

C A N A D A

PROVINCE OF QUEBEC
District of Montreal

(Class Action)
SUPERIOR COURT

N^o: 500-06-000561-114

DE WAYNE MILLER

Petitioner

v.

KABA ILCO INC.
and
KABA ILCO CORP.
and
KABA AG

Respondents

SETTLEMENT AGREEMENT

Made as of July 7, 2016
(the "Execution Date")

- A. WHEREAS** on March 28, 2011, Petitioner De Wayne Miller filed a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative in the present Court file.
- B. WHEREAS** Petitioner was granted permission to amend his proceedings on two occasions and accordingly filed an Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative on July 3, 2013 and a Re-Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative on April 3, 2014.
- C. WHEREAS** Petitioner alleges in the Proceedings that certain push-button locks (the "Effected Locks") manufactured by Respondents are susceptible to manipulation and defective in their design and unfit for their intended use. Petitioner further alleges that Respondents misrepresented the quality, characteristics and/or reliability of the Effected Locks.
- D. WHEREAS** in the Proceedings, Petitioner seeks to become the representative of the following class:

“All residents in Canada who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their Series1000/L1000, 2000, 3000, 5000, 6000, 6200, 7000, 7100, 8100, E-Plex 2000, and any such other locks manufactured by KABA that are capable of being opened with a magnet (the “Locks”), or any other group to be determined by the Court;”

Alternatively (or as a subclass)

“All residents in Quebec who have purchased and/or own a pushbutton lock sold under the brand names Unican and Simplex with regard to their Series1000/L1000, 2000, 3000, 5000, 6000, 6200, 7000, 7100, 8100, E-Plex 2000, and any such other locks manufactured by KABA that are capable of being opened with a magnet (the “Locks”), or any other group to be determined by the Court;”

- E. **WHEREAS** Respondents deny all of Petitioner’s allegations and continue to maintain that the Effected Locks are fit for the purpose they were intended to, and that they have not committed any fault.
- F. **WHEREAS** the Parties have engaged in extensive settlement discussions with a view to arriving at a mutually agreeable solution putting an end to the present Proceedings in the best interests of the Parties and, particularly, in a manner that is fair, reasonable and in the best interests of the Settlement Class Members.
- G. **WHEREAS** on April 28, 2014, in light of the above-mentioned settlement discussions, the Court, presided over by the honourable Micheline Perreault J.S.C., granted a Joint Motion to Postpone the Hearing of the Authorization of the Class Action.
- H. **WHEREAS** as a result of these discussions and negotiations, the Parties have agreed to enter into the present Settlement Agreement, the whole subject to Court approval.
- I. **WHEREAS** Respondents have agreed to enter into the present Settlement Agreement without any admission of liability whatsoever. Rather, they have agreed to enter into the present Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them by Petitioner and/or Settlement Class Members regarding the facts alleged in the Proceedings, and in order to avoid the further costs, risks and inconvenience of continued litigation in these matters.
- J. **WHEREAS** Petitioner and Class Counsel have thoroughly investigated the facts alleged in the Proceedings and the relevant legal issues, and based upon their analysis of the facts and applicable law and of the Settlement Benefits to be obtained under the present Settlement Agreement, as well

as the burden, expense and risk of further prosecution of the Proceedings, including the costs, delays and uncertainties associated with trial, with an appeal(s) and with the ability to collect a potential award of damages against certain Respondents, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class Members.

NOW THEREFORE, WITHOUT PREJUDICE TO THEIR RESPECTIVE POSITIONS AND WITHOUT ANY ADMISSION OF LIABILITY, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the present Proceedings be settled out of Court in their entirety, in capital, interest and costs, subject to the approval of the Court, on the following terms and conditions:

1. Definitions

As used in this Agreement and the accompanying Schedules, the following terms have the meanings set forth below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

- 1.1 "CCP" mean the *Code of Civil Procedure* of Quebec, CQLR c. C-25.01.
- 1.2 "Claim Form" means the claim form, substantially in the form set forth in Schedule A, which form must be completed in a timely manner and submitted for an End-User Settlement Class Member to be eligible for benefits under the terms of this Settlement Agreement.
- 1.3 "Claims Administration Fees and Expenses" means the fees and expenses charged by the Claims Administrator for, among other things, the publication of the Notice of Proposed Settlement and Notice of Final Judgment, establishment and maintenance of the Settlement Website and other communication and notice methods with Class Members, and the handling, reviewing, and processing of claims and administering the Settlement.
- 1.4 "Claims Administrator" means the entity selected by the Parties and appointed by the Court to administer the Settlement.
- 1.5 "Claims Period" means the time during which any End-User Settlement Class Member may submit a Claim Form under the Settlement Agreement, or during which a Locksmith Class Member may return unsold Effected Locks as provided herein. The Claim Period shall run immediately from the publication of the Notice of a Proposed Settlement and will terminate 120 days after the Effective Date.

- 1.6 "Class Counsel" means the attorneys of record for Petitioner in the Proceedings who, on behalf of any and all of the Settlement Class Members who have not been properly excluded from the Settlement Class, shall have the authority on behalf of the Settlement Class Members to execute all necessary documentation relating to the Settlement Class, the Settlement Agreement, and all necessary effectuating documentation:

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- 1.7 "Class Counsel Fees, Disbursements and all Other Expenses" means the amounts approved by the Court for payment to Class Counsel to cover attorneys' fees, costs, and all other expenses, including, all fees, costs and expenses of addressing objections and appeals.
- 1.8 "Court" means the Superior Court of Quebec sitting in the District of Montreal.
- 1.9 "DIY Upgrade Kit" means a kit developed by Respondents which is designed to be installed inside the chassis of an Effected Lock by an End-User Settlement Class Member, and which when installed, will deter magnetic manipulation of the lock.
- 1.10 "DIY Shield" means a protective metal shield developed by Respondents which is designed to be installed outside the body of some models of the Effected Locks, specifically Simplex 1000, 6200, 7000, and 8100 series locks purchased after January 1, 2001, by an End-User Settlement Class Member, and which when installed, will deter magnetic manipulation of the lock.
- 1.11 "Effective Date" means the date on which the Final Judgment approving the Settlement Agreement is no longer subject to appeal and becomes *res judicata*.
- 1.12 "Effected Lock" means a Simplex[®] or Unican[™] Model/Series 1000, L1000, 2000, 3000, 6200, 7000, 7100, 8000 or File Guard mechanical pushbutton lock manufactured before January 1, 2011, or purchased before it was upgraded to deter magnetic manipulation.

- 1.13 "Extended Claims Period" means the period of six months beyond the Claims Period during which Respondents will continue to make available the free DIY Upgrade Kits.
- 1.14 "Final Judgment" means the judgment of the Court on the Motion to obtain the Approval of the Settlement Agreement pursuant to Article 590 CCP. The judgment entered pursuant to the Settlement Agreement becomes final on the date on which all appeal rights with respect to that judgment have expired or have been exhausted in a manner that conclusively affirms the judgment.
- 1.15 "Maximum Installation and Shield Costs" means the amount of CND \$80,000 (Eighty thousand dollars) reserved by Respondents to cover the Shield Costs and Installation Claims made by the End-User Settlement Class Members who purchased their Effected Locks after January 1, 2001 and pursuant to Section 3 of the Settlement Agreement have alternatives to the right to receive one DIY Upgrade Kit.
- 1.16 "Notice of Final Judgment" means the Court-approved notice of the Final Judgment to the Settlement Class Members pursuant to Article 591 CCP, and substantially in the form set forth in Schedule C.
- 1.17 "Notice of Proposed Settlement" means the Court-approved notice to the Settlement Class Members to be sent pursuant to the terms of Articles 576 and 590 CCP and described in Section 5 of the Settlement Agreement, and substantially in the form set forth in Schedule B.
- 1.18 "Notice Administration Expenses" means all reasonable costs and expenses incurred in connection with preparing, publishing, and disseminating the Notice of Proposed Settlement and the Notice of Final Judgment.
- 1.19 "Notice Provider" means the Person selected by Respondents to disseminate the Notice of Proposed Settlement and the Notice of Final Judgment, including but not limited to the Claims Administrator.
- 1.20 "Opt-Out Deadline" means 45 days after the first date of publication of the Notice of Proposed Settlement;
- 1.21 "Objection Deadline" means no later than 10 days prior to the date of the Settlement Approval Hearing;
- 1.22 "Parties" means the Petitioner, on behalf of himself and the Settlement Class Members, and the Respondents.

- 1.23 "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof any business or legal entity, and such individual's or entity's spouse, heirs, predecessors, successors, representatives, and assignees.
- 1.24 "Petitioner" means the named Petitioner in the Proceedings.
- 1.25 "Proceedings" means the proceedings instituted by way of the *Motion to Authorize the Bringing of a Class action and to Ascribe the Status of Representative*, which was most recently re-amended on April 3, 2014, before the Superior Court of Quebec in the district of Montreal in Court file no 500-06-000561-114.
- 1.26 "Proof of Claim" means, pursuant to the claims procedure described in Section 9 below, proof that a Settlement Class Member is entitled to the relief provided for by the Settlement Agreement.
- 1.27 "Released Claims" means any and all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, suspected or unsuspected, matured or unmatured, contingent or non-contingent, concealed or hidden from existence, asserted or unasserted, or based upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of different or additional facts, that Petitioner or the Settlement Class Members have or may have against the Released Persons (defined below) arising out of or related in any way to the subject matter of the Proceedings.
- 1.28 "Released Person(s)" means Respondents, and each of their past, present and future officers, directors, shareholders, employees, predecessors, affiliates, parents, distributors, wholesalers, subsidiaries and related persons, partners, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, assigns and ayants-droit of all of the foregoing entities.
- 1.29 "Respondents" means Kaba Ilco Inc., Kaba Ilco Corp. and Kaba AG.
- 1.30 "Respondents' Counsel" means Respondents' counsel of record in the Proceedings, LCM Attorneys Inc.
- 1.31 "Settlement Agreement" or "Settlement" means this agreement, including its preamble and all its attached schedules.

- 1.32 "Settlement Benefits" means the benefits to be provided to the Settlement Class Members by Respondents pursuant to the Settlement Agreement.
- 1.33 "Settlement Class" means:
- "All residents in Quebec who use or own a Simplex® or Unican™ Model/Series 1000, L1000, 2000, 3000, 6200, 7000, 7100, 8000 or File Guard mechanical pushbutton lock manufactured before January 1, 2011 ("End-Users") or who purchased such a lock for re-sale ("Locksmiths")."
- 1.34 "Settlement Class Member" means all natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with juridical personality who fall within the definition of the Settlement Class.
- 1.35 "Settlement Approval Hearing" means the hearing to be held by the Court pursuant to Article 590 CCP to consider and determine whether the proposed settlement of these Proceedings as contained in the Settlement Agreement should be approved.
- 1.36 "Settlement Website" means the website to be created for this settlement that will include information about the Proceedings and the settlement, relevant documents and electronic and printable forms relating to the settlement, including the Claim Form, both in English and in French. The Settlement Website shall be activated no later than 10 days after the Court approves the Notice of Proposed Settlement, and shall remain active until Respondents fulfill 95% of all valid claims.

2. Preamble and Conditions Precedent

- 2.1 The Preamble is true and correct and forms an integral part hereof.
- 2.2 The present Settlement Agreement is conditional upon the fulfilment of the following conditions:
- a) The Court approves this Settlement Agreement pursuant to Article 590 CCP; and
 - b) The Court's approval of this Settlement Agreement becomes final and non-appealable ("Final Judgment").
- 2.3 The present Settlement Agreement, including the Releases referred to in Section 11 below, shall enter into full force and effect as, if and

when all conditions stated in this Section are fulfilled, being the Effective Date.

3. Settlement Benefits

A. Settlement Benefit for Locksmith Settlement Class Members

- 3.1 Locksmith Settlement Class Members who have inventory of unsold Effected Locks which were manufactured between January 1, 2001 and January 1, 2011, or thereafter in the event the lock was not upgraded to deter against magnetic manipulation, shall be eligible, within the Claims Period, to exchange the unsold inventory which is unused, complete with all parts and in its original factory package in a resalable condition with Respondents for identical product that has been upgraded to deter against magnetic manipulation.
- 3.2 Respondents shall be responsible for shipping costs to and from the Locksmith. Neither the shipping costs nor any other costs Respondents incur in making this exchange shall be deducted from the Maximum Installation and Shield Costs. This inventory exchange as described in this paragraph is the sole benefit afforded the Locksmith Settlement Class Members.
- 3.3 Members of the Locksmith Settlement Class Members who want to exchange unsold inventory do not have to complete a claim form; they simply have to contact the Respondents at 855-621-5879 or by writing at 2941 Indiana Avenue, Winston Salem, North Carolina 27105, to obtain a Return Goods Authorization in the form set forth in Schedule E.

B. Settlement Benefit for End-User Settlement Class Members

- 3.4 All End-User Settlement Class Members are entitled to receive one do-it-yourself installation ("DIY") Upgrade Kit for each corresponding Effected Lock in their possession. Respondents will provide the DIY Upgrade Kit to such Settlement Class Members without charge, and postage-paid. The cost of the DIY Upgrade Kits and the postage for those kits will not be deducted from the Maximum Installation and Shield Costs.
- 3.5 End-User Settlement Class Members who purchased their Effected Locks after January 1, 2001 shall have the following alternatives to the right to receive one DIY Upgrade Kit for each lock:
 - a) DIY Shields are available for Simplex 1000, 6000, 7000 and 8100 series locks. Instead of receiving a DIY Upgrade Kit, End-Users who, after January 1, 2001, purchased a model/series of these locks for which Respondents make

a DIY Shield, and who make a timely claim, may elect to receive one DIY Shield for each Effected Lock. End-User Settlement Class Members who receive a DIY Shield shall not be eligible for the installation benefit as described in the next paragraph. Respondents' costs for the Shields shall be deducted from the Maximum Installation and Shield Costs at a flat rate of \$10 CND per Shield ("**Shield Costs**"); or

- b) End-User Settlement Class Members who purchased their Effected Lock after January 1, 2001, who make a timely claim and do not elect to receive a DIY Shield, will be eligible to have Respondents arrange for installation of a DIY Upgrade Kit at Respondents' expense ("**Installation Claims**"). Costs for the Installation Claims for DIY Upgrade Kits shall be deducted from the Maximum Installation and Shield Costs;

- 3.6 End-User Settlement Class Member Claims Process: Claim forms will require End-User Settlement Class Members to provide their basic contact information, along with the number of locks, the date of purchase, and the model/series of locks for which they are making a claim. All claim forms must be submitted within the Claims Period. Proof of purchase is not required for any End-User Settlement Class Member to file a claim, unless the End-User Settlement Class Member files a claim for more than five Effected Locks. The Claim Form shall use the same language and be substantially in the same form as the example attached as Schedule A.

C. Maximum Installation and Shield Costs

- 3.7 Respondents shall reserve an amount up to no more than CND \$80,000 (Eighty thousand dollars) to cover the costs associated with the claims made by the End-User Settlement Class Members who purchased their Effected Locks after January 1, 2001 and have alternatives to the right to receive one DIY Upgrade Kit, as described at Section 3.5 above ("Maximum Installation and Shield Costs"). Any part of the reserved amount for Maximum Installation and Shield Costs which is not used to satisfy End-User Settlement Class Member claims shall remain the Respondents' sole property, whom shall have complete control, use and possession of same at the conclusion of the Claims Period.
- 3.8 For further clarity, the Maximum Installation and Shield Costs establishes a maximum exposure for the financial responsibility of Respondents for the cost of the Installation Claims and Shield Costs provided for on an individual basis in Section 3.5 of the

Settlement Agreement and does not constitute an amount to be recovered through a liquidation of claims or any other distribution to the Settlement Class.

- 3.9 At the conclusion of the Claims Period, Respondents will organize the Installation Claims by postal code.
- 3.10 Respondents will compute the total estimated cost to complete the installation for those class members who have made a claim for installation, and will provide the basis for its calculations to Class Counsel.
- a) If the total estimated Installation Claims are less than the amount reserved for Maximum Installation and Shield Costs (less amounts already deducted for Shield Costs), Respondents will directly pay the selected locksmiths or other security professionals to proceed with the installations, without any further calculation or contribution from the Settlement Class Members;
 - b) If, on the other hand, the total estimated Installation Claims exceed the amount reserved for Maximum Installation and Shield Costs (less amounts already deducted for Shield Costs), each eligible Settlement Class claimant will pay the difference to obtain installation. The payment will be on a *pro rata* share, and will be calculated to generate enough money to cover only the portion of the Installation Claims that exceeds the amount reserved by Respondents for Maximum Installation and Shield Costs. Eligible Class Members will pay the difference to Kaba or to the installer at the time of installation.

D. Notice and Claims Administration Fees and Expenses

- 3.11 Respondents will bear all costs of the dissemination of the Notice of Proposed Settlement and the Notice of Final Judgment. Respondents will also bear all Claims Administration Fees and Expenses. These costs and expenses shall not be deducted from the Maximum Installation and Shield Costs.

4. Best Efforts

- 4.1 The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate this Settlement Agreement, including, without limitation, seeking the Court's approval of the present Settlement Agreement, carrying out the terms of the Settlement Agreement, and promptly agreeing upon and executing all

such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement Agreement and to carry out the terms of the Settlement Agreement.

5. Motion Seeking Approval of Notice and Authorization

- 5.1 Promptly after the execution of the Settlement Agreement, Petitioner shall bring a motion before the Court seeking approval of the Notice of Proposed Settlement attached hereto as Schedule B and the authorization of the Settlement Class in the Proceedings commenced against Respondents (for settlement purposes only).
- 5.2 The Notice of Proposed Settlement shall inform the Settlement Class Members of the following:
- a) the authorization of the Proceedings as a Class Action against Respondents for settlement purposes only;
 - b) describe the proposed settlement relief outlined in the Settlement Agreement;
 - c) the procedure to opt-out in accordance with Section 6 of the Settlement Agreement;
 - d) if they do not exclude themselves from the Settlement Class, they may be eligible to receive the relief under the proposed settlement;
 - e) a short, plain statement of the background of the Proceedings and the proposed settlement, describing the nature of the Settlement Agreement and the method of execution;
 - f) the date and place of the hearing at which the Court will be asked to approve the Settlement Agreement (the Settlement Approval Hearing) and to approve Class Counsel Fees, Disbursements and all Other Expenses;
 - g) the process by which Settlement Class Members can present their Objections to the proposed Settlement Agreement as set out in Section 7.
- 5.3 Prior to the Settlement Approval Hearing, and subject to the approval of the Court, the Notice of Proposed Settlement will be disseminated by way of publication once in the form of an approximately 1/3 of a page advertisement in the following French or English newspapers, as the case may be: La Presse Plus, Le Soleil, the Montreal Gazette,

the Canadian Jewish News, the Heimishe Newsflash and the Suburban;

5.4 The Claims Administrator will be responsible for disseminating the Notice of Proposed Settlement.

6. Opting-Out

6.1 Settlement Class Members may elect to exclude themselves from the Settlement Agreement, relinquishing their rights to benefits under the Settlement Agreement. Settlement Class Members who exclude themselves from the Settlement will not release their claims under Section 11.

6.2 A Settlement Class Member wishing to exclude himself/herself/itself from the Settlement Agreement must send a letter substantially in the form set forth in Schedule D to the Claims Administrator, which includes the following information:

- a) his/her/its name, current address, and telephone number;
- b) if the Settlement Class Member seeking to opt-out is a corporation, the name of the corporation and the position of the Person submitting the request to opt-out on behalf of the corporation;
- c) the approximate date of acquisition of the Effected Lock;
and
- d) a clear statement communicating that he/she/it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to this Settlement.

6.3 Any request for exclusion must be postmarked no later than 45 days after the publication of the Notice of Proposed Settlement. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been submitted in a timely manner.

6.4 A Settlement Class Member wishing to exclude himself/herself/itself from the Settlement Agreement must also send to the Clerk of the Superior Court of Quebec a written election to opt-out at the address to be identified in the Opt-Out Form, which is referred to in Section 19.2 herein.

6.5 Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Opt-Out Deadline specified in

the Notice of Proposed Settlement, or on such other date set by the Court, shall be bound by all terms of the Settlement Agreement and the Final Judgment, regardless of whether they have requested exclusion from the Settlement Agreement.

- 6.6 Any Settlement Class Member who submits a timely request for exclusion may not file an Objection to the Settlement Agreement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.
- 6.7 Any Settlement Class Member who has commenced proceedings or commences proceedings and fails to discontinue such proceedings by the Opt-Out Deadline shall be deemed to have opted-out.
- 6.8 No later than fourteen (14) days after the Opt-Out Deadline, the Claims Administrator shall provide to Respondents' Counsel and Class Counsel a complete exclusion list, together with copies of the exclusion requests.
- 6.9 Notwithstanding anything else in the Settlement Agreement, Respondents may, in their sole discretion, unilaterally withdraw from and terminate the Settlement Agreement no later than 15 days prior to the Settlement Approval Hearing if the number of Settlement Class Members who elect to exclude themselves from the Class is more than 50.

7. Objections to Proposed Settlement

- 7.1 Any Settlement Class Member who intends to object to the present Settlement Agreement ("Objection") must send a written Objection to the Court and provide a copy to Class Counsel and Respondents' Counsel at the contact information set forth in Section 19 no later than 10 days (calculated based on post-mark where the Objection is sent by mail) prior to the Settlement Approval Hearing (the "Objection Deadline").
- 7.2 In his/her/its Objection, the objecting Settlement Class Member must include:
 - a) his/her/its full name, current address and telephone number;
 - b) the approximate date of acquisition of the Effected Lock and the model of the lock;
 - c) a statement that the objector has reviewed the Settlement Class definition and understands that he/she/it is a Class Member, and has not opted out of the Settlement Class;

- d) a complete statement of all legal and factual bases for any Objection that the objector wishes to assert; and
 - e) provide copies of any documents that the objector wishes to submit relating to his/her/its position.
- 7.3 In addition to the requirements set forth in Sections 7.1 and 7.2, objecting Settlement Class Members must state in writing whether the objecting Settlement Class Member intends to appear at the Settlement Approval Hearing, either with or without separate counsel.
- 7.4 No Settlement Class Member shall be entitled to be heard at the Settlement Approval Hearing (whether individually or through a separate counsel) or to object to the Settlement Agreement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Settlement Approval Hearing, unless a written Notice of the Settlement Class Member's intention to appear at the Settlement Approval Hearing and copies of any written objections or briefs have been filed with the Court and provided to Class Counsel and Respondents' Counsel at the addresses set forth in Section 19 before the Objection Deadline.
- 7.5 Any Class Member who does not file, before the Objection Deadline, a written objection to the proposed Settlement Agreement and notice of his/her/its intent to appear and make representations at the Settlement Approval Hearing, or who fails to otherwise comply with the requirements of this Section, shall be foreclosed from seeking any adjudication, review or appeal of any Final Judgment approving the Settlement Agreement.

8. Motion to Approve the Settlement Agreement

- 8.1 Promptly following the execution of the present Settlement Agreement by all of the Parties, Counsel for the Parties shall advise the Court of same and obtain a date to present a Motion to Approve the Settlement Agreement.
- 8.2 The Motion to Approve the Settlement Agreement shall seek Court orders to, *inter alia*:
- a) Approve and homologate the Settlement Agreement;
 - b) Declare that the Settlement Agreement is fair, reasonable and in the best interest of the Settlement Class Members;
 - c) Approve the Notice to the Settlement Class Members to be published after the Final Judgment approving the Settlement

("Notice of Final Judgement"); the Notice of Final Settlement will be disseminated by way of publication once in the form of an approximately 1/4 of a page advertisement in the following French or English newspapers, as the case may be: La Presse Plus, Le Soleil, the Montreal Gazette, The Canadian Jewish News, the Heimishe Newsflash and the Suburban;

- d) Authorize Petitioner, both personally and in his capacity as Representative of all Settlement Class Members, to grant the Releases to Respondents referred to in Section 11 hereof, and to seek an order by the Court that the Releases provided for herein are binding on all Settlement Class Members;
 - e) Declare that all Respondents, and each of their past, present and future officers, directors, shareholders, employees, predecessors, affiliates, parents, distributors, wholesalers, subsidiaries and related persons, partners, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, assigns, and ayants-droit of all of the foregoing entities. (otherwise defined as "Released Persons"), are released in accordance with the terms of Section 11 hereof;
 - f) Approve of the appointment of the Claims Administrator for the purposes of administering the claims process;
 - g) Approve the payment of Class Counsel Fees, Disbursements and all Other Expenses in accordance with Section 10 hereof;
 - h) Approve and declare such other matters as Counsel for the Parties may reasonably request the Court, to the extent not inconsistent with the terms of the present Settlement Agreement.
- 8.3 In the event that the Court does not approve the present Settlement Agreement, then the present Settlement Agreement shall be null and void and of no effect, unless otherwise agreed to in writing by the Parties hereto and approved by the Court (save and except for Section 8.4 hereof, which shall continue to apply).
- 8.4 In the event that the present Settlement Agreement is not approved by the Court, then: a) the Parties will be restored to their respective procedural positions prior to the execution of the present Settlement Agreement; b) the present Settlement Agreement will not be deemed in any way to prejudice the positions of any of the Parties with respect to the Proceedings; c) neither the existence nor the contents of the

present Settlement Agreement will be admissible into evidence, nor referred to by any of the Parties for any purpose in these Proceedings or in any other litigation or proceedings; d) neither the existence, nor the contents of the present Settlement Agreement will constitute an admission of any sort by any of the Parties in the present Proceedings or in any other litigation or proceedings; e) the Parties may agree to continue good faith negotiations in an attempt to arrive at a modified and mutually satisfactory settlement and transaction and seek the Court's approval of any such settlement and transaction pursuant to Article 590 CCP.

- 8.5 Within five (5) business days of the Effective Date, the Claims Administrator shall publish, pursuant to Article 591 CCP, the Notice of Final Judgment approved by the Court, substantially in the form set forth in Schedule C.

9. Claims Process

- 9.1 End-User Settlement Class Members who believe they are eligible to receive benefits under the Settlement Agreement must send to the Claims Administrator the Claim Form and any applicable documentation that the Claim Form may require.
- 9.2 All Claim Forms for DIY Upgrade Kit(s), DIY Shield(s) and installation of DIY Upgrade Kit(s) must be submitted within the Claims Period.
- 9.3 Additionally, Claim Forms for DIY Upgrade Kits only can also be submitted during the Extended Claims Period.
- 9.4 Any Settlement Class Member who fails to submit a Claim Form by (and including) the last day of the Claims Period shall be forever barred from receiving any benefit pursuant to the Settlement Agreement and the Final Judgment, but shall in all other respects be bound by the terms of the Settlement Agreement.
- 9.5 A Claim Form shall be deemed to have been submitted when postmarked, if received with a postmark indicated on the envelope and if mailed, postage prepaid, and completed in accordance with the instructions contained in this Agreement. Class Members will also be able to submit the Claim Form online at the Settlement website, and any Claim Form submitted online shall be deemed to have been submitted on the date when it was received by the Settlement Website.
- 9.6 The Claims Administrator will be responsible for implementing and administering claims by Settlement Class Members, including, but not limited to, receiving and conducting a validation screening of claims to determine timeliness of submission, completeness of the claim, and

completeness of Proof of Claim or any other requested information and confirming or denying the Settlement Class Member's eligibility for a DIY Upgrade Kit(s), a DIY Shield(s), and installation of DIY Upgrade Kit(s). The Claims Administrator shall determine the extent, if any, to which each claim shall be accepted and allowed, in accordance with the terms of the Settlement Agreement. Claims that are incomplete (*e.g.*, because of the lack of adequate Proof of Claim) or are not approved by the Claims Administrator will not undergo the claim validation process until the claim is complete.

- 9.7 The Claims Administrator is required, within thirty (30) days of the end of the Claims Period, or, where applicable, within thirty (30) days of the end of the Extended Claims Period, to send notice to each Settlement Class Member whose claim has been approved, in which the Claims Administrator shall inform that Settlement Class Member that Respondents will begin shipping their DIY Upgrade Kit(s) or DIY Shield(s) or begin contacting claimants to arrange installation of a DIY Upgrade Kit, as is appropriate to the particular claim.
- 9.8 If a Settlement Class Member submits an incomplete Claim or Claim Form, the Claims Administrator shall give the Settlement Class Member written notice of the deficiencies and the Settlement Class Member shall have fifteen (15) days from the date of the written notice to cure the deficiencies. Settlement Class Members shall have only one opportunity to cure.
- 9.9 Within 15 days of receipt of a Claim or a cured deficient claim, as the case may be, the Claims Administrator shall notify any claimant whose Claim Form has been rejected, in whole or in part, setting forth the reasons for the rejection, as well as providing timely notice of the claimant's right to contest the rejection as set forth in Section 9.10 below.
- 9.10 If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within fifteen (15) days after the date of mailing of the notice of the rejection described in Section 9.9 above, mail to the Claims Administrator a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Claims Administrator, in consultation with Respondents' Counsel and Class Counsel, of the denial of the claim. Submissions by the Settlement Class Member, if subsequently approved, will be subject to the claim validation process and the procedures outlined herein.
- 9.11 For those End-User Settlement Class Members who qualify for installation of a DIY Upgrade Kit(s), Respondents shall only have the obligation to make one attempt to travel to the lock's location to provide

the installation service. If the End-User Settlement Class Member, or its, his or her designee, is not available at the scheduled installation appointment time, Respondents shall have no further obligation to provide DIY Upgrade Kit installation or any settlement benefit for that claimant.

- 9.12 Respondents will use reasonable commercial efforts to deliver all benefits due under the approved claims within 180 days from the expiration of the Claims Period and the Extended Claims Period.

10. Class Counsel Fees, Disbursements and all Other Expenses

- 10.1 Subject to the approval of same by the Court, Respondents agree to pay an amount of \$212,500 plus applicable Goods and Services Tax ("GST") and Quebec Sales Tax ("QST") to Class Counsel for Class Counsel Fees, Disbursements and all Other Expenses in the present Proceedings (exclusive of the payment to the Petitioner as set forth in paragraph 10.7 below).
- 10.2 Respondents do not oppose, and will not encourage or assist any third party in opposing, Class Counsel's request for Class Counsel Fees, Disbursements and all Other Expenses in the amount of \$212,500 plus applicable GST and QST. Class Counsel will not seek reimbursement in excess of \$212,500 plus applicable GST and QST and, in any event, Class Counsel agree that Respondents shall not pay, nor be obligated to pay, any sum in excess of \$212,500 plus applicable GST and QST.
- 10.3 The Parties negotiated and agreed to the amount of Class Counsel Fees, Costs and all Other Expenses only after reaching agreement upon all other material terms of the Settlement Agreement and thus constitute an integral part thereof.
- 10.4 The Parties agree that the amount in this Section represents Respondents' all-inclusive, full payment for all Class Counsel Fees, Disbursements and all Other Expenses in relation to the claims covered by the contemplated release; including, but not limited to fees, costs, and other expenses incurred by any counsel in the Proceedings, whether known or unknown to Respondents, as well as any objectors or later-appearing counsel.
- 10.5 The amount described in this Section shall constitute full satisfaction of Respondents' obligation to pay any person, attorney or law firm for Class Counsel Fees, Costs, and all Other Expenses, and shall relieve Respondents' and the Released Persons from any other claims or liability to any other attorney or law firm or Persons for any Class Counsel Fees, Disbursements and all Other Expenses to which the

Petitioner, any Settlement Class Member, objector, or any other person may claim that are in any way related to the Released Claims.

- 10.6 In furtherance of the agreement in this Section, in the event of any Objections to the Settlement Agreement or appeal from any judgment regarding the approval of the Settlement Agreement, Class Counsel agree that they will be solely responsible for responding to objectors and defending the Court's order or judgment on appeal at their own cost. Respondents will join and/or not oppose Class Counsel's defence of the Settlement Agreement and any resulting order or judgment. Respondents agree not to appeal, or otherwise support any appeal, of any order or judgment entered by the Court that is consistent with this provision and the terms of the Settlement Agreement. Any fees, costs and other expenses incurred by Class Counsel in such appeals, including fees, costs or any other expenses incurred to settle any claims by objectors, are the sole responsibility of Class Counsel. No one may seek to recover such fees, costs or other expenses from Respondents.
- 10.7 Subject to the approval of same by the Court, Respondents agree to pay a one-time all-in incentive payment to Petitioner De Wayne Miller of \$2,500.
- 10.8 The Parties agree that Respondents shall not pay, or be obligated to pay, any sum in excess of \$2,500 to the Petitioner. This payment is in addition to any benefit provided to the Petitioner as a Settlement Class Member under the Settlement Agreement.
- 10.9 Any Class Counsel Fees, Disbursements and all Other Expenses awarded by the Court to Class Counsel and any incentive payment to Petitioner shall be paid by Respondents to Class Counsel and to the Petitioner within ten (10) days of the Effective Date. Releases

A. Releases of Released Persons

- 10.10 Upon the Effective Date, Petitioner and Settlement Class Members, and each of them, forever release, discharge, and covenant not to sue the Released Persons regarding any of the Released Claims, which shall be understood to include all such claims which they do not know of or suspect to exist in their favour at the time of this release and which, if known by them, might have affected their settlement and release of the Released Persons or might have affected their decision not to object to this Settlement.
- 10.11 The Settlement Class Members including the Petitioner, both personally and in his capacity as Representative of all of the Settlement Class Members, shall be deemed to have and by operation of the present

Settlement Agreement, shall have, granted a full and final, unconditional and irrevocable release and discharge to all of the Released Persons, from any and all claims, actions, causes of action of whatsoever nature, damages, and liabilities of every nature and description defined as Released Claims, whether known or unknown, suspected or unsuspected, matured or unmatured, contingent or non-contingent, concealed or hidden from existence, asserted or unasserted, or based upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of different or additional facts.

B. End-User Settlement Class Member Release of Locksmith Settlement Class Members

- 10.12 Upon the Effective Date, the Petitioner and End-User Settlement Class Members, and each of them, forever release, discharge, and covenant not to sue the Locksmith Settlement Class Members, for any claims arising in any way, under any theory of law, out of the Locksmith Settlement Class Members' marketing, sales, or installation of the Effected Locks ("Released Locksmith Claims"), which shall be understood to include all such claims which the End-User Settlement Class Member does not know of or suspect to exist in its favour at the time of this release and which, if known by them, might have affected their settlement and release of the Released Persons or might have affected their decision not to object to the Settlement Agreement.
- 10.13 The End-User Settlement Class Members including the Petitioner, both personally and in his capacity as Representative of all of the Settlement Class Members, shall be deemed to have and by operation of the present Settlement Agreement, shall have, granted a full and final, unconditional and irrevocable release and discharge for any and all claims, actions, causes of action of whatsoever nature, damages, and liabilities of every nature and description defined as Released Locksmith Claims in Section 11.3, whether known or unknown, suspected or unsuspected, matured or unmatured, contingent or non-contingent, concealed or hidden from existence, asserted or unasserted, or based upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of different or additional facts.
- 10.14 The Releases set forth in the Settlement Agreement shall apply even if the Petitioner and/or Settlement Class Members subsequently

discover facts in addition to or different from those which they now know or believe to be true.

11. Effect of Settlement Agreement

- 11.1 The Parties intend the Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Proceedings. The existence and terms of this Settlement Agreement, and any actions taken to carry out the terms of this Settlement Agreement, shall not be deemed, construed or interpreted in any way to be an admission of liability or of any violation of any law, statute or regulation, or of any fault, negligence, or wrongdoing, by any of the Parties, or of the truth of any of the allegations contained in the present Proceedings.
- 11.2 Once this Settlement Agreement enters in full effect as per Section 2.3 above, this Settlement Agreement shall be binding upon and inure to the benefit of the Petitioner, Settlement Class Members, Respondents and each of their past, present and future officers, directors, shareholders, employees, predecessors, affiliates, parents, distributors, wholesalers, subsidiaries and related persons, partners, insurers, administrators, agents, servants, successors, trustees, vendors, subcontractors, independent contractors, attorneys, representatives, heirs, executors, experts, consultants, assigns, and ayants-droit of all of the foregoing entities.

12. Agreement Not Evidence

- 12.1 Neither this Settlement Agreement, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement, is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the Released Claims, or of any wrongdoing or liability of any Released Persons; or is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal.
- 12.2 Any Released Person may file this Agreement and/or the Final Judgment in any action that may be brought against it in order to support any defence or counterclaim, including, without limitation, those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.

13. Transaction

- 13.1 The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the parties do hereby renounce to raise any errors of fact or of law in respect thereof.
- 13.2 The Final Judgment shall constitute a final judgment of homologation of the present Settlement Agreement.

14. Arm's-Length Negotiations

- 14.1 The Parties to the present Settlement Agreement have negotiated all of the terms and conditions thereof in good faith and at arm's length, without any collusion whatsoever. The present Settlement Agreement reflects a settlement that was reached voluntarily after consultation with competent and independent legal counsel.
- 14.2 The Parties have all participated in the drafting of the present Settlement Agreement, and the Settlement Agreement is not to be interpreted or construed in favour of, or against, any of the Parties hereto.

15. Continuing Jurisdiction of the Court

- 15.1 The Superior Court of Quebec shall retain exclusive and continuing jurisdiction over the present Proceedings and the present Settlement Agreement, including over all matters relating to the interpretation, implementation and enforcement of the Settlement Agreement as it relates to the Proceedings. The Parties hereto, their counsel and the Claims Administrator may apply to said Court for directions as and when necessary.

16. General

- 16.1 The present Settlement Agreement shall be interpreted and construed in accordance with the laws of the Province of Quebec and those of Canada that may be applicable.
- 16.2 In the event that any provision of the present Settlement Agreement shall be or become illegal or unenforceable in whole or in part, the remaining provisions of this Settlement Agreement shall nevertheless be valid, binding and enforceable.

17. Miscellaneous

- 17.1 All agreements made and orders entered during the course of the Proceedings relating to the confidentiality of information will survive the Settlement Agreement.
- 17.2 The Settlement Agreement and any Schedules attached hereto constitute the entire agreement among the Parties, and no representations, warranties, or inducements have been made to any Party concerning the Settlement Agreement or its exhibits other than the representations, warranties, and covenants covered and memorialized in such documents. The present Settlement Agreement may not be amended or modified except in writing and with the consent of the Parties or their respective successors-in-interest, and any such amendment or modification must be approved by the Court. Except as otherwise provided herein, the Parties will bear their own respective costs.
- 17.3 Class Counsel, on behalf of Petitioner and the Settlement Class Members, represents and warrants that it is expressly authorized to take all appropriate action required or permitted to be taken by the Petitioner or Settlement Class Members pursuant to the Settlement Agreement to effectuate its terms, and is expressly authorized to enter into the Settlement Agreement, as well as any modifications or amendments to this Agreement on behalf of the Settlement Class Members, that Class Counsel deems appropriate.
- 17.4 Each Person executing the Settlement Agreement or any of its schedules on behalf of any Party hereby warrants that such Person has the full authority to do so.
- 17.5 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument.
- 17.6 The Parties agree that, other than where expressly provided, Respondents are in no way liable for any taxes that Class Counsel, the Petitioner, Settlement Class Members, or others may be required to pay as a result of the receipt of any benefits or monies under the Settlement Agreement.
- 17.7 No Settlement Class Member or other Person shall have any claim against the Petitioner, Class Counsel, the Released Persons, the Claims Administrator, or any agent designated by Class Counsel based on any eligibility determinations, distributions or payments made in accordance with the Settlement Agreement, or based on the payments made or other relief provided and made substantially

in accordance with the Settlement Agreement or with further orders of the Court or any appellate court.

- 17.8 None of the Parties, or their respective counsel, will be deemed the drafter of the Settlement Agreement or its exhibits for purposes of construing the provisions thereof. The language in all parts of the Settlement Agreement and its schedules will be interpreted according to its fair meaning, and will not be interpreted for or against any of the Parties as the drafter thereof.

18. Service or Notice to Counsel and Claims Administrator

- 18.1 Any notice to be given to Class Counsel or to Respondents' Counsel in connection with the present Settlement Agreement shall be in writing and shall be given by personal delivery, fax or e-mail, addressed or sent as follows:

If to Petitioner's counsel (referred to as Class Counsel):

Consumer Law Group Inc.
c/o Mtre Jeff Orenstein
1030 Berri Street, Suite 102
Montreal, Québec, H2L 4C3
Email: jorenstein@clg.org
Tel.: (514) 266-7863 ext. 2
Fax.: (514) 868-9690

If to Respondents' Counsel:

LCM Attorneys Inc.
c/o Mtre Bernard Amyot, Ad. E.
Mtre Sébastien C. Caron
1000, de la Gauchetière West, Suite 1510
Montreal, Quebec, H3B 4W5
E-mail: bamyot@lcm-boutique.ca
E-mail: scaron@lcm-boutique.ca
Tel.: (514) 375-2679
Fax: (514) 905-2001


- 18.2 Any notice to be given to the Court in connection with the present Settlement Agreement shall be in writing and shall be addressed or sent as follows:

c/o Clerk of the Superior Court of Quebec
Montreal Courthouse
1, Notre-Dame Street East, room 1.140
Montreal, Quebec
H2Y 1B6
Court file no. 500-06-000561-114

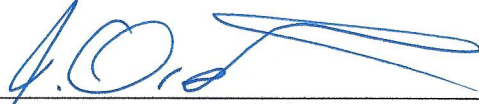
19. Language

- 19.1 Respondents shall be responsible for translating the present Agreement, all Schedules attached hereto, all notices pursuant to this Agreement, and all related documents reasonably required for the implementation of this Agreement from English to French.
- 19.2 The parties acknowledge that they have required and consented that the Agreement and all related documents be prepared in both French and English. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en français et en anglais.*

IN WITNESS WHEREOF, THE PRESENT SETTLEMENT AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO:



DE WAYNE MILLER, Petitioner on his own behalf and in his quality as Representative of the Settlement Class Members



CONSUMER LAW GROUP INC.
Per: Jeff Orenstein

KABA ILCO INC.

Per: Michael Kincaid

Per: Sandra Heller

KABA ILCO CORP.

Per: Michael Kincaid

Per: Sandra Heller

KABA AG

Per:

Per:

LCM ATTORNEYS INC.

Per: Bernard Amyot, Ad. E.