

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE BALTMAN

) **WEDNESDAY**, THE **5th** DAY
) OF **FEBRUARY**, 2020



BETWEEN:

A.Z.P., A.J.P., and QI ZHANG

Plaintiffs

- and -

REPROMED LTD., THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE INC.,
DR. ALFONSO DEL VALLE, PRAXAIR CANADA INC. and CHART INDUSTRIES, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Settlement Approval)**

THIS MOTION made by the Plaintiffs for an Order approving the Settlement Agreement entered into with the Settling Defendants was heard this day at the Court House, 7755 Hurontario St., Brampton, Ontario.

ON READING the materials filed, including the settlement agreement dated December 3, 2019, attached to this Order as **Schedule "A"** (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiffs and counsel for the Settling Defendants;

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no objections to the Settlement Agreement;

AND ON BEING ADVISED that the Plaintiffs and Defendants consent to this Order:

1. **THIS COURT ORDERS** that, except to the extent that they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the within action.
4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.
6. **THIS COURT ORDERS** that, upon the Effective Date, each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.

7. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
8. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor shall not now or hereafter 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.
9. **THIS COURT ORDERS** that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement; to the administration, investment, or distribution of the Trust Account; or to the Plan of Allocation.
10. **THIS COURT ORDERS** that Class Counsel shall hold the Settlement Amount (minus any amounts that revert back to the Settling Defendants pursuant to section 4.1(2) of the Settlement Agreement), plus any accrued interest, in trust for the benefit of the Settlement Class pending further orders of the Court.
11. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice if the Settlement Agreement is terminated in accordance with its terms.

12. **THIS COURT ORDERS** that the Proceeding is hereby dismissed as against the Defendants, without costs and with prejudice.

A handwritten signature in blue ink, appearing to read "R. Baltman", written over a horizontal line.

The Honourable Justice Baltman

SCHEDULE "A"

REPROMED CLASS ACTION SETTLEMENT AGREEMENT

Made as of December 3, 2019

Between:

A.Z.P., A.J.P., and QI ZHANG

and

**REPROMED LTD., THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE
INC., PRAXAIR CANADA INC. and CHART INDUSTRIES, INC.**

REPROMED SETTLEMENT AGREEMENT
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REPROMED CLASS ACTION SETTLEMENT AGREEMENT

RECITALS

- A. WHEREAS the Proceeding was commenced in Brampton by the Plaintiffs, A.Z.P. and A.J.P;
- B. WHEREAS the Proceeding was subsequently amended by Order dated March 18, 2019 to add Qi Zhang as a Plaintiff and Praxair Canada Inc. as a Defendant;
- C. WHEREAS the Proceeding alleges, among other things, that the Plaintiffs' Reproductive Material was destroyed as a result of the Defendants' negligence;
- D. WHEREAS the Settling Defendants do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of wrongful conduct alleged in the Proceeding, and otherwise deny all liability and assert that each has complete defences in respect of the merits of the Proceeding;
- E. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the 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 Plaintiffs' allegations, which allegations are expressly denied by the Settling Defendants;
- F. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiffs and the Settlement Class Members in the Proceeding, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- G. WHEREAS Counsel for the Settling Defendants and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement;
- H. WHEREAS, as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both

individually and on behalf of the Settlement Class they seek to represent, subject to approval of the Court;

I. WHEREAS Class Counsel, on their own behalf and on behalf of the Plaintiffs and the Settlement Class Members, have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, 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 Plaintiffs and the Settlement Class they represent;

J. WHEREAS the Parties therefore wish to and hereby finally resolve, without admission of liability, the Proceeding as against the Defendants;

K. WHEREAS for the purposes of settlement only and contingent on approvals by the Court as provided for in this Settlement Agreement, the Parties consent to certification of the Proceeding as a class proceeding and consent to a Settlement Class and a Common Issue for Settlement Purposes in the Proceeding on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

L. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Class and will seek to be appointed representative plaintiffs for the Settlement Class;

M. WHEREAS the Parties acknowledge that the Settlement Agreement is contingent on certification and approval by the Court as provided for in this Settlement Agreement, and entered into with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Proceeding in the event that certification is denied and/or this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed with

prejudice, all without costs as to the Plaintiffs, the Settlement Class they seek to represent, or the Defendants, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals hereto:

- (1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, but excluding Class Counsel Fees and Class Counsel Disbursements.
- (2) ***Class Counsel*** means Siskinds LLP.
- (3) ***Class Counsel Disbursements*** include the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding.
- (4) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon.
- (5) ***Common Issue for Settlement Purposes*** means: Were the Settling Defendants, or any of them, negligent in the design, manufacture and/or distribution of the Tank, and/or storage of Class Members' Reproductive Material?
- (6) ***Counsel for the Settling Defendants*** means:
 - (a) with respect to Repromed Ltd. and The Toronto Institute for Reproductive Medicine Inc, Lerners LLP;
 - (b) with respect to Chart Industries, Inc., Dentons Canada LLP; and
 - (c) with respect to Praxair Canada Inc., Lax O'Sullivan Lisus Gottlieb LLP.
- (7) ***Court*** means the Ontario Superior Court of Justice.
- (8) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(9) **Defendants** means the Repromed Defendants, Praxair Canada Inc. and Chart Industries, Inc.

(10) **Effective Date** means the date when a Final Order has been received from the Court approving this Settlement Agreement.

(11) **Final Order** means a final order made by the Court approving this Settlement Agreement that either (i) has not been appealed before the time to appeal such an order has expired, or (ii) has been affirmed upon a final disposition of all appeals. For further certainty, any order made by the Court approving this Settlement Agreement will not become a Final Order until the time to appeal such order has expired without any appeal having been taken or until the order has been affirmed upon a final disposition of all appeals.

(12) **Net Settlement Proceeds** means the Settlement Amount plus interest and less the amounts payable in respect of Class Counsel Fees, Class Counsel Disbursements, and Administration Expenses.

(13) **Opt-Out Deadline** means the date which is sixty (60) days after dissemination of the notices described in Section 9.1(1).

(14) **Other Actions** means actions or proceedings, other than the Proceeding, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(15) **Opt-Out Administrator** means the third-party firm, agreed to by the Parties, who will receive opt-out elections from putative Settlement Class Members.

(16) **Party and Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.

(17) **Plaintiffs** means A.Z.P., A.J.P and Qi Zhang.

(18) **Plan of Allocation** means the plan for distributing the Net Settlement Proceeds and accrued interest, in whole or in part, as approved by the Court.

(19) ***Proceeding*** means the action commenced in the Ontario Superior Court of Justice bearing Court File No. CV-18-00002489-00CP.

(20) ***Released Claims*** means any and all manner of claims, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees and disbursements (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 Plaintiffs or Settlement Class Members ever had, now have or hereafter can, shall or may have, relating in any way to any conduct related to, arising from, or described in the Proceeding.

(21) ***Releasees*** means, jointly and severally, the Settling Defendants, Dr. Alfonso Del Valle, and all of their present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, joint ventures, franchisees, dealers, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, mandataries, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(22) ***Releasors*** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective successors, heirs, executors, administrators, trustees and assigns.

(23) ***Reproductive Material*** means human eggs and embryos.

(24) ***Repromed Defendants*** means Repromed Ltd., The Toronto Institute for Reproductive Medicine Inc. and Dr. Alfonso Del Valle.

(25) ***Settlement Agreement*** means this agreement, including the recitals.

(26) **Settlement Amount** means CAD \$1,500,000.

(27) **Settlement Class** means all patients of the Repromed Defendants (and their reproductive partners, if applicable) whose Reproductive Material was destroyed while being stored in the Tank.

(28) **Settlement Class Member(s)** means any member of the Settlement Class who does not validly opt-out of the Settlement Class.

(29) **Settling Defendants** means Repromed Ltd., The Toronto Institute for Reproductive Medicine Inc., Praxair Canada Inc., and Chart Industries, Inc.

(30) **Tank** means the dewar manufactured by a subsidiary of Chart Industries, Inc. bearing serial number NPB2017520124U.

(31) **Trust Account** means a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46) held at a Canadian financial institution under the control of Class Counsel or a claims administrator, if appointed, for the benefit of the Settlement Class Members or the Defendant, as provided for in this Settlement Agreement.

SECTION 2– SETTLEMENT APPROVAL

2.1 Best Efforts

(1) The Parties shall use their best efforts to implement this Settlement Agreement and to secure the prompt, complete and final implementation of settlement and dismissal with prejudice of the Proceeding as against the Defendants.

2.2 Notice Approval and Certification

(1) As soon as practicable following the Date of Execution, the Plaintiffs shall file a motion before the Court for an order approving the notice described in Section 9.1(1) and certifying the Proceeding for settlement purposes only.

(2) The order approving the notice described in Section 9.1(1) and certifying the Proceeding for settlement purposes only shall be as agreed to by the Plaintiffs and Settling Defendants or in such form or manner as approved by the Court.

2.3 Settlement Approval

(1) The Plaintiffs shall file a motion before the Court for an Order approving this Settlement Agreement as soon as practicable after:

- (a) the order described in Section 2.2(1) has been granted; and
- (b) the notice described in Section 9.1(1) has been disseminated.

(2) The order approving the Settlement Agreement shall be as agreed to by the Plaintiffs and Settling Defendants or in such form or manner as approved by the Court.

2.4 Pre-Motion Confidentiality

(1) Until the motion required by Section 2.2(1) is filed, 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 Settling 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

(1) This Settlement Agreement shall only become final on the Effective Date.

SECTION 3 - SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

(1) Nothing in this Settlement Agreement impacts, in any way, any previous settlements or releases entered into by the Repromed Defendants and Settlement Class Members. For greater certainty, to the extent that the Repromed Defendants have provided or agreed to provide treatments and/or refunds to Settlement Class Members, those treatments and/or refunds do not

form part of this Settlement Agreement and are not impacted in any way by this Settlement Agreement.

(2) Within thirty (30) days of the Date of Execution, the Settling Defendants shall pay the Settlement Amount to Class Counsel, for deposit into the Trust Account.

(3) Payment of the Settlement Amount shall be made by wire transfer. At least ten days prior to the Settlement Amount becoming due, Class Counsel will provide, in writing, the following information necessary to complete the wire transfers: 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) Subject to Section 3.1(1), the Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims and the Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceeding.

(5) Class Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.

(6) Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Taxes and Interest

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

(2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account,

including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Class Counsel.

SECTION 4 - OPTING OUT

4.1 Procedure

(1) Class Counsel will seek approval from the Court of the following opt-out process as part of the motion contemplated in section 2.2

- (a) Persons seeking to opt-out of the Proceeding must do so by sending a written election to opt-out by pre-paid mail, courier, fax or email to the Opt-Out Administrator at an address to be identified in the notice described in Section 2.2.
- (b) An election to opt-out sent by mail will only be valid if it is received or postmarked on or before the Opt-Out Deadline. Where the postmark is not visible or legible, the request to opt out shall be deemed to have been postmarked four (4) business days prior to the date that it is received. 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 must be signed by the Settlement Class Member or the Settlement Class Member's designee and must include the following information:
 - (i) the Settlement Class Member's full name, current address and telephone number;

- (ii) a statement to the effect that the Settlement Class Member wishes to be excluded from the Proceeding; and
 - (iii) the reason for opting out of the proceeding.
- (d) Any potential Settlement Class Member who validly opts out of the Proceeding shall not be able to participate in the Proceeding or to share in the distribution of the Settlement Amount and no further right to opt-out of the Proceeding will be provided.
- (e) Within five (5) days of the Opt-Out Deadline, the Opt-Out Administrator shall provide a report to the Plaintiffs and Settling Defendants indicating the number of opt-out elections received pursuant to Section 4.1(1)(a) and the reasons stated for opting out of the Proceeding.
- (f) If any potential Settlement Class Member states in their opt-out election that they intend to commence litigation against the Defendants, the Opt-Out Administrator shall forward their opt-out election to Class Counsel and Counsel for the Settling Defendants.

(2) For each individual Settlement Class Member who indicates an intention to commence litigation against the Defendants, the Settlement Amount shall be reduced by \$12,500. For clarity, if the opt-out election is completed on behalf of two putative Settlement Class Members, the Settlement Amount shall be reduced by \$25,000.

(3) The Defendants reserve all of their legal rights and defences with respect to any potential Settlement Class Member who validly opts out from the Proceeding.

SECTION 5– TERMINATION OF SETTLEMENT AGREEMENT

5.1 Right of Termination

- (1) In the event that:
- (a) the Court declines to certify the Proceeding for the purposes of the Settlement Agreement;

- (b) the Court declines to approve this Settlement Agreement or any material part hereof;
- (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
- (e) any order approving this Settlement Agreement made by the Court does not become a Final Order;

the Plaintiffs and the Settling Defendants shall each have the right to terminate this Settlement Agreement by delivering a written notice within thirty (30) days following an event described above, subject to the Parties using best efforts and good faith to attempt to resolve any issues in furtherance of resolution of the Proceeding on such modified terms as may be required to obtain the Court's approval.

(2) In addition, if the Settlement Amount is not paid in accordance with Section 3.1(2), the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 12.14.

(3) Except as provided for in Section 5.1(4), if the Settlement Agreement is terminated, the 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. For greater certainty, in the event of termination, in accordance with Section 5, the Parties' positions with respect to the Proceeding shall be returned to *status quo ante*.

- (4) Any order, ruling or determination made or rejected by any Court with respect to:
- (a) Class Counsel Fees or Class Counsel Disbursements;
 - (b) the opt-out process; or
 - (c) the Plan of Allocation

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.

5.2 If Settlement Agreement Is Terminated

- (1) In the event of termination,
 - (a) no application to certify the Proceeding as a class proceeding on the basis of the Settlement Agreement or to approve the Settlement Agreement that has not been heard shall proceed;
 - (b) the Parties will cooperate in seeking to have any prior order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving the Settlement Agreement set aside and declared of no force and effect, and any person shall be estopped from asserting otherwise; and
 - (c) any prior certification the Proceeding as a class proceeding on the basis of the Settlement Agreement, including the definitions of the Settlement Class and the Common Issue for Settlement Purposes pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceeding or any other litigation.

5.3 Return of Settlement Amount Following Termination

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Class Counsel, within thirty (30) business days of the written notice advising that the Settlement Agreement has been terminated in accordance with its terms, shall return to the Settling Defendants the amount the Settling Defendants paid to Class Counsel, plus all accrued interest thereon and less any costs of notices incurred or payable under Section 9.2, if applicable.

5.4 Survival of Provisions After Non-Approval of Settlement Agreement

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 5.1(3), 5.1(4), 5.2, 5.3, 5.4, 7.1, 7.2, 9.1(3), and 10.2, and the definitions and Schedules applicable thereto, shall survive the

termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 5.1(3), 5.1(4), 5.2, 5.3, 5.4, 7.1, 7.2, 9.1(3), and 10.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 6 – RELEASES AND DISMISSALS

6.1 Release of Defendants

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasers 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.

(2) The Releasers 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 or the Proceeding, and it is the Releasers' 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 new or different facts.

6.2 No Further Claims

(1) Upon the Effective Date, each of the Releasers shall not 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 Releasers shall not assert or pursue a Released Claim against any Releasee under the laws of any foreign jurisdiction.

6.3 Dismissal of the Proceeding

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Defendants.

(2) Upon the Effective Date, each Settlement Class Member shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

6.4 Material Term

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of the Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 5 of the Settlement Agreement.

SECTION 7– EFFECT OF SETTLEMENT

7.1 No Admission of Liability

(1) The Plaintiffs 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, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, or any other pleading filed by the Plaintiffs.

7.2 Agreement Not Evidence

(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, 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 may be necessary, or as otherwise required by law.

SECTION 8– CERTIFICATION FOR SETTLEMENT ONLY

8.1 Certification Solely for the Purposes of Settlement

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

(2) The Plaintiffs agree 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 issue that they will seek to define is the Common Issue for Settlement Purposes and the only class that they will assert is the Settlement Class.

SECTION 9 – NOTICE TO CLASS MEMBERS

9.1 Notice Required

(1) Settlement Class Members shall be notified of: (i) the certification of the Proceeding as a class proceeding as against the Settling Defendants; (ii) the right to opt-out of the Proceeding; (iii) the hearing at which the Court will be asked to approve the Settlement Agreement; and (iv) if brought with the hearing to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and Class Counsel Disbursements.

(2) If the Settlement Agreement is approved, Class Members will receive further notice of such an event and will be advised of the process for applying to receive settlement benefits.

(3) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class Members shall be given notice of such event.

9.2 Form and Distribution of Notices

(1) The notices described in Section 9.1 shall be in a form agreed upon by the Parties and approved by the Court.

(2) The Repromed Defendants by their counsel shall distribute the notices described in Section 9.1 to Settlement Class Members by direct mail and email (if available), or by such other method agreed upon by the Parties and approved by the Court.

SECTION 10 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

10.1 Plan of Allocation

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendants, Class Counsel will bring a motion seeking an order from the Court approving the Plan of Allocation.

10.2 No Responsibility for Administration or Fees

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

SECTION 11 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

11.1 No Liability for Fees

(1) 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 the Settlement Class Members, or any lien of any person on any payment to any Settlement Class Member from the Settlement Amount.

11.2 Responsibility for Administration Expenses

(1) Class Counsel shall pay the Administration Expenses as they become due.

11.3 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements, Class Counsel Fees, and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as Class Counsel may determine in their sole discretion. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date.

SECTION 12 - MISCELLANEOUS

12.1 Motions for Directions

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

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties, except for those applications concerned solely with the implementation and administration of the Plan of Allocation.

12.2 Headings, etc.

(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.

12.3 Computation of Time

(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 *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

12.4 Ongoing Jurisdiction

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement and the Plaintiffs, Settlement Class Members and Settling Defendants attorn to the jurisdiction of the Ontario Court for such purposes.

12.5 Governing Law

(1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Provinces of Ontario and the laws of Canada applicable therein.

12.6 Entire Agreement

(1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, term sheets 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.

12.7 Amendments

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

12.8 Binding Effect

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

12.9 Counterparts

(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.

12.10 Negotiated Agreement

(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.

12.11 Recitals

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

12.12 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood 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.

12.13 Authorized Signatures

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

12.14 Notice

(1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceeding:

Charles M. Wright
Bridget M. Moran
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Barristers and Solicitors
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Fax: 905.754.3793
Email: pharte@hartelaw.com

For the Defendants ReproMed Ltd. and The Toronto Institute for Reproductive Medicine, Inc.

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For the Defendant Chart Industries, Inc.

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Fax: 416.863.4592
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michael.beeforth@dentons.com

For the Defendant Praxair Canada Inc.

Nadia Champion
Lars Brusven
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Tel: 416.598.1744
Fax: 416.598.3730

Email: ncampion@lolg.ca
lbrusven@lolg.ca

12.15 Date of Execution

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

A.Z.P. and A.J.P. on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory:

Bridget Moran

Signature of Authorized Signatory:

Bridget Moran
Siskinds LLP

QI ZHANG on her own behalf and on behalf of the Settlement Class, by her counsel

Name of Authorized Signatory:

Signature of Authorized Signatory:

Gluckstein personal Injury Lawyers, Rastin &
Associates, Harte Law

**REPROD MED LTD. and THE TORONTO INSTITUTE FOR REPRODUCTIVE
MEDICINE, INC. by their counsel**

Name of Authorized Signatory:

Signature of Authorized Signatory:

Lerners LLP

CHART INDUSTRIES, INC. by their counsel

Name of Authorized Signatory:

Email: ncampion@lolg.ca
lbrusven@lolg.ca

12.15 Date of Execution

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

A.Z.P. and A.J.P. on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Siskinds LLP

QI ZHANG on her own behalf and on behalf of the Settlement Class, by her counsel

Name of Authorized Signatory: Jordan Assaraf

Signature of Authorized Signatory:  _____
Gluckstein personal Injury Lawyers, Rastin & Associates, Harte Law

REPROMED LTD. and THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE, INC. by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Lerners LLP

CHART INDUSTRIES, INC. by their counsel

Name of Authorized Signatory: _____

Email: ncampion@lolg.ca
lbrusven@lolg.ca

12.15 Date of Execution

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A.Z.P. and A.J.P. on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Siskinds LLP

QI ZHANG on her own behalf and on behalf of the Settlement Class, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____

Gluckstein personal Injury Lawyers, Rastin & Associates, Harte Law

REPROMED LTD. and THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE, INC. by their counsel

Name of Authorized Signatory: _____

Peter W Kryworuk - Partner

Signature of Authorized Signatory: _____

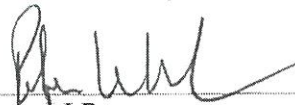

Lerners LLP

CHART INDUSTRIES, INC. by their counsel

Name of Authorized Signatory: _____

Email: ncampion@lolg.ca
lbrusven@lolg.ca

12.15 Date of Execution

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

A.Z.P. and A.J.P. on their own behalf and on behalf of the Settlement Class, by their counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Siskinds LLP

QI ZHANG on her own behalf and on behalf of the Settlement Class, by her counsel

Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Gluckstein personal Injury Lawyers, Rastin & Associates, Harte Law

REPROMED LTD. and THE TORONTO INSTITUTE FOR REPRODUCTIVE MEDICINE, INC. by their counsel


Name of Authorized Signatory: _____

Signature of Authorized Signatory: _____
Lerners LLP

CHART INDUSTRIES, INC. by their counsel

Name of Authorized Signatory: Neil Rabinovitch

Signature of Authorized Signatory:



Dentons Canada LLP

PRAXAIR CANADA INC.

Name of Authorized Signatory:

Sheryl Nisenbaum

Signature of Authorized Signatory:

Praxair Canada Inc.

Signature of Authorized Signatory:

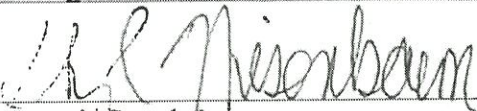
Dentons Canada LLP

PRAXAIR CANADA INC.

Name of Authorized Signatory:

Sheryl Nisenbaum

Signature of Authorized Signatory:



Praxair Canada Inc.

A.Z.P., A.J.P., and Qi Zhang
Plaintiffs and
REPROMED LTD., et al.
Defendants

Court File No.: CV-18-00002489-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Brampton

ORDER
(Settlement Approval)

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