

[REDACTED]  
[REDACTED]

IN THE SUPREME COURT OF [REDACTED]

BETWEEN:

JOHN DOE 1

PLAINTIFF

AND:

[REDACTED]  
[REDACTED]  
[REDACTED]

DEFENDANTS

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50*

ORDER

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BEFORE ) The Honourable [REDACTED] ) [REDACTED]  
)  
)

THE APPLICATION of the Plaintiff, John Doe 1 as proposed representative plaintiff, coming on for hearing before me this day at [REDACTED], AND ON HEARING [REDACTED] of counsel for the Plaintiff, [REDACTED] on behalf of the defendants [REDACTED] [REDACTED] on behalf of the defendant [REDACTED], AND ON READING the Affidavit #2 of John Doe 1, sworn June 18, 2020, Affidavit #1 of [REDACTED], sworn August 31, 2020; and the materials filed herein;

AND BY CONSENT as to Orders :

THIS COURT ORDERS that:

1. This action is certified as a class proceeding pursuant to the *Class Proceeding Act*, R.S.B.C. 1996, c.50.

[REDACTED]

2. The plaintiff class (the "Class"), as defined in the Settlement Agreement dated for reference [REDACTED], a copy of which is attached hereto as Schedule "A" (the "Settlement Agreement"), consists of each of the [REDACTED] members of [REDACTED] [REDACTED] who were sent [REDACTED] from [REDACTED] regarding the subject "[REDACTED] [REDACTED], and whose email address was included in the cc field of the email, excluding any person who has validly opted out of this Action, and including any such members located out-of-province who opt in to the Action in accordance with the terms of this Order.
3. Defined terms used and not defined in this Order shall have the meanings ascribed to them in the Settlement Agreement.
4. John Doe 1 is appointed the representative plaintiff for the Class (the "Representative Plaintiff").
5. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. The Settlement Agreement including all schedules thereto, is hereby approved.
7. This Order, including the Settlement Agreement, is binding upon the parties to the Settlement Agreement and all members of the Class.
8. The terms of the Settlement Agreement are incorporated into this Order. Without limiting the generality of the foregoing, all rights, obligations and releases provided for in the Settlement Agreement are deemed to have been ordered by this Court pursuant hereto.
9. The Class shall be given notice of the certification of this action as a class proceeding and of the approval of the Settlement Agreement in the manner specified in Schedule "D" of the Settlement Agreement, the costs of which shall be borne by the Representative Plaintiff in accordance with the Settlement Agreement, and the content requirements of section 19(6) of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 are dispensed with to the extent that any such content is not included in the notice to the Class attached to Schedule "D" of the Settlement Agreement.
10. [REDACTED] [REDACTED] MNP LTD. is hereby approved and appointed as Claims Administrator of the settlement embodied in the Settlement Agreement and shall carry out its obligations under the Settlement Agreement as an officer of this Court. The Claims Administrator is at liberty to make application to this Court as

it deems necessary for directions in relation to the discharge of its functions as Claims Administrator pursuant to the terms of the Settlement Agreement.

11. No proceeding or enforcement process in any court or tribunal (each, a Proceeding") shall be commenced or continued against the Claims Administrator without the written consent of the Claims Administrator or with leave of the Court.
12. All claims by Class Members relating in any way to the Disclosure and the Subject Email as defined in the Settlement Agreement are absolutely and finally extinguished and all Class Members are hereby barred, prohibited and enjoined from bringing or continuing any Claims as against The Releasees (as defined in the Settlement Agreement) and are deemed to have released the Releasees from any and all Claims in accordance with the terms of the Settlement Agreement.
13. All claims for contribution, indemnity, or other claims over, whether asserted or unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to, arising out of or in connection with the Disclosure or Allegations, whether they are, were or could have been brought in this action or any other proceeding or otherwise, by any of the defendants against any of the other defendants in the Action, are barred, prohibited and enjoined in accordance with the terms of the Settlement Agreement incorporated into this Order (unless such claim is made in respect of a claim by a person who has validly opted out of these proceedings).
14. All issues or disputes arising out of or connected with the Settlement Agreement, including without limitation, issues or disputes as to construction, supervision or enforcement, shall be determined by this Court, and the Parties to the Settlement Agreement and the Claims Administrator are at liberty to make further

application to this Court for orders or directions as may be necessary to carry out the Settlement Agreement or to give effect to its meaning and intention.

By the Court.

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Registrar

APPROVED AS TO FORM:

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████████████████████  
Lawyer for the plaintiff,  
John Doe 1

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████████████████████  
Lawyers for the defendants,  
████████████████████  
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██████████  
Lawyers for the defendant,  
████████████████████

SCHEDULE A

[REDACTED]

IN THE SUPREME COURT OF [REDACTED]

BETWEEN:

JOHN DOE 1

PLAINTIFF

AND:

[REDACTED]

and

[REDACTED]

DEFENDANTS

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c.50

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SETTLEMENT AGREEMENT

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**WHEREAS** by Notice of Civil Claim filed the 4<sup>th</sup> day of August, 2017, and by Amended Notice of Civil Claim filed the 30<sup>th</sup> day of September, 2019, and by Further Amended Notice of Civil Claim filed August 28, 2020 the proposed representative Plaintiff (the "PR Plaintiff") brought this action under the *Class Proceedings Act*, R.S.B.C. 1996 c. 50 alleging *inter alia* negligence, breach of statutory duties, breach of privacy, breach of confidence, breach of fiduciary duty, breach of contract and breach of warranty by the Defendants in relation to an email delivered on [REDACTED] (herein [REDACTED]) to some 796 members of [REDACTED], which email disclosed to the recipients the email addresses of all other recipients of the email, and thereby disclosed to the 796 email recipients that all of the other recipients were members of [REDACTED] and were therefore [REDACTED];

**AND WHEREAS** counsel for the parties to this Agreement have conducted a thorough analysis of the claims, and have also taken into account the extensive burdens and expense of litigation, including the risks of proceeding to trial;

**AND WHEREAS** in consideration of all of the circumstances and after extensive arms' length negotiations, both directly and with the assistance of a mediator, the parties to this Agreement wish to settle any and all issues among themselves in any way relating to the allegations made in the original and Amended Notice of Civil Claim filed in this Action;

**AND WHEREAS** after their investigations and assessments, the PR Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

**AND WHEREAS** the Defendants have denied and continue to deny liability, and have also denied causation, or that any damages are payable under any head of damage irrespective of liability;

**NOW THEREFORE** the parties to this Agreement agree to settle the issues in dispute in the Class Action relating to the allegations on the following terms and conditions:

#### **DEFINITIONS**

- 1) For the purposes of this Settlement Agreement, the following definitions apply:
  - a) "Action" means the proceeding commenced pursuant to the *Class Proceedings Act*, R.S.B.C. 1996 c. 50 by John Doe 1 as proposed Representative Plaintiff in the [REDACTED] of the Supreme Court of [REDACTED], as Court Docket No. [REDACTED]
  - b) "Administration Costs" means all costs to administer and distribute the Compensation Fund including the costs and professional fees of the Claims Administrator and the costs of implementing the Notice Plan;
  - c) "Allegations" means all of the facts, law, causes of action and damages plead in the original and Amended Notices of Civil Claim filed in this Action, including but not

limited to the allegations relating to negligence, breach of statutory duties, breach of privacy, breach of confidence, breach of fiduciary duty, breach of contract and breach of warranty;

d) "Approval Hearing" means the hearing at the Court to approve the certification and settlement of the Action;

e) "Approval Order" means the Court Order attached as Schedule "A", or such Order as is made at the Approval Hearing approving the certification and settlement of the Action;

f) "Claim" means the claim made by a Claimant with the Claims Administrator in accordance with the procedure in the Distribution Protocol;

g) "Claimant" means a Class Member who files a Claim pursuant to the terms hereof;

h) "Claims Administrator" means MNP LTD. of Calgary, Alberta as approved by the Court;

i) "Class" is defined as – "Each of the 796 members of [REDACTED] who were sent an email [REDACTED] regarding the subject "[REDACTED]", and whose email address was included in the cc field of the email, excluding any person who has validly opted out of this Action, and including any such members located out-of-province who opt in to the Action between the Court Approval Date and March 31, [REDACTED].

j) "Class Counsel" means [REDACTED];

k) "Class Counsel Fees" mean the fees, disbursements, interest on disbursements and taxes as are awarded to Class Counsel by the Court at the Approval Hearing;

- l) "Class Member" is a person who is a member of the Class;
- m) "Compensation Fund" means the pool of funds to be paid in trust to Class Counsel, less the honorarium payable to the PR Plaintiff John Doe 1, less the amounts ordered payable to Class Counsel as Class Counsel fees, and any expenses and taxes relating to the Notice of Court Approval and the cost of any other steps ordered by the Court at the Hearing for certification, settlement approval and approval of Class Counsel;
- n) "Court" means the Supreme Court of [REDACTED];
- o) "Court Approval Date" means the day the Court hears the proposed Representative's Plaintiff's applications for Certification and approval of the settlement of the Action, and makes the necessary Orders;
- p) "Disclosure" means the alleged unauthorized disclosure of personal information arising from the Subject Email;
- q) "Distribution Protocol" means the plan setting out the plan for payment of compensation to Class Members as proposed by the proposed Representative Plaintiff and approved by the Court. Attached hereto as Schedule "B" is the proposed Distribution Protocol, in turn attaching the proposed "SETTLEMENT BENEFIT CLAIM FORM" labelled Schedule B(i) and B (ii) and the proposed "REQUEST FOR EXCLUSION FORM" labeled C;
- r) "Final Order" means a final judgment or order entered by the Court, once the time to appeal such judgment or order has expired without any appeal being taken, or once there has been affirmation of the approval of any such judgment or order upon a final disposition of all appeals.
- s) "Notice Plan" means the plan approved by the Court to disseminate to prospective Class Members notice that the Court has approved the settlement and made the Approval



Order. Attached as Schedule "D" to this Settlement Agreement is the proposed "NOTIFICATION OF CERTIFICATION AND SETTLEMENT" for promulgation by way of publication in the next edition of the [REDACTED], and by way of such further means as may be ordered by the Court or at the discretion of the Claims Administrator;

t) "Releasees" means the Defendants, and each of their respective present and former employees, servants, officers, directors, agents, insurers, re-insurers, representatives, predecessors, executors, administrators, successors and assigns;

u) "Settlement Agreement" means this agreement, as executed by the parties or their representatives;

v) "Settlement Fund" means the sum of [REDACTED] (CDN) which the Defendants have agreed to pay in trust to Class Counsel all-inclusive to settle the Action, inclusive of every Claim, Administration Costs, and Class Counsel Fees;

w) "Subject Email" means the email sent on [REDACTED] from [REDACTED] regarding the subject "[REDACTED]", and which included in the cc field the email addresses of the members to whom the email was sent;

#### **SETTLEMENT FUND**

- 2) The Releasees shall pay the Settlement Fund to Class Counsel "in trust" within seven (7) days of the Approval Order becoming a Final Order;
- 3) Class Counsel shall disburse the Settlement Fund as follows:
  - a) First, to pay the sum of \$10,000.00 or such other amount as may be approved by the Court as payable by way of an honorarium to the PR Plaintiff;

[REDACTED]

b) Second, to pay the Class Counsel Fees as determined by the Court at the Settlement Approval Hearing, pursuant to s. 38 of the *Class Proceedings Act*, R.S.B.C. 1996 c. 50.;

c) Third, the remainder of the Settlement Fund will then be the Compensation Fund, and forwarded to the Claims Administrator and used to compensate Claimants in accordance with the Distribution Protocol, and to pay Administration Costs.

**COMMUNICATIONS**

4) The parties, Class Counsel and Class Members agree that they will not comment or post publicly about the Action or this Settlement Agreement, except to the extent that disclosure is required by Class Counsel or the court to provide notice to Class Members;

**COURT APPROVAL**

5) It is agreed that court approval of this Settlement Agreement and the Distribution Protocol is required, and it is acknowledged that the Court will set a period after certification and settlement approval for prospective Class Members to elect to opt out of making a claim within this class Action following completion of the Notice Plan. The parties propose that the period of time to make a Request for Exclusion be from the Court Approval Date to [REDACTED];

**RELEASES**

6) On the date of Court approval of this settlement, each Class Member, whether or not he or she submits a Claim or otherwise receives compensation in accordance with the Distribution Protocol, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees and each of them of and from any and all actions, counterclaims, causes of action, suits, debts, contracts, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, loss or harm of any nature and kind whatsoever, known or

[REDACTED]

unknown, whether at law or in equity, and howsoever arising, which they may heretofore have had, may now have or may hereafter have, whether commenced or not in connection with, relating to, or arising out of the Disclosure including but not limited to the Allegations made or which could have been made in the Action, and each Class Member will be forever barred and enjoined from commencing, instituting, prosecuting, assigning or asserting, on their own behalf or on behalf of any other person or entity, 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 Releasees any claims in connection with, relating to, or arising out of the Disclosure or Allegations.

- 7) It is agreed that the Class Members will not, in any manner whatsoever, at any time hereafter, commence, maintain, pursue, continue, assign or assert, on their own behalf or on behalf of any other Class Members, against any other person or entity, any legal action against any person or entity who may have claim against the Releasees or any of them for contribution or indemnity in connection with, relating to, or arising out of the Disclosure or Allegations. In the event any Class Member breaches this term, then such person shall waive, forego, and not pursue such claims and shall consent to an Order of the Court or any other court as may be applicable, striking out any such action or pleadings and shall completely and fully indemnify and save harmless the Releasees in respect of all claims, damages, awards, judgments and costs in respect of such action or pleading, including the solicitor and own client costs of the Releasees.
  
- 8) It is agreed that the Defendants will not, in any manner whatsoever, at any time hereafter, commence, maintain, pursue, continue, assign or assert, against any other Defendant, or any other person or entity who may claim contribution or indemnity from any other Defendant, any legal action for contribution or indemnity in connection with, relating to, or arising out of the Disclosure or Allegations, including but not limited to any claims that were made or could have been made against the Defendants or any of them by way of third party claim in the Action (unless such claim is made in respect of a claim by a person who has validly opted out of these proceedings).



- 9) No proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against the Claims Administrator without the written consent of the Claims Administrator or with leave of the Court.

**NO ADMISSIONS, NO USE**

- 10) This Settlement Agreement and any proceedings taken pursuant to this Settlement Agreement are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been, or in the future might be asserted in any litigation, court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the settlement and this Settlement Agreement. For greater clarity, the Releasees deny the truth of the allegations in the Action and deny any liability whatsoever.

**TERMINATION**

- 11) This Settlement Agreement shall, without notice, be automatically terminated if:
  - a. the Court does not approve this Settlement Agreement; or
  - b. if the Approval Order does not become a Final Order.
- 12) In the event of termination, this Settlement Agreement shall have no further force or effect, save and except for this section and section 10, which shall survive termination.

**GENERAL**

- 13) This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of [REDACTED].

[REDACTED]

- 14) This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, on consent of the parties, and with Court approval.
- 15) This Settlement Agreement may be signed by the parties in counterpart which shall have the same effect and enforceability as a single executed document.
- 16) It is agreed that the signature of duly authorized signature of counsel of record conveyed electronically and attached to this Settlement Agreement is of the same full force and effect as an original signature of counsel.

IN WITNESS WHEREOF, each of the parties has caused this Settlement Agreement to be executed on her/his/their behalf by her/his/their duly authorized counsel of record, effective as of



IN THE SUPREME COURT OF [REDACTED]

BETWEEN:

JOHN DOE 1

PLAINTIFF

AND:

[REDACTED]  
DEFENDANTS

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50*

ORDER

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BEFORE ) The Honourable [REDACTED] ) 04/SEP, [REDACTED]  
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THE APPLICATION of the Plaintiff, John Doe 1 as proposed representative plaintiff, coming on for hearing before me this day at [REDACTED] AND ON HEARING [REDACTED] of counsel for the Plaintiff, [REDACTED] on behalf of the defendants the [REDACTED]

[REDACTED], AND ON READING the Affidavit #2 of John Doe 1, sworn June 18, [REDACTED] Affidavit #1 of [REDACTED], sworn August 31, [REDACTED] and the materials filed herein;

AND BY CONSENT as to Orders :

THIS COURT ORDERS that:

1. This action is certified as a class proceeding pursuant to the *Class Proceeding Act*, R.S.B.C. 1996, c.50.

2. The plaintiff class (the "Class"), as defined in the Settlement Agreement dated for reference September 3, [REDACTED] a copy of which is attached hereto as Schedule "A" (the "Settlement Agreement"), consists of each of the 796 members of [REDACTED] who were sent an email on [REDACTED] from [REDACTED] regarding the subject [REDACTED], and whose email address was included in the cc field of the email, excluding any person who has validly opted out of this Action, and including any such members located out-of-province who opt in to the Action in accordance with the terms of this Order.
3. Defined terms used and not defined in this Order shall have the meanings ascribed to them in the Settlement Agreement.
4. John Doe 1 is appointed the representative plaintiff for the Class (the "Representative Plaintiff").
5. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
6. The Settlement Agreement including all schedules thereto, is hereby approved.
7. This Order, including the Settlement Agreement, is binding upon the parties to the Settlement Agreement and all members of the Class.
8. The terms of the Settlement Agreement are incorporated into this Order. Without limiting the generality of the foregoing, all rights, obligations and releases provided for in the Settlement Agreement are deemed to have been ordered by this Court pursuant hereto.
9. The Class shall be given notice of the certification of this action as a class proceeding and of the approval of the Settlement Agreement in the manner specified in Schedule "D" of the Settlement Agreement, the costs of which shall be borne by the Representative Plaintiff in accordance with the Settlement Agreement, and the content requirements of section 19(6) of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 are dispensed with to the extent that any such content is not included in the notice to the Class attached to Schedule "D" of the Settlement Agreement.
10. [REDACTED] MNP LTD. is hereby approved and appointed as Claims Administrator of the settlement embodied in the Settlement Agreement and shall carry out its obligations under the Settlement Agreement as an officer of this Court. The Claims Administrator is at liberty to make application to this Court as

it deems necessary for directions in relation to the discharge of its functions as Claims Administrator pursuant to the terms of the Settlement Agreement.

11. No proceeding or enforcement process in any court or tribunal (each, a Proceeding") shall be commenced or continued against the Claims Administrator without the written consent of the Claims Administrator or with leave of the Court.
12. All claims by Class Members relating in any way to the Disclosure and the Subject Email as defined in the Settlement Agreement are absolutely and finally extinguished and all Class Members are hereby barred, prohibited and enjoined from bringing or continuing any Claims as against The Releasees (as defined in the Settlement Agreement) and are deemed to have released the Releasees from any and all Claims in accordance with the terms of the Settlement Agreement.
13. All claims for contribution, indemnity, or other claims over, whether asserted or unasserted, or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to, arising out of or in connection with the Disclosure or Allegations, whether they are, were or could have been brought in this action or any other proceeding or otherwise, by any of the defendants against any of the other defendants in the Action, are barred, prohibited and enjoined in accordance with the terms of the Settlement Agreement incorporated into this Order (unless such claim is made in respect of a claim by a person who has validly opted out of these proceedings).
14. All issues or disputes arising out of or connected with the Settlement Agreement, including without limitation, issues or disputes as to construction, supervision or enforcement, shall be determined by this Court, and the Parties to the Settlement Agreement and the Claims Administrator are at liberty to make further



application to this Court for orders or directions as may be necessary to carry out the Settlement Agreement or to give effect to its meaning and intention.

By the Court.

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Registrar

APPROVED AS TO FORM:

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[REDACTED]  
Lawyer for the plaintiff,  
John Doe 1

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[REDACTED]  
Lawyers for the defendants,  
[REDACTED]

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[REDACTED]  
Lawyers for the defendant,  
[REDACTED]