

Court File No.: CV-21-00665193-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

ALGA ADINA BONNICK, GORAN STOILOV DONEV,  
and SARAH-JANE SHAW

Plaintiffs

- and -

LAWRENCE KRIMKER, CROWN CREST CAPITAL MANAGEMENT CORP., CROWN  
CREST FINANCIAL CORP., CROWN CREST CAPITAL TRUST, CROWN CREST CAPITAL  
II TRUST, CROWN CREST BILLING CORP., CROWN CREST CAPITAL CORP., CROWN  
CREST FUNDING CORP., SANDPIPER ENERGY SOLUTIONS, SANDPIPER ENERGY  
SOLUTIONS HOME COMFORT, SIMPLY GREEN HOME SERVICES (ONTARIO) INC.,  
SIMPLY GREEN HOME SERVICES INC., SIMPLY GREEN HOME SERVICES CORP.,  
PEOPLES TRUST COMPANY, LYUDMILA KRIMKER, 2775996 ONTARIO INC., MARBLE  
AMALCO INC., HCSI HOME COMFORT INC., HCSI HOME COMFORT 2 INC. and SGHS  
MANAGEMENT HOLDCO INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**DISTRIBUTION PROTOCOL**

## I. GENERAL PRINCIPLES

1. This is a distribution protocol pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (particularly, section 27.1). The purpose of this Court-approved Distribution Protocol is to set out and govern the administration of the settlement agreement entered into by all parties on November 1, 2024 (the “**Settlement Agreement**”), and how the settlement funds and benefits are to be distributed amongst class members. The term “class member” in this Distribution Protocol has the same meaning as the defined term “Settlement Class Member” in section 2.53 of the Settlement Agreement.

2. The administration shall:

- (a) implement and conform to the Settlement Agreement, orders of the Court, and this Distribution Protocol;
- (b) employ secure, paperless, web-based systems with electronic registration and record-keeping wherever possible; and
- (c) rely on data provided by the Settling Defendants wherever feasible.

## II. DEFINITIONS

3. For the purpose of this Distribution Protocol, the definitions as provided in the Settlement Agreement apply, unless otherwise stated herein. The following definitions also apply:

- (a) ***Claim*** means the electronic or paper form that a class member must complete and submit before the Claims Filing Deadline;
- (b) ***Claims Administrator*** means the firm appointed by the Court to administer the distribution of the settlement in accordance with the provisions of the Settlement Agreement, this Distribution Protocol, and any related Court order;

- (c) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be submitted in order for class members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising class members of the claims process;
- (d) ***Court*** means the Superior Court of Justice for Ontario; and
- (e) ***Net Settlement Funds*** means the Initial Cash Amount plus the Participation Amount, if any, as defined in the Settlement Agreement, less:
- i. Class Counsel Fees as approved by the Court;
  - ii. Class Proceedings Fund levy relating to the Ontario class;
  - iii. Administration Expenses (which include fees of the Claims Administrator in administering this Distribution Protocol, expenses in distributing notice to the Class, and other administration disbursements);
  - iv. Taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
  - v. Any other deduction approved by the Court.

### **III. BACKGROUND**

#### **a. Parties**

4. The plaintiffs are Alga Adina Bonnick, Goran Stoilov Donev, and Sarah-Jane Shaw.
5. The settling defendants are Lawrence Krimker, Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Capital Trust, Crown Crest Capital II Trust, Crown Crest Billing Corp., Crown Crest Capital Corp., Crown Crest Funding Corp., Sandpiper Energy Solutions, Sandpiper Energy Solutions Home Comfort, Simply Green Home Services (Ontario)

Inc., Simply Green Home Services Inc., Simply Green Home Services Corp., Simply Group, HCSI Home Comfort Inc., HCSI Home Comfort 2 Inc., Ecohome Financial Inc., Simply Group Acquisition Corp., Peoples Trust Company, Lyudmila Krimker, 2775996 Ontario Inc., Marble Amalco Inc., and SGHS Management Holdco Inc. (“**Settling Defendants**”).

#### **b. History of the Litigation**

6. Alga Adina Bonnick and Goran Stoilov Donev commenced an action against some of the defendants on July 7, 2021, alleging, among others, the non-disclosure of material and statutorily-mandated information to consumers and the use of notices of security interests and other encumbrances on consumers’ home titles as leverage to extract buyout amounts from class members.

7. On November 6, 2023, Peoples Trust Company, as the senior secured creditor of certain of the defendants, initiated a proceeding under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“**CCAA**”) involving certain of the defendants. This proceeding resulted in an order that stayed the class action.

8. On December 21, 2023, the plaintiffs commenced an action against Peoples Trust Company for its alleged role in the impugned conduct. The plaintiffs subsequently sought to add other defendants to that action.

9. The Judge of the Superior Court of Justice overseeing the CCAA proceeding (Justice Conway) ordered the parties in both Actions to attend a mediation in August 2024, failing which, the certification and summary judgment motion in the Ontario action scheduled for October 1-3, 2024 would proceed. The CCAA-imposed stay was lifted for the purposes of the mediation and the hearing of the certification and summary judgment motions.

10. The parties attended three days of mediation with the Honourable Thomas McEwen in August 2024 and another day in September 2024. While a settlement was not achieved, negotiations continued with assistance from Mr. McEwen. After the start of the certification and summary judgment hearing, the parties reached a settlement agreement in principle and the hearing was adjourned on consent. The Settlement Agreement was subsequently signed.

**c. The Settlement Class**

11. The proposed consent certification class is as follows:

All Persons in Canada who are or were party to a Lease at any time between July 17, 2013 and January 15, 2025, except Excluded Persons.

Where:

“Excluded Persons” means any putative Class Member who validly opts out of this proceeding in accordance with the terms of this Order and each Defendant;

“Lease” means Equipment leases between putative Class Members and either: (i) a Simply Green Vendor; or (ii) an entity to which a Simply Green Vendor is or was a successor in interest in respect of that Equipment Lease whether by assignment, purchase, corporate acquisition or amalgamation or otherwise, including Leases that have been terminated, bought out, or rescinded, and Leases that have expired or matured;

“Equipment” means furnaces, heat pumps, air conditioners, air purifiers, water heaters, water softeners, water purification systems, water treatment systems, water filters, boilers, thermostats, air cleaners, humidifiers, chimney liners, duct cleaning services, heat recovery ventilators, filters, and other equipment or services; and

“Simply Green Vendor” means any of Crown Crest Capital Management Corp., Crown Crest Financial Corp., Crown Crest Funding Corp., HCSI Home Comfort Inc., HCSI Home Comfort 2 Inc., Simply Green Home Services Inc., Simply Green Home Services Corp., Utilebill Home Services Inc., Crown Crest Capital Trust, Simply Green Retail Services Inc., Crown Crest Billing Corp., Simply Green Home Services (BC) Inc., Simply Green Home Services (AB) Inc., Simply Green Home Services (SK) Inc., and Simply Green Home Services (MB) Inc.

**d. Benefits Under the Settlement Agreement**

12. The Settlement Agreement provides the following benefits to class members:

**(i) Cash components:**

- (a) A cash payment of \$17,000,000; and
- (b) Cash participation in the sale proceeds of the companies protected under the CCAA proceeding in the amount of 25% of the purchase price paid over \$250 million in relation to any transaction concluded in accordance with a court-approved sale process (e.g., where the business is sold for \$251 million, the Class would receive 25% of the \$1 million dollars over the threshold, being \$250,000).

**(ii) Lease modification and relief components:**

- (a) Cancellation and arrears forgiveness of \$13,500,000 worth of ongoing lease agreements and gifting the equipment thereunder to the affected consumers without further payment or obligation;
- (b) A permanent cap shall apply to the annual increase of payments under the lease agreement at 3.5% per annum for leases currently held by the Settling Defendants;
- (c) A permanent 25% reduction in lease buy-out prices for certain HVAC equipment for leases currently held by the Settling Defendants; and
- (d) A consent court order to the effect that no notice of security interest or similar lien anywhere in Canada shall be enforceable in respect of leases currently held by the Settling Defendants, together with an individualized letter to affected class members confirming that notices of security interest or other encumbrance registered by the

Settling Defendants are of no force and effect. The letter will authorize a lawyer engaged by a class member to seek to discharge same from title.

**e. Categorization of Class Members**

13. The settlement contains both monetary and non-monetary elements such that there is no fixed individual payment and the payment will vary depending on the ultimate take-up rate.

14. Those class members who paid the Settling Defendants a buyout fee may be eligible for monetary compensation in accordance with this distribution protocol.

15. Further, the settlement contemplates the cancellation of lease agreements and arrears forgiveness of \$13,500,000 worth of ongoing lease agreements. Of this amount, \$2,000,000 worth of leases will be subject to the claims process described below.

16. Class members who are deemed not eligible for a cash payment or a cancellation will benefit from the settlement in any case, including by way of a 3.5% per annum cap on the annual payment increases under their agreements, a 25% reduction in lease buyout prices for the equipment, and receipt of a letter and court order rendering any notice of security interest or similar encumbrance unenforceable and authorizing any solicitor to discharge such encumbrance.

**f. Calculation of Individual payments**

17. Pursuant to the Settlement Agreement, the Settling Defendants have agreed to pay an Initial Cash Amount of \$17,000,000, in addition to a Participation Amount to be determined based on the proceeds of the sale of the business. These proceeds, less fees and disbursements, shall constitute the amount to be allocated to class members as specified below.

18. There is no fixed individual payment and the payment will vary depending on the ultimate take-up rate. The manner of distribution is as follows.

19. Class members who paid any of the Settling Defendants a buyout or termination fee may be eligible for a cash reimbursement that shall not be larger than the actual amount that they paid.

20. For the purposes of *pro rata* distribution, the cash entitlement of class members will be calculated based on the amount of the buyout fee that they paid compared to the Net Settlement Funds available to be paid to eligible Class Members, further detailed below.

21. The verification of these claims is intended to be easy for class members and primarily carried out by reference to data from the Settling Defendants.

22. The Settling Defendants have a cooperation obligation under section 6.3 of the Settlement Agreement to provide the following data relating to class members eligible for a payout:

6.3 Subject to privacy issues being properly addressed, substantially in the manner set out in the Approval Order, the Simply Green Vendors will use commercially reasonable efforts to provide Class Counsel with contact information for Class Members who paid moneys to Simply Green Vendors to terminate or buy out their Leases during the period from July 17, 2013 to the date of the Approval Order, and the amount of those termination or buy out payments, to facilitate the administration of the settlement. In connection with the Approval Order, the Parties will make best efforts to obtain an order of the Court addressing privacy issues in connection with the foregoing.

23. This data is intended to facilitate the administration of the settlement by paying monetary payouts to the subset of the class that made lump sum payments to any of the Settling Defendants to buy out their leased equipment during the class period. The above data is intended to:

(a) lessen the burden of proof of loss on such eligible class members;

(b) streamline claims administration by allowing for independent verification by the Claims Administrator against the Settling Defendants' data; and

(c) using the quantum of the amount paid by the class member against the Net Settlement Funds available to compensate the claimants to assess a payout to each such claimant that is based on a proportionate percentage to the total of the actual sums paid by the class members compared to the total fund available to compensate all eligible class members, not exceeding the actual amount paid by such class members to any of the Settling Defendants:

Example A: If the Net Settlement Funds to be distributed is \$100; three eligible class members claim, each of whom paid the following sums: class member 1, \$45; class member 2, \$80; class member 3, \$65. The payment to each will be calculated as follows:

$\$45 + \$80 + \$65 = \$190$  (total amount paid out by all eligible and approved claimants)

The Net Settlement Funds (\$100) represents an approximately 52% share of the total amount paid by the claimant class members (\$190).

Each claimant receives approximately 52 % of the actual sums paid: class member 1 receives ( $\$45 \times 0.52 = \mathbf{\$23.4}$ ); class member 2 receives ( $\$80 \times 0.52 = \mathbf{\$41.6}$ ); class member 3 receives ( $\$65 \times 0.52 = \mathbf{\$33.8}$ ).

Example B: If the Net Settlement Funds is \$100; three eligible class members apply, each of whom paid the following sums: class member 1, \$25; class member 2, \$30; class member 3, \$15. The payment to each class member will be the full amount that they each paid, but not higher than 100%: \$25, \$30, and \$15.

24. Notwithstanding any other provision in this Distribution Protocol and subject to further order of the Court, claims that are valued at or below \$25 will be assigned a minimum value of \$25. The \$25 valuation target is not an estimate of any damages suffered, and it is not expected that any approved claim in this case will be at or below the \$25 mark. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution. The \$25 valuation shall be applied only after summing all payments across all claims.

25. To the extent that the full Net Settlement Funds are not paid out due to uncashed e-transfers or cheques, residual interest or otherwise, the funds shall be held in trust for the benefit of class members, pending further order of the Court. In such a scenario, Class Counsel shall seek the Court's directions on a further direct, or *cy-près*, distribution.

26. Class members seeking compensation must disclose any compensation received and/or release granted through other proceedings or private out-of-class settlements in relation to their Lease.

#### **g. Lease Modifications**

27. The Settlement Agreement includes several lease modifications and benefits to the class. These include benefits under sections 7, 8, 9, and 10 of the Settlement Agreement.

28. With one exception, these modifications take place by the Parties' agreement and through direct order of the Court. The following summarizes these benefits and the portion thereof that is the subject of this Distribution Protocol.

##### **(i) Lease cancellations**

29. Section 7 of the Settlement Agreement states:

7.1 Through the process set out in this Section 7, the Simply Green Vendors will cancel Leases with Settlement Class Members with an aggregate value of \$13,500,000 with the value of such Leases being the sum of all payments remaining to be made under the Leases, including payments already due and payable, with annual payment

escalations no greater than 3.5%, and with useful life Lease terms deemed to be 180 months.

7.2 The Leases to be cancelled shall be identified by the following Parties in the following amounts:

(a) \$11,500,000 by value of the Leases to be cancelled shall be identified by Peoples Trust Company within thirty (30) days of the Effective Date; and

(b) \$2,000,000 by value of the Leases to be cancelled shall be identified by the Plaintiffs in the course of the implementation of the settlement.

7.3 With respect to those Leases to be selected by Peoples Trust Company, the Simply Green Vendors will provide Peoples Trust Company with a list of the Leases of Settlement Class Members held as of the date of this Settlement Agreement by the Simply Green Vendors and currently in default for non-payment, and Peoples Trust Company shall identify Leases for cancellation by order of the longest outstanding default, based on Simply Green Vendors' records. Offers of cancellation to lessees will be made by starting at the top of the list and working down the list until the agreed-upon value of Lease cancellations has been met. The language of these offers of cancellation communications to the affected Settlement Class Members will be subject to Class Counsel's review and comments. Peoples Trust Company will provide Class Counsel with a list of those Leases for which offers of cancellation have been made and separately of those Leases for which offers of cancellation have been accepted by Settlement Class Members.

7.4 Lease cancellation under this Section is intended to benefit Settlement Class Members experiencing the most hardship, and therefore Settlement Class Members who are offered the option of cancelling their Lease and who accept the Lease cancellation will be entitled to retain the Equipment that was the subject of the cancelled Lease at no cost to the Settlement Class Members, but they will no longer be entitled to any service or maintenance from any of the Settling Defendants. Settlement Class Members who are offered the option of cancelling their Lease and refuse the Lease cancellation will maintain the same obligations and benefits under their Leases in accordance with their terms and this Settlement Agreement (including the benefits under Sections 8 and 9 and 10, below) in all respects as if a cancellation offer had not been made to them.

7.5 The Parties recognize that it will likely be impossible to cancel Leases with values that match the precise amounts set out in Section 7.2, and therefore the Parties agree that the Lease cancellation thresholds set out in Section 7.2 will be deemed to be fulfilled if the value of Lease cancellations is within two thousand dollars (CDN \$2,000.00) of those Lease cancellation thresholds.

30. In the above cancellations, only a portion under section 7.2(b) is covered by this Distribution Protocol detailed below.

31. This benefit may only be available to class members who have not paid a buyout amount and are in ongoing Leases with any of the Settling Defendants.

32. Valuation of the Leases for the purposes of this section shall be determined by reference to the sum of all payments remaining to be made under the Leases, including payments already due and payable, with annual payment escalations no greater than 3.5%, and with useful life Lease terms deemed to be 180 months.

**(ii) Benefits Outside the Scope of this Distribution Protocol**

33. The Settlement Agreement includes certain benefits that will be directly administered through the effect of the Court's orders. These include the following:

(a) **Annual Escalation Limit:** The Court's order shall permanently cap any annual escalation of monthly Lease payments for all Leases at 3.5% for class members. In other words, the monthly Lease payment cannot be raised more than 3.5% in any given year despite any terms to the contrary in the class member's actual Lease.

(b) **Buyout Fee Reduction:** The Court's order shall permanently reduce by 25% the contractual buyout/termination fees on Leases of furnaces, boilers, heat pumps, and air conditioners held by the Settling Defendants, as such buyout/termination fees are currently calculated under the terms of the Leases.

(c) **Permanent Invalidity Of Notices Of Security Interest and Liens on Home Title:** The Court's order shall declare that no notice of security interest or similar lien anywhere in Canada shall be enforceable against the class members by the Settling

Defendants or any parties to whom they henceforth assign their interest in the Leases, including a buyer in a SISP and such buyer's successors and assigns. This means that such notices shall be permanently unenforceable. Further, if a class member wishes to remove the notice, the Settling Defendants consent for any solicitor engaged by such class members whose Leases the Settling Defendants have not previously assigned or sold to seek to discharge the notices of security interest from title to the class members' home, with any and all discharge fees, costs and disbursements to be paid by the class member to such solicitor and provided that such discharge shall not otherwise affect the rights and obligations of the parties under the applicable Lease.

#### **IV. THE CLAIMS PROCESS**

##### **a. The Claim**

34. To make a claim for monetary compensation, class members must submit the following:

(a) A claims form (of the nature of a statutory declaration) by the class member party to the Lease, or their legal representative, attesting to the following:

- i. That they are a resident of Canada;
- ii. Their identity;
- iii. That they were a party to a Lease or the legal representative of a party to a Lease, for Equipment between July 17, 2013 and January 15, 2025;
- iv. The address of the real estate property associated with the Lease where the Equipment was installed;
- v. That the class members paid a buyout fee or other termination fee in order to end their obligations under the Lease, including to discharge any lien,

notice of security interest, or similar encumbrance from title to their property;

- vi. The amount of the buyout fee they paid;
- vii. The entity to which they paid the buyout amount; and
- viii. Any information about any compensation received and/or release granted through other proceedings or private out-of-class settlements in relation to the same Lease, or otherwise an affirmation that no such information exists; and

(b) Proof of the claimant's identity, and in the case of a legal representative of a claimant party to a Lease, proof substantiating such legal representation.

35. The claims form must be submitted to the Claims Administrator through a secure online portal, no later than the Claims Filing Deadline.

36. As detailed below, the Claims Administrator's helpline shall assist any class member who may not be able to use an online portal or other electronic means of delivery such as email that may be provided as an alternative, so that such a class member can nevertheless submit their claim through mail or courier if they cannot use an electronic online portal.

**b. Verification of Claims**

37. The Claims Administrator shall take reasonable steps to verify the information contained in each class member's Claim. In verifying the information provided, the Claims Administrator shall take the following approach.

38. First, the Claims Administrator shall check the claimant's information against the database provided by the Settling Defendants to independently verify whether the claim for payment and

the quantum of payment associated with the Lease, claimant, and specific real estate property can be substantiated without further supporting documentation from the claimant.

39. In carrying out this verification, the Claims Administrator shall take a sensitive and remedial approach, accounting for spelling variations and other issues with the Settling Defendants' database.

40. Second, if some or all of the information required to verify whether a claimant made a termination or buyout payment to the Settling Defendants or the quantum of such payment is not available, the Claims Administrator may request that information from the claimant to the extent that is necessary. In such instances, missing information must be supported by supporting documentation as described in paragraph 41(b) below.

41. Where data provided by the Settling Defendants does not substantiate a Claim, the Claims Administrator may request that a claimant be required to provide supporting documents, such as:

- (a) Any buyout invoice received from any of the Settling Defendants (if any);
- (b) Proof that payment of the buyout or other termination fee was made to the entity as specified in the statutory declaration (including bank records, solicitor's records, receipts, and any other evidence of payment); or
- (c) A title abstract showing a discharged notice of security interest from title to the subject property.

42. The Claims Administrator shall specify a reasonable deadline, at least thirty (30) days, in its requests for further documentation.

43. Class members must respond to requests from the Claims Administrator seeking to verify the information required by such deadline. If such information is not provided by the specified

deadline, the Claims Administrator may adjudicate the claim based on the information available to the Claims Administrator as of the date of the decision.

**c. Lease Cancellations**

44. As part of the Settlement Agreement, the Settling Defendants agree that \$13,500,000 worth of ongoing Leases may be terminated, arrears forgiven, security registrations discharged, and equipment gifted to class members who receive them. Of this amount, \$2,000,000 by value of the Leases to be cancelled shall be chosen by the plaintiffs through class counsel. This section shall govern how these Leases to be cancelled shall be determined.

45. Through the claims process, class members who have not terminated or bought out the Equipment will have the option to submit a request to the Claims Administrator through the process detailed herein that their Lease be considered for cancellation, and to provide their reasons for the request. Class Counsel may also independently consider and refer Leases for cancellation based on information known to them about eligible class members outside the claims process.

46. To make a claim to be considered for cancellation of an ongoing Lease, Class Members must:

(a) provide proof of the ongoing Lease, including a copy of the Lease if available or any ongoing invoices, collections efforts, or communications from any of the Simply Green Vendors demonstrating ongoing obligations vis-à-vis any Equipment under the Lease(s); and

(b) fill out an online form that requires the following information:

i. The class member's contact information (name, address, phone number, and email address);

- ii. A written explanation for their request; and
- iii. Any documentation which may support their written request.

47. A claim for cancellation shall be disqualified if the claimant was previously offered a cancellation by the Settling Defendants under section 7.2(a) but refused the offer.

48. Leases to be cancelled, which are to be decided by the plaintiffs (through Class Counsel), will be selected according to the following process.

49. To determine which Leases are eligible for cancellation by the plaintiffs (through Class Counsel), the following non-exhaustive factors apply:

- (a) The plaintiffs (through Class Counsel) may consider whether extenuating circumstances resulted in hardship to the claimant that is disproportionate and must best be adequately rectified by a cancellation;
- (b) Mental incapacity or significant vulnerability of the affected class member (including age, illness, disability, or language barriers);
- (c) Documented unhonoured cancellation request(s) to the defendants or their agents during the 10-day cooling-off period;
- (d) Removal of functioning equipment (age of removed equipment to be considered) to install the leased equipment in its place;
- (e) Equipment failure, service issues, or non-operational equipment; and
- (f) Door-step fraud and misrepresentation.

50. In each instance, the Claims Administrator shall obtain confirmation from the class member that in the event of a cancellation the class member shall retain the subject Equipment free of charge but will not in the future receive any services for same from the Settling Defendants.

Future services on the subject Equipment, if necessary, shall be the class member's sole responsibility.

51. The Claims Administrator shall compile a list of the claimants seeking cancellation and their supporting documentation.

52. The Claims Administrator shall provide the full list to Class Counsel who will determine class members who are entitled to a cancellation under section 7.2(b).

53. Once such class members are identified and determined, Class Counsel shall create a list of tentatively approved candidates for cancellation, which will be to the extent possible in order of priority for cancellation.

54. Class Counsel shall then effect the cancellations on the list of priorities in coordination with the Settling Defendants until the threshold in section 7.2(b) is met.

55. If the entirety of the list that has been provided is cancelled and a budget still remains under section 7.2(b), the Claims Administrator shall provide a further list to Class Counsel who will repeat the process outlined above until the budget in section 7.2(b) is exhausted.

56. Should a budget under section 7.2(b) still remain, the Claims Administrator shall confer with Class Counsel on whether directions from the Court may be needed to give full effect to section 7(2).

**d. Deceased Class Members**

57. Claimants who are claiming on behalf of the estate of a deceased class member must include:
- (a) Death Certificate for the deceased claimant; and
  - (b) Documentation in the form of a will or other legal form of appointment, establishing to the Claims Administrator's satisfaction that the individual who filed the claim is able to act on behalf of the estate.
58. Any payments to estate claims will be issued to the estate of the deceased class member.

**e. Assistance in Filing a Claim**

59. Class members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
60. If a class member chooses to use a third-party claims service, a legal professional of their own choosing, or similar services, the class member will be responsible for any and all expenses incurred in doing so.

**f. The Online Claims Portal**

61. The Claims Administrator shall create an online claims portal that the class members can access in order to file a Claim. The online claim portal shall contain fields that require the class member to provide all applicable information required as part of the Claim in accordance with paragraphs 34 and 46 as applicable.
62. Class members will be encouraged to complete and submit a Claim electronically using the online claims portal. If a class member does not have internet access or is otherwise unable to submit a Claim using the online claims portal, the class member can register over the telephone

with the Claims Administrator and the Claims Administrator shall send the class member a hardcopy claim form by mail.

63. Subject to paragraph 62 or further order of the Court, Claims must be submitted to the online claims portal or postmarked no later than the Claims Filing Deadline.

64. Subject to the discretion of the Claims Administrator, Claims may not be amended after the Claims Filing Deadline. For greater clarity, “placeholder claims” (including inaccurate Claims filed solely for the purpose of meeting the Claim Filing Deadline) will not be permitted.

**g. Claims Administrator’s Adjudication**

65. In respect of each class member who has filed a Claim, the Claim Administrator shall:

(a) adjudicate whether the class member is eligible to receive monetary compensation payable out of the Net Settlement Funds in accordance with this Distribution Protocol and any related Court orders; and

(b) assist the plaintiffs (through Class Counsel), as described herein, to make a determination of whether a class member who is party to an active Lease is entitled to the cancellation of their Lease in accordance with this Distribution protocol and any related Court orders. For further clarity, the Claims Administrator does not adjudicate lease cancellations.

66. At its sole discretion, the Claims Administrator can reject a Claim, in whole or in part, where, in the Claim Administrator’s view, the class member is ineligible, has submitted insufficient or false information, or has otherwise engaged in fraudulent conduct.

67. The Claims Administrator shall audit Claim Forms and supporting documentation for (or implement processes to detect) deficiencies including incomplete fields, missing documentation,

duplicative or fraudulent claims, the use of AI or bots to submit fraudulent claims, and/or out-of-country claims.

68. The Claims Administrator shall notify class members if their Claim was identified as including incomplete fields or missing documentation, as potentially duplicative, as potentially fraudulent and/or out-of-country.

69. The Claims Administrator will provide the class member with instructions for remedying the issue(s) and shall provide thirty (30) days from the date of such notice to remedy the issue(s). If the issue(s) is not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim.

70. The Claims Administrator shall send to the class member a decision as to the approval or rejection of the Claim (the “**Decision Notice**”). Where the Claims Administrator has rejected all or part of the Claim, the Claims Administrator shall include in the Decision Notice its grounds for doing so.

71. The Claims Administrator’s decision will be binding upon the class member, subject to the class member’s limited right to appeal, below.

72. To ensure a fair and efficient administration of the Settlement Funds, the Claims Administrator and Class Counsel may agree to extend the Claims Filing Deadline and/or adjust the claims process in situations of exceptional hardship.

#### **h. Appeal of Decisions on Compensation and Cancellation**

73. Claimants who wish to appeal the decision of the Claims Administrator must do so by sending their request for appeal by email, or in the mail postmarked, no later than thirty (30) days from the date the Decision Notice was issued by the Claims Administrator.

74. In the request for appeal, claimants must outline the reason(s) they are appealing the decision of the Claims Administrator. Appeal reviews will be based solely on the claims submission and supporting documentation already submitted to the Claims Administrator, new supporting documentation will not be accepted along with requests for appeal.

75. All appeals will be reviewed by a claims adjudicator familiar with this claims process but who was not involved in the initial claim review process for the appellant. Upon receipt of an appeal request, the Claims Administrator will have five (5) business days to send the appeal request and claim package to the claims adjudicator.

76. The claims adjudicator will have thirty (30) days from the date of receipt to review the appeal request and provide a written response to the Claims Administrator detailing their decision. The claims adjudicator's decision is final and binding with no further right of appeal.

#### **i. Payment of Claims**

77. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:

- (a) report to Class Counsel the particulars of the proposed distribution to each eligible class member; and
- (b) pay approved Claims.

78. Class members will be paid by e-transfer through email where an email address has been provided, or by cheque where no email address has been provided or the class member has elected to be paid by cheque. Where an individual class member elects to receive payment by cheque, \$2 will be deducted from that class member's payment to reflect the cost of issuing a cheque.

79. The online claims portal shall provide individual class members an opportunity to elect between payment by e-transfer or cheque and shall advise that individual class members who elect to receive payment by cheque will have \$2 deducted from his/her payment to reflect the cost of issuing a cheque.

80. The Claims Administrator shall have the discretion, but is not required, to reissue payments to a class member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the class member shall be deducted from that class member's settlement benefits.

## **V. THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES**

### **a. Supervisory Powers of the Ontario Court**

81. The Claims Administrator shall administer this Distribution Protocol under the ongoing authority and supervision of the Court.

### **b. Investment of Settlement Funds**

82. The settlement funds shall be held in a guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, S.C. 1991, c. 46), held at a Canadian financial institution.

### **c. Taxes**

83. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Funds while held in trust and shall pay any taxes imposed on such monies while held in trust out of the Net Settlement Funds.

84. Class members shall be responsible for any taxes payable by them as a result of the receipt of any settlement funds.

**d. Communication, Languages, and Translation**

85. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a class member, unless the class member requests otherwise, communications shall be made to the third-party claims agent or lawyer upon confirmation of that agent or lawyer's authority to represent the class member.

86. The Claims Administrator shall establish a toll-free number for calls from Canada.

87. The Claims Administrator shall dedicate sufficient personnel to respond to class members' inquiries in English or French, as the class member elects.

88. All written communications from the Claims Administrator to a class member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

**e. Undeliverable Mail**

89. The Claims Administrator shall have no responsibility for locating class members for any mailing returned to the Claims Administrator as undeliverable. Where a mailing has been returned as undeliverable, the Claims Administrator will not send any further correspondence, including payments, to that address.

**f. Reporting**

90. The Claims Administrator shall provide regular reports to Class Counsel regarding administration and shall respond to Class Counsel's inquiries about administration.

91. The Claims Administrator shall provide all reports required under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, and any reports requested by the Court.

**g. Assistance to the Claims Administrator**

92. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as is reasonably necessary in the implementation of this Distribution Protocol.

**VI. CLASS MEMBER INFORMATION**

**a. Confidentiality**

93. All information received from the Settling Defendants or class members collected, used, and retained by the Claims Administrator for the purposes of administering this Distribution protocol is protected under the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

94. The Claims Administrator shall have and maintain certification regarding cyber-security for the administration of the online claims portal, all information received through the claims portal, and information provided through the class member database. Specifically, the Claims Administrator must certify the protection/encryption of all data following documented technical security standards set by NIST Cybersecurity Framework guidelines (available at <https://www.nist.gov/cyberframework>), including controls such as system hardening, encryption, anti-virus, malware protection and a regular patching protocol.

95. The information provided by class members is strictly private and confidential and will not be disclosed without the express written consent of the relevant class member, except in accordance with this Distribution Protocol and any related Court orders. Prior to implementing the

Distribution Protocol, the Claims Administrator shall execute an undertaking that confirms its commitment to abide by the obligations set out in this paragraph.

96. Under no circumstances will any data received or assembled for or in connection with any class member in connection with this Protocol, be made available directly or indirectly to any person who might attempt to use the data to enforce collection or any debt or liability against a class member.

**b. Subsequent Distributions**

97. Information provided by class members as part of the claims process will be preserved and used by the Claims Administrator in the future administration of further settlement funds, should there be any delay in respect of the Participation Amount contemplated in the Settlement Agreement.

**c. Disposition of Claim Submissions**

98. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two years after all claims have been resolved and the settlement monies or court awards have been paid out to class members. At such time, the Claims Administrator shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

**d. Amendment**

99. The material and substantive terms of this Distribution Protocol may be amended on a motion by Class Counsel with approval of the Court.

100. Non-material readjustments and revisions to this Distribution Protocol that may become necessary or desirable from time to time may be carried out by the Claims Administrator upon confirmation with and approval in writing of Class Counsel.