

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 26th
)
JUSTICE BELOBABA) DAY OF JUNE, 2019

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -



**GLOBAL LEARNING GROUP INC., GLOBAL LEARNING TRUSTS SERVICES INC.
AS THE TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS,
IDI STRATEGIES INC., JDS CORPORATION, ESCROWAGENT INC.,
JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH,
MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP,
CASSELS BROCK & BLACKWELL LLP, WISE BLACKMAN LLP,
and EVANS & EVANS INC.**

Defendants

ORDER

(Motion for Certification and Settlement Approval)

THIS MOTION, made by the Plaintiffs, for an order certifying this proceeding as a class proceeding as against Denis Jobin and JDS Corporation, now continued as 8225311 Canada Inc., (together, the **Jobin Defendants**), appointing the Plaintiffs as representative plaintiffs, and approving the settlement agreement between the Plaintiffs and the Jobin Defendants was heard this day at the court house, 130 Queen St. W., Toronto, Ontario.

ON READING the notice of motion for certification, dated August 14, 2018, the affidavit of John Phillips, sworn August 9, 2018, the affidavit of Lynn Wintercorn, sworn August 13, 2018, the affidavit of Peter Newman, sworn August 13, 2018, the affidavit of Emily Flammini, sworn August 10, 2018, the affidavit of Alex Kepic, sworn August 10, 2018, the supplementary notice of motion for settlement approval, the supplementary affidavit of John Phillips sworn May 21, 2019, the Affidavit of Stephanie Ficker affirmed June 13, 2019, the facts of the Plaintiffs and the Defendants Cassels Brock & Blackwell LLP, Fasken Martineau DuMoulin LLP and Allan Beach and the submissions of Morris Kepes Winters LLP, James Penturn, Richard Glatt and IDI Strategies Inc., and upon being advised of the consent of the Jobin Defendants and the consent of Cassels Brock & Blackwell LLP, Fasken Martineau DuMoulin LLP and Allan Beach, Morris Kepes Winters LLP, James Penturn, Richard Glatt and IDI Strategies Inc., Wise Blackman LLP, Evans & Evans Inc., and Robert Lewis (together, the **Non-Settling Defendants**), and on hearing the submissions of the lawyers for the Plaintiffs and for the Non-Settling Defendants, no one appearing for the Jobin Defendants, who have been noted in default,

1. **THIS COURT ORDERS** that this action is certified as a class proceeding under sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the **CPA**) regarding the claims asserted against the Jobin Defendants.
2. **THIS COURT ORDERS** that the class is described as follows:

All persons who participated in the Global Learning Gifting Initiative Charitable Donation program (“the Gift Program”), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale

of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lopus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak. (the **Class**)

3. **THIS COURT ORDERS** that Lynn Wintercorn, Peter Newman, Emily Flammini and Alex Kepic are appointed as the representative plaintiffs.

4. **THIS COURT DECLARES** claims asserted on behalf of the Class against the Jobin Defendants are negligence, unjust enrichment, knowing receipt, conspiracy, and deceit.

5. **THIS COURT DECLARES** that the relief sought by the Class is: (a) general damages and special damages; (b) restitution; (c) declarations; and (d) punitive, aggravated and exemplary damages.

6. **THIS COURT ORDERS** that the common issues certified as against the Jobin Defendants are:

- (1) If the Global Learning Gifting Initiative (the Gift Program) was a sham or a fraud, are the funds that the Class Members paid to participate in the Gift Program that were paid to specified charities, and which were in turn paid by those charities to Global Learning Group Inc., impressed with a constructive trust in favour of the Class Members?
- (2) Were Denis Jobin and JDS Corporation in knowing receipt of funds impressed with a constructive trust in favour of the Class Members? and

- (3) Did Denis Jobin and/or JDS Corporation owe the Class a duty of care, and if so, did they breach the applicable standard of care?

7. **THIS COURT ORDERS** that notice of certification of this proceeding as a class proceeding shall be given to the Class members in a manner to be approved by the court, with the cost of giving notice to be determined by the court.

8. **THIS COURT ORDERS** that Class members may opt out of the class proceeding by delivering to Class Counsel or as otherwise directed by the court a written and signed statement, in a form to be approved by the court, confirming their intent to opt out, no later than 60 days following first publication of the notice of certification (the **Opt Out Deadline**). Opt out forms received after the Opt Out Deadline will not be valid.

9. **THIS COURT DECLARES** that notice to the Class of the hearing for approval of the Settlement Agreement made between the Plaintiffs and the Jobin Defendants (the **Jobin Settlement Agreement**) was not required under s. 19 *CPA*, and is hereby dispensed with.

10. **THIS COURT ORDERS** that the Settlement Agreement made between the Plaintiffs and the Jobin Defendants, attached hereto as **Appendix 1**, as amended by the Amendment to Settlement Agreement, attached hereto as **Appendix 2**, (together, the Jobin Settlement Agreement) is fair, reasonable and in the best interests of the Class and is hereby approved, and shall be implemented in accordance with its terms, except to the extent that this Order varies those terms, in which case this Order takes precedence over the terms of the Settlement Agreement, as amended.

11. **THIS COURT ORDERS** that the Jobin Settlement Agreement is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Jobin Settlement Agreement.

12. **THIS COURT ORDERS** that the Jobin Settlement Agreement is binding upon the Jobin Defendants, the Plaintiffs, and all Class Members who do not validly excluded themselves from this action (opt out) including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.

13. **THIS COURT ORDERS** that any putative members of the Class who validly opt out of the Action by the Opt Out Deadline, in accordance with paragraph 8 of this Order are not bound by the Jobin Settlement Agreement, and shall no longer participate in or have the opportunity in the future to participate in this Action, including any future settlements or judgment.

14. **THIS COURT ORDERS AND DECLARES** that, subject to the terms of the Jobin Settlement Agreement, the Class forever and absolutely release the Jobin Defendants from all manner of claims, demands, actions, suits, Québec civil law and statutory liabilities, and causes of action which have been asserted or which could have been asserted in the Action, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and lawyers' fees that the Class ever had, now have, or hereafter can, shall, could, or may have against the Jobin Defendants, relating in any way to any to the Class' participation in the Gift Program and the resulting tax liabilities arising from their income tax reassessments by Canada Revenue Agency (the **Released Claims**).

15. **THIS COURT ORDERS AND DECLARES** that each Class Member is forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against the Jobin Defendants any claims that relate to or constitute any Released Claims, as referenced in paragraph 14, above.

16. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in this Action or that have been asserted by separate action in Ontario seeking contribution, indemnity and other relief over from the Jobin Defendants in respect of a proposed class proceeding commenced in Saskatchewan being *Piett v. Global Learning Group Inc., et al.*, Court file No. Q.B.G. "590" of 2016 (the **Piett Action**), by any Non-Settling Defendant against the Jobin Defendants, or by the Jobin Defendants against a Non-Settling Defendant are barred, prohibited and enjoined but the Non-Settling Defendants may nonetheless pursue claims against the Jobin Defendants for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the *Piett Action* that do not overlap with the claims asserted in this Action (both in terms of subject matter and class members).

17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Gift Program which were or could have been brought in the Action or in a separate proceeding by any Non-Settling Defendant or any other person or party

against any of the Jobin Defendants, or by the Jobin Defendants against any Non-Settling Defendant are barred, prohibited and enjoined, unless such a claim is made in respect of a claim by a person who has validly opted out of the Action, or is made by the Non-Settling Defendants for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the Piett Action that do not overlap with this Action (both in terms of subject matter and class members).

18. **THIS COURT ORDERS** that the Plaintiffs shall provide to the Non-Settling Defendants a copy of all documents produced to them by the Jobin Defendants.

19. **THIS COURT ORDERS** that on at least ten (10) days notice to the Jobin Defendants, a Non-Settling Defendant may seek an order requiring the Jobin Defendants to serve an affidavit of Documents compliant with Rule 30.03 of the *Rules of Civil Procedure* and to produce their Schedule A documents in accordance with the relevant *Rules of Civil Procedure*.

20. **THIS COURT ORDERS** that the Non-Settling Defendants may attend at the Plaintiffs' examination of the Jobin Defendants referenced in paragraph 3 of the Jobin Settlement Agreement and conduct an examination for discovery of the Jobin Defendants, which shall take place at the same time as the Plaintiffs' examination of the Jobin Defendants referenced in paragraph 3 of the Jobin Settlement Agreement, and may read into the record at trial any such evidence as though the Jobin Defendants remained parties to the Action.

21. **THIS COURT ORDERS** that, pursuant to Rule 30.1.01(8), the deemed undertaking rule shall not apply to the evidence obtained from the Jobin Defendants pursuant to paragraphs 18, 19

and 20 of this Order to the extent that the evidence may be used by the Non-Settling Defendants in any claims or cross claims made in or related to this Action or the Pielt Action

22. **THIS COURT ORDERS** that, if requested by the Non-Settling Defendants, Denis Jobin will attend as a witness at the trial of this Action without the need to be served with a summons to witness, and the Non-Settling Defendants may cross-examine him.

23. **THIS COURT ORDERS AND DECLARES** that, should it be necessary, it has full authority to determine the proportionate liability of the Jobin Defendants at the trial or other disposition of the Action, whether or not the Jobin Defendants appear at the trial or other disposition of this proceeding, and the proportionate liability of the Jobin Defendants shall be determined as if the Jobin Defendants are parties to the Action and any determination by the Court in respect of the proportionate liability shall only apply in the Action and shall not be binding on the Jobin Defendants in any other proceedings.

24. **THIS COURT ORDERS** that the Action shall be dismissed against the Jobin Defendants, with prejudice and without costs upon the court being notified by the Plaintiffs that the Jobin Defendants have completed the examinations for discovery required by this Order, including answering any undertakings or court ordered refusals arising therefrom.

25. **THIS COURT ORDERS** that there shall be no costs of this motion.

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUN 28 2019

PER/PAR



The Honourable Justice E. Belobaba

Appendix 1

SETTLEMENT AGREEMENT

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC
(Plaintiffs)

- and -

DENIS JOBIN and
JDS CORPORATION, now continued as 8225311 CANADA INC.
(Settling Defendants)

The parties hereto agree to settle the Plaintiffs' claims against Denis Jobin ("Jobin") and JDS Corporation, now continued as 8225311 Canada Inc. ("JDS") (together, the "Settling Defendants") on the following basis, subject to the approval of the Ontario Superior Court of Justice:

1. The Settling Defendants hereby represent and warrant that:
 - a. JDS and Jobin each have a net worth of less than \$500,000; and
 - b. There is no professional liability or other insurance available to either of the Settling Defendants that would respond to the claims asserted against the Settling Defendants in the Plaintiffs' action, *Wintercorn et al. v. Global Learning Group et al.*, Court File No. CV-17-583573-00CP (the "Action").
2. The Action shall be certified as a class proceeding as against the Settling Defendants on consent and without costs on the following basis, and in the form attached hereto as **Schedule A**, or as otherwise approved by the Court:
 - a. The common issues to be certified as against the Settling Defendants will be:
 - i. If the Gift Program was a sham or a fraud, are the funds that the Class Members paid to participate in the Gift Program that were paid to specified charities, and which were in turn paid by those charities to GLGI, impressed with a constructive trust in favour of the Class Members?
 - ii. Were Denis Jobin and JDS Corporation in knowing receipt of funds impressed with a constructive trust in favour of the Class Members?
and
 - iii. Did Denis Jobin and/or JDS Corporation owe the Class a duty of care, and if so, did they breach the applicable standard of care?

- b. The Class will be defined as “all persons who participated in the Global Learning Gifting Initiative Charitable Donation program (“the Gift Program”), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak.”
 - c. Notice of certification of the Action as against the Settling Defendants will be published at a time to be specified by the Court, and in a form to be approved by the Court, and may be published in conjunction with notice of certification of the Action as against other Defendants.
3. Jobin will attend before an official examiner in Montreal, Quebec to be examined under oath by the lawyers for the Plaintiffs (“Class Counsel”) on a date to be agreed upon between the Plaintiffs and the Settling Defendants, but which shall take place no later than 45 days after the Court approves this settlement. Jobin will attend to answer questions both in his personal capacity and in his capacity as an officer and director of JDS Corporation (“JDS”) regarding his knowledge about, and involvement in the matters described in the Second Amended Statement of Claim (the “Claim”) in the Action, or in any further amendment to the statement of claim, or any further amendments to the Claim.
4. The Plaintiffs will be entitled to read into the trial record any of the evidence of the Settling Defendants given on the examination under oath as though the Settling Defendants remained defendants in the Action.
5. Jobin will, in accordance with the order of the Court approving this settlement, and by no later than 15 days prior to his examination under oath, produce to Class Counsel all documents in his power, possession or control both in his personal capacity and in his capacity as an officer and director of JDS Corporation that are relevant to the matters described in the Claim, including, but not limited to any copy of the database of participants in the Global Learning Gifting Initiative (the database). The database shall be produced in electronic (Excel) format. Any communications between the Settling Defendants and any of the non-settling defendants in this Action shall be produced in their original format, in either electronic or hard copy format.
6. The Action will be dismissed, with prejudice, and on consent and without costs as against the Settling Defendants following the completion of Jobin’s examination under oath; but without prejudice to the Plaintiffs’ rights to seek a tracing order against Jobin and JDS as non-parties to the Action in the event that the Plaintiffs subsequently discover and demonstrate to the satisfaction of the Court that the representation and warranty set forth in paragraph #1 herein is not accurate (the “Dismissal Order”).

7. The Dismissal Order will include a full and final release by the Class in favour of the Settling Defendants.
8. If Jobin provides evidence to the Plaintiffs that is false or materially misleading, the Plaintiffs may bring a motion on notice to the Settling Defendants to set aside this Agreement and the Dismissal Order, and, if granted, the Plaintiffs' claims asserted against the Settling Defendants in the Claim shall be continued as though this Settlement Agreement and the Dismissal Order had not been made, and the Settling Defendants agree that they will be barred from asserting a defence based upon the expiry of any limitation period.
9. Bar Order: The Plaintiff and the Settling Defendants agree that the Dismissal Order shall contain a bar order which shall include the following provisions:
 - (a) The following words shall be defined as:
 - (i) **Effective Date** means the date when the Court grants the Dismissal Order which will include the Bar Order terms, and all appeal periods with respect thereto have expired such that the Dismissal Order is a final order of the Court;
 - (ii) **Gift Program** means the Global Learning Group Inc. charitable donation tax program, Federal Tax Shelter Identification #TS070003, which was offered or otherwise available between 2004 and 2014 and which is the subject of the Action;
 - (iii) **Non-Settling Defendants** means a Defendant in the Action that is not a Settling Defendant under this Settlement Agreement;
 - (iv) **Settling Defendants** means Denis Jobin and JDS Corporation;
 - (v) **Settlement Class Members** means a member of the Class who has not validly opted out of the Action.
 - (b) all claims for contribution or indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs relating to or arising from the Gift Program which were or could have been brought in the Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Settling Defendants, or by the Settling Defendants against any Non-Settling Defendant, shall be barred, prohibited and enjoined (unless such a claim is made in respect of a claim by a person who has validly opted out of the Action);
 - (c) all claims of any nature whatsoever arising out of or relating in any way to the professional services provided by the Settling Defendants to the defendants Global Learning Group Inc, and Global Learning Trust Services Inc. as Trustees of Global Learning Trust (2004) relating to or arising from


the Gift Program which could have been brought in the Action or in a separate proceeding are barred, prohibited and enjoined;


- (d) if a Non-Settling Defendant or any other person or party would have the right to make a claim of any kind against any of the Settling Defendants:
- (i) the Plaintiffs and/or the Class Members shall not claim or be entitled to recover from the Non-Settling Defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of any of the Settling Defendants as proven at trial;
 - (ii) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Action as if the Settling Defendants were parties to the action and any such finding by the Court in respect of the Settling Defendants' proportionate liability shall only apply in this Action and shall not be binding upon the Settling Defendants in any other proceedings;
- (e) after the Dismissal Order is final, a Non-Settling Defendant may, on motion to the court determined as if the Settling Defendants remained parties to the Class Action, and on at least ten days' notice to the Settling Defendants and the Plaintiffs, seek an order to conduct an examination for discovery of the Settling Defendants as though they remained a party to the Action, according to the Ontario *Rules of Civil Procedure*. The Settling Defendants retain all rights to oppose such a motion or seek the costs of compliance. On any motion brought pursuant to this paragraph, the Court may make such orders as to costs and other terms that it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be produced in a timely manner by the Settling Defendants to Class Counsel;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the Court for these purposes only; and
- (h) a Non-Settling Defendant may affect service of the motion referred to in Article 9(e) on the Settling Defendants by service on Counsel for the Settling Defendants.
10. For greater certainty, to the extent that the Settling Defendants are found to have any liability to any of the Non-Settling Defendants for damages or losses arising from or related to amounts for which the Non-Settling Defendants are found liable to the Class, the Class Members' recovery from the Non-Settling Defendants shall be reduced by the amount(s) for which the Settling Defendants are found liable to the Non-Settling Defendants.


11. Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class Members against any person other than the Settling Defendants.
12. The Plaintiffs will seek Court approval of this Agreement and an Order certifying this Action as against the Settling Defendants and then dismissing the certified Action as against the Settling Defendants with prejudice, and on consent and without costs, and the consent Dismissal Order shall include the Bar Order terms set out above. In the event the Court does not approve this Settlement Agreement or grant the Order including the Bar Order terms, then this Settlement Agreement shall be at an end, and all parties shall be returned to the position they were in immediately before executing this Agreement.
13. The Settling Defendants represent and warrant that they have had a reasonable opportunity to review and consider this Settlement Agreement prior to executing it, have obtained independent legal advice in respect thereto and understand the significance of the Settlement Agreement including their obligations and rights hereunder, and are under no incapacity of any nature at the time that it was executed and explained to them. The Settling Defendants acknowledge that Class Counsel have not provided them with legal advice.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and such separate counterparts shall constitute together one and the same instrument, notwithstanding their date of actual execution.

Dated this 29 day of March, 2019


 Denis Jobin


 8225311 Cañada Inc.,
 formerly JDS Corporation
 Per: Denis Jobin a.s.o.


 Lynn Wintercorn, Peter Newman,
 Emily Flammini and Alex Kepic
 By their lawyers,
 Waddell Phillips Professional Corporation
 and Landy Marr Kats LLP

Appendix 2

Amendment to SETTLEMENT AGREEMENT

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC
(Plaintiffs)

- and -

DENIS JOBIN and
JDS CORPORATION, now continued as 8225311 CANADA INC.
(Settling Defendants)

Whereas the parties hereto entered into a Settlement Agreement on March 29, 2019, which included at Schedule A, a draft form of certification and settlement approval order;

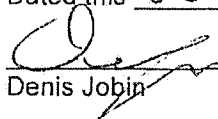
And whereas certain of the Defendants to the Plaintiffs' action, *Wintercorn et al. v. Global Learning Group et al.*, Court File No. CV-17-583573-00CP (the "Action") objected to certain terms of the order at Schedule and also sought additional procedural and substantive protections,

Now therefore, the Parties hereto have consented and agreed to amend the terms of the Settlement Agreement to remove Schedule A and replace it with the form of order attached hereto as Revised Schedule A.

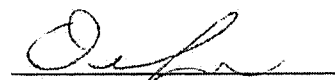
Insofar as any terms of the Settlement Agreement are inconsistent with the terms of Revised Schedule A, then the terms of Revised Schedule A shall prevail.

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and such separate counterparts shall constitute together one and the same instrument, notwithstanding their date of actual execution.


Dated this 25 day of June, 2019



Denis Jobin



8225311 Canada Inc.,
formerly JDS Corporation
Per: Denis Jobin a.s.o.



Lynn Wintercorn, Peter Newman,
Emily Flammini and Alex Kepic
By their lawyers, Waddell Phillips Professional Corporation

Revised Schedule A

Court File No. CV-17-583573-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 26th
JUSTICE BELOBABA) DAY OF JUNE, 2019

BETWEEN:

LYNN WINTERCORN, PETER NEWMAN, EMILY FLAMMINI and ALEX KEPIC

Plaintiffs

- and -

**GLOBAL LEARNING GROUP INC., GLOBAL LEARNING TRUSTS SERVICES INC.
AS THE TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS,
IDI STRATEGIES INC., JDS CORPORATION, ESCROWAGENT INC.,
JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH,
MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP,
CASSELS BROCK & BLACKWELL LLP, WISE BLACKMAN LLP,
and EVANS & EVANS INC.**

Defendants

ORDER

(Motion for Certification and Settlement Approval)

THIS MOTION, made by the Plaintiffs, for an order certifying this proceeding as a class proceeding as against Denis Jobin and JDS Corporation, now continued as 8225311 Canada Inc., (together, the Jobin Defendants), appointing the Plaintiffs as representative plaintiffs, and

approving the settlement agreement between the Plaintiffs and the Jobin Defendants was heard this day at the court house, 130 Queen St. W., Toronto, Ontario.

ON READING the notice of motion for certification, dated August 14, 2018, the affidavit of John Phillips, sworn August 9, 2018, the affidavit of Lynn Wintercorn, sworn August 13, 2018, the affidavit of Peter Newman, sworn August 13, 2018, the affidavit of Emily Flammini, sworn August 10, 2018, the affidavit of Alex Kepic, sworn August 10, 2018, the supplementary notice of motion for settlement approval, the supplementary affidavit of John Phillips sworn May 21, 2019, the Affidavit of Stephanie Ficker affirmed June 13, 2019, the facts of the Plaintiffs and the Defendants Cassels Brock & Blackwell LLP, Fasken Martineau DuMoulin LLP and Allan Beach and the submissions of Morris Kepes Winters LLP, James Penturn, Richard Glatt and IDI Strategies Inc., and upon being advised of the consent of the Jobin Defendants, and on hearing the submissions of the lawyers for the Plaintiffs and for the Non-Settling Defendants, no one appearing for the Jobin Defendants, who have been noted in default,

1. **THIS COURT ORDERS** that this action is certified as a class proceeding under sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the *CPA*) regarding the claims asserted against the Jobin Defendants.
2. **THIS COURT ORDERS** that the class is described as follows:

All persons who participated in the Global Learning Gifting Initiative Charitable Donation program (“the Gift Program”), exclusive of the Defendants, their family members, employees, agents, assigns, parent or subsidiary or affiliated companies, and any person or entity who provided services to one or more of the Defendants in respect of the creation, promotion, marketing or sale of the Gift Program, including any sales agents or distributors, and

exclusive of Juanita Mariano, Douglas Moshurchak, Sergiy Bilobrov, Melba Lapus, Lylyne Santos, the Estate of Penny Sharp, and Janice Moshurchak.

3. **THIS COURT ORDERS** that Lynn Wintercorn, Peter Newman, Emily Flammini and Alex Kopic are appointed as the representative plaintiffs.

4. **THIS COURT DECLARES** the causes of action asserted on behalf of the class against the Jobin Defendants are negligence, unjust enrichment, and knowing receipt.

5. **THIS COURT DECLARES** that the relief sought by the class is: (a) general and special damages and damages; (b) restitution; (c) declarations; and (d) punitive, aggravated and exemplary damages.

6. **THIS COURT ORDERS** that the common issues certified as against the Jobin Defendants are:

- (1) If the Global Learning Gifting Initiative (the Gift Program) was a sham or a fraud, are the funds that the Class Members paid to participate in the Gift Program that were paid to specified charities, and which were in turn paid by those charities to GLGI, impressed with a constructive trust in favour of the Class Members?
- (2) Were Denis Jobin and JDS Corporation in knowing receipt of funds impressed with a constructive trust in favour of the Class Members? And
- (3) Did Denis Jobin and/or JDS Corporation owe the Class a duty of care, and if so, did they breach the applicable standard of care?

7. **THIS COURT ORDERS** that notice of certification of this proceeding as a class proceeding shall be given to the class members in a manner to be approved by the court, with the cost of giving notice to be determined by the court.

8. **THIS COURT ORDERS** that Class members may opt out of the class proceeding by delivering to Class Counsel or as otherwise directed by the court a written and signed statement, in a form to be approved by the court, confirming their intent to opt out, no later than 60 days following first publication of the notice of certification (the Opt Out Deadline). Opt out forms received after the Opt Out Deadline will not be valid.

9. **THIS COURT DECLARES** that notice to the Class of the hearing for approval of the Settlement Agreement made between the Plaintiffs and the Jobin Defendants (the Jobin Settlement Agreement) was not required under s. 19 *CPA*, and is hereby dispensed with.

10. **THIS COURT ORDERS** that the Settlement Agreement made between the Plaintiffs and the Jobin Defendants, attached hereto as **Appendix 1**, is fair, reasonable and in the best interests of the Class and is hereby approved, and shall be implemented in accordance with its terms.

11. **THIS COURT ORDERS** that the Settlement Agreement is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.

12. **THIS COURT ORDERS** that the Settlement Agreement is binding upon the Jobin Defendants, the Plaintiffs, and all Class Members who do not validly excluded themselves from this action (opt out) including those persons who are minors or mentally incapable, and that the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are hereby disposed of.

13. THIS COURT ORDERS that any putative members of the Class who validly opt out of the Action by the Opt Out Deadline, in accordance with paragraph 8 of this Order are not bound by the Settlement Agreement, and shall no longer participate in or have the opportunity in the future to participate in this Action, including any future settlements or judgment.

14. **THIS COURT ORDERS AND DECLARES** that, subject to the terms of the Settlement Agreement, the Class forever and absolutely release the Jobin Defendants from all manner of claims, demands, actions, suits, Québec civil law and statutory liabilities, and causes of action which have been asserted or which could have been asserted in the Action, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and lawyers' fees that the Class ever had, now have, or hereafter can, shall, could, or may have against the Jobin Defendants, relating in any way to any to the Class' participation in the Gift Program and the resulting tax liabilities arising from their income tax reassessments by Canada Revenue Agency (the Released Claims).

15. **THIS COURT ORDERS AND DECLARES** that each Class Member is forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against the Jobin Defendants any claims that relate to or constitute any Released Claims, as referenced in paragraph 14, above.

16. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in this Action

or that have been asserted by separate action in Ontario seeking contribution and indemnity from the Jobin Defendants in respect of a proposed class proceeding commenced in Saskatchewan being *Piett v. Global Learning Group Inc., et al.*, Court file No. GBQ “590” of 2016 (the “Piett Action”), by any Non-Settling Defendant against the Jobin Defendants, or by the Jobin Defendants against a Non-Settling Defendant are barred, prohibited and enjoined but the Non-Settling Defendants may nonetheless pursue claims against the Jobin Defendants for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the Piett Action that do not overlap with the claims asserted in this Action (both in terms of subject matter and class members).

17. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to or arising from the Gift Program which were or could have been brought in the Action or in a separate proceeding by any Non-Settling Defendant or any other person or party against any of the Jobin Defendants, or by the Jobin Defendants against any Non-Settling Defendant are barred, prohibited and enjoined, unless such a claim is made in respect of a claim by a person who has validly opted out of the Action, or is made by the Non-Settling Defendants for contribution and indemnity and other claims over in respect of any claims asserted against the Non-Settling Defendants in the Piett Action that do not overlap with this Action (both in terms of subject matter and class members).

18. **THIS COURT ORDERS** that the Plaintiffs shall provide to the Non-Settling Defendants a copy of all documents produced to them by the Jobin Defendants.

19. **THIS COURT ORDERS** that the Non-Settling Defendants may conduct an examination for discovery of the Jobin Defendants, which shall take place at the same time as the Plaintiff's examination of the Jobin Defendants referenced in paragraph 3 of the Settlement Agreement, and may read into the record at trial any such evidence as though the Jobin Defendants remained parties to the Action.

20. **THIS COURT ORDERS** that the deemed undertaking rule, Rule 30.1.01(8), shall not apply to the evidence obtained from the Jobin Defendants pursuant to paragraphs 18 and 19 of this Order to the extent that the evidence may be used by the Non-Settling Defendants in the Pielt Action.

21. **THIS COURT ORDERS** that, if requested by the Non-Settling Defendants, Denis Jobin will attend as a witness at the trial of this action without the need to be served with a summons to witness, and the Non-Settling Defendants may cross-examine him.

22. **THIS COURT ORDERS AND DECLARES** that, should it be necessary, it has full authority to determine the proportionate liability of the Jobin Defendants at the trial or other disposition of the Action, whether or not the Jobin Defendants appear at the trial or other disposition of this proceeding, and the proportionate liability of the Jobin Defendants shall be determined as if the Jobin Defendants are parties to the Action and any determination by the Court in respect of the proportionate liability shall only apply in the Action and shall not be binding on the Jobin Defendants in any other proceedings.

23. **THIS COURT ORDERS** that the Action shall be dismissed against the Jobin Defendants, with prejudice and without costs upon the court being notified by the Plaintiffs that the Jobin

Defendants have completed the examination under oath required by the Settlement Agreement, including answering any undertakings or court ordered refusals arising therefrom.

24. **THIS COURT ORDERS** that there shall be no costs of this motion.

The Honourable Justice E. Belobaba

LYNN WINTERCORN, et al.
Plaintiffs

-and-

GLOBAL LEARNING GROUP INC., et al.
Defendants
Court File No. CV-17-583573-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER
CERTIFICATION AND SETTLEMENT
APPROVAL (JOBIN/JDS SETTLEMENT)

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