

**STUDENT LOANS CLASS ACTION
NATIONAL SETTLEMENT**

SETTLEMENT AGREEMENT

Made as at December 5, 2017

Court File No: T-132-13

FEDERAL COURT

BETWEEN:

GAELEN PATRICK CONDON,
REBECCA WALKER
ANGELA PIGGOTT

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

PREAMBLE

The Representative Plaintiffs, Gaelen Patrick Condon, Rebecca Walker and Angela Piggott, (together, the “Plaintiffs”), and the defendant Her Majesty the Queen (the “Defendant”), (collectively, the “Parties”), hereby enter into this agreement providing for the settlement of actual and potential claims arising out of or relating to, without limitation, the alleged loss of the external hard drive in control of Human Resources and Skills Development Canada, now known as Employment and Social Development Canada (“ESDC”) or the National Student Loan Services Center which contained the personal information of the Plaintiffs and Class Members on or about November 5, 2012, pursuant to the terms and conditions set out herein and subject to the approval of the Federal Court (the “Court”) (the “Settlement Agreement”).

RECITALS

A. WHEREAS on April 25, 2013, the Plaintiffs commenced a proposed class proceeding in the Federal Court, Court File No. T-132-13, against the Defendant (the “Class Action”);

B. AND WHEREAS the Class Action asserts claims for breach of contract, breach of warranty, breach of confidence, intrusion upon seclusion and negligence on behalf of all persons whose personal information was contained on an external hard drive in the control of ESDC or the National Student Loan Services Center which was allegedly lost on or about November 5, 2012, but not including senior management of ESDC, the Canada Student Loans Program, or Ministers and Deputy Ministers of the Ministry of ESDC;

C. AND WHEREAS the Class Action was certified as a class proceeding by order dated June 20, 2016 and the opt out period has expired;

D. AND WHEREAS the Defendant denies the allegations made in the Class Action, has not conceded or admitted any liability, denies that any damages are payable, and has good defences to the claims in the Class Action;

E. AND WHEREAS the Parties intend by this Settlement Agreement to resolve all past, present and future claims of Class Members in any way arising from or relating to the alleged loss of personal information which was contained in an external hard drive in the control of ESDC or the National Student Loan Services Center on or about November 5, 2012;

F. AND WHEREAS the Parties have engaged in extensive, arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

G. AND WHEREAS the Parties therefore wish to, and hereby do, fully and finally resolve the Class Action without admission of liability on the part of the Defendant;

H. NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by the Parties that the Class Action be settled and that the Parties shall consent to the Court Order finally approving the settlement on the following terms and conditions:

ARTICLE 1: DEFINITIONS

- 1.1 For the purpose of this Settlement Agreement only, including the Recitals and any Schedules hereto:
- (a) *Account* means an interest bearing trust account under the control of the Claims Administrator at a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members. The conversion rate for the Settlement Amount will be the Bank of Canada rate on the date of payment. If the Settlement Amount is not paid when due the Settlement Amount will accrue interest until paid at a rate of 4% per annum;
 - (b) *Actual Loss* means a proven loss by an Eligible Class Member, excluding exemplary and punitive damages, as determined by an Arbitrator, caused by the Alleged Privacy Incident for which the Eligible Class Member has not been otherwise compensated, and the Arbitrator must be satisfied, on the balance of probabilities, that such loss could not have been prevented or limited by the credit protection services offered by the Defendant;
 - (c) *Administration Expenses* means the reasonable fees, disbursements, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the fees, expenses and taxes of the Claims Administrator but excluding:
 - (i) Class Counsel Fees;
 - (ii) the cost paid by the Defendant for one direct mailing to the Class Members;
 - (iii) the costs of the Arbitrator(s), which will be paid by the Defendant; and,
 - (iv) costs of the administration dealing with Actual Losses after the Claims Bar Date, which will be paid by the Defendant;
 - (d) *Alleged Privacy Incident* means the alleged loss on or about November 5, 2012 of the external hard drive in the control of ESDC or the National Student Loan Services Center containing the personal information of the Class Members;
 - (e) *Approval Hearing* means a motion for the approval of the Settlement Agreement at a date, time and place fixed by the Federal Court;
 - (f) *Approval Order* means the Order of the Federal Court approving this settlement in its entirety;

- (g) *Arbitrator* means one or more persons appointed by the Federal Court to serve as an Arbitrator for the purposes of Article 3.3 at the sole cost of the Defendant;
- (h) *Claim* means a properly completed Claim Form submitted by or on behalf of a Class Member and any other required supporting documentation to the Claims Administrator on or before the Claims Bar Date;
- (i) *Claim Form* means the document that enables a Class Member to apply for benefits pursuant to the Settlement Agreement, the content of which, will be agreed upon by counsel for the Parties and approved by the Federal Court;
- (j) *Claimant* means a Class Member whose Claim Form is submitted to the Administrator for evaluation;
- (k) *Claims Bar Date* means the date which is six months after the Effective Date;
- (l) *Claims Administrator* means the entity selected by Class Counsel and appointed by the Federal Court to administer the Settlement Agreement;
- (m) *Class Action* means the action commenced in Federal Court, Court File No. T-132-13, against the Defendant which has been certified as a class proceeding;
- (n) *Class Counsel* means the law firms of Strosberg Sasso Sutts LLP, Charney Lawyers, Branch MacMaster LLP and Bob Buckingham Law;
- (o) *Class Counsel Fees* means the reasonable fees, disbursements and taxes of Class Counsel;
- (p) *Class or Class Members* means all persons whose personal information was contained in an external hard drive in the control of ESDC or the National Student Loan Services Centre which was allegedly lost on or about November 5, 2012, but not including senior management of ESDC, the Canada Student Loans Program or Ministers and Deputy Ministers of the Ministry of ESDC, not including the Opt-Outs, and not including the individuals who are named plaintiffs in any other proceeding against the Defendant in respect of the same subject matter which has not been discontinued within the meaning of rule 334.21(2) of the Federal Court rules;
- (q) *Defendant* means Her Majesty the Queen;
- (r) *Effective Date* means the date on which the Approval Order becomes final;
- (s) *Eligible Class Members* means the Class Members whose Claims Forms are approved by the Administrator;
- (t) *ESDC* means the federal Department of Employment and Social Development Canada, formerly known as the Department of Human Resources and Skills Development Canada;

- (u) *Opt-Out* or *Opt-Outs* means a person or persons who opted out of the Class Action or is deemed to have opted out of the Class Action;
- (v) *Net Settlement Amount* means the Settlement Amount minus Class Counsel Fees and minus the Administration Expenses;
- (w) *Notice* means a notice in a form approved by the Federal Court of (a) the upcoming settlement approval hearing; or (b) the approval of the Settlement Agreement;
- (x) *Parties* means the Plaintiffs on behalf of the Class and the Defendant;
- (y) *Payment* means the amount paid to Eligible Class Members on account of the inconveniences associated with the Alleged Privacy Incident;
- (z) *Plaintiffs* mean Gaelen Patrick Condon, Rebecca Walker and Angela Piggott;
- (aa) *Registration System* means a confidential, secure, encrypted, web-based claim system, hosted in Canada, accessible from a public website:
 - (i) to allow Class Members to register;
 - (ii) once registered, a Class Member must complete and submit a Claim Form provided by the Registration System, his or her asserted Actual Losses, if any, also provided by the Registration System, and upload documents;
 - (iii) to communicate decision by the Claims Administrator; and
 - (iv) to communicate between or among the Claims Administrator and Class Member(s), the Defendant, Class Counsel, the Arbitrator(s) and the Claims Administrator and/or any other person;
- (bb) *Released Claims* means any and all manner of claims, demands, actions, suits and causes of action at common law or under Federal, Provincial or Territorial legislation alleged or which could have been asserted in this Class Action or otherwise, whether direct or indirect, class, individual, or otherwise in nature, whether personal or subrogated, including for damages whenever incurred and liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyer fees that the Releasers, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasee, whether known or unknown, relating in any way to any act or omission by the Releasee prior to the execution of this Settlement Agreement;
- (cc) *Releasee* means the Defendant Her Majesty the Queen in Right of Canada, The Attorney General of Canada, Her and their respective representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs and assigns;

- (dd) *Releasors* means, jointly, jointly and severally, individually and collectively, the Class Members and their respective executors, administrators, and heirs but not including Opt-Outs and not including the individuals who are named plaintiffs in any other proceeding against the Defendant in respect of the same subject matter which has not been discontinued within the meaning of rule 334.21(2) of the Federal Court rules;
- (ee) *Representative Claimants* means personal representatives, executors, administrators, heirs, assigns and trustees of Class Members;
- (ff) *Settlement Agreement* or *Settlement* means this agreement, including the recitals and schedules hereto;
- (gg) *Settlement Amount* means \$17,500,000; and
- (hh) *Surplus Fund* means the balance remaining, if any, calculated as the Net Settlement Amount minus the Payment to each Eligible Class Member.

1.2 Notwithstanding the definition of Class or Class Members in Articles 1.1(p):

- (a) any named plaintiff in any other outstanding class action or putative class action in the Federal Court or any Provincial Court or Territorial Court which has not been discontinued or dismissed; or
- (b) any Class Member who previously opted out of this Class Action

may opt into this Class Action by the Claims Bar Date by submitting a Claim Form to the Administrator.

ARTICLE 2: CONDITION PRECEDENT, COURT APPROVAL

2.1 This Settlement Agreement shall be null and void and of no force or effect, unless:

- (a) the Federal Court approves this Settlement Agreement; and
- (b) the Approval Order becomes final.

2.2 For greater certainty, the Approval Order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

2.3 Motions

- (a) The Plaintiffs shall first file a motion before the Federal Court for an order:

- (i) approving the form and content of the notice advising the Class Members of the proposed settlement (“Settlement Approval Hearing Notice”) and the dissemination plan thereof;
 - (ii) approving Sarkis Isaac to receive any objections to the proposed settlement; and
 - (iii) setting the date, time and place of the Approval Hearing;
- (b) The Plaintiffs shall file a second motion for approval of this Settlement Agreement;
 - (c) The Orders referred to in paragraph 2.3(a) and (b) shall be in a form agreed upon by Class Counsel and counsel for the Defendant and approved by the Federal Court.

ARTICLE 3: SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (a) Within seven (7) days of the Effective Date, the Defendant shall pay the Settlement Amount to Strosberg Sasso Sutts LLP in trust.
- (b) Strosberg Sasso Sutts LLP will pay from trust:
 - (i) Class Counsel Fees approved by the Federal Court;
 - (ii) From time to time, the Administration Expenses approved by the Federal Court; and
 - (iii) the remainder, the Net Settlement Amount, shall be paid to the Claims Administrator for payment to the Class Members as set out below.
- (c) Strosberg Sasso Sutts LLP or the Claims Administrator will invest the monies referred to in section 3.1 in bankers acceptance issued by a Schedule 1 chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members.
- (d) Strosberg Sasso Sutts LLP or the Claims Administrator shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Federal Court made on notice to or on consent of the Parties.

3.2 Payment to the Eligible Class Members

- (a) The Claims Administrator will pay \$60 from the Net Settlement Amount to each Eligible Class Member. If the Net Settlement Amount is insufficient, the \$60 Payment will be reduced on pro-rata basis. The Claims Administrator may make electronic payments or other payments to Eligible Class Members.
- (b) As soon as practicable after the Claims Bar Date, the Claims Administrator will pay the Payment to the Eligible Class Members.

3.3 Actual Losses by Eligible Class Members

- (a) The cost of the Arbitrator(s) and the costs of administration dealing with Actual Losses after the Claims Bar Date will be paid by the Defendant.
- (b) Amounts paid to Eligible Class Members for Actual Losses will first be paid from the Surplus Fund, if any, but thereafter shall be paid directly by the Defendant, with no cap on the ultimate amount to be paid for Actual Losses to each Eligible Class Member.

3.4 Shortfall or *Cy Pres* Distribution

- (a) In the event that the total amount of each \$60 Payment, payable to each Eligible Class Member, is more than the Net Settlement Amount, the Payment to each Eligible Class Member shall be reduced on a *pro rata* basis.
- (b) In the event that there is a balance remaining in the Surplus Fund, it shall first be applied to satisfy the claims of the Eligible Class Members whom the Arbitrator determines suffered an Actual Loss and thereafter any amount remaining in the Surplus Fund shall be paid out *cy-pres* to qualified donee(s) selected by the Parties and approved by the Federal Court

3.5 Funds

- (a) All funds held by the Claims Administrator shall be deemed and considered to be in *custodial legis* of the Federal Court, and shall remain subject to the jurisdiction of the Federal Court until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Federal Court.
- (b) All taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount, shall be the sole responsibility of the Claims Administrator. The Claims Administrator in consultation with Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.

- (c) The Defendant, the Plaintiffs and Class Counsel shall have no responsibility to make any tax filings relating to the Account and shall have no responsibilities to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account unless anyone of Class Counsel agrees to pay tax on any income earned on the Settlement Amount.

ARTICLE 4: ADMINISTRATION AND IMPLEMENTATION

4.1 Mechanics of Administration

- (a) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Federal Court on motion brought by the Parties, or any of them.

4.2 Administration

- (a) The Federal Court shall appoint a Claims Administrator, approve the Registration System, and approve the payments to Eligible Class Members under section 3.2(a).

4.3 Notices

- (a) The Class Members will be advised of the Approval Hearing by:
- (i) disseminating the Notice through an online media campaign approved by the Federal Court;
 - (ii) Class Counsel may send the emails themselves or retain Envoke.com or another Canadian company to send an email advising of the Approval Hearing and attaching the Notice to the Class Members who have registered with Class Counsel and provided a valid email address; and
 - (iii) posting a downloadable version of the Notice on the www.studentloansclassaction.com website.
- (b) If the Federal Court approves the Settlement Agreement, the Class Members will be provided notice:
- (i) by the Defendant, at its own expense, sending the notice by direct mail to the Class Members whose mailing addresses are believed by the Defendant to be current and whose previous notice of certification was not returned as undeliverable;

- (ii) by Class Counsel posting the Notice on the www.studentloansclassaction.com website ; and
- (iii) by the Claims Administrator sending the emails itself or retaining Envoke.com or another Canadian company to send an email to the Class Members, who registered with Class Counsel and provided a valid email address, advising them of the Settlement Agreement and the www.studentloansclassaction.com website from which the Notice can be downloaded, and the Registration System accessed.
- (c) Class Counsel and the Defendant acknowledge that no notices shall be disseminated anywhere until such time as they are approved by the Federal Court.

4.4 Duties of Claims Administrator

- (a) The Claims Administrator will:
 - (i) implement the approved Registration System;
 - (ii) receive from the Defendant, in a mutually agreed format between the Defendant and the Claims Administrator, the list of Class Members, their Student Loan Numbers and their mailing addresses believed by the Defendant to be current, and, if available, their email addresses by secure transmission;
 - (iii) receive Claim Forms from the Class Members using the Registration System's electronic version of the Claim Form only;
 - (iv) receive affidavits from Class Members by the Registration System only as an uploaded document;
 - (v) deliver monthly reports to the Defendant and Class Counsel information about the Eligible Class Members who claim Actual Losses;
 - (vi) advise Claimants whether they are Eligible Class Members by the Registration System only; and
 - (vii) implement the approved electronic payment process, and advise Eligible Class Members of the electronic payment process by the Registration System only.
- (b) If a person is not listed as a Class Member, she or he must upload into the Registration System an affidavit ("Affidavit") stating that she or he obtained a student loan and explaining why he or she is an Eligible Class Member.
- (c) If a person delivers an Affidavit, she or he will be deemed to be a Class Member for the Payment but,

- (i) if she or he asserts an Actual Loss, she or he must prove eligibility as a Class Member on the balance of probabilities; and,
- (ii) the Affidavit is subject to review by the Administrator and the Administrator may determine that the person is not an Eligible Class Member.

4.5 Actual Losses

- (a) On motion by the Defendant, the Federal Court will appoint an Arbitrator(s) who serves or served as Deputy Small Claims Court judge in the Province of Ontario and/or other individual(s) as the Federal Court may approve, with similar qualifications.
- (b) Eligible Class Members may apply for compensation for Actual Losses in the Registration System only on or before the Claims Bar Date.
- (c) The sole issues for the Arbitrator to determine are whether an Eligible Class Member suffered an Actual Loss on a balance or probabilities, and if so, the Arbitrator will assess damages; and, for greater certainty:
 - (i) The Defendant may assert all defences available at law;
 - (ii) If an Eligible Class Member did not use the credit protection services offered by the Defendant, the Arbitrator shall consider whether the credit protection services offered by the Defendant would have prevented or reduced the Actual Loss;
 - (iii) If the person was deemed to be an Eligible Class Member as set out in Article 4.4 (c), the person must establish on a balance of probabilities that his or her personal information was on the hard drive lost in the Alleged Privacy Incident.
- (d) The Defendant and Class Counsel may consult with some or all of the Arbitrator(s) to design a hearing process to decide Actual Loss. This process will be submitted to the Federal Court for approval. This hearing process, in the discretion of the Arbitrator, may allow for an in person hearing. The decision of the Arbitrator must be in writing. The Defendant and/or a Class Member have a right to appeal to the Prothonotary of the Federal Court.
- (e) The Claims Administrator will provide to the Arbitrator(s) access to the Registration System, on a read only basis, the name and contact information for any Eligible Class Member, and the Actual Loss application of any Eligible Class Member who alleges that they had an Actual Loss prior to the Claims Bar Deadline.

ARTICLE 5: RELEASES AND DISMISSALS

5.1 Releases

The Federal Court will order and declare that:

- (a) Upon the Effective Date, the Releasors forever and absolutely release, acquit, and discharge the Releasee from the Released Claims.
- (b) For the consideration provided herein, the Releasors agree not to make any claim or take, commence or continue any proceedings arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O. 1990, c N.1 or other comparable Federal, Provincial or Territorial legislation and any amendments thereto, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from the Releasee.
- (c) The Parties intend that the Settlement Agreement will be approved by the Federal Court and will order the dismissal of all claims asserted or which could have been asserted by Class Members on the terms set forth herein.
- (d) Without limiting any other provision herein, each Class Member whether or not he/she receives a payment, will be deemed by the Settlement Agreement completely and unconditionally to have released and forever discharged the Releasee from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts and demands whatsoever, known or unknown, that were or could have been asserted in the litigation that is the subject of this Settlement Agreement.
- (e) The Parties agree that each Class Member, whether or not he/she receives a payment, will be forever barred and enjoined from continuing, commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively or derivatively, asserting against the Defendant and Releasee, any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.
- (f) Except for the relief ordered by the Approval Order, this Class Action is dismissed without costs.

ARTICLE 6: DISMISSAL OF OTHER KNOWN CLASS ACTIONS

6.1 Outstanding Class Actions

- (a) The Plaintiffs and Defendant will cooperate to stay or dismiss or limit all known class actions, but will not attempt to prohibit the remaining actions as individual actions.

ARTICLE 7: TERMINATION OF SETTLEMENT AGREEMENT

7.1 No approval by the Federal Court

- (a) If this Settlement Agreement is not approved by the Federal Court:
 - (i) Subject to any costs paid by the Defendant for Notice, the Settlement Agreement shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms; and
 - (ii) All negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.
- (b) The Parties expressly reserve all of their respective rights to the extent that the Federal Court does not approve this Settlement Agreement.

ARTICLE 8: LEGAL FEES AND DISBURSEMENTS

8.1 Motion to Approve Fees and Disbursements

- (a) Class Counsel will bring a motion to the Federal Court for approval of Class Counsel Fees at the same time as the Approval Hearing. Such Fees, disbursements and taxes are awarded at the discretion of the Federal Court after hearing from Class Counsel. The Defendant will not take any position with respect to the amount of Fees requested by Class Counsel.

- (b) Class Members who have retained, or who retain lawyers, to assist them in respect of payments from this Settlement, shall be personally responsible for the legal fees and expenses of such lawyers and neither Class Counsel nor the Defendant have any responsibility for these retainers or awards that may be made.

ARTICLE 9: NO ADMISSION OF LIABILITY

9.1 No Admission of Liability Generally

- (a) The Parties agree that, whether or not this Settlement Agreement is approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussion and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasee, or of the truth of any of the claims or allegations made in the Class Action or in any other pleading filed by the Plaintiffs.
- (b) The Parties further agree that, whether or not this Settlement Agreement is approved or terminated, neither this Settlement Agreement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

9.2 Releasee Has No Liability for Administration

- (a) The Releasee has no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement except as expressly provided herein.

ARTICLE 10: MISCELLANEOUS

10.1 Best Efforts:

- (a) The Parties shall use their best efforts to effectuate this Settlement Agreement.

10.2 Motions for Directions

- (a) The Plaintiffs, Class Counsel, Claims Administrator and the Defendant may apply to the Federal Court for directions in respect of the interpretation, implementation, and administration of this Settlement Agreement.
- (b) All motions contemplated by this Settlement Agreement, including applications to the Federal Court for directions, shall be on notice to the Parties.

10.3 Timing

- (a) Class Counsel will make their best efforts to bring the motions to approve the form of Notice being provided to the Class Members and to approve the Settlement Agreement as soon after the execution of the Settlement Agreement as possible.

10.4 Headings, etc. in this Settlement Agreement

- (a) The division of the Settlement Agreement into Articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement.
- (b) The terms “this Settlement Agreement”, “the Settlement Agreement”, “hereto”, “hereunder”, “herein” and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

10.5 Ongoing Jurisdiction

- (a) The Federal Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

10.6 Entire Agreement

- (a) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations or promises other than as contained, or referred to, in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.
- (b) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Federal Court.

10.7 Binding Effect

- (a) Once the Settlement Agreement is approved by the Federal Court, this Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiffs, Eligible Class Members, Releasers, Releasee, Defendant, Class Counsel, Arbitrator and the Claims Administrator.

10.8 Assignment

- (a) No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement. This Agreement permits an assignment in the event of death, disability and/or bankruptcy.

10.9 Survival

- (a) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

10.10 Counterparts

- (a) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and an electronically scanned or facsimile signature shall be deemed an original signature for the purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, facsimile or other electronic form provided that it is duly executed.

10.11 Negotiated Agreement

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

10.12 Dates

- (a) Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Federal Court.

10.13 Language

- (a) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English.

10.14 French Translation

- (a) A working French translation of this Settlement Agreement, and all notices pursuant to this Settlement Agreement shall be prepared and paid from the amount reserved for Administration Expenses and made available to Class Members upon request. In case of any conflicting interpretations, the English version shall prevail.
- (b) The Claim Form will be available in English and French and the Administrator shall have English and French speaking persons available to assist any Class Member.

10.15 Statements to Media

- (a) The Parties agree that no public statements shall be made regarding the Class Action or the Settlement which are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements regarding the Class Action will indicate clearly that the Settlement has been negotiated, agreed and approved by the Federal Court without any admission or finding of liability or wrongdoing, and without any admissions or conclusions as to the truth of any of the facts alleged in the Class Action, all of which are specifically denied by the Defendant.
- (b) Each Party agrees not to disparage the opposite Parties or their counsel with respect to any of the matters in issue in the Class Action or the manner in which the Settlement was conducted.

10.16 Recitals

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

10.17 Schedules

- (a) The Schedules, if any, form part of this Settlement Agreement.

10.18 Acknowledgements

- (a) Each of the Parties hereby affirms and acknowledges that:
 - (i) He/she, or a representative of the Party, with the authority to bind the Party with respect to the matters set forth herein, has read and understands the Settlement Agreement;
 - (ii) The terms of this Settlement Agreement and the effects thereof have been fully explained to him/her, or the Party's representative, by his/her or the Party's counsel;

- (iii) He/she or the Party's representative, fully understands each term of the Settlement Agreement and its effects; and
- (iv) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) or any other Party with respect to the first Party's decision to execute this Settlement Agreement.

10.19 Authorized Signatures

- (a) Each of the undersigned represents that he/she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

10.20 Notice

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

For Plaintiffs and Class Counsel:

Harvey T. Strosberg, Q.C./Sharon Strosberg Luciana Brasil/Chelsea Hermanson

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

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