price of E-Books in Canada during the Settlement Class Period?"
 - b) the facts alleged seem to justify the conclusions sought;
 - c) the composition of the group makes the application of art. 59 or 67 C.C.P. difficult or impracticable;
 - d) Mr. Antoine Pontbriand is in a position to represent the members adequately;

- 3- THIS COURT ORDERS therefore that the sought Class Action be and is hereby authorized for settlement purposes only, for the following Group, as against the Settling Defendants:

“All individuals resident in Quebec and all legal Persons in Quebec established for a private interest, partnership or association in the Province of Quebec which at all times since February 24, 2013 have had no more than fifty persons bound to it by contact of employment or under its direction or control, who purchased E-Books during the Settlement Class Period”

- 4- THIS COURT ORDERS that the status of representative for the Group be ascribed to Mr. Antoine Pontbriand;
- 5- THIS COURT ORDERS that any member of the Quebec Settlement Class who wishes to opt-out of the Quebec Proceeding must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to Quebec Class Counsel Sylvestre Fafard Painchaud, postmarked or faxed on or before the end of the Opt Out Period;
- 6- THIS COURT ORDERS that any member of the Quebec Settlement Class who has validly opted-out of the Quebec Proceeding would not be bound by the Agreement and would not either be entitled to receive any share of benefits payable in connection with same, and will cease to be a putative class member in the continuing action against the Non-Settling Defendant;
- 7- THIS COURT ORDERS that any member of the Quebec Settlement Class who has not validly opted-out of the Quebec Proceeding will be bound by the Agreement should it be approved;
- 8- THIS COURT ORDERS that the hearing to approve the Agreement shall take place on <date>;
- 9- THIS COURT ORDERS that the Pre-Approval Notice is hereby approved substantially in the form attached hereto as **Schedule “B”**;
- 10- THIS COURT ORDERS that the Plan of Dissemination is hereby approved in the form attached hereto as **Schedule “C”**;
- 11- THIS COURT ORDERS that the Pre-Approval Notice shall be disseminated in accordance with the Plan of Dissemination;
- 12- THIS COURT ORDERS that this Judgment, including, without limiting the generality of the foregoing, the authorisation of the Quebec Proceeding against the Settling Defendants and the definitions of the Quebec Settlement Class, Settlement Class Period and Common Issue, is without

prejudice to any position the Non-Settling Defendant may take in this or any other proceeding on any issue, including the issue of whether the Quebec Proceeding should be certified as a class proceeding as against the Non-Settling Defendant. For greater certainty, this Judgment, the Court's reasons in support of this Judgment and the certification of the Quebec Proceeding against the Settling Defendants for settlement purposes only are not binding on and shall have no effect on the Court's ruling in the continuing prosecution of the Quebec Proceeding or any other proceeding as against the Non-Settling Defendant. Notwithstanding the foregoing, the Non-Settling Defendant may not rely, cite or refer to all or any part of this Judgment or any reasons given by the Court in support of this Judgment, and may not assert a deficiency in the notice plan and /or opt-out process set out in this Judgment, as a basis to oppose the Plaintiff's motion to approve the Agreement, including without limitation as a basis to oppose the proposed bar order contained in the Agreement.

SCHEDULE C

Schedule C

Discontinuance Order

No. S-122529
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WAYNE VAN TASSEL

PLAINTIFF

AND:

APPLE INC., HACHETTE BOOK GROUP CANADA LTD., HACHETTE BOOK GROUP, INC., HARPERCOLLINS CANADA LIMITED, HARPERCOLLINS PUBLISHERS, INC., MACMILLAN PUBLISHERS, INC., PENGUIN GROUP (USA) LLC (formerly PENGUIN GROUP (USA), INC.), PENGUIN CANADA BOOKS, INC. and SIMON & SCHUSTER CANADA, a division of CBS CANADA HOLDINGS CO.

DEFENDANTS

Proceedings pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50

ORDER

(Discontinuance as Against Settling Defendants)

BEFORE THE HONOURABLE <>) <DATE>
)
)

ON THE APPLICATION of the Plaintiff, Wayne Van Tassel, dated <date> coming on for hearing before me at 800 Smithe Street, Vancouver, British Columbia, on <date>, and UPON HEARING:

<counsel>

AND UPON READING the pleadings and materials filed in relation to this application, including <material> and on being advised that the Plaintiff has entered into an agreement with the Defendants, Hachette Book Group Canada Ltd., Hachette Book Group Inc., HarperCollins Canada Limited, HarperCollins Publishers, LLC, Macmillan

Publishers, Inc., Penguin Group (USA) LLC (formerly Penguin Group (USA) Inc.), Penguin Canada Books, Inc., Simon & Schuster Canada, a division of CBS Canada Holdings Co. (collectively, the "Settling Defendants"), dated ♦; and on being advised that the Plaintiff and the Settling Defendants consent to this Order; and on being advised that the Defendant Apple, Inc. takes no position on this Order;

THIS COURT ORDERS that:

1. The action as against the Settling Defendants is hereby discontinued without costs;
2. The discontinuance of this action as against the Settling Defendants shall be with prejudice; and
3. There shall be no costs of this action.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS NOTED ABOVE:

Signature of lawyer for the Plaintiff

[LAWYER NAME]

Signature of lawyer for the Defendants,
HarperCollins Canada Limited and
HarperCollins Publishers, LLC

[LAWYER NAME]

Signature of lawyer for the Defendants,
Penguin Group (USA) LLC. and
Penguin Canada Books, Inc.,

[LAWYER NAME]

Signature of lawyer for the Defendant,
Apple Inc.

[LAWYER NAME]

Signature of lawyer for the Defendants,
Hachette Book Group Canada Ltd. and
Hachette Book Group Inc.

[LAWYER NAME]

Signature of lawyer for the Defendant,
Macmillan Publishers, Inc.

[LAWYER NAME]

Signature of lawyer for the Defendants,
Simon & Schuster Canada, a division of
CBS Canada Holdings Co.

[LAWYER NAME]

By the Court

Registrar

Schedule C

Discontinuance Order

No. S-122529
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WAYNE VAN TASSEL

PLAINTIFF

AND:

APPLE INC., HACHETTE BOOK GROUP CANADA LTD., HACHETTE
BOOK GROUP, INC., HARPERCOLLINS CANADA LIMITED,
HARPERCOLLINS PUBLISHERS, INC., MACMILLAN PUBLISHERS,
INC., PENGUIN GROUP (USA) LLC (formerly PENGUIN GROUP (USA),
INC.), PENGUIN CANADA BOOKS, INC. and SIMON & SCHUSTER
CANADA, a division of CBS CANADA HOLDINGS CO.

DEFENDANTS

Proceedings pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50

ORDER

(Discontinuance as Against Settling Defendants)

BRANCH MACMASTER LLP
Barristers & Solicitors
1410 – 777 Hornby Street
Vancouver, BC V6Z 1S4

Tel: (604) 654-2999
Fax: (604) 684-3429
Email: lbrasil@branmac.com

SCHEDULE D

E-BOOKS CLASS ACTION

To all persons in Canada who purchased E-Books from April 1, 2010 to <date>

Notice of Certification/Authorization and Proposed Canadian Settlement

THE LAWSUITS

Class action lawsuits were commenced in Ontario, British Columbia and Quebec ("Actions") against Apple Inc. ("Apple") and various publishers of E-books (the "Publishers", particularized below) alleging they conspired to fix, maintain, increase or control the price of E-books sold by them in Canada, contrary to Part VI of the *Competition Act*, the common law and the Civil Code of Quebec (the "Alleged Conspiracy"). The Actions allege that, as a result of the Alleged Conspiracy, the price of E-books sold in Canada from April 1, 2010 to <date> was artificially high, and seek, among other things, reimbursement of the alleged overcharges. The defendants deny those allegations, and the claims have not been proven in Court.

THE PUBLISHERS

The Publishers are **Hachette** Book Group Canada Ltd, Hachette Book Group Inc., **HarperCollins** Canada Limited, HarperCollins Publishers LLC, **Macmillan** Publishers, Inc., **Penguin** Group (USA) LLC (formerly Penguin Group (USA), INC.), Penguin Canada Books, Inc. and **Simon & Schuster** Canada, a division of CBS Canada Holdings Co.

THE PROPOSED SETTLEMENT

A settlement was reached with the Publishers (the "Settlement"). Settlement benefits include payment of \$3,175,000 (the "Settlement Proceeds") and cooperation in prosecuting the Actions against Apple. The Settlement must be approved by the Ontario and Quebec Courts ("Courts") to be effective.

CERTIFICATION / AUTHORIZATION

For the purposes of implementing the Settlement, the Actions were certified/authorized as class actions by the Courts in relation only to the Publishers. This means that the determinations made in the Actions will automatically apply to all persons who purchased E-books in Canada between April 1, 2010 and <date>, unless they take steps to exclude themselves from the Actions (see below under "Your Options"). Certification / authorization will be set aside if the Settlement is not approved by all the Courts.

SETTLEMENT APPROVAL HEARINGS

The requests to approve the Settlement will take place in hearings on <date> (Ontario) and <date> (Quebec). At the same time, the Class Lawyers may seek approval of their contingency agreements with the representative plaintiffs and of a fee percentage to be deducted from the Settlement Proceeds with other court-approved costs.

THE SETTLEMENT AFFECTS YOUR RIGHTS

If the Settlement is approved, it will affect all persons in Canada who purchased Ebooks from April 1, 2010 to <date> except those who opt out of the Actions, the Defendants and certain related parties ("Settlement Class Members"). Under the Settlement, Settlement Class Members **RELEASE** the Publishers and other related parties from claims regarding the purchase of Ebooks in Canada from April 1, 2010 to <date>, and commit to discontinue or dismiss other proceedings.

WILL I RECEIVE ANY MONEY AT THIS TIME?

The manner in which the net Settlement Proceeds (after deduction of court approved legal fees and other expenses) will be distributed will be determined at a later date, in particular because the case is continuing against Apple. The net Settlement Proceeds will be held in trust for the benefit of the Settlement Class Members. Once the Courts have approved the method for distributing the net Settlement Proceeds, another notice will be provided and posted online at <website> explaining who is eligible for direct payment and how those persons can apply to receive payment. In the meantime, all purchasers of E-Books in Canada are encouraged to retain proof of purchase of E-Books.

YOUR OPTIONS

If you want to **participate in the Actions and benefit from this Settlement and any later settlements or judgments**, you **do not need to do anything**. All persons in Canada who purchased E-books from April 1, 2010 to <date> are **automatically included**. You can provide your name and contact information to the Class Lawyers so we can provide further updates on the Actions to you and let you know once the Courts approve a plan to distribute the Net Settlement Amounts.

If you **do not want to participate in the Actions, or participate in the Settlement, you must exclude yourself** by completing and sending an Opt Out Form to the Class Lawyers by <date> (the "Opt Out Deadline"). Opt Out Forms are available at <website> or from the Class Lawyers. If you opt out, you will keep any right to bring your own lawsuit but will not receive the benefit of this or future settlements or any judgments in the Actions. If you do not opt out of the Actions by the Opt Out Deadline, you will be bound by the Settlement and will not be able to opt out of the Actions in the future.

To **comment on or object** to the Settlement, you must write to one of the Class Lawyers **by <Date>**. Comments and objections will be provided to the Courts, but the Courts cannot change the terms of the Settlement.

DO I NEED TO PAY ANYTHING?

You do not need to pay anything out of your pocket. The plaintiffs and petitioners entered into contingency agreements with the Class Lawyers providing for payment of up to 1/3 of amounts recovered in the Actions and reimbursement of disbursements incurred to prosecute the Actions. The Courts will determine the amount to be paid to the Class Lawyers from the Settlement Proceeds.

HOW DO I CONTACT THE CLASS LAWYERS?

To ask questions about the Settlement or Actions, or register as an E-book purchaser, contact:

- For British Columbia residents: Luciana P. Brasil of Branch MacMaster LLP care of uherlev@branmac.com
- For Quebec residents: Normand Painchaud of Sylvestre Fafard Painchaud care of n.painchaud@sfpavocats.ca
- For all others: Heather Rumble Peterson of Sutts Strosberg LLP care of ebooks@strosbergco.com

This Notice is a summary. For more information about the Settlement or to read the settlement agreement, please visit <website> or contact the Class Lawyers.