



ACTION NO. S2010419  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

ADAM RAWSKI

PLAINTIFF

AND

BLACK DIAMOND EQUIPMENT, LTD., CLARUS CORPORATION, AND  
PIEPS GMBH

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION**

BEFORE } THE HONOURABLE JUSTICE BLAKE } DECEMBER/05/2025

ON THE APPLICATION of the plaintiff, Adam Rawski, coming on for hearing in person at the Courthouse at 800 Smithe Street Vancouver, BC on December 5, 2025; and on hearing David Honeyman for the Plaintiff and Jake Cabott for the Defendants;

**AND ON READING** all materials filed and on hearing the submissions of counsel;

**AND ON BEING ADVISED** that all parties consent to the Order;

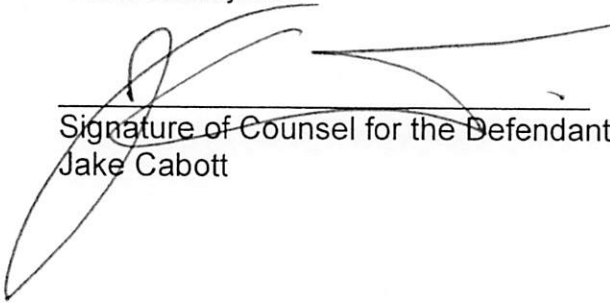
1. THIS COURT ORDERS that the terms of the Settlement Agreement reached between the parties as set out in the Settlement Agreement attached as **Schedule "A"** to this Order are hereby approved and that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement;
2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is fair, reasonable and in the best interest of the Class;
3. THIS COURT ORDERS AND DECLARES that, in accordance with the Settlement Agreement, this proceeding was certified on consent as a class proceeding, subject to the terms and conditions of this Settlement Agreement, including the Defendants' express reservation of rights to contest certification or authorization of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings;
4. THIS COURT ORDERS AND DECLARES that the Plaintiff and Class Member Releasors have fully and finally released and forever discharged the Releasees from the Plaintiff and Class Members' Released Claims, in keeping with the terms of the Settlement Agreement;
5. THIS COURT ORDERS AND DECLARES that the Plaintiff and Class Member Releasors are barred, prohibited, and enjoined from bringing claims, except claims by any persons for personal injury and/or death, against the Defendants or others as set out in paragraphs 7.1.4 and 7.2.1 of the Settlement Agreement;
6. THIS COURT ORDERS AND DECLARES that that this Court retains continuing exclusive jurisdiction over the Parties and the Class to administer, supervise, construe, and enforce this Settlement Agreement;
7. THIS COURT ORDERS AND DECLARES that the parties may bring such motions to this Court for directions as may be required in relation to the implementation, administration, interpretation, and enforcement of the Settlement Agreement; and
8. THIS COURT ORDERS that the Action is hereby dismissed with prejudice as against each of the Defendants, on a without costs basis, and each Class Member shall be deemed to irrevocably consent to such dismissal.
9. THIS COURT ORDERS that the form and content of the Notice of Settlement Approval and Claim Period ("Approval Notice") is approved in the form set out as **Schedule "B"** to this Order;
10. THIS COURT ORDERS that Approval Notice shall be distributed to Class Members by the Claims Administrator to known Class Members directly by email, and to unknown Class Members indirectly by online advertisements in French and English on Google Display Network, Facebook and Instagram, with an additional press release over PR Newswire's Canadian Bilingual Newswire.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Class Counsel

David Honeyman



Signature of Counsel for the Defendants

Jake Cabott



By the Court

Registrar



**SCHEDULE "A"**  
**[Settlement Agreement]**



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**SETTLEMENT AGREEMENT**

**Dated January 14, 2025**

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## RECITALS

- A. **WHEREAS** on October 16, 2020, the Proceeding<sup>1</sup> was commenced against the Defendants, in which it is alleged, among other things, that certain avalanche beacons manufactured, distributed and sold in Canada by the Defendants, were defective, and the Plaintiff claimed damage and loss allegedly caused by the defect on behalf of himself and the proposed Class Members.
- B. **AND WHEREAS** on January 26, 2022, the Plaintiff filed the Certification Application in the Proceeding seeking certification of the Proceeding as a multi-jurisdictional class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- C. **AND WHEREAS** the Defendants opposed certification of the Proceeding and took the position that they are not liable in respect of the claims in the Proceeding, and the Defendants assert that they have good, reasonable, and complete defences in respect of the merits of the Proceeding.
- D. **AND WHEREAS** the Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any of the allegations of breach of duty or wrongful conduct alleged in the Proceeding, and otherwise deny all liability and maintain that they have complete defences in respect of the merits of the Proceeding;
- E. **AND WHEREAS** the Plaintiff, Class Counsel, and the Defendants agree that neither this Settlement Agreement nor any statement made in negotiation thereof shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of any of the Plaintiff's allegations against the Defendants, which allegations are expressly denied by the Defendants;
- F. **AND WHEREAS** the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against the Defendants by the Plaintiff and the Class in the Proceeding, excluding claims by any persons for personal injury and/or death, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;
- G. **AND WHEREAS** Counsel for the Defendants and Class Counsel have engaged in arm's length settlement discussions and negotiations, resulting in this Settlement Agreement;
- H. **AND WHEREAS** as a result of these settlement discussions and negotiations, the Defendants and the Plaintiff have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Defendants

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<sup>1</sup> Capitalized terms have the meaning defined in Section 1 below.

and the Plaintiff, both individually and on behalf of the proposed Class the Plaintiff seeks to represent, subject to approval of the Court;

- I. **AND WHEREAS** Class Counsel, on their own behalf and on behalf of the Plaintiff and the proposed Class, have reviewed and fully understand the terms of this Settlement Agreement, and based on their analysis of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expenses associated with prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the proposed Class;
- J. **AND WHEREAS** the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Proceeding as against the Defendants;
- K. **AND WHEREAS** the Parties consent to certification of the Proceeding as a class proceeding, and to the Class, and to the Common Issues for settlement purposes and the Class Period solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approval by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;
- L. **AND WHEREAS** the Plaintiff asserts that he is an adequate class representative for the Class he seeks to represent and will seek to be appointed as representative plaintiff for the Class;
- M. **AND WHEREAS** the Parties intend to pursue the approval of this Settlement Agreement by the Supreme Court of British Columbia;

**NOW THEREFORE**, in consideration of the covenants, agreements, and releases set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and discontinued without costs, subject to the approval of the Court, on the following terms and conditions:

## **SECTION 1 – DEFINITIONS**

- 1.1 The terms herein have the following definitions, including in the Recitals and Schedules hereto:
  - (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Defendants, for the implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

- (b) **Approved Claim** means a Claimant's Claim for a Compensatory Payment or Compensatory Credit approved by the Claims Administrator.
- (c) **Certification and Notice Approval Hearing** means the hearing on the application before the Court for the certification of the Proceeding as a class action for settlement purposes only, and the approval of the form, content, and manner of dissemination of the First Notice.
- (d) **Beacon** means electronic avalanche transceiver in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice.
- (e) **Certification Application** means the notice of application filed in the Proceeding by the plaintiff on January 26, 2022 seeking certification of the Proceeding as a multi-jurisdictional class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (f) **Certification Order** means the Order certifying this proceeding for settlement purposes, specifying notice and opt-out provisions, in the form attached as Schedule "A".
- (g) **Claim** means the claim of a Class Member for a Compensatory Payment or Compensatory Credit.
- (h) **Claim Determination Decision** means a written decision of the Claims Administrator pronouncing a Claimant's eligibility for Compensatory Payment or Compensatory Credit under the Settlement Agreement.
- (i) **Claim Application** means an online application portal provided by the Claims Administrator, to be completed by a Claimant pursuant to the Claims Administration Procedure.
- (j) **Claim Period** means the period commencing on the Effective Date, and expiring at 12:01 am, PST, on the one hundred and twentieth (120) day after the Effective Date.
- (k) **Claimant** means any Class Member who submits a Claim Application during the Claim Period.
- (l) **Claims Administration Procedure** means the procedure described in Section 3 of the Settlement Agreement.
- (m) **Claims Administrator** means the firm agreed to the Parties, RicePoint Administration Inc., and appointed by the Court to administer the Claims Administration Procedure in accordance with the provisions of this Settlement Agreement.

- (n) **Claims Report** means a report delivered by the Claims Administrator to Class Counsel setting out the total number of Claims received by category, and the total amounts payable by category.
- (o) **Class** means all persons resident in Canada, except for the Excluded Persons, who purchased the Beacons in Canada during the Class Period.
- (p) **Class Counsel** means Rice Harbut Elliott LLP.
- (q) **Class Counsel Disbursements** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (r) **Class Counsel Fees** means the fees of Class Counsel, and any applicable taxes or charges thereon.
- (s) **Class Members** means members of the Class who do not opt-out of this action.
- (t) **Class Period** means the period of time from January 1, 2013 to April 12, 2021.
- (u) **Common Issues for Settlement Purposes** means the common issues listed in Schedule "B".
- (v) **Compensatory Payment** means a payment made to a Claimant pursuant to paragraph 4.2.1(a) of this Settlement Agreement.
- (w) **Compensatory Credit** means a credit provided to a Claimant pursuant to paragraph 4.2.1(b) of this Settlement Agreement.
- (x) **Counsel for the Defendants** means Borden Ladner Gervais LLP.
- (y) **Court** means the Supreme Court of British Columbia.
- (z) **Date of Execution** means the date on which the Parties have executed this Settlement Agreement.
- (aa) **Defendants** means the Defendants Black Diamond Equipment, Ltd., Clarus Corporation, and Pieps GMBH.
- (bb) **Deficiency Letter** means a letter of the Claims Administrator advising the Claimant of any deficiencies in their Claim Application. The Deficiency Letter is to be sent within ten (10) days of receipt of the Claimant's Claim Application.
- (cc) **Effective Date** means the date that is 30 days after pronouncement of a Final Order approving this Settlement Agreement unless there is an appeal,



in which case, the date on which any or all such appeals have been dismissed or quashed.

- (dd) **Excluded Persons** means the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors.
- (ee) **Final Order** means an order of the Court approving the Settlement Agreement pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, as shown in Schedule "C".
- (ff) **Final Report** means a report, prepared by the Claims Administrator, setting out, *inter alia*:
  - (i) the number and most recent addresses of the Claimants;
  - (ii) the number of Approved Claims;
  - (iii) the number of Claims rejected by the Defendants; and
  - (iv) the Compensatory Payment or Compensatory Credit paid to each Claimant.
- (gg) **First Notice** means the notice in the form attached hereto as Schedule "D", and approved by the Court, to be distributed to the Class Members, in advance of the Settlement Approval Hearing, in respect of (1) the certification of the Proceeding as a class proceeding as against the Defendants for settlement purposes; (2) the right to opt out of the Proceeding or to deliver an Objection and Notice of Intention to Appear at the Settlement Approval Hearing; and (3) the date and time of the Settlement Approval Hearing.
- (hh) **Honorarium** means an amount payable to the Representative Plaintiff in the amount of \$5,000.
- (ii) **Notice and Claims Administration Costs** means all costs of the First Notice, Second Notice, Claims Administrator, and Claims Administration Procedure.
- (jj) **Objection and Notice of Intention to Appear** means an objection to the Settlement Agreement of a Class Member, and a statement of whether they intend to appear and make submissions at the Settlement Approval Hearing as set out in paragraphs 5.2.1-5.2.5.
- (kk) **Objection Deadline** means the date which is sixty (60) days after the date on which the First Notice is first published.



- (ll) **Opt-Out Deadline** means the date which is sixty (60) days after the date on which the First Notice is first published.
- (mm) **Opt-Out Form** means a confirmation of a Class Member to opt-out of this Proceeding as set out in paragraph 5.1.1.
- (nn) **Party and Parties** means the Defendants, the Plaintiff, and, where necessary, the Class Members.
- (oo) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.
- (pp) **Plaintiff** means the Plaintiff Adam Rawski.
- (qq) **Proceeding** means the action commenced in the Supreme Court of British Columbia, Court File Number No. S2010419 (the "Proceeding") against the Defendants.
- (rr) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, including assigned, and whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, actual, or contingent, liquidated or unliquidated, in law, under statute or in equity, that the Plaintiff or Class Members ever had, now have or hereafter can, shall, or may ever have, relating in any way to any conduct related to, arising from, or described in the Proceeding, excluding claims on behalf of any persons for personal injury and/or death.
- (ss) **Releasees** means, jointly and severally, individually and collectively, the Defendants and each of their past and present parents, subsidiaries, affiliates, partners, insurers, and all other Persons, partnerships or corporations with whom any of the foregoing have been, or are now, affiliated, and each of their respective past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, and insurers.
- (tt) **Releasors** means, jointly and severally, individually, and collectively, the Plaintiff and the Class Members, except for the Excluded Persons, and all of their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners, and insurers, and their predecessors, successors, heirs executors, trustees, administrators, and assignees.

- (uu) **Representative Plaintiff** means Adam Rawski.
- (vv) **Second Notice** means the notice in the form attached hereto as Schedule "E", and approved by the Court, to be distributed to the Class Members if this Settlement Agreement is approved, in respect of: (1) the approval of this Settlement Agreement; and (2) the process by which Class Members may apply to obtain compensation.
- (ww) **Settlement Agreement** means this agreement, including the recitals, and schedules.
- (xx) **Settlement Approval Hearing** means the hearing at which the Parties seek the Final Settlement Approval Order and approval of Class Counsel Fees and Class Counsel Disbursements.
- (yy) **Settlement Funds** means the all-inclusive amount of up to \$338,120, which includes the Compensatory Payments, the Compensatory Credits, Honorarium, Class Counsel Fees and Class Counsel Disbursements.

## SECTION 2– SETTLEMENT APPROVAL

### 2.1 Best Efforts

2.1.1 Upon the execution of the Settlement Agreement, Class Counsel shall use their best efforts to implement its terms.

### 2.2 Application Seeking Certification and Approval of Notice

2.2.1 As soon as practicable after the Date of Execution, the Plaintiff shall bring an application before the Court, for orders certifying the Proceeding for settlement purposes only and approving the First Notice.

2.2.2 The order certifying the Proceeding for settlement purposes and approving the First Notice shall be sought substantially in the form attached as Schedule "A".

### 2.3 Application Seeking Approval of the Settlement Agreement

2.3.1 The Plaintiff shall make best efforts to bring an application before the Court for an order approving this Settlement Agreement within three weeks after the expiration of the Opt-Out Deadline and Objection Deadline or as soon as practicable thereafter.

2.3.2 The order approving this Settlement Agreement shall be sought substantially in the form attached as Schedule "C".

### 2.4 Pre-Application Confidentiality

2.4.1 Until the date on which the Proceeding is certified for settlement purposes and the First Notice is approved, the Parties shall keep all of the terms of the Settlement

Agreement confidential and shall not disclose them without the prior consent of Counsel for the Defendants and Class Counsel, as the case may be, except as required for the purposes of financial reporting, the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

## **2.5 Settlement Agreement Effective**

2.5.1 This Settlement Agreement shall only become final and binding on the Effective Date.

## **SECTION 3—CLAIMS ADMINISTRATION PROCEDURE**

### **3.1 Appointment and Role of the Claims Administrator**

3.1.1 The Claims Administrator shall be responsible for:

- (a) receiving, reviewing, and creating and storing electronic copies of every submitted Claim Application;
- (b) setting up and maintaining a website to disseminate information about the Claims Administration Procedure, to answer commonly asked questions, and to publish the Settlement Agreement and related documentation;
- (c) establishing a dedicated e-mail account whereby Class Members can direct inquiries about this class proceeding;
- (d) preparing reports as required by this Settlement Agreement;
- (e) preparing and sending Deficiency Letters, Claim Determination Decisions, reports required by the Settlement Agreement, and any other necessary correspondence or communications to, from, or between Claimants, Class Counsel, and Counsel for the Defendants, as required by, or incidental to the administration of the Settlement Agreement;
- (f) reporting to Class Counsel the total number of Claims received by category, calculating any necessary pro rata reductions, and the total amounts payable by category and requisitioning funds to pay Compensatory Payments and any other amounts under the Settlement Agreement;
- (g) distributing the requisitioned funds to pay Compensatory Payments or providing Compensatory Credits to Claimants with an Approved Claim and any other amounts under the Settlement Agreement.

3.1.2 Any information provided by or regarding Class Members, or otherwise obtained pursuant to the Settlement Agreement, shall be kept strictly confidential and shall not be disclosed except only to the extent necessary to process a Claim or to provide benefits

under the Settlement Agreement, as otherwise expressly provided for in the Settlement Agreement, or as required by law.

3.1.3 The Claims Administrator and any persons appointed by them to assist in the administration of the Settlement Agreement shall execute a confidentiality agreement, in a form satisfactory to the Parties, pursuant to which they shall agree to keep confidential any information whatsoever concerning a Claim.

3.1.4 The Claims Administrator shall institute and maintain strict internal procedures to reasonably protect the identity of all Claimants and all information regarding their Claim. In particular, Claim Applications shall be kept strictly confidential and shall not be provided to any person or entity unless provided for in the Settlement Agreement or as required by law.

3.1.5 All written communications with each Claimant shall be conducted by e-mail or by regular mail to the last known address provided by the Claimant. Each Claimant shall keep the Claims Administrator apprised of their current contact information.

3.1.6 If, for any reason, the Claims Administrator becomes unable or unwilling to continue to act in this role, the Parties may choose an alternate claims administrator, subject to the approval of the Court.

## **3.2 Claims Administration Procedure**

3.2.1 Upon the Effective Date, the Claims Administrator shall issue the Second Notice advising of the approval of this Settlement Agreement, of the process for submitting a Claim, and the Claim Period.

3.2.2 All Class Members will be required to submit a completed Claim Application in the form attached as Schedule "F" to the Claims Administrator before the end of the Claim Period to be entitled to receive any benefits under this Settlement Agreement.

3.2.3 All Claim Applications must be received by the Claims Administrator by 5:00 pm Pacific Standard Time ("PST") on the last day of the Claim Period. The Claims Administrator shall deny any Claim received or completed after that date and time.

3.2.4 The Claims Administrator will review the Claim Application submitted by the Claimant as received to determine eligibility.

3.2.5 If a Claim Application is not properly completed, there is a discrepancy disclosed by a given Claim Application and the Claim Form or other documentation submitted by the Class Member, or the Claim Application is in any way deficient, the Claims Administrator shall send a Deficiency Letter within ten (10) days of receipt of the Claimant's Claim Application to the Claimant, and shall grant the Claimant thirty (30) days to amend or supplement it.

3.2.6 Once a Claim Application is complete, the Claims Administrator shall assess the Claim for eligibility for a Compensatory Payment or Compensatory Credit, and shall

prepare and send a Claim Determination Decision to each Claimant with an Approved Claim.

3.2.7 The Claims Administrator will be at liberty to determine the Compensatory Payment and Compensatory Credit to Class Members in accordance with paragraphs 4.2.1(a)-(b) of this Settlement Agreement. The Claims Administrator shall use the best available evidence in making their determination. The Claims Administrator decision as to the eligibility of a Class Member is subject to review by the Court, on the application of Class Counsel.

3.2.8 As a condition precedent to the receipt of a Compensatory Payment under paragraph 4.2.1(a) a Claimant must provide:

- (a) proof or declaration of purchase to establish that they purchased a Beacon in Canada during the Class Period; and
- (b) proof or declaration of purchase to establish that they purchased a replacement beacon between October 1, 2020 and April 12, 2021.

3.2.9 As a condition precedent to the receipt of a Compensatory Credit under paragraph 4.2.1(b), a Claimant must provide proof or declaration of purchase to establish that they purchased a Beacon in Canada during the Class Period. A Claimant may be awarded either a Compensatory Payment under paragraph 4.2.1(a) or a Compensatory Credit under paragraph 4.2.1(b), but not both.

3.2.10 The Claims Administrator will be at liberty to apply to the Court for directions if any problem arises in the claims administration process, which they are unable to resolve.

## **SECTION 4 – SETTLEMENT BENEFITS**

### **4.1 Applicable Currency**

4.1.1 All dollar amounts set forth in the Settlement Agreement are expressed in Canadian currency.

### **4.2 Distribution of the Settlement Amount**

4.2.1 Pursuant to the terms and conditions of the Settlement Agreement, the Defendants shall pay Compensatory Payments and Compensatory Credits in accordance with the Claims Administration Procedure pursuant to one of the following categories:

- (a) **Compensatory Payment:** Respecting a Claimant who purchased a Beacon in Canada during the Class Period and purchased a replacement beacon between October 1, 2020 and April 12, 2021, a Compensatory Payment of \$300, all inclusive. The aggregate amount payable under this paragraph shall be a maximum of \$120,000. If the total quantum of Approved Claims for Compensatory Payments would exceed \$120,000, then each individual award shall be reduced on a *pro rata* basis such that the total amount



payable by the Defendants in respect of all such claims shall not exceed \$120,000 in aggregate. If the maximum amount of \$120,000 in Compensatory Payments is not awarded, the remainder shall be distributed *cy-près* to the Law Foundation of British Columbia (50%) and to North Shore Rescue Team Society (50%).

- (b) Compensatory Credit: Respecting a Claimant who purchased a Beacon in Canada during the Class Period but did not purchase a replacement beacon between October 1, 2020 and April 12, 2021, a Compensatory Credit of \$50 toward any purchase on the Defendants' online stores. The aggregate amount payable under this paragraph shall be a maximum of \$50,000 in credit toward any purchase on the Defendants' online stores. If the total quantum of Approved Claims for Compensatory Credits reaches \$50,000, the Defendants will cease to assess Claims for Compensatory Credits and will not accept additional Claims for Compensatory Credits as Approved Claims.

4.2.2 Within thirty (30) days of the Effective Date, the Defendants shall pay the following to Class Counsel:

- (a) \$57,120, all inclusive, on account of Class Counsel Fees;
- (b) \$106,000, all inclusive on account of Class Counsel Disbursements; and
- (c) \$5,000, all inclusive, for the Plaintiff as an Honorarium for services provided to the Class Members.

4.2.3 The Defendants shall be responsible for the Notice and Claims Administration Costs, which are uncapped and currently estimated to be \$85,000 - \$100,000.

4.2.4 Payment of Class Counsel Fees, Class Counsel Disbursements, and the Honorarium will be made by wire transfer or e-transfer. Class Counsel will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.

4.2.5 The Defendants shall pay any sums or grant any credits required pursuant to the definitions of a Compensatory Payment and Compensatory Credit in the following manner:

- (a) Within ten (10) days of the later of the end of the Claim Period and resolution of all Deficiency Letters, the Claims Administrator will deliver the Claims Report to Class Counsel;
- (b) Within twenty (20) days of receipt of the Claims Report, the Defendants will pay \$120,000 to the Claims Administrator, in trust.

- (c) The Claims Administrator will issue all requisite Compensatory Payments by cheque to each Claimant with an Approved Claim for a Compensatory Payment in accordance with this Settlement Agreement.
- (d) Within twenty (20) days of delivering the Claims Report, the Claims Administrator will provide information on how to access the Compensatory Credit to each Claimant with an Approved Claim for a Compensatory Credit in accordance with this Settlement Agreement;
- (e) Within twenty (20) days of delivering the Claims Report, if there is any remainder from the maximum amount of the Compensatory Payments after payment of all Approved Claims for Compensatory Payments, the Claims Administrator will issue payment to the Law Foundation of British Columbia (50%) and to North Shore Rescue Team Society (50%) pursuant to paragraph 4.2.1(a) of this Settlement Agreement.

4.2.6 The Claims Administrator will deliver a Final Report to the Court within one hundred and fifty (150) days of the end of the Claim Period.

4.2.7 The Defendants shall have no obligation to pay any amount in addition to the amounts abovementioned, for any reason, pursuant to or in furtherance of this Settlement Agreement.

## **SECTION 5– OPTING-OUT AND OBJECTIONS**

### **5.1 Opt-Out Procedure**

5.1.1 Class Counsel will seek approval from the Court of the following opt-out process as part of the order certifying the Proceeding as a class proceeding for settlement purposes:

- (a) Persons seeking to opt-out of the Proceeding must do so by sending a written election to opt-out signed by the Person, by pre-paid mail, courier or email to the Claims Administrator at an address to be identified in the First Notice.
- (b) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the First Notice. Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by the Claims Administrator. Where the opt-out election is sent by email or facsimile, it must be received on or before the Opt-Out Deadline.
- (c) The written election to opt-out in the form attached as Schedule “G” must be signed by the Class Member and must contain the following information in order to be valid:

- (i) the Class Member's full name, current address, and telephone number;
  - (ii) a statement to the effect that the Class Member wishes to be excluded from the Proceeding; and
  - (iii) the reason for opting out of the Proceeding.
- (d) Any person who validly opts out of the Proceeding shall be excluded from the Proceeding and Class, and shall no longer participate or have the opportunity to participate in the Proceeding or to share in the distribution of any funds received as a result of the settlement in the Proceeding.
- (e) Any Class Member who does not validly opt out of the Proceeding in the manner and time proscribed above, shall be deemed to have elected to participate in the Proceeding and no further right to opt out of the Proceeding will be provided in the future.

5.1.2 Within seven (7) days of the Opt-Out Deadline, the Claims Administrator will provide Class Counsel a report containing the names of each proposed Class Member who has validly and timely opted-out of the Proceeding.

5.1.3 With respect to any person who validly opts out of the Proceeding, the Defendants reserve all of their legal rights and defences.

5.1.4 The Plaintiff expressly waives all rights to opt out of the Proceeding.

## **5.2 Objection Procedure**

5.2.1 A Class Member may object to the approval of the Settlement Agreement by sending an Objection and Notice of Intention to Appear by pre-paid mail, courier or email to the Claims Administrator.

5.2.2 Objections must be received before 5:00 pm PST on or before the Objection Deadline.

5.2.3 A Class Member who wishes to object to the approval of the Settlement Agreement shall state in their objection:

- (a) The full name, current mailing address, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes they are a member of the Class and the reason for that belief; and



- (d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel.

5.2.4 A Class Member who opts out shall not be entitled to submit a written objection or appear or be heard at the Settlement Approval Hearing.

5.2.5 Within seven (7) days of the Objection Deadline, the Claims Administrator will provide Class Counsel a copy of each Objection and Notice of Intention to Appear.

## **SECTION 6– TERMINATION OF SETTLEMENT AGREEMENT**

### **6.1 Right of Termination**

6.1.1 The Defendants shall have the right, in their sole discretion, to terminate this Settlement Agreement if:

- (a) The Court declines to certify the Proceeding for the purposes of this Settlement Agreement;
- (b) The Court declines to approve this Settlement Agreement or any term or part thereof deemed material by the Defendants;
- (c) The Court approves this Settlement Agreement in a materially modified form;
- (d) The Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement or not substantially in the form attached to this Settlement Agreement as Schedule “C”;
- (e) Any order approving this Settlement Agreement made by the Court does not become a Final Order;
- (f) Twenty (20) or more proposed Class Members opt out of the Class during the court approved Opt-Out Period.

6.1.2 To exercise a right of termination, the Defendants shall deliver a written notice of termination to Class Counsel. Upon delivery of such a written notice, the Settlement Agreement is terminated, this Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

6.1.3 Any order, ruling or determination made by the Court with respect to a reduction of Class Counsel Fees, Class Counsel Disbursements, or the Honorarium payable shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

## 6.2 If Settlement Agreement is Terminated

6.2.1 If this Settlement Agreement is not approved, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

- (a) no application to certify this Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) the Parties will cooperate in seeking to have any issued order certifying the Proceeding as a class proceeding on the basis of this Settlement Agreement set aside and declared null and void and of no force or effect, and any party shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issues for Settlement Purposes pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Defendants may later take on any issue in the Proceeding, or any subsequent proceedings; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall make reasonable efforts to destroy all documents or other materials provided by the Defendants and/or Counsel for the Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Defendants and/or Counsel for the Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Defendants and/or Counsel for the Defendants to any other Person, shall make reasonable efforts to recover and destroy such documents or information. Class Counsel shall provide Counsel for the Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this paragraph shall be construed to require Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendants and/or Counsel for the Defendants, or received from the Defendants and/or Counsel for the Defendants in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the relevant Defendant(s). Class Counsel shall take appropriate steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

## **SECTION 7 – RELEASES, DISCONTINUANCE AND DISMISSAL**

### **7.1 Release of Releasees**

7.1.1 Upon the Effective Date, and in consideration of the Settlement Funds and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

7.1.2 The Releasors acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally, and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of additional or different facts.

7.1.3 Without limiting any other provisions herein, each Class Member, whether or not he or she submits a claim or otherwise receives an award, will be deemed by this Settlement Agreement completely and unconditionally to have released and forever discharged the Releasees from any and all Released Claims.

7.1.4 Each Class Member, whether or not he or she submits a claim or otherwise receives an award, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against any of the Defendants or Releasees any claims that relate to or constitute any Released Claims.

7.1.5 For the consideration provided herein, the Releasors agree not to make any claim or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, the *Business Practices and Consumer Protection Act*, or other comparable provincial legislation and any amendments thereto, the common law, Québec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees.

### **7.2 No Further Claims**

7.2.1 Upon the Effective Date, each of the Releasors shall not, nor encourage others to, then or thereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee, or any other person who may claim contribution or indemnity or other claims over relief from any Releasee, in respect of any Released Claim. For greater certainty and without

limiting the generality of the foregoing, each of the Releasors shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

7.2.2 In the event that litigation, commenced or continued by any Class Member against another person arising out of or in any way relating to the Released Claims, results in a claim over or judgment against the Releasees, that Class Member shall fully hold harmless, reimburse, and indemnify the Releasees for all legal fees, expenses, and judgments in connection with such litigation.

### **7.3 Discontinuance of the Proceeding**

7.3.1 Upon the Effective Date, Class Counsel will take steps to file a notice of discontinuance of all claims in the Proceeding, without costs.

7.3.2 Upon the Effective Date, each Class Member shall be deemed to irrevocably consent to the discontinuance of all claims in the Proceeding, without costs.

### **7.4 Material Term**

7.4.1 The releases, discontinuances, and granting of consent contemplated in this Section 7 shall be considered a material term of the Settlement Agreement and, without limiting any other provisions of the Settlement Agreement, the failure of any Court to approve the releases, discontinuances, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6 of the Settlement Agreement.

## **SECTION 8 – EFFECT OF SETTLEMENT**

### **8.1 No Admission of Liability**

8.1.1 The Plaintiff and the Defendants expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement (including the certification of the Proceeding as against the Defendants for settlement purposes), 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 whatsoever by the Defendants, or of the truth of any of the claims or allegations contained in the Proceeding against the Defendants and cannot be used for any purpose whatsoever in any subsequent proceeding relating to the matters in issue.

### **8.2 Agreement not Evidence**

8.2.1 The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this

Settlement Agreement (including the certification of the Proceeding against the Defendants for settlement purposes), shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

## **SECTION 9 – CERTIFICATION FOR SETTLEMENT ONLY**

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

9.1.1 The Parties agree that the Proceeding shall be certified as a class proceeding as against the Defendants solely for purposes of settlement of the Proceeding and the approval of this Settlement Agreement by the Court.

9.1.2 The Plaintiff agrees that, in the motion for certification of the Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issues that they will seek to define are the Common Issues for Settlement Purposes and the only class that they will assert is the Class.

## **SECTION 10 – NOTICES TO SETTLEMENT CLASS**

### **10.1 Notices Required**

10.1.1 Class Members shall be given a single First Notice in the form attached as Schedule “D” of: (i) the certification of the Proceeding as a class proceeding as against the Defendants for settlement purposes; (ii) the right to opt out of the Proceeding and Objection and Notice of Intention to Appear at the Settlement Approval Hearing (iii) the hearing at which the Court will be asked to approve the Settlement Agreement and to approve Class Counsel Fees and Class Counsel Disbursements.

10.1.2 If this Settlement is approved, Class Members will receive the Second Notice in the form attached as Schedule “E” advising of the process for applying to receive settlement benefits.

### **10.2 Form and Distribution of Notices**

10.2.1 The First Notice and the Second Notice described in the above paragraphs shall be in a form attached as Schedules “D” and “E”, and approved by the Court.

10.2.2 The First Notice and the Second Notice shall be disseminated by the methods set out in this Settlement Agreement or its Schedules and approved by the Court.



## **SECTION 11 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES**

### **11.1 Responsibility for Fees, Disbursements and Taxes**

11.1.1 Other than as stipulated herein, the Defendants shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or Class Members, or any lien of any Person on any payment to any Class Member.

### **11.2 Court Approval for Class Counsel Fees and Disbursements**

11.2.1 Class Counsel shall seek the Courts' approval to pay Class Counsel Disbursements, Class Counsel Fees, and the Honorarium contemporaneous with seeking approval of this Settlement Agreement.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Authorship**

12.1.1 The Settlement Agreement shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them solely by reason of authorship.

### **12.2 Public Comments**

12.2.1 The Parties and their respective counsel agree that when publicly commenting on the Claims that have been settled pursuant to the Settlement Agreement, they can only:

- (a) inform the inquirer that all Released Claims have been settled pursuant to the Settlement Agreement and to the satisfaction of the Parties and the Claimants;
- (b) inform the inquirer that the settlement of the Released Claims, which are subject to the Settlement Agreement, is fair, reasonable; and in the best interests of the Class;
- (c) decline to comment in a manner that would cast the conduct of any party in a negative light, or reveal anything expressed, either orally or in writing, during settlement negotiations; and
- (d) inform the inquirer the Settlement Agreement is not to be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability whatsoever by the Defendants, or of the truth of any of the claims or allegations contained in the Proceeding against the Defendants.

### **12.3 Motions for Direction**

12.3.1 Class Counsel or the Defendants may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

12.3.2 All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

### **12.4 Headings, etc.**

12.4.1 In this Settlement Agreement:

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

### **12.5 Computation of Time**

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

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as "holiday" is defined in the *Supreme Court Civil Rules*, BC Reg 168/2009, the act may be done on the next day that is not a holiday.

### **12.6 Ongoing Jurisdiction**

12.6.1 The Court shall maintain jurisdiction with respect to implementation, administration, interpretation, and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Class Members, and Defendants attorn to the jurisdiction of the Court for such purposes. This provision shall not be used by any entity, whether or not a party to these proceedings, in an effort to establish any of the alleged facts, the jurisdiction of the Canadian courts over any foreign party, or the certification of any other proceedings in any province of Canada.

## **12.7 Governing Law**

12.7.1 This Settlement Agreement and all disputes arising out of or in connection with it shall be governed by and construed and interpreted exclusively in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

## **12.8 Entire Agreement**

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

## **12.9 Amendments**

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

## **12.10 Binding Effect**

12.10.1 This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, the Releasors, the Releasees, and all of their successors and assigns, in all jurisdictions in Canada. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees in all jurisdictions of Canada.

## **12.11 Counterparts**

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

## **12.12 Negotiated Agreement**

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



### **12.13 Language**

12.13.1 The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English. An official translation in French is also available. In case of any ambiguity or dispute about interpretation arising out of a French translation prepared by the Parties, the English version is official and shall prevail.

### **12.14 Recitals**

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

### **12.15 Schedules**

12.15.1 The schedules annexed hereto form part of this Settlement Agreement.

### **12.16 Acknowledgements**

12.16.1 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 the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

### **12.17 Authorized Signatures**

12.17.1 Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

### **12.18 Notice**

12.18.1 Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another Party, such notice, communication or

document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For the Plaintiff:**

Anthony Leoni  
**Rice Harbut Elliott LLP**  
 Injury Trial Lawyers  
 Suite #820 – 980 Howe Street  
 Vancouver, BC V6Z 0C8  
 Tel: 604-682-3771  
 Fax: 604-682-0587  
 Email: ALeoni@rhelaw.com

**For the Defendants:**


Brad W. Dixon, K.C.  
 Jake Cabott  
**Borden Ladner Gervais LLP**  
 1200 Waterfront Centre  
 200 Burrard Street  
 P.O. Box 48600  
 Vancouver, BC V7X 1T2  
 Tel: 604-640-4111  
 Fax: 604-687-1415  
 Email: BDixon@blg.com

**12.19 Date of Execution**

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

**PLAINTIFF:**

Name of Authorized Signatory: Adam Rawski

Name of Authorized Signatory:   
 Adam Rawski, on behalf of himself and the Class

Name of Authorized Signatory: \_\_\_\_\_

Name of Authorized Signatory: Rice Harbut Elliott LLP

document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

**For the Plaintiff:**

Anthony Leoni  
**Rice Harbut Elliott LLP**  
 Injury Trial Lawyers  
 Suite #820 – 980 Howe Street  
 Vancouver, BC V6Z 0C8  
 Tel: 604-682-3771  
 Fax: 604-682-0587  
 Email: ALeoni@rhelaw.com

**For the Defendants:**

Brad W. Dixon, K.C.  
 Jake Cabott  
**Borden Ladner Gervais LLP**  
 1200 Waterfront Centre  
 200 Burrard Street  
 P.O. Box 48600  
 Vancouver, BC V7X 1T2  
 Tel: 604-640-4111  
 Fax: 604-687-1415  
 Email: BDixon@blg.com

**12.19 Date of Execution**

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

**PLAINTIFF:**

Name of Authorized Signatory: \_\_\_\_\_

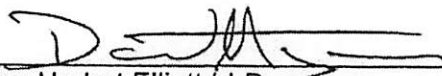
Name of Authorized Signatory: \_\_\_\_\_

Adam Rawski, on behalf of himself and the Class

Name of Authorized Signatory: \_\_\_\_\_

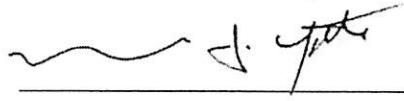
David Honeyman

Name of Authorized Signatory: \_\_\_\_\_

  
 Rice Harbut Elliott LLP

**BLACK DIAMOND EQUIPMENT, LTD., CLARUS CORPORATION, PIEPS GMBH  
AND PIEPS CANADA**

Name of Authorized Signatory:

  
\_\_\_\_\_

Name of Authorized Signatory:

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

**Schedule A – Consent Certification and Notice Approval Order**

ACTION NO. S2010419  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

ADAM RAWSKI

PLAINTIFF

AND

BLACK DIAMOND EQUIPMENT, LTD., CLARUS CORPORATION, AND  
PIEPS GMBH

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION**

BEFORE } THE HONOURABLE JUSTICE BLAKE } \_\_\_/\_\_\_/2024

ON THE APPLICATION of the plaintiff, Adam Rawski, coming on for hearing in person at the Courthouse at 800 Smithe Street Vancouver, BC on \_\_\_\_\_, 2024; and on hearing Anthony Leoni for the plaintiff and Jake Cabott for the Defendants;

**AND ON READING** all materials filed and on hearing the submissions of counsel, and  
**BY CONSENT** of all parties;

THIS COURT ORDERS that:

1. For the purposes of the Order, except to the extent that they are modified in this Order, the definitions set out in the settlement agreement dated \_\_\_\_\_ ("**Settlement Agreement**"), and attached as **Schedule 1** to this Order, apply to and are incorporated into this Order;
2. This Proceeding is certified as a class proceeding as against the Defendants for settlement purposes only;
3. Notice is approved in the forms set out as Schedule "D" and Schedule "E" to the Settlement Agreement;
4. The Class is defined as:
  - a. All persons resident in Canada, except for the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors (the "**Excluded Persons**"), who purchased electronic avalanche transceivers in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice (the "**Beacons**") in Canada from January 1, 2013 to April 12, 2021 (the "**Class Period**");
5. Adam Rawski is appointed the representative plaintiff on behalf of the Class;
6. Rice Harbut Elliott LLP is appointed class counsel on behalf of the Class ("**Class Counsel**");
7. RicePoint Administration Inc. ("**RicePoint**") be appointed as Claims Administrator on behalf of the Class;
8. Within three weeks of the date of this Order, the Defendants will provide to RicePoint any email contact information they have for known Class Members as a result of purchases using a loyalty program or online purchases or confirm that they do not have email contact information for known Class Members. RicePoint will only use the information provided to create a contact list to effect to Class Members the Notice of Proposed Settlement and Settlement Approval Hearing, and should it be approved, Notice of Settlement to any Class Member. RicePoint will destroy all records received from the Defendants after the contact list has been created, and will destroy the email contact information of Opt-Outs which was received from the Defendants;
9. Notice of certification will be distributed to known members of the Class by email and to unknown members of the Class by advertisements in French and English on Google Display Network, Facebook, and Instagram, with an additional press release over PR Newswire's Canadian Bilingual Newswire;



10. Notice distributed to known Class Members by email will state that the Court ordered that such notice be conveyed in this matter based on contact information the Court ordered the Defendants provide;
11. The procedure by which any Person can opt out of this Action as set out in paragraphs 5.1.1 to 5.1.4 of the Settlement Agreement is hereby approved;
12. Schedule G to the Settlement Agreement (Opt-Out Form) is hereby approved;
13. Any Person who opts out of this action in accordance with Schedule G to this Settlement Agreement shall be excluded from the Class and the Proceeding;
14. The hearing date for the approval of the Settlement Agreement ("**Settlement Approval Hearing**") is hereby set for \_\_\_\_\_;
15. The procedure by which any Person can file an Objection and Notice of Intention to Appear at the Settlement Approval Hearing as set out in paragraphs 5.2.1 to 5.2.5 of the Settlement Agreement is hereby approved;
16. If the Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, this Order, including certification for settlement purposes only, shall be set aside and declared null and void and of no force or effect without the need for any further order of this Court; and
17. The Common Issues for Settlement Purposes set out in Schedule B to the Settlement Agreement are hereby approved.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of Class Counsel  
Anthony Leoni

\_\_\_\_\_  
Signature of Counsel for the Defendants  
Jake Cabott

By the Court

\_\_\_\_\_  
Registrar

**SCHEDULE 1**  
**[Settlement Agreement]**

### **Schedule “B” – Common Issues for Settlement Purposes**

The Plaintiff seeks certification of the following common issues for settlement purposes only:

#### ***Definitions***

1. Capitalized terms have the same meaning as defined in the Third Amended Notice of Civil Claim and Notice of Application for certification.

#### ***Negligence and Failure to Warn***

2. Did the Defendants, or any of them, develop, manufacture, distribute and/or sell the Beacons in the Canadian market during the Class Period?
3. Did one or more of the Defendants breach the standard of care owed to the Plaintiff and Class Members with respect to the development, design, research, testing, manufacturing, marketing, distribution, import and/or sale of the Beacons, and if so, when and how?
4. Did the Defendants have a duty to warn the Plaintiff and Class Members of the Defect inherent in the Beacons?
5. When did the Defendants know or ought to have known of the Defect?
6. Was the free replacement hardcase carrying system offered by the Defendants (the “Hard Case”) a suitable repair of the Defect, and if not, why not?

#### ***Causation and Damages in Negligence***

7. Is it a reasonably foreseeable consequence of the Defect that Class Members could experience personal injury and/or death as a result of the Defect?
8. Are Class Members entitled to damages, restitution or disgorgement for negligence and/or failure to warn and, if so, in what amount?
9. If so, can the amount of damages be determined on an aggregate basis and, if so, in what amount?

#### ***Breach of Contract/Breach of SGA***

10. Did the Defendants have an implied contract with Class Members that the Beacons would be of merchantable quality and fit for use?
11. Were the Beacons sold and distributed by the Defendants not of merchantable quality and/or unfit for their intended use due to the Defect?

12. Did the Defendants breach their contract with Class Members?
13. Are Class Members entitled to a claim for recovery against the Defendants under Sale of Goods Legislation for breach of the implied condition that the goods be of merchantable quality and/or the implied warranty or condition as to the quality or fitness of the Beacons for their intended use?

***Breach of Consumer Protection Legislation***

14. Did one or more of the Defendants engage in conduct that constituted deceptive, unfair and/or unconscionable acts or practices, contrary to the *BPCPA* including ss. 4, 8, 171 and 172 and other Consumer Protection Legislation?
15. If so, are some or all of the Class Members entitled to restoration of the purchase price acquired from them, pursuant to s. 172 of the *BPCPA* or, alternatively, to damages for the losses they suffered, pursuant to s. 171 of the *BPCPA* and the other Consumer Protection Legislation?
16. Can the amount of restitution be determined on an aggregate basis and, if so, in what amount?

***Competition Act***

17. Did the Defendants, or any of them, engage in conduct contrary to s. 52 of the *Competition Act*?
18. If so, what damages, if any, are payable by the Defendants to the Class Members pursuant to s. 36 of the *Competition Act*?
19. Can the damages be determined on an aggregate basis and, if so, in what amount?
20. Should the Defendants, or any of them, pay the full costs, or any costs, of the investigation into this matter, including the cost of the proceeding or part thereof, pursuant to s. 36 of the *Competition Act* and if so, in what amount?

***Unjust Enrichment***

21. Have the Defendants, or any of them, been unjustly enriched by the receipt, either directly or indirectly, of payments from the Class Members for the Beacons that were subject to the Defect?
22. If so, what amount of restitution, if any, is payable by the Defendants to the Class Members?
23. Can the amount of restitution be determined on an aggregate basis and, if so, in what amount?

***Punitive Damages***

24. Are the Defendants, or any of them, liable to pay punitive or exemplary damages having regard to the nature of their conduct and, if so, in what amount?

***Directions Post-Common Issues Trial***

25. If the court determines that one or more of the Defendants are liable to the Class Members for damages, and if the court considers that the participation of individual Class Members is required to determine individual issues, then are the following individual issues appropriate: are the Class Members who have suffered personal injury, including death, as a result of the Defect entitled to damages?
- (a) are the Class Members entitled to damages for costs incurred in purchasing the Beacons?
  - (b) are the Class Members entitled to damages for costs incurred in purchasing the Beacons?
26. Should one or more of the Defendants pay the costs of administering and distributing any amounts awarded under s. 33 of the *CPA*? If so, what amount should be paid and to whom?
27. Should one or more of the Defendants pay prejudgment and post judgment interest? If so, at what annual interest rate? Should the interest be simple or compound?

**Schedule "C" – Final Order**

ACTION NO. S2010419  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

ADAM RAWSKI

PLAINTIFF

AND

BLACK DIAMOND EQUIPMENT, LTD., CLARUS CORPORATION, AND  
PIEPS GMBH

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION**

BEFORE } THE HONOURABLE JUSTICE BLAKE } \_\_\_\_/\_\_\_\_/2024

ON THE APPLICATION of the plaintiff, Adam Rawski, coming on for hearing in person at the Courthouse at 800 Smithe Street Vancouver, BC on \_\_\_\_\_, 2024; and on hearing Anthony Leoni for the plaintiff and Jake Cabott for the Defendants;

**AND ON READING** all materials filed and on hearing the submissions of counsel;

**AND ON BEING ADVISED** that all parties consent to the Order;

1. THIS COURT ORDERS that the terms of the Settlement Agreement reached between the parties as set out in the Settlement Agreement attached as **Schedule 1** to this Order are hereby approved and that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement;

2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is fair, reasonable and in the best interest of the Class;

3. THIS COURT ORDERS AND DECLARES that, in accordance with the Settlement Agreement, this proceeding was certified on consent as a class proceeding, subject to

the terms and conditions of this Settlement Agreement, including the Defendants' express reservation of rights to contest certification or authorization of any other related or unrelated proceedings and their rights to defend on the merits any other related or unrelated proceedings;

4. THIS COURT ORDERS AND DECLARES that the Plaintiff and Class Member Releasors have fully and finally released and forever discharged the Releasees from the Plaintiff and Class Members' Released Claims, in keeping with the terms of the Settlement Agreement;

5. THIS COURT ORDERS AND DECLARES that the Plaintiff and Class Member Releasors are barred, prohibited, and enjoined from bringing claims, except claims by any persons for personal injury and/or death, against the Defendants or others as set out in paragraphs 7.1.4 and 7.2.1 of the Settlement Agreement;

6. THIS COURT ORDERS AND DECLARES that that this Court retains continuing exclusive jurisdiction over the Parties and the Class to administer, supervise, construe, and enforce this Settlement Agreement;

7. THIS COURT ORDERS AND DECLARES that the parties may bring such motions to this Court for directions as may be required in relation to the implementation, administration, interpretation, and enforcement of the Settlement Agreement; and

8. THIS COURT ORDERS that the Action is hereby dismissed with prejudice as against each of the Defendants, on a without costs basis, and each Class Member shall be deemed to irrevocably consent to such dismissal.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

\_\_\_\_\_  
Signature of Class Counsel  
Anthony Leoni

\_\_\_\_\_  
Signature of Counsel for the Defendants  
Jake Cabott

By the Court

\_\_\_\_\_  
Registrar



**SCHEDULE 1**  
**[Settlement Agreement]**

## Schedule “D” – First Notice

### Notice of Proposed Settlement and Settlement Approval Hearing

**DID YOU PURCHASE PIEPS BRANDED AVALANCHE BEACONS IN CANADA  
FROM JANUARY 1, 2013 TO APRIL 12, 2021?**

***YOUR LEGAL RIGHTS MAY BE AFFECTED***

#### Why did I get this Notice?

All Canadian residents who purchased a PIEPS DSP Sport, a PIEPS DSP Pro, or a PIEPS DSP Pro Ice (the “**Beacons**”) in Canada from January 1, 2013 to April 12, 2021 (the “**Class**” or “**Class Members**”) have the right to know about a proposed settlement that has been reached in a lawsuit *Rawski v. Black Diamond Equipment et al.*, S.C.B.C. No. VLC S-2010419 (the “**Class Action**”).

On \_\_\_\_\_, the BC Supreme Court certified the Class Action for the purpose of settlement. A copy of the Court’s Order can be obtained here [insert link].

The proposed settlement of the Class Action must be approved by the Court to become binding. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing or fault by any of the Defendants.

The Plaintiff who filed the lawsuit on behalf of the Class Members is Adam Rawski (called the “**Representative Plaintiff**”).

The lawyers for the Class are Rice Harbut Elliott LLP (“**Class Counsel**”).

#### What is the Class Action about?

The Class Action alleges that PIEPS branded Beacons were not safe for their intended use and the Defendants failed to warn consumers about the risks of a defective locking mechanism on the Beacons which caused the Beacons to unexpectedly change modes from “send” to “search” or “off”.

The Defendants deny the allegations, which have not been proven, and are defending the lawsuit.

#### Who are the Class Members affected by the settlement?

The Class consists of:

All persons resident in Canada, except for the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors (the “**Excluded Persons**”), who purchased electronic avalanche transceivers in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice (the “**Beacons**”) in Canada from January 1, 2013 to April 12, 2021 (the “**Class Period**”).

If you are not sure whether you are included in the Class, you can ask for free help by calling the settlement administrator at <phone number> for more information. You can also visit <website> for more information or send an email to <email address>.

**Will I receive compensation from this settlement if it is approved?**

The amount of compensation each Class Member is entitled to depends on the particular circumstances of the Class Member and will be determined by reference to a settlement distribution protocol to be approved by the Court, a draft of which can be found here: <hyperlink>.

The current projection is that Class Members who purchased a replacement Beacon (between October 1, 2020 and April 12, 2021) will receive a Compensatory Payment of \$300, whereas Class Members who did not purchase a replacement Beacon will receive a Compensatory Credit of \$50 toward any purchase on the Defendants’ online stores.

The precise amount of claims may be reduced depending upon the number of claims that are made.

Note: The proposed settlement does not include claims for personal injury or death in relation to the Beacons.

**What if I wish to advance a claim for personal injury or death? Can I still participate in the Class Action settlement?**

Yes. Class Members with personal injury claims may receive a Compensatory Payment or a Compensatory Credit from the settlement without jeopardizing any potential claims for personal injury damages.

**What are the terms of the settlement?**

The settlement provides for the payment of up to \$\_\_\_\_\_ by the Defendants, in exchange for a full release of all claims (except personal injury claims) against them by the Class.

A further Court hearing will be held to seek approval of the Settlement Agreement by the Court (the "**Settlement Approval Hearing**"). The Settlement Approval Hearing will take place on \_\_\_\_\_.

If the Court approves the proposed settlement, it will be binding on all Class Members who do not opt out of the proceeding.

The full settlement terms and court documents are available at the following link:

<hyperlink>

### **How do I participate?**

**If you are a Class Member and you want to participate in the settlement, you do not need to do anything.** You are automatically included as a Class Member unless you opt out of the applicable proceeding.

After the Court approves the settlement, you will be notified in writing regarding how to apply for compensation.

You may contact Class Counsel if you would like to be notified when this information becomes available.

### **What if I do NOT want to participate in the settlement?**

If you do not want to participate in the settlement, you may exclude yourself ("**Opt Out**") from this Action. Any Class Member who elects to Opt Out of the settlement of this Action and does so successfully (the "**Opt Out Individuals**") will have the option to start their own individual action against the Defendants **at their own expense**. Class Counsel warns those individuals who are contemplating Opting Out that if they choose to Opt Out and pursue their own individual lawsuit at their own cost, they will likely face significant **challenges proving their case**, as did the Plaintiffs in this Action. If unsuccessful in prosecuting their own action, the Opt Out Individuals may be responsible for the payment of costs to the Defendants. Such costs will be the **sole responsibility** of the Opt Out Individuals.

If you Opt Out, you will **not** be able to make a claim for compensation under the proposed settlement.

In order to Opt Out, you must complete and sign an Opt-Out form and deliver it to the Claims Administrator (RicePoint) by pre-paid mail, courier, or email no later than the Opt-Out Deadline, which is 60 days after the date on which this Notice was first published, or **[precise date]**. The Opt-Out form is available at <website>.

The Opt-Out form must be emailed to <email address> or mailed or couriered to:

RicePoint Administration, Inc.

[insert mailing address, fax, and email]

**Attention: [Name]**

**What are the legal fee arrangements?**

Under the terms of their retainer agreement with the Representative Plaintiff, Class Counsel will seek approval of a legal fee of 30% of the settlement amount payable to the Class Members, plus disbursements, applicable taxes, administration expenses, and an honorarium of \$5,000 to the Representative Plaintiff.

Class Counsel fees, disbursements and any payments to the Representative Plaintiff are also subject to Court approval to ensure fairness.

**What if I want to object to the settlement or legal fee?**

All Class Members have the right to let the Court know of any objection they have to the approval of the Settlement Agreement, claims administration and distribution protocol, Class Counsel fees, disbursements, administration expenses or the payment of an honorarium to the Representative Plaintiff. To make an objection, you must deliver a letter or written objection by pre-paid mail, courier, or email to the Claims Administrator (RicePoint) no later than 60 days after the date on which this Notice was first published, or on or before 5:00 pm PST on **[SPECIFIC DATE]**.

If a Class Member wishes to object, the following information must be included in the letter or written objection delivered to the Claims Administrator:

- a) The objector's full name, current mailing address, telephone number and email address;
- b) A brief statement of the nature and reasons for the objection;
- c) A declaration that the person believes they are a member of the Class and the reason for that belief; and
- d) Whether the objector intends to appear at the Approval Hearing or intends to appear by counsel, and if by counsel, the name, address, telephone number, fax number, and email address of counsel.

**For more information or a copy of the Settlement Agreement**, go to the following website:

<website>

You may also contact Class Counsel at <email?> or via mail at the address above.

This notice has been authorized by an order of the Supreme Court of British Columbia.

## Schedule “E” – Second Notice

### Class Action Legal Notice

**IF YOU PURCHASED PIEPS BRANDED AVALANCHE BEACONS IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021, YOU MAY BE ENTITLED TO RECEIVE MONEY**

#### Why I Am I Receiving This Notice?

This class action lawsuit has ended with a settlement for:

- a) All persons resident in Canada, except for the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors (the “**Excluded Persons**”), who purchased electronic avalanche transceivers in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice (the “**Beacons**”) in Canada from January 1, 2013 to April 12, 2021 (the “**Class Period**”).

(“**Class Members**”)

As a possible Class Member, you may be eligible to receive a share of the Settlement Funds. **However, there is a deadline for making a claim (see next heading).**

Settlement Funds of approximately \$\_\_\_\_\_ (after legal fees, claims administration costs and disbursements are deducted) are available to pay all eligible claimants, known as Class Members, who make a claim.

#### Deadline For Making a Claim

**Important:** The deadline for making a claim is <@>.

All claims must be received by the Claims Administrator, **NO LATER THAN 150 days after the settlement of the Class Action has been approved, or <@>.**

#### Who Can Make a Claim?

You must match **Option A and/or B** in order to be eligible for compensation.

OPTION	IF YOU PURCHASED A PIEPS DSP SPORT, PIEPS DSP PRO, OR A PIEPS DSP PRO ICE IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021 <u>AND:</u>	THEN:
<b>A</b> <b>[COMPENSATORY PAYMENT]</b>	You purchased a replacement beacon between October 1, 2020 and April 12, 2021.	You may be eligible for up to \$300 in compensation. Please complete the Claim Application form.



OPTION	IF YOU PURCHASED A PIEPS DSP SPORT, PIEPS DSP PRO, OR A PIEPS DSP PRO ICE IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021 <u>AND:</u>	THEN:
<b>B</b> [COMPENSATORY CREDIT]	You did <u>not</u> purchase a replacement beacon or you purchased a replacement beacon outside of the period of October 1, 2020 to April 12, 2021.	You may be eligible for a \$50 online store credit. Please complete the Claim Application form.

### How Do I Make a Claim?

You must fully complete the Court-approved Claim Application form.

To complete the form, you must do so electronically by visiting the following website:

[Website for Claim Application Portal]

### WHAT ARE MY OPTIONS?

<b>1. Submit a Claim Application Form</b>	If you want to receive money you <b>MUST SUBMIT</b> a Claim Application form to the Claims Administrator <b>NO LATER THAN [DATE]</b> .
<b>2. Do Nothing</b>	If you do <b>not</b> make a claim, you will <b>not</b> get any money and you will give up the right to get money in the future.

## Schedule “F” – Class Action Claim Application Form

<hyperlink to website>

### **PIEPS BRANDED AVALANCHE BEACON CLASS ACTION SETTLEMENT CLAIM APPLICATION FORM**

---

Complete this Claim Application form if you want to apply for payment from the class action settlement fund.

**Completed Claim Application forms must be submitted to the Claims Administrator, RicePoint Administration Inc., by no later than 5:00 p.m. PST on <date>.**

Late claim submissions will NOT be accepted and they are invalid.

A class action lawsuit has ended with a settlement for:

- a) All persons resident in Canada, except for the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors (the “**Excluded Persons**”), who purchased electronic avalanche transceivers in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice (the “**Beacons**”) in Canada from January 1, 2013 to April 12, 2021 (the “**Class Period**”).  
 (“**Class Members**”)

Class Members who meet **Options A or B** criteria below can claim money using this Claim Application form.

As part of this claims settlement process, your claim for money will be received and assessed by an independent Administrator (“**Claims Administrator**”). Your claim information will be reviewed, and a decision will be made about whether you are eligible for money, and if so, how much.

#### **WHO CAN MAKE A CLAIM?**

If you reside in Canada and did not opt-out of the class proceeding against Black Diamond, Clarus, and PIEPS regarding the Beacons you may submit a claim if you match **Option A or B** below.

<b>OPTION</b>	<b>IF YOU PURCHASED A PIEPS DSP SPORT, PIEPS DSP PRO, OR A PIEPS DSP PRO ICE IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021 <u>AND:</u></b>	<b>THEN:</b>
<b>A</b> <b>[COMPENSATORY PAYMENT]</b>	You purchased a replacement beacon between October 1, 2020 and April 12, 2021.	You may be eligible for up to \$300 in compensation. Please complete the Claim Application form.
<b>B</b>	You did <u>not</u> purchase a replacement beacon or you purchased a replacement	You may be eligible for a \$50 online store credit.

OPTION	IF YOU PURCHASED A PIEPS DSP SPORT, PIEPS DSP PRO, OR A PIEPS DSP PRO ICE IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021 <u>AND:</u>	THEN:
[COMPENSATORY CREDIT]	beacon outside of the period of October 1, 2020 to April 12, 2021.	Please complete the Claim Application form.

ONLY ONE CLAIM PER CLASS MEMBER. A claimant may be awarded either a Compensatory Payment or a Compensatory Credit, but not both.

### **HOW TO MAKE A CLAIM**

Your claim must be submitted by no later than 5:00 p.m. PST on <date>.

The information you provide in your Claim Application form will be considered by the Claims Administrator to determine whether you are eligible to receive a portion of the settlement funds. Please ensure you have provided complete and accurate information.

The information you provide in your Claim Application form will be kept confidential by the Claims Administrator and Class Counsell and will not be shared with third parties.

### **NEED HELP COMPLETING THIS CLAIM APPLICATION FORM?**

If you are unable to complete this form and need help, you can contact the Claims Administrator at: <email>

The Claims Administrator's Website is: <website>

If you require legal advice as you complete this Claim Application form, or if you have any further questions which cannot be answered by the Claims Administrator, Class Counsel are also available (at no cost) to help you. You can reach Class Counsel at: <email> / <phone>

You may also decide to consult another lawyer of your choosing at your own cost.

### **Making a Claim**

**Important:** The deadline for making a claim has been set by the Court. This completed Claim Application form **must** be submitted to the Administrator **NO LATER THAN** <@>. **If your claim is submitted after this time/date, your claim will not be processed, and you will be ineligible for any payment.**

To make a claim, please fill in the information below and click the "Submit" button after all information has been provided.

### **CHANGES TO CLAIM APPLICATION FORM AFTER SUBMISSION**

If you need to make changes to any information in your Claim Application form after you have sent it to the Claims Administrator, please do so as soon as possible. Examples of important changes include a change

of address and corrections to any information. If your Claim Application form is incomplete or does not contain all required information, you will be asked to provide more details. This may delay the processing of your claim. The information you provide in your Claim Application form is a very important part of what will be considered when deciding whether to pay you money and if so, how much money.

#### SECTION A: CLAIMANT CONTACT INFORMATION

(\*indicates required fields)

First Name*		Last Name*	
Current Address*			
City/Town*	Province*	Country*	Postal Code*
Telephone Number*		Email Address*	
<p>*Click <a href="#">HERE</a> to upload a picture or copy of your government issued ID (e.g., driver's license, provincial or territorial identification card).</p>			

**Important Note:** Correspondence from the Claims Administrator and/or Class Counsel will be sent to the address you provide above.

#### SECTION B: DESCRIPTION OF CLAIM

**Question #1:** Did you purchase a PIEPS DSP Sport, PIEPS DSP Pro, or PIEPS DSP Pro Ice in Canada between January 1, 2013 and April 12, 2021?

YES ☐

(Go to question #2)

NO ☐

([See Note below.](#))

**Note:** if you answered 'No' to Question #1, you are not eligible to receive compensation.

**Question #2:** Did you purchase a replacement beacon between October 1, 2020 and April 12, 2021?

YES ☐

(Go to next section)

NO ☐

([See Note below.](#))

**Note:** if you answered 'No' to Question #2, you are eligible to receive compensation in the form a Compensatory Credit (store credit).

- If you have proof of purchase (i.e. receipts), **please provide a copy of all receipts.**
- If you do not have proof of purchase, you will be required to complete the attestation below.
- There is a fund of \$50,000 available to split, on a first-come-first-serve basis. Once the fund is depleted, no further claims for Compensatory Credit will be processed.

**Note:** if you answered 'Yes' to Question #2, you are eligible to receive compensation in the form a Compensatory Payment.

- If you have proof of purchase (i.e. receipts), **please provide a copy of all receipts.**
- If you do not have proof of purchase, you will be required to complete the attestation below.
- There is a fund of \$120,000 available to split. The precise amount of payment will not be known until after the Claim Period has passed (after <date>). The amount paid per Class Member will depend on the total number of claims made on the settlement fund, but is expected to be up to \$300 per claim.

### SECTION C: PROOF OF PURCHASE

[Complete if you answered "Yes" to Questions 1 or 2]

Do you have proof of purchase (a receipt) relating to the original purchase of a PIEPS DSP Sport, PIEPS DSP Pro, or PIEPS DSP Pro Ice? If yes, please submit <insert file submission function>. If not, please proceed to the next section.

Do you have proof of purchase (a receipt) relating to the replacement beacon? If yes, please submit <insert file submission function>. If not, please proceed to the next section.

### SECTION D: ATTESTATION

Complete if:

- (1) you answered "Yes" to Questions 1 or 2; and
- (2) you did not provide proof of purchase in the previous section

By submitting this claim, I attest that I purchased a PIEPS DSP Sport, PIEPS DSP Pro, or PIEPS DSP Pro Ice during the Class Period of January 1, 2013 to April 12, 2021, and that I am a Canadian resident.

<insert tick box> – I agree

By submitting this claim, I attest that I purchased a replacement beacon between October 1, 2020 and April 12, 2021.

<insert tick box> – I agree

<insert tick box> – Not applicable

The information in this Claim Application form is true and correct to the best of my knowledge.

<insert tick box> – I agree

I understand that I may be contacted to verify the information I provided.

<insert tick box> – I agree

**Executed In**

City

Province

Country

**Signed by**

Full name

Date of Execution

If you wish to have a record of your claim form, please ensure that you print this page prior to submitting your claim form.

Once you submit your claim form, you will receive a screen message confirming your submission is complete.

If you want a copy of your confirmation, please print a copy of the page as you will not receive a separate confirmation.

<Insert SUBMIT BUTTON>

## **Schedule “G” – Opt-Out Form**

### **Background**

A settlement fund of \$\_\_\_\_\_ is available to pay all eligible claimants, known as Class Members, who make a claim.

### **Can I Remove Myself from the Class Action?**

If you do not want to participate in the class action, you can opt-out of the Action as described below.

### **What is the Consequence of Opting Out?**

When you opt-out, you lose your right to claim and/or receive any money through the class action.

### **Is Opting Out Final?**

Yes, opting-out is a final decision that cannot be undone.

### **How do I Opt-Out?**

In order to properly opt-out, you must prepare and submit the below form on page 2 (called an “Opt-Out Form”) to the Claims Administrator identified below.

The Claims Administrator must receive your Opt-Out Form by **no later than** \_\_\_\_\_ (“Opt-Out Deadline”).

Opt-Out Forms must be sent by pre-paid mail, courier, or email to:

**RicePoint Administration, Inc;**

**Attention: Black Diamond / Pieps Class Action Administrator**

**[Address]**

**Or**

**Email: <email address>**

**NOTE: An Opt-Out Form that does not contain all of the required information or is received after the Opt-Out Deadline will not be valid.**

**OPT-OUT ELECTION FORM – START ON NEXT PAGE**





## OPT-OUT ELECTION FORM

### SECTION A: CLAIMANT INFORMATION

(\*indicates required fields)

First Name*		Last Name*	
Current Address*			
City/Town*	Province*	Country*	Postal Code*
Telephone Number*		Email Address	

**Question #1:** Have you carefully read page 1 of this document?

YES ☐

NO ☐

(Go to question 2)

(Read page 1 and proceed to question 2)

**Question #2:** Do you want to Opt-Out of the Class Action?

YES ☐

NO ☐

(Go to question 3)

(No need to complete this form)

**Question #3:** What is/are your reason(s) for electing to Opt-Out of the Class Action? (please provide written answer below)

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\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**SCHEDULE "B"**

**[Notice of Settlement Approval and Claim Period]**

## **APPROVAL NOTICE**

### **Class Action Legal Notice**

**IF YOU PURCHASED PIEPS BRANDED AVALANCHE BEACONS IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021, YOU MAY BE ENTITLED TO RECEIVE MONEY OR STORE CREDIT**

#### **What is this Class Action About?**

The Class Action alleges that PIEPS branded Beacons were not safe for their intended use and the Defendants failed to warn consumers about the risks of a defective locking mechanism on the Beacons which caused the Beacons to unexpectedly change modes from "send" to "search" or "off".

This lawsuit has ended in settlement. The settlement is a compromise of disputed claims and is not an admission of liability or wrongdoing or fault by any of the Defendants.

#### **Why I Am I Receiving This Notice?**

This class action lawsuit has ended with a settlement for:

- a) All persons resident in Canada, except for the Defendants and their officers and directors and any of the heirs, successors and assigns of the Defendants and their officers and directors (the "**Excluded Persons**"), who purchased electronic avalanche transceivers in one of the following three (3) models: 1) PIEPS DSP Sport, 2) PIEPS DSP Pro, or 3) PIEPS DSP Pro Ice (the "**Beacons**") in Canada from January 1, 2013 to April 12, 2021 (the "**Class Period**").

(**"Class Members"**)

As a possible Class Member, you may be eligible to receive a share of the Settlement Benefits. **However, there is a deadline for making a claim (see next heading).**

Settlement Benefits valued at \$170,000 (after deductions) are available to eligible Class Members. The Settlement Benefits consist of compensatory payments (up to \$300 per eligible claim, subject to a \$120,000 cap) and compensatory credits (\$50 online store credit per eligible claim, subject to a \$50,000 cap).

The settlement does not cover claims for personal injury or death related to the Beacons. Individuals wishing to pursue such claims must do so independently.

#### **Deadline For Making a Claim**

**Important:** The deadline for making a claim is <@>.

All claims must be received by the Claims Administrator, **NO LATER THAN 150 days after the settlement of the Class Action has been approved, or <@>.**

### Who Can Make a Claim?

You must match **Option A or B** in order to be eligible for compensation.

OPTION	IF YOU PURCHASED A PIEPS DSP SPORT, PIEPS DSP PRO, OR A PIEPS DSP PRO ICE IN CANADA FROM JANUARY 1, 2013 TO APRIL 12, 2021 <u>AND:</u>	THEN:
<b>A</b> [COMPENSATORY PAYMENT]	You purchased a replacement beacon between October 1, 2020 and April 12, 2021.	You may be eligible for up to \$300 in compensation. Please complete the Claim Application form.
<b>B</b> [COMPENSATORY CREDIT]	You did <u>not</u> purchase a replacement beacon or you purchased a replacement beacon outside of the period of October 1, 2020 to April 12, 2021.	You may be eligible for a \$50 online store credit. Please complete the Claim Application form.

**Note - Compensatory Payments:** There is a fund of \$120,000 available to split. The precise amount of payment will not be known until after the Claim Period has passed (after <date>). The amount paid per Class Member will depend on the total number of claims made on the settlement fund, but is expected to be up to \$300 per claim.

**Note - Compensatory Credits:** There is a fund of \$50,000 available to split **on a first-come-first-serve basis**. Once the fund is depleted, no further claims for Compensatory Credit will be processed.

### How Do I Make a Claim?

You must fully complete the Court-approved Claim Application form.

To complete the form, you must do so electronically by visiting the following website:

[Website for Claim Application Portal]

### **WHAT ARE MY OPTIONS?**

<b>1. Submit a Claim Application Form</b>	If you want to receive money you <b>MUST SUBMIT</b> a Claim Application form to the Claims Administrator <b>NO LATER THAN [DATE]</b> .
<b>2. Do Nothing</b>	If you do <b>not</b> make a claim, you will <b>not</b> get any money and you will give up the right to get money in the future.

If you have any questions, you can ask for free help by calling the settlement administrator at <phone number> for more information. You can also visit <website> for more information or send an email to <email address>.