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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

SCOTT MEEKER and ERIN MEEKER,  
KELLY GOODWIN, BRUCE ELY and  
KRISTI HAUKE, ELIZABETH BORTE and  
RINO PASINI, CHRISTIAN MINER, and  
JUDY SANSERI and HOWARD BANICH;  
individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

BULLSEYE GLASS CO., an Oregon  
corporation,

Defendant.

Case No. 16cv07002

**CLASS ACTION SETTLEMENT  
AGREEMENT AND RELEASE**

**1. PREAMBLE**

Subject to the preliminary and final approval of the Multnomah County Circuit Court of Oregon (the “Court”), and as further set forth below, this Settlement Agreement is made by and between the Class Representatives defined below (“Plaintiffs”), individually and on behalf of the certified classes defined below (the “Class”), and Defendant Bullseye Glass Co. (“Defendant” or “Bullseye”). Plaintiffs and Defendant are collectively referred to as the “Parties.”<sup>1</sup>

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<sup>1</sup> Capitalized words and phrases used throughout this Settlement Agreement carry the definitions set forth herein.

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## 2. RECITALS

On March 3, 2016, Plaintiffs filed the putative class action lawsuit, *Meeker, et al. v. Bullseye Glass Co.*, Multnomah County Case No. 16CV07002 (the “Action” or the “Litigation”), alleging trespass, nuisance, and negligence claims against Bullseye related to air and particulate emissions of arsenic, cadmium, chromium, and hexavalent chromium (the “Contaminants”) from the Bullseye Facility at 3722 SE 21st Avenue, Portland, Oregon, also known as the facility governed by Air Contaminant Discharge Permit number 26-3125;

2.1 On April 14, 2016, Plaintiffs filed their first amended complaint in the Action;

2.2 On August 8, 2016, the Court entered an order denying in part and granting in part Bullseye’s motion to dismiss, and giving Plaintiffs leave to file an amended complaint;

2.3 On August 9, 2016 and February 13, 2018, Plaintiffs filed their second and third amended complaints in the Action;

2.4 Plaintiffs have sought relief, including but not limited to damages, injunctive relief, punitive damages, and attorneys’ fees and costs for the alleged acts and omissions of Bullseye;

2.5 On February 23, 2018 Bullseye filed an Answer to Plaintiffs’ Third Amended Complaint, which denied Plaintiffs’ allegations and asserted a number of defenses to Plaintiffs’ claims;

2.6 On February 28, 2018 the Court entered its order granting class certification of two subclasses consisting of (i) all residents as of February 3, 2016 and (ii) all owners as of February 3, 2016, of the residential real properties within the Class Area depicted in the figure attached to this Settlement Agreement as Exhibit 1;

1           **2.7**     On February 28, 2018, the court also appointed the Plaintiffs as Class  
2 Representatives and Keller Rohrback L.L.P. and Law Office of Karl G. Anuta, P.C. as Class  
3 Counsel;

4           **2.8**     Between August 8, 2016 and November 9, 2018, the Parties engaged in intensive  
5 fact discovery, undertook site inspections at the Bullseye Facility and Plaintiffs' homes,  
6 undertook certain soil, dust, and bodily testing of class members, deposed 22 witnesses, and  
7 undertook certain soil, dust, and bodily testing of class members, deposed 22 witnesses, and  
8 litigated numerous, vigorously contested motions, including Plaintiffs' motion for punitive  
9 damages, and Plaintiffs' motion for class certification, in support of which Plaintiffs filed three  
10 initial and three rebuttal expert reports, and Bullseye filed eight expert reports;

11           **2.9**     The Parties have been engaged in intense mediation efforts between April 2018  
12 and January 2019 under the auspices of two mediators, which included at least three day-long  
13 mediation sessions, numerous additional in-person and telephonic conferences, and written  
14 exchanges. After extended, arms-length negotiations, and recognizing the uncertain outcome of  
15 trial and appeal for both sides and sharing an interest in reaching final resolution of this matter,  
16 the Parties reached final agreement on the terms of Settlement proposed to the Court herein;

17           **2.10**    Since learning of emissions concerns on February 1, 2016, Bullseye has spent  
18 approximately \$2.2 million dollars installing a state-of-the-art baghouse emissions control  
19 system at the Bullseye Facility. The system includes a leak detection monitor that constantly  
20 measures the particulate being emitted from the baghouse and sounds an alarm if the volume of  
21 particulate increases, either because of a leak in a baghouse filter or some other system  
22 malfunction. In July 2017, Bullseye reported to DEQ that emissions testing conducted after  
23 installation of the baghouses established that Bullseye was in compliance with the most stringent  
24 federal and state emissions standards. In addition, in June 2018, Bullseye voluntarily attached its  
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1           **3.5**    “**Bullseye Facility**” means the real estate located at 3722 SE 21st Avenue,  
2 Portland, Oregon, also known as the facility governed by Air Contaminant Discharge Permit  
3 number 26-3125.

4           **3.6**    “**Case Contribution Awards**” means amounts authorized by the Court to be paid  
5 out of the Settlement Cash Payment from the Qualified Settlement Fund to the Class  
6 Representatives in the amount of \$7,500 per each Class Representative, or \$10,000 per married  
7 or co-habiting couple, in recognition of each Class Representative’s time and effort in actively  
8 participating in the Litigation.  
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10          **3.7**    “**Claim**” means a timely and complete submission, signed under penalty of  
11 perjury, and submitted by a Class Member or Claiming Class Member Household together with  
12 all necessary supporting documentation related thereto.  
13

14          **3.8**    “**Claim Form**” means the document labeled “Claim Form” available on the  
15 Settlement website or accompanying the mailed Class Settlement Notice.

16          **3.9**    “**Claimant**” means a person, set of persons, or entity filing a Claim.

17          **3.10** “**Claiming Class Member Household**” means one or more Class Members who  
18 reside or resided together or own real property together in the Class Area, and who elect to  
19 submit a joint Claim or Claims.  
20

21          **3.11** “**Class Area**” means the area depicted in the figure attached to this Settlement  
22 Agreement as Exhibit 1.

23          **3.12** “**Class Counsel**” means Keller Rohrback L.L.P. (Daniel Mensher, Amy  
24 Williams-Derry, and Matthew Preusch) and the Law Office of Karl G. Anuta, P.C.

25          **3.13** “**Class Member**” means anyone who owned residential real property within,  
26 and/or who had a legal entitlement to reside within and did reside within, the Class Area on the

1 Relevant Date, but excluding all persons who make a timely election to be excluded from the  
2 Class, governmental entities, residents of Reed College, and the judge to whom this case is  
3 assigned and that judge's immediate family.

4           **3.14 "Class Member Payment"** means the potential reimbursements and/or payments  
5 to Class Members described below in Sections 4.5, 4.6, and 4.7.

6           **3.15 "Class Notice Program"** means the form and manner of notice to Class Members  
7 as ordered by the Court.

8           **3.16 "Class Property"** means a residential real property lot classified as such on  
9 February 3, 2016 and identified by a tax parcel number or residential street address that is wholly  
10 or partially within the Class Area.

11           **3.17 "Class Representative"** means each Plaintiff appointed by the Court to serve in  
12 that role, namely, Scott Meeker, Erin Meeker, Kelly Goodwin, Bruce Ely, Kristi Hauke,  
13 Elizabeth Borte, Rino Pasini, Christian Miner, Judy Sanseri, and Howard Banich.

14           **3.18 "Class Settlement Notice"** means the proposed notice of the Settlement  
15 Agreement and Fairness Hearing substantially in the form attached as Exhibits 2 ("Long Form  
16 Notice" and 3 ("Publication Notice"), or as amended with the Court's approval.

17           **3.19 "Court"** means the Multnomah County Circuit Court of Oregon.

18           **3.20 "Days"** means calendar days unless otherwise specified. If the day specified for  
19 an action falls on a non-business day or an Oregon state holiday, the deadline shall be extended  
20 to the next calendar day that is a regular business day.

21           **3.21 "DEQ"** means the Oregon Department of Environmental Quality.

22           **3.22 "Effective Date"** means the day after the expiration of the deadline for appeal,  
23 writs, petitions, or motions for rehearing or certiorari regarding the Final Approval Order without  
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1 the initiation of any such proceeding, or if such proceeding has been initiated, the day after the  
2 full and final disposition of any such proceeding including any proceedings in remand and/or  
3 subsequent appeal and the Court’s order approving the Settlement Agreement has been affirmed,  
4 or any such appeal is dismissed or withdrawn with no further right of appeal.

5       **3.23 “Fairness Hearing”** means the hearing to be scheduled by the Court to consider  
6 whether to approve this Settlement Agreement as fair, reasonable, and adequate.  
7

8       **3.24 “Final Approval Order”** means the Court’s order(s) approving the Settlement  
9 Agreement and resolving Class Counsel’s application for Attorneys’ Fees and Litigation  
10 Expenses, following the Fairness Hearing.

11       **3.25 “Litigation”** means the underlying case: *Meeker, et al. v. Bullseye Glass Co.*,  
12 Multnomah County Case No. 16CV07002.

13       **3.26 “ORCP”** means the Oregon Rules of Civil Procedure.

14       **3.27 “Parties”** means Bullseye Glass Co. on the one hand, and the Plaintiffs, by and  
15 through Class Counsel and on behalf of the Class Members, on the other hand.  
16

17       **3.28 “Plaintiffs”** means Scott Meeker, Erin Meeker, Kelly Goodwin, Bruce Ely, Kristi  
18 Hauke, Elizabeth Borte, Rino Pasini, Christian Miner, Judy Sanseri, and Howard Banich.

19       **3.29 “Preliminary Approval Hearing”** means the hearing set by the Court to consider  
20 whether the Settlement Agreement is fair, reasonable, and adequate, such that issuance of the  
21 Class Settlement Notice is warranted.  
22

23       **3.30 “Preliminary Approval Order”** means the order entered by the Court at or after  
24 the Preliminary Approval Hearing, which preliminarily approves this Settlement Agreement,  
25 orders the issuance of the Class Settlement Notice, and schedules a hearing on the fairness and  
26 adequacy of the Settlement Agreement (Fairness Hearing).

1           **3.31**    “**Qualified Settlement Fund**” or “**QSF**” means one or more bank trust accounts  
2 within the meaning of and as defined in Section 468B of the U.S. Internal Revenue Code and in  
3 the IRS regulations promulgated thereunder, which shall be established and maintained in  
4 accordance with an order or orders of the Court and in a manner consistent with Sections 5.2  
5 through 5.8 of this Settlement Agreement.  
6

7           **3.32**    “**Release**” means the release described in Sections 7.1 through 7.8 of this  
8 Settlement Agreement and in the Final Approval Order.

9           **3.33**    “**Released Claims**” means the claims as defined in Sections 7.1, 7.2, and 7.3 of  
10 the Settlement Agreement.

11           **3.34**    “**Relevant Date**” means February 3, 2016.

12           **3.35**    “**Remainder Funds**” means any funds leftover in the QSF resulting from  
13 uncashed checks or unclaimed Class Member Payments after all Successful Claims have been  
14 paid and the Independent Engineering Firm has been fully paid for the neighborhood air  
15 monitoring program, but not including funds necessary to pay Court-approved account  
16 maintenance fees, if any, or taxes.  
17

18           **3.36**    “**Settlement Agreement,**” “**Settlement,**” or “**Agreement,**” means this document  
19 in its final, executed form, together with all of its referenced exhibits and appendices, including  
20 any subsequent amendments executed by the Parties and any exhibits to such amendments.  
21

22           **3.37**    “**Settlement Cash Payment**” means \$6,500,000.00.

23           **3.38**    “**Settlement Notice and Administrative Expenses**” mean the fees and expenses  
24 incurred by the settlement administrator in the performance of its responsibilities (see Section 6  
25 below), and other person or entities appointed to assist in the management of this Settlement as  
26 authorized by the Court.



1           **3.37**    “**Successful Claim**” means a Claim that meets the criteria set forth in the Class  
2 Notice and on the Claim Form, and which the settlement administrator determines is eligible for  
3 payment.

4                                   **4. SETTLEMENT CONSIDERATION AND SUMMARY OF PAYMENT**  
5   **CATEGORIES**

6           **4.1**    **Consideration.** As consideration for the terms, conditions, and Releases described  
7 herein, Bullseye has agreed:

- 8           a.     to continue to maintain and operate DEQ-approved Baghouse Filters on all  
9                       furnaces at the Bullseye Facility for as long as its furnaces are in operation; and  
10           b.    to make the Settlement Cash Payment into the Qualified Settlement Fund, which  
11                       payment shall be funded by Bullseye’s Contributing Insurers pursuant to a  
12                       separate agreement among Bullseye and those insurers, and shall be used to cover  
13                       the following, each of which is set forth in more detail below: (i) court-approved  
14                       Case Contribution Awards to the Class Representatives; (ii) Settlement Notice  
15                       and Administrative Expenses, (iii) court-approved attorneys’ fees and litigation  
16                       expenses; (iv) a neighborhood air monitoring program conducted by an  
17                       Independent Engineering Firm, (v) reimbursements for approved and documented  
18                       Class Member out-of-pocket expenses incurred by them between February 3,  
19                       2016 (the “Relevant Date”) and January 18, 2019 for certain soil testing, soil  
20                       remediation and purchase of air purifiers; (vi) prospective expenses incurred by  
21                       Class Members for approved and documented out-of-pocket expenses for soil  
22                       testing, soil remediation and purchase of air purifiers for a limited period after the  
23                       Settlement Agreement has received final approval from the Court and all appeals  
24                       have been exhausted; and (vii) payments to Claiming Class Member Households.  
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2           **4.2**    Case Contribution Awards. At the Fairness Hearing, Class Counsel will request,  
3 and Bullseye will not oppose, Court approval of Case Contribution Awards for the Class  
4 Representatives in the amount of \$7,500 per each Class Representative, and \$10,000 per married  
5 or co-habiting couple in recognition of their time and effort in actively participating in the  
6 Lawsuit. Any such payments will be payable from the QSF upon or after the Effective Date as  
7 set forth below in Section 5.7.

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9           **4.3**    Attorneys’ Fees, Litigation Costs, and Settlement Notice and Administrative  
10 Expenses. At the Fairness Hearing, Class Counsel will request, and Bullseye will not oppose,  
11 Court approval of Attorneys’ Fees and Litigation Expenses, as defined in Paragraph 3.2 above, in  
12 a total amount not to exceed \$2.5 million. Any such approved amounts will be payable from the  
13 QSF upon or after the Effective Date as set forth below in Section 5.7.

14           **4.4**    Neighborhood Air Monitoring. For a period of at least two years commencing as  
15 soon as practicable after the Effective Date, an independent engineering firm approved by the  
16 Court and acceptable to the Class Representatives, Class Counsel, and Bullseye (the  
17 “Independent Engineering Firm”), will be engaged to conduct air monitoring in the  
18 neighborhood at a total cost of \$1 million to be funded from the QSF. The parties will begin the  
19 process of jointly selecting the Independent Engineering Firm promptly after entry of the  
20 Preliminary Approval Order, and the Independent Engineering Firm will be authorized to begin  
21 work upon the Effective Date. After the Effective Date, the Independent Engineering Firm will  
22 be authorized to submit periodic statements to the Parties detailing its work on the neighborhood  
23 air monitoring plan. Class Counsel shall be responsible for review and approval of these  
24 invoices, and Class Counsel shall authorize payments from the QSF to the Independent  
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1 Engineering Firm accordingly. The air monitoring conducted by the Independent Engineering  
2 Firm will occur at a minimum of two locations near the Bullseye Facility on Bullseye's property  
3 and four locations distributed throughout the Class Area at locations to be determined by the  
4 Independent Engineering Firm after consultation with the Parties, to evaluate the presence and  
5 extent of airborne concentrations of, at a minimum, particulate cadmium, chromium, hexavalent  
6 chromium, and arsenic (the "Contaminants"), and diesel particulate, and to report the results of  
7 such air monitoring on a regular, periodic basis (but not less than monthly) on a publicly  
8 accessible website (the "Website"). The Independent Engineering Firm shall retain discretion, in  
9 consultation with the Parties, to modify the monitoring protocol after implementation as may be  
10 necessary to achieve best results within scientific, practical, and commercially reasonable  
11 guidelines. At the end of the two-year monitoring period, or later if the \$1 million budget allows  
12 for monitoring over a longer time period, the monitors and any other related durable equipment  
13 used in the monitoring program shall be donated to a Portland-based non-profit organization,  
14 university, researcher, or research institution jointly selected by the Parties.  
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17 **4.5** Class Member Testing and Cleaning Reimbursements for Past Expenses. Class  
18 Members who timely submit a Claim Form and all necessary supporting documents will be  
19 eligible to receive reimbursement from the QSF as soon as reasonably possible after the  
20 Effective Date for out-of-pocket expenses incurred by them between February 3, 2016 and  
21 January 18, 2019, for:  
22

- 23 a. testing of their soils within the Class Area for any of the Contaminants. Such  
24 reimbursement will be conditioned upon the Class Member providing reasonable  
25 documentation evidencing such expenditure, as set forth in more detail in the  
26

1 Class Notice and Claim Form. The reimbursement for soils testing shall be  
2 capped at \$500 per tax parcel number in the Class Area.

- 3 b. soil remediation for properties in the Class Area. Such reimbursement will be  
4 conditioned upon the Class Member providing reasonable documentation  
5 evidencing such expenditure and the necessity of that remediation, as set forth in  
6 more detail in the Class Settlement Notice and Claim Form. The reimbursement  
7 for soil remediation shall be capped at \$5,000 per tax parcel identification number  
8 in the Class Area.
- 9 c. acquiring one or more air purifier units for their residence in the Class Area. Such  
10 reimbursement will be conditioned upon the Class Member providing reasonable  
11 documentation evidencing such expenditure by them as set forth in more detail in  
12 the Class Settlement Notice and Claim Form. The reimbursement for air  
13 purifier(s) will be capped at \$300 per Class Member.

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16 **4.6** Class Member Testing and Cleaning Reimbursements for Expenses Incurred after  
17 the Effective Date. Class Members who timely submit a Claim Form and elect on that form  
18 “reimbursement for prospective testing and cleaning expenses” will be mailed instructions  
19 promptly after the Effective Date for future reimbursements. Class Members who then follow  
20 these instructions and timely submit all necessary supporting information will be eligible to  
21 receive reimbursement for out-of-pocket expenses incurred by them within six months of the  
22 Effective Date, for:

- 23  
24 a. testing of their soil within the Class Area for any of the Contaminants, provided  
25 no such reimbursement has otherwise been requested by them and approved by  
26

1 the settlement administrator with respect to the soil on their tax parcel number and  
2 as reported on their Claim Form. Such testing will be capped at \$500 per tax  
3 parcel number in the Class Area.

4 b. soil remediation of properties in the Class Area as may be necessary to bring that  
5 soil to within DEQ Urban Residential Risk Based Concentrations (RBCs) for  
6 chromium or cadmium, and/or within the ATSDR Screening Values for arsenic or  
7 hexavalent chromium. Either Class Counsel or the settlement administrator, at  
8 Class Counsel's direction, will provide Bullseye with copies of all soil testing  
9 results, identifying the block and street on which such testing occurred, but with  
10 personal identifying names and exact street addresses redacted, for those Class  
11 Properties that elect future reimbursement for soil remediation under this section.  
12 The cost for such soil remediation shall be capped at \$5,000 per tax parcel  
13 number in the Class Area.

14 c. acquisition of one or more air purifier units for Class Members who reside in the  
15 Class Area on the Effective Date. Such purchase will be capped at \$300 per  
16 eligible Claiming Class Member Household.

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19 **4.7 Payments to Claiming Class Member Households.** The balance remaining in the  
20 QSF after deductions for the payments described in Sections 4.2 through 4.6, inclusive, shall be  
21 distributed as soon as reasonably possible, according to a plan of allocation approved by the  
22 Court. Class Counsel will request, and Bullseye will not oppose, a plan of allocation  
23 substantially as follows:  
24

25 a. Each Class Member individually, or subset of Class Members, to the extent those  
26 Class Members were either residing together as a household on February 3, 2016

1 (the “Relevant Date”) (defined herein individually or collectively as a “Claiming  
2 Class Member Household”) or co-owned a Class Property on February 3, 2016,  
3 shall be entitled to submit a Claim Form under penalty of perjury and signed by  
4 all members of the Claiming Class Member Household who are eighteen years of  
5 age or older as of the date the Claim Form is submitted, certifying (1) that at no  
6 point between February 3, 2016 and January 18, 2019 (x) has s/he been a  
7 Medicare beneficiary, or (y) submitted (nor has any medical provider submitted  
8 on his/her behalf), a claim to Medicare for any reimbursement for any bodily  
9 testing for the Contaminants; or (2) if such certification is not given, agreeing to  
10 execute paperwork that consists of a medical release and limited representation  
11 agreement with Class Counsel for purposes of working with class counsel, and the  
12 contributing insurers, to the extent necessary, in order to comply with the  
13 Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b), and agreeing to submit  
14 certain personal information related thereto as may be necessary for any such  
15 compliance. The Claim Form shall also state the following as of the Relevant  
16 Date:  
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- 19
- 20 i. the tax parcel identification number or residential street address of  
21 each residential property in the Class Area owned of record by such  
22 class member (if any Class Property was owned jointly on the  
23 Relevant Date, all co-owners must join in the claim and must submit  
24 one Claim Form for such Class Property);
  - 25 ii. whether the Claiming Class Member Household resided in one of the  
26 properties described in 4.7(a)(i) on the Relevant Date, and if so, which  
property;
  - iii. whether the Claiming Class Member Household resided in a Class  
Property on the Relevant Date other than the one described in clause  
4.7(a)(i), and if so, identifying such Class Property by tax parcel

1 identification number or residential street address; and

2 iv. if the Claiming Class Member Household resided in the Class Area on  
3 the Relevant Date, the total number of persons in such Claiming Class  
4 Member Household (including the class member's spouse or domestic  
5 partner, minor child(ren) or any other person claimed as a dependent  
6 on such Class Member's federal income tax return for 2016) on the  
7 Relevant Date.

8 b. One Claim Form total shall be submitted by each Claiming Class Member  
9 Household listing each tax parcel identification number or residential street  
10 address described in clause 4.7(a)(i), and a separate Claim Form should be  
11 submitted by each Claiming Class Member Household for any Class Property it  
12 identifies in clause 4.7(a)(iii). The Claim Form shall identify and certify the full  
13 name and current residential address of the Class Member to whom the associated  
14 distribution shall be made.

15 c. Each Claiming Class Member Household that resided in a Class Property on the  
16 Relevant Date shall be entitled to a total number of settlement shares that is: (i)  
17 one; plus (ii) one half the number of persons described in clause 4.7(a)(iv), plus,  
18 (iii) if the Claiming Class Member Household owned a residence in the Class  
19 Area on the Relevant Date, three (3) settlement shares total for each such Class  
20 Property. These settlement shares shall be totaled for each Claiming Class  
21 Member Household.

22 d. The net QSF shall be distributed to each Claiming Class Member Household *pro*  
23 *rata* in accordance with the total number of settlement shares held by each,  
24 ***provided however***, that any Claim approved by the settlement administrator for  
25 payment from the QSF to any individual Class Member (a household of one) will  
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1 be capped at \$25,000.00, and *provided further*, that any Claim approved by the  
2 settlement administrator for payment from the QSF to a Claiming Class Member  
3 Household of two or more persons will be capped at \$25,000.00 per household  
4 member.

5 e. After accounting for taxes to be paid by the QSF and deducting and accounting  
6 for fees required to be paid, any residual amount remaining in the QSF after the  
7 payments described above, whether due to uncashed checks (after all reasonable  
8 attempts to contact the payee regarding same have been exhausted) or otherwise,  
9 shall be distributed according to Oregon Rule of Civil Procedure 32 O. Prior to  
10 the submission of the motion seeking final approval of the Settlement, the Parties  
11 will identify and agree on a non-profit entity whose work relates directly to the  
12 issues being pursued by the Class in the Litigation, and which should be the  
13 recipient of any funds distributed under this paragraph. The identity of this non-  
14 profit and a brief summary of its relevant work shall be submitted to the Court for  
15 approval at the Fairness Hearing in connection with a potential future payment to  
16 it under ORCP 32 O.  
17  
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## 19 **5. SETTLEMENT FUND PAYMENT AND ITS DISPOSITION**

20 **5.1** Promptly following the Preliminary Approval Hearing and on a schedule  
21 approved by the Court in the Preliminary Approval Order, Class Counsel, working with the  
22 settlement administrator, will cause the Class Settlement Notice to be provided, and will cause  
23 all additional filings and other actions provided for in the Preliminary Approval Order to be  
24 timely completed. Defendant will cooperate reasonably in this process.  
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1           **5.2**     Class Counsel will establish the Qualified Settlement Fund (“QSF”) provided for  
2 in the Preliminary Approval Order within five (5) days of entry of the Preliminary Approval  
3 Order and will provide to Defendant written notification of the establishment thereof, including:  
4 (x) wire transfer instructions; and (y) instructions for payment by physical check, which shall  
5 include the name of the check payee, the federal tax identification number of the check payee,  
6 and the address for delivery of the check. Defendant and Bullseye’s Contributing Insurers will  
7 not bear any of the costs of establishing or maintaining the QSF. The QSF will be established at  
8 a major financial institution such as CitiBank, Wells Fargo, Chase, or Bank of America. The  
9 Settlement Cash Payment deposited in the QSF may be invested in an interest-bearing deposit  
10 account insured by the Federal Deposit Insurance Corporation to the applicable limits. Within  
11 twenty (20) days of receipt of notification from Class Counsel, Defendant and/or Bullseye’s  
12 Contributing Insurers shall deposit \$35,000 of the Settlement Cash Payment into the QSF. The  
13 balance of the Settlement Cash Payment shall be deposited into the QSF by the Defendant and/or  
14 Bullseye’s Contributing Insurers no later than twenty-one (21) days after the Court enters the  
15 Final Approval Order. Any interest accrued in the QSF pending distribution, net of taxes paid  
16 thereon, shall inure to the benefit of the Class, except as provided in paragraph 9.2.  
17  
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19           **5.3**     Expenses associated with giving notice of the Class Settlement Notice not to  
20 exceed \$35,000 will be paid from the QSF, with no obligation to refund if the Court declines to  
21 enter the Final Approval Order or if the Settlement is terminated or revoked for any reason  
22 provided for herein.  
23

24           **5.4**     Other than a maximum of the \$35,000 described above, no additional funds will  
25 be disbursed or deducted from the QSF until the Effective Date, except for taxes required to be  
26 paid on accrued interest, or as provided in paragraph 9.2.

1           **5.5**     The trust agreement established to create the QSF will incorporate the terms of  
2 Sections 5.2 through 5.8 of this Agreement, and such trust agreement will be subject to approval  
3 by Bullseye and Bullseye’s Contributing Insurers before funds are deposited into the QSF,  
4 provided such approval shall not be unreasonably withheld. The trust agreement established to  
5 create the QSF shall provide that, other than with respect to the maximum of \$35,000 discussed  
6 above, and taxes required to be paid on accrued interest, no money shall be deducted or  
7 disbursed from the QSF prior to the Effective Date without the written approval of all of  
8 Bullseye's Contributing Insurers.  
9

10           **5.6**     QSF account statements shall be sent to Class Counsel and to Bullseye, as set  
11 forth in Paragraph 16.5.  
12

13           **5.7**     Upon or after the Effective Date, Class Counsel shall be entitled to submit, and  
14 Bullseye will not oppose, a proposed order to the Court authorizing the prompt transfer from the  
15 QSF to an account designated by Class Counsel an amount equal to the sum of the Court-  
16 approved Case Contribution Awards, Attorneys’ Fees and Litigation Expenses, and costs of  
17 Settlement Notice and Administration, not to exceed the amount set forth in paragraph 4.3.  
18

19           **5.8**     Upon or after the Effective Date, Class Counsel shall be entitled to instruct  
20 periodic payments from the QSF to pay invoices submitted by the Independent Engineering Firm  
21 and approved by Class Counsel, not to exceed a total of \$1 million, as set forth in Section 4.4  
22 above.  
23

## 24           **6. SETTLEMENT ADMINISTRATOR AND RESPONSIBILITIES**

25           **6.1**     Settlement Administrator. AB Data, Ltd. shall serve as the settlement  
26 administrator.

1           **6.2**    Responsibilities of Settlement Administrator. The responsibilities of the  
2 settlement administrator shall include:

- 3           a.     Administering Class Settlement Notice, including updating of the mailing list  
4               (including the removal of Opt-outs), the printing and mailing of Class Settlement  
5               Notice, skip tracing undelivered Notices, placing publication class notice,  
6               maintaining a toll-free number and recording at that number with information for  
7               Claimants, and any reasonable “claim stimulation” notice procedures the  
8               settlement administrator recommends;
- 9           b.     Reviewing the (blank) Claim Form prepared by Class Counsel;
- 10          c.     Assisting Class Counsel with responding to potential Claimant’s inquiries about  
11               the claims process;
- 12          d.     Instituting procedures to detect fraud, identify duplicate claims, and maintain  
13               appropriate quality control over the management, evaluation, and payment of  
14               Claims;
- 15          e.     Evaluating all Claim Forms in accordance with this Settlement and the plan of  
16               allocation set forth in Paragraph 4.7, including: (i) verifying Claimants’ identities,  
17               class membership, and eligibility, including verifying that Claimants have not  
18               opted out or are not otherwise excluded by the Settlement Agreement from  
19               receiving proceeds from the Settlement Cash Payment; (ii) verifying’ Claimants’  
20               supporting documents for reimbursement payments; (iii) providing notifications  
21               to Claimants regarding Claim Form deficiencies and, in response to requests, the  
22               status and determination of their claim; (iv) calculating reimbursement payment  
23               to Claimants regarding Claim Form deficiencies and, in response to requests, the  
24               status and determination of their claim; (iv) calculating reimbursement payment  
25               to Claimants regarding Claim Form deficiencies and, in response to requests, the  
26               status and determination of their claim;

1 amounts and allocating any Remainder Funds; and (iv) distributing Class Member  
2 payments from the QSF.

- 3 f. Documenting Settlement Notice and Administrative Expenses for Class Counsel's  
4 authorization;
- 5 g. Providing reports to Class Counsel, who in turn will share them on an as-needed  
6 basis with counsel for Bullseye and/or the Court;
- 7 h. Tracking the status of all Claim Forms; and
- 8 i. Notifying Class Counsel when all timely and meritorious Claim Forms have been  
9 paid, and the availability of any Remainder Funds for donation pursuant to OCRP  
10 32 O.  
11

12 **6.3** As soon as is practicable after the deadline for exclusions, but in no event less  
13 than 15 days prior to the Fairness Hearing, working with the settlement administrator, Class  
14 Counsel shall report to Bullseye regarding the completion of the Class Notice Program, including  
15 information on the number of notices mailed, the number of those returned as undeliverable, a  
16 summary of follow-up mailing efforts, copies of valid exclusion forms received, and information  
17 regarding Class Member elections regarding past and future reimbursement options set forth in  
18 paragraphs 4.5 and 4.6 of this Agreement. Class Counsel will also provide this information to  
19 the Court no later than the deadline for the filing of any motion for final approval of the  
20 Settlement. The Parties agree, and will jointly request permission from the Court, to file under  
21 seal any Class Member requests for exclusion.  
22

24 **6.4** Cooperation with Settlement Administrator. The Parties shall provide the  
25 settlement administrator with information required by the settlement administrator for the  
26 performance of its required tasks and responsibilities.

1           **6.5**     Settlement Administrator’s Costs. Costs incurred by the settlement administrator  
2 shall be considered Settlement Notice and Administrative Expenses and shall be paid from the  
3 Qualified Settlement Fund as specified by this Agreement and approved by the Court.

4  
5   **7. RELEASE**

6           Upon the Effective Date, the Parties agree to release one another from all claims  
7 described below in Sections 7.1 through 7.8 (the “Release”). The terms of the Release will be  
8 reflected in the Final Approval Order.

9           **7.1**     **“Released Claims”** means, collectively, the Released Plaintiff Claims and the  
10 Released Defendant Claims.

11           **7.2**     **“Released Plaintiff Claims”** means all claims, counterclaims, allegations, rights,  
12 covenants, causes of action, duties, obligations, demands, actions, debts, sums of money, suits,  
13 contracts, agreements, promises, damages, and liabilities of every nature and description that  
14 Releasing Plaintiff Persons (defined to include the Class Representatives and all Class Members  
15 who do not opt out) ever had, now have or hereafter can, shall, or may have for, upon, or by  
16 reason of any matter, cause or thing whatsoever as of the date of this Agreement, whether known  
17 or unknown, arising under federal, state, local, statutory, common law, or any other domestic or  
18 foreign law, rule or regulation, that arise from, relate to, or are in connection with, airborne  
19 emissions from the Bullseye Facility, including, without limitation, claims that: (i) were asserted  
20 or could have been asserted by Plaintiffs in the Action, (ii) would have been barred by *res*  
21 *judicata* or claim preclusion had the Action been fully litigated to a final judgment, or (iii) could  
22 have been asserted in any forum or proceeding or otherwise by Releasing Plaintiff Persons  
23 against the Released Defendant Persons. Notwithstanding any other provision hereof, “Released  
24 Plaintiff Claims” shall not include or extend to claims to enforce this Agreement.

1           **7.3**     “**Released Defendant Claims**” means all claims that Releasing Defendant  
2 Persons ever had, now have or hereafter can, shall, or may have for, upon, or by reason of any  
3 matter, cause or thing whatsoever from the beginning of the world to the day of the date of this  
4 Agreement, whether known or unknown, whether arising under federal, state, local, statutory,  
5 common law or any other domestic or foreign law, rule or regulation, that arise from, relate to, or  
6 are in connection with the institution, prosecution, assertion, settlement, or resolution of the  
7 Action or the Released Plaintiff Claims. Notwithstanding any other provision hereof, “Released  
8 Defendant Claims” shall not include or extend to claims to enforce this Agreement.  
9

10           **7.4**     “**Released Persons**” means collectively the Released Plaintiff Persons and the  
11 Released Defendant Persons.  
12

13           **7.5**     “**Released Defendant Persons**” means Bullseye Glass Company and its owners,  
14 shareholders, directors, officers, agents, servants, employees, managers, representatives,  
15 predecessors, successors, assigns, affiliates, Bullseye’s Contributing Insurers, their reinsurers,  
16 and each of their respective shareholders, predecessors, successors, assigns, affiliated entities,  
17 administrators, heirs, and assigns.  
18

19           **7.6**     “**Released Plaintiff Persons**” means each Class Representative and each Class  
20 Member, including to the extent a Class Member is other than a natural person, such Class  
21 Member’s parents, subsidiaries, affiliates, officers, directors, agents, representatives, employees,  
22 successors, and assigns, and any of their respective partners, managing directors, employees,  
23 agents, directors, or officers, each in their respective capacities as such.  
24

25           **7.7**     “**Releasing Plaintiff Persons**” means each Class Representative and each Class  
26 Member, including to the extent a Class Member is other than a natural person, such Class  
Member’s parents, subsidiaries, affiliates, officers, directors, agents, representatives, employees,

1 successors, and assigns, and any of their respective partners, managing directors, employees,  
2 agents, directors, or officers, each in their respective capacities as such.

3 **7.8** “**Releasing Defendant Persons**” means Defendant and each of Defendant’s  
4 parents, subsidiaries, affiliates, officers, directors, agents, representatives, employees, successors,  
5 and assigns, affiliated entities and any of its respective partners, managing directors, employees,  
6 agents, directors, or officers, each in their respective capacities as such.

8 **8. NO ADMISSION OF WRONGDOING**

9 **8.1** Bullseye denies any wrongdoing or liability associated with this Action, and  
10 further denies that other than for purposes of settling this Action, any part of this Action is  
11 appropriate for class treatment. Bullseye also denies all material factual allegations and alleged  
12 claims in any version of Plaintiffs’ Complaint, the class allegations, and all claims for relief.  
13 Nothing contained herein should be construed as an admission by Bullseye of wrongdoing or  
14 liability or of the truth of the allegations asserted in the Action, or that that the Action is properly  
15 brought on a class or representative basis. The negotiations, agreements, and assertions herein  
16 are for settlement purposes only. Whether or not the Settlement is approved by the Court, and  
17 whether or not the Settlement is consummated, the fact and terms of this Settlement, including  
18 exhibits, all negotiations, discussions, drafts and proceedings in connection with the Settlement,  
19 and any act performed or document signed in connection with the Settlement,  
20  
21

22 **8.1.1.** shall not be offered or received against any of the Released Persons as  
23 evidence of, or construed as, or deemed to be evidence of any presumption, concession or  
24 admission by any of the Released Persons with respect to the truth of any fact alleged by  
25 Plaintiffs or the validity of any claim that was or could have been asserted against any of the  
26 Released Persons in this Action or in any litigation, in this or any other court, administrative

1 agency, arbitration forum or other tribunal, or of any liability, negligence, fault or other  
2 wrongdoing of any kind of any of the Released Persons to Plaintiffs, the Class or anyone else;

3 **8.1.2.** shall not be offered or received against any of the Released Persons as  
4 evidence of a presumption, concession or admission of any fault, misrepresentation or omission  
5 with respect to any statement or written document approved or made by any of the Released  
6 Persons, or against the Released Persons, Plaintiffs or any Settlement Class Member(s) as  
7 evidence of any infirmity in the claims or defenses that have been or could have been asserted in  
8 the Action; and

9  
10 **8.1.3.** shall not be offered or received against any of the Released Persons, or  
11 against the Plaintiffs or any other Settlement Class Member(s), as evidence of a presumption,  
12 concession or admission with respect to any liability, negligence, fault or wrongdoing of any  
13 kind, or in any way referred to for any other reason or purpose as against any of the Released  
14 Persons, in any other civil, criminal or administrative action or proceeding, other than such  
15 proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;  
16 provided, however, that if this Settlement Agreement is approved by the Court, any Released  
17 Person may file this Settlement Agreement and/or the Judgment in any action for any purpose,  
18 including, but not limited to, in order to support a defense or counterclaim based on principles of  
19 *res judicata*, collateral estoppel, release and discharge, good faith settlement, judgment bar or  
20 reduction or any other theory of claim preclusion or issue preclusion or similar defense or  
21 counterclaim.  
22  
23

## 24 **9. TERMINATION**

25 **9.1** Termination. Bullseye shall have the right at its election to terminate and void the  
26 agreement and the settlement provided for herein if:



- 1 a. More than five percent of Class Members elect to opt out of the class and those  
2 Class Members timely comply with all procedures set forth in the Class  
3 Settlement Notice for opting out of the class; and  
4  
5 b. Bullseye's Contributing Insurers have exercised any corresponding right they may  
6 have in any agreement between Bullseye and those insurers to terminate and void  
7 that agreement based on the circumstances set forth in sub-clause (a), above; and  
8  
9 c. Bullseye communicates to Class Counsel in writing a decision to terminate and  
10 void the agreement no later than ten (10) business days after it receives from  
11 Class Counsel the information described above in Paragraph 6.3; and  
12  
13 d. Any election by Bullseye to terminate and void the agreement under this  
14 Paragraph 9 shall be non-revocable, and if exercised, the parties shall return to the  
15 position they were in as of April 29, 2018.

16 **9.2** Bullseye shall also have the right at its election to terminate and void the  
17 agreement and settlement provided for herein if any insurer fails to make full and timely  
18 payment of settlement funds into the QSF as required by paragraph 5.2, above, and does not cure  
19 that failure within five (5) business days. If Bullseye exercises its right to Terminate the  
20 agreement and settlement under either paragraphs 9.1 or 9.2 of this Agreement, it shall  
21 immediately provide written notice of that election, and the basis for such election, to the Parties,  
22 the Contributing Insurers, and the QSF Trustee.

23 **9.3** Return of QSF Funds to Bullseye's Contributing Insurers if Settlement  
24 Terminated. The Trust Agreement establishing the QSF shall provide that, if the Trustee  
25 receives notice from Bullseye that the settlement has been terminated pursuant to paragraphs 9.1  
26 or 9.2 of this Agreement, or if the Trustee receives notice that the order approving the Settlement

1 is reversed, the QSF Trustee shall disburse remaining funds in the QSF to Bullseye's  
2 Contributing Insurers. The QSF Trustee shall distribute to each of the Contributing Insurers an  
3 amount equal to the sum of (a) each Contributing Insurer's contribution to the QSF made  
4 following entry of the Court's Final Approval Order, plus (b) interest earned on the QSF in  
5 proportion to that contribution, minus (c) taxes paid on the QSF in proportion to that  
6 contribution. The QSF Trustee shall make such distribution with 21 days of receiving written  
7 approval from all of the Contributing Insurers as required by paragraph 5.5, above. The QSF  
8 will file all required tax reporting forms with the appropriate taxing authorities and will pay any  
9 required taxes due from the QSF.  
10

#### 11 **10. TERMINATION OF SETTLEMENT FUND**

12 After the Effective Date, once all timely filed Claims have been processed, payments for  
13 Successful Claims have been distributed, all payments have been made to the Independent  
14 Engineering Firm, and any Remainder Funds have been identified or paid pursuant to Section  
15 4.7(e), the settlement administrator shall provide a complete accounting to Class Counsel. Class  
16 Counsel shall file thereafter a report with the Court seeking an order confirming that the purpose  
17 of the QSF has been fulfilled and authorizing the QSF to be closed. The proposed order shall  
18 provide for the proper and timely filing of any final tax reports or returns.  
19

#### 20 **11. TAXES**

21 Plaintiffs understand, and the Class Settlement Notice shall advise each Class Member,  
22 that Claimants are responsible for any tax consequences resulting from monetary awards they  
23 may receive based on the terms of this Settlement, and that neither the Parties, Class Counsel,  
24 nor the settlement administrator are providing, nor have obligation or expertise to provide,  
25  
26

1 advice as to the tax consequences of any payments made to Class Members or Claiming Class  
2 Member Households under this Settlement Agreement..

3 **12. MOTIONS FOR PRELIMINARY APPROVAL AND MOTION FOR FINAL**  
4 **APPROVAL, ENTRY OF JUDGMENT**

5 **12.1** Promptly after the execution of this Settlement Agreement, Class Counsel shall  
6 submit it to the Court and shall move the Court for preliminary approval of the Settlement  
7 reflected herein. A copy of a proposed form of a Preliminary Approval Order, which Class  
8 Counsel shall submit to the Court for its approval in connection with a motion for preliminary  
9 approval of the Settlement, is attached hereto as Exhibit 4.

10 **12.2** Class Counsel shall include in the Motion for Preliminary Approval a request for  
11 the Court to approve a plan of notice (the “Class Notice Program”) substantially in the form  
12 previously approved by the Court following certification of the Class, and which shall include  
13 the Class Settlement Notice substantially in the form attached hereto as Exhibits 2 and 3. Class  
14 Counsel will also ask the Court to schedule a hearing on the Settlement’s fairness and accuracy  
15 (Fairness Hearing), and to enjoin and stay the underlying Litigation pending the Court’s final  
16 ruling approving or denying approval of the Settlement Agreement.

17 **12.3** The Parties agree to take all actions and steps reasonably necessary to obtain a  
18 Preliminary Approval Order from the Court.

19 **12.4** If the Court denies the Motion for Preliminary Approval of the Settlement, then  
20 the Parties will meet and confer in an effort to agree to an amended settlement agreement that  
21 addresses the Court’s concerns. Within thirty (30) days of any denial, the Parties shall either  
22 submit a revised agreement to the Court or request a new trial date.

23 **12.5** If the Court enters a Preliminary Approval Order and the Settlement has not  
24 otherwise been terminated, then, after the Class Notice Program is implemented and after  
25

1 expiration of the time for Class Members to timely and properly exclude themselves from the  
2 Settlement, Class Counsel shall submit to the Court a Motion for Final Approval and Entry of  
3 Judgment.

### 4 **13. NOTICE AND OBJECTIONS**

#### 5 **13.1 Form and Publication of Notice.**

6 **13.1.1.** Concurrently with the filing of the Motion for Preliminary Approval, the  
7 Parties shall submit for the Court's approval a form of Publication Notice substantially in the  
8 form of Exhibit 3 and a Long Form Notice substantially in the form of Exhibit 2. All such  
9 notices explaining the terms and conditions of the Settlement Agreement and the Class  
10 Members' rights with respect to the Settlement shall be in plain language that is readily  
11 understandable.  
12

13 **13.1.2.** No later than 28 days after the Court enters a Preliminary Approval  
14 Order, the settlement administrator, working with Class Counsel as may be necessary, shall  
15 begin implementation of the Class Notice Program, including the mailing of the Long Form  
16 Notice, Publication Notice, implementation of a settlement website, and the processing of Class  
17 Member Claim Forms as they are received.  
18

#### 19 **13.2 Objection to Settlement.**

20 **13.2.1.** As the Class Settlement Notice will instruct, any Class Member may  
21 present written objections, if any, explaining why they believe the Settlement Agreement should  
22 not be approved by the Court as fair, reasonable, and adequate. No later than such date as is  
23 ordered by the Court, a Class Member who wishes to object to any aspect of the Settlement  
24 Agreement, must mail to the Court, Class Counsel, and Counsel for Bullseye a written statement  
25 of objection. The statement must include a detailed statement of the objection and the specific  
26

1 reasons for each such objection, including any evidence and legal authority the Class Member  
2 wishes to bring to the Court's attention. That written statement must also contain the Class  
3 Member's printed name, address, telephone number, and information or documentation  
4 establishing the objector's status as a Class Member. If a Class Member retains an attorney to  
5 submit an objection on their behalf (which a Class Member may do at their own expense), such  
6 attorney must (a) file a notice of appearance with the Court by the date set forth in the  
7 Preliminary Approval Order; (b) file a sworn declaration attesting to their representation of the  
8 Class Member on whose behalf the objection is being filed; and (c) satisfy (on behalf of the  
9 Class Member) all substantive requirements for objection described in this Section.  
10

11 **13.2.2.** Any Class Member (or their authorized representative, including but not  
12 limited to their attorney) who wishes to appear in person at the Fairness Hearing must file a  
13 written notice of intent to do so with the Court, by the date set forth in the Preliminary Approval  
14 Order.  
15

16 **13.2.3.** Unless the Court directs otherwise, any Class Member who fails to  
17 comply with the provisions of this Section will waive and forever forfeit the right to object to the  
18 Settlement, to appear and be heard on any such objection at the Fairness Hearing, and/or to  
19 appeal from the Court's disposition of the Settlement.  
20

## 21 **14. REPRESENTATIONS AND WARRANTIES**

22 **14.1** Class Counsel is Authorized to Protect Interests of the Class. Class Counsel  
23 represent that: (a) they are authorized by the Class Representatives to enter into this Settlement  
24 Agreement with respect to the claims asserted in this Litigation and any other claims covered by  
25 the Release; and (b) in proposing this Settlement, they are acting to protect the interests of the  
26 Class.

1           **14.2** Authorized Bullseye Representative. Bullseye represents and warrants that the  
2 individual(s) executing this Settlement Agreement on its behalf are authorized to do so.

3           **14.3** Necessary Steps. Class Counsel, on behalf of the Class, and Bullseye and its  
4 counsel represent that they will undertake the necessary steps to support and effectuate the terms  
5 of this Settlement Agreement if it is approved by the Court. This includes, to the extent that any  
6 Class Member must comply with the Medicare Secondary Payment Act (MSP) in connection  
7 with a release provided herein, a representation by Class Counsel that it will share with Bullseye  
8 the information necessary to complete a Medicare Form Bv2 so that Bullseye may provide that  
9 information to its contributing insurers for compliance with the MSP process. Bullseye makes  
10 no representation about the accuracy or completeness of such information.  
11

12           **15. FINAL ORDER AND JUDGMENT, DISMISSAL WITH PREJUDICE**

13           **15.1** Motions Related to Final Approval. No later than a date to be set by the Court,  
14 and provided the Settlement has not otherwise been terminated as set forth in Section 9, Class  
15 Counsel shall file, and Bullseye shall not oppose, a Motion for Final Approval and for approval  
16 of Attorneys' Fees and Litigation Expenses, and Case Contribution Awards for the Class  
17 Representatives.  
18

19           **15.2** Final Approval Order. Class Counsel shall seek a final approval order that:

20                   **15.2.1.** Approves the Settlement as fair, reasonable, and adequate;

21                   **15.2.2.** Approves the Plan of Allocation;

22                   **15.2.3.** Finds that the Class Notice Program satisfies the requirements of ORCP  
23 32;

24                   **15.2.4.** Permanently bars and enjoins Class Members from commencing,  
25 asserting, or continuing any of the Released Claims;  
26

1           **15.2.5.** Provides for the continuing jurisdiction of the Court to enforce the terms  
2 of this Settlement Agreement; and

3           **15.2.5.** Incorporates the terms of this Settlement Agreement into the judgment.

4   **16. GENERAL MATTERS**

5           **16.1** Binding Effect. This Settlement Agreement will be binding upon, and inure to the  
6 benefit of, the successors, transferees, and assigns of Bullseye, the Class Representatives, and  
7 Class Members.

8           **16.2** Implementation Efforts. The Parties and their respective counsel will cooperate  
9 with each other, act in good faith, and use reasonable efforts to effectuate the implementation of  
10 the Settlement Agreement. The Parties further agree to make reasonable efforts to ensure the  
11 timely and expeditious implementation of the Settlement Agreement and to minimize the costs  
12 and expenses incurred herein.

13           **16.3** Entire Agreement. The terms and conditions set forth in this Settlement  
14 Agreement and attached exhibits constitute the complete and exclusive statement of the  
15 agreement between the Parties hereto relating to the subject matter of this Settlement Agreement,  
16 superseding all previous negotiations and understandings, and may not be contradicted by  
17 evidence of any prior or contemporaneous agreement. The Parties further intend that this  
18 Settlement Agreement constitutes the complete and exclusive statement of these terms between  
19 the Parties hereto and that no extrinsic evidence whatsoever may be introduced in any judicial  
20 proceeding, if any, involving this Settlement Agreement.

21           **16.4** Amendment. This Settlement Agreement may not be modified or amended  
22 except in writing signed by counsel for all Parties and after approval by the Court.  
23  
24  
25  
26

1           **16.5** Notices. Whenever this Settlement Agreement requires or contemplates that one  
2 of the Parties shall or may give notice to the other, notice shall be provided by email and/or next-  
3 day (excluding Saturdays, Sundays, and federal or Oregon state holidays) express delivery  
4 service as follows:

5           If to Bullseye, then to:

6  
7                                   Bullseye Glass Company  
8                                   Attn: Vice President  
9                                   3722 SE 21<sup>st</sup> Avenue  
10                                   Portland, OR 97202

11                                   And to:

12                                   GRM Law Group  
13                                   5285 Meadows Road, Suite 330  
14                                   Lake Oswego, OR 97035

15           If to the Class, then to:

16                                   Daniel Mensher  
17                                   Keller Rohrback L.L.P.  
18                                   1201 Third Avenue, Suite 3200  
19                                   Seattle, WA 98101  
20                                   (206) 623-1900; dmensher@kellerrohrback.com

21                                   And to:

22                                   Karl G. Anuta  
23                                   Law Office of Karl G. Anuta, P.C.  
24                                   735 SW First Avenue, 2nd Floor  
25                                   Portland, OR 97204  
26                                   (503) 827-0320; kga@integra.net

27           **16.6** Construction. The Settlement Agreement is the result of a mutual negotiation  
28 among the Parties and their counsel and shall not be construed in favor of or against any Party by  
29 reason of authorship.

30           **16.7** Offer of Compromise. The Parties expressly acknowledge and agree that this  
31 Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings,



1 conversations, negotiations, related notes, and correspondence, constitute an offer of compromise  
2 and a compromise within the meaning of the both Oregon's and the Federal Rules of Evidence.

3       **16.8** Severability. The provisions of this Settlement Agreement are not severable. In  
4 the event any one or more of the provisions contained in this Settlement Agreement shall for any  
5 reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
6 unenforceability shall not affect any other provision if the Defendant, and Class Counsel, on  
7 behalf of Class Representatives and Class Members, mutually agree in writing to proceed as if  
8 such invalid, illegal, or unenforceable provision had never been included in this Settlement  
9 Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes  
10 effective.  
11

12       **16.9** Governing Law. This Settlement Agreement and any amendments thereto, and  
13 any dispute arising out of or related to this Settlement Agreement, shall be governed by and  
14 interpreted according to the Oregon Rules of Civil Procedure and applicable jurisprudence  
15 related thereto, and the laws of the State of Oregon, without regard to conflict of law rules.  
16

17       **16.10** Retention of Jurisdiction. This Court shall have exclusive jurisdiction over the  
18 interpretation, effectuation, and implementation of this Settlement Agreement and any dispute  
19 arising out of or related to this Settlement Agreement.  
20

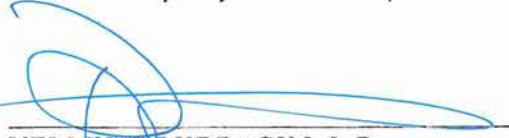
21       **16.11** Waiver. The waiver by one Party of any breach of this Settlement Agreement by  
22 another Party shall not be deemed a waiver of any prior or subsequent breach of this Settlement  
23 Agreement.  
24

25       **16.12** Notice of Breach. If one Party to this Settlement Agreement considers another  
26 Party to be in breach of its obligations under this Settlement Agreement, that Party must provide  
the breaching Party with written notice of the alleged breach and provide a reasonable

1 opportunity to cure the breach before taking any action to enforce any rights under this  
2 Settlement Agreement.

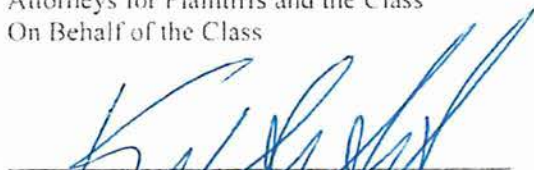
3 16.13 Counterparts. This Settlement Agreement may be signed with an electronic or  
4 facsimile signature and in counterparts, each of which shall constitute a duplicate original,  
5 provided that this Settlement Agreement shall not be complete until it has been signed by  
6 everyone for whom a signature line has been provided.  
7

8 IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to  
9 be executed by duly authorized representatives on the dates indicated below.

10  
11 

12 **KELLER ROHRBACK L.L.P.**  
13 Attorneys for Plaintiffs and the Class  
14 On Behalf of the Class

11 1.16.19  
12 Date

13  
14 

15  
16 **THE LAW OFFICE OF KARL G. ANUTA**  
17 Attorney for Plaintiffs and the Class  
18 On Behalf of the Class

15 1-16-19  
16 Date

19  
20 

21 **GRM LAW GROUP**  
22 Attorneys for Defendant, Bullseye Glass Co.

20 1-16-19  
21 Date

22  
23 

24 **BULLSEYE GLASS CO.**  
25 Defendant

23 1/16/19  
24 Date

26  
CLASS ACTION SETTLEMENT AGREEMENT  
AND RELEASE

(16cv07002) - 34

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