

Purvis v Dell USA LP and Dell Canada Inc.
Supreme Court of Nova Scotia Hfx No 500912
Proceeding under the *Class Proceedings Act*, SNS 2007, c 28

SETTLEMENT AGREEMENT

Between

CHRISTOPHER PURVIS

and

DELL USA LP and DELL CANADA INC.

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RECITALS

WHEREAS:

- A. The Defendants sell computer devices and related services, and in the past used the Service Provider to provide customer support services to customers.
- B. The Action was commenced by the Plaintiff in Nova Scotia on behalf of a proposed class alleging negligence, intrusion upon seclusion, and vicarious intrusion upon seclusion by agent in relation to the Data Thefts.
- C. The Defendants disputed liability and do not admit, by reaching the Settlement, any allegation in the Action, and deny all liability and assert that they have complete defences to the Action.
- D. The Parties through counsel have engaged in settlement discussions and negotiations with a view to resolving the Action, including attending a mediation on May 12, 2022.
- E. The Parties have reached this Settlement, and have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiff, both individually and on behalf of the Settlement Class, subject to Court approval.
- F. The Defendants are entering into this Settlement Agreement to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiff and the Settlement Class in the Action, and to avoid further expense of protracted litigation.
- G. Class Counsel has reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with certification, trial and appeals, and having regard to the value of the Settlement Agreement, has concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class.
- H. The Parties intend and agree that the Settlement provides a simplified and convenient procedure for the Class in addressing the Data Thefts.

NOW THEREFORE, for the consideration set out in this Settlement Agreement, and subject to approval of the Court, the Parties agree to settle on the following terms:

**ARTICLE 1
DEFINITIONS**

- (1) In this Settlement Agreement:
- (a) “**Action**” means the Halifax action styled *Christopher Purvis v Dell USA LP and Dell Canada Inc.*, commenced in the Supreme Court of Nova Scotia bearing Hfx No. 500912;
 - (b) “**Administration End Date**” means the date that is seven months after the Payment Date;
 - (c) “**Administration Expenses**” means all fees, disbursements, expenses, costs, and taxes owed to the Settlement Administrator for its services administering the Settlement;
 - (d) “**Administration Expenses Payment**” means the sum of \$100,000.00 to be paid by the Defendants towards the Administration Expenses, separate and apart from the Maximum Settlement Commitment;
 - (e) “**Base Payment**” means the sum of \$85.00 to be paid from the Maximum Base Fund to each member of the Settlement Class who completes a valid and timely Settlement Distribution Form in accordance with the Distribution Protocol;
 - (f) “**Certification and Settlement Approval Motion**” means the motion for an Order:
 - (i) certifying the Action for the purposes of settlement;
 - (ii) approving the Settlement Agreement;
 - (iii) approving the Phase II Notice and Phase II Notice Plan;
 - (iv) approving the Opt-Out Procedure and the Opt-Out Deadline;
 - (v) approving the Distribution Protocol;

- (vi) dismissing the Action effective upon the Payment Date, with prejudice and without costs;
- (vii) approving the Representative Plaintiff Honorarium; and
- (viii) granting other relief the Parties request;
- (g) “**Class**” and “**Class Members**” mean the 14,179 individuals to whom the Defendants sent notices of the Data Thefts on April 2, 2018 and January 25, 2019;
- (h) “**Class Counsel**” means Wagners;
- (i) “**Class Counsel Disbursements**” means the disbursements (taxes included) incurred by Class Counsel prosecuting the Action;
- (j) “**Class Counsel Fee**” means Class Counsel’s fee (taxes included) for prosecuting the Action;
- (k) “**Court**” means the Supreme Court of Nova Scotia;
- (l) “**Data Thefts**” means the theft of customer information from the Service Provider and the use of that information by third parties to carry out targeted tech support scam calls, as publicly disclosed by the Defendants on April 2, 2018 and January 25, 2019;
- (m) “**Defendants**” means Dell USA LP and Dell Canada Inc.;
- (n) “**Distribution Protocol**” means the distribution protocol attached as Schedule “D”;
- (o) “**Effective Date**” means the date when the Court’s Order approving this Settlement Agreement becomes a Final Order;
- (p) “**Eligible Economic Loss Claim**” means a claim by a member of the Settlement Class for:
 - (i) a fraudulent credit card charge or other banking charge or financial loss incurred as a result of the Data Thefts; and/or

- (ii) costs incurred to remediate or replace computers or technological equipment as a result of the Data Thefts;
- (q) **“Eligible Economic Loss Claim Payment”** means the sum, not exceeding \$3,000.00, to be paid from the Maximum Economic Loss Fund to a Settlement Class Member who, in the opinion of the Settlement Administrator, has proven an Eligible Economic Loss Claim in accordance with the Distribution Protocol;
- (r) **“Excess Administration Expenses”** means any portion of Administration Expenses that exceeds the Administration Expenses Payment and which shall be paid from the Maximum Settlement Commitment;
- (s) **“Execution Date”** means the date on which the last Party signs the Settlement Agreement;
- (t) **“Fee Approval Motion”** means the motion for an Order approving the:
 - (i) Class Counsel Fee; and
 - (ii) Class Counsel Disbursements;
- (u) **“Final Order”** means an Order after the later of: (i) the time for appeal has expired, and (ii) any appeals have been resolved;
- (v) **“Final Report”** means the Settlement Administrator’s report to the Parties, which shall include details regarding:
 - (i) the number of Class Members who opted-out of the Action;
 - (ii) the number of Class Members who could not be contacted;
 - (iii) the number of Class Members who were contacted but did not submit a Settlement Distribution Form and did not opt-out of the Action;
 - (iv) the number of Settlement Distribution Forms received; and
 - (v) the number and total sum of Base Payments and Eligible Economic Loss Claim Payments issued.

- (w) **“Maximum Base Fund”** means the all-inclusive sum, not to exceed \$1,205,215.00, committed by the Defendants for Base Payments;
- (x) **“Maximum Economic Loss Fund”** means the all-inclusive sum, not to exceed \$215,000.00, committed by the Defendants for Eligible Economic Loss Claim Payments;
- (y) **“Maximum Settlement Commitment”** means the all-inclusive sum, not to exceed \$2,000,000.00, committed by the Defendants in full and final settlement of the claims against the Defendants, inclusive of the Maximum Base Fund, Maximum Economic Loss Fund, Class Counsel Fee, Class Counsel Disbursements, Representative Plaintiff Honorarium and any Excess Administration Expenses;
- (z) **“Net Settlement Funds”** means the amount available from the Maximum Base Fund and Maximum Economic Loss Fund to be distributed to Settlement Class Members as Base Payments and Eligible Economic Loss Claim Payments and to pay any Excess Administration Expenses, after deducting the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (aa) **“Opt-Out Deadline”** means the date 60 calendar days after the date of implementation of the Phase II Notice Plan;
- (bb) **“Opt-Out Form”** means the form attached as Schedule “B” to the Draft Order Approving Certification and Settlement (Schedule “B” to this Agreement);
- (cc) **“Opt-Out Procedure”** means the procedure set out in section 4.3 of this Settlement Agreement for Class Members to opt-out of the Action should they wish to exclude themselves from the Settlement Class;
- (dd) **“Order”** means an order or judgment of the Court;
- (ee) **“Parties”** means the Plaintiff and the Defendants;
- (ff) **“Payment Date”** means the date that the Settlement Administrator first distributes payment to the Settlement Class Members, which shall be no later than 10 calendar

days after the Settlement Administrator receives the Settlement Transfer Amount from the Defendants;

- (gg) “**Phase I Notice**” means the form of notice attached as Schedule “B” to the Draft Order Approving Phase I Notice (Schedule “A” to this Agreement) informing the Class of the Certification and Settlement Approval Motion;
- (hh) “**Phase I Notice Approval Motion**” means the motion to obtain approval of the Phase I Notice and Phase I Notice Plan and the appointment of the Settlement Administrator, which the Parties will seek to be conducted in writing;
- (ii) “**Phase I Notice Approval Order**” means the Order approving the Phase I Notice, Phase I Notice Plan and the appointment of the Settlement Administrator, attached as Schedule “A”;
- (jj) “**Phase II Notice**” means the form of notice, attached as Schedule “C” to the Draft Order Approving Certification and Settlement (Schedule “B” to this Agreement), informing the Class of the:
 - (i) Certification;
 - (ii) Settlement Agreement, and informing them they can visit Class Counsel’s website to read the Settlement Agreement;
 - (iii) Opt-Out Procedure and the Opt-Out Deadline; and
 - (iv) Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (kk) “**Plaintiff**” means Christopher Purvis;
- (ll) “**Released Claims**” means any and all claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, Administration Expenses, penalties, and lawyers’ fees

(including the Class Counsel Fee and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with, related to, or arising from, any conduct described in the Action on account of, arising out of, resulting from, the Data Thefts;

- (mm) “**Releasees**” means the Defendants and their former, present, and future, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, are now, or may become affiliated, and all of their respective past, present and future officers, directors, employees, stockholders, shareholders, agents, trustees, and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators, and assigns of each of the foregoing;
- (nn) “**Releasors**” means the Plaintiff and the Settlement Class and their individual successors, heirs, executors, administrators, trustees, and assigns;
- (oo) “**Representative Plaintiff Honorarium**” means an amount to be approved by the Court, not to exceed \$3,000.00, to be paid to the Plaintiff for his role prosecuting the Action;
- (pp) “**Service Provider**” means the third-party company used in the past by the Defendants to provide customer support services to customers;
- (qq) “**Settlement**” means the settlement provided for in this Settlement Agreement;
- (rr) “**Settlement Administrator**” means RicePoint or such other third-party administrator agreed upon by the parties and approved by the Court;

- (ss) “**Settlement Class**” and “**Settlement Class Member**” means the Class except any Class Member who validly opts-out of the Action; and
- (tt) “**Settlement Distribution Form**” means the document attached as Schedule “E”.

**ARTICLE 2
PHASE I NOTICE**

2.1 Phase I Notice Approval Motion

- (1) The Plaintiff shall, as soon as is reasonably practicable after the Execution Date, take steps to serve and file the Phase I Notice Approval Motion seeking the draft order in the form attached as Schedule “A”.
- (2) The Phase I Notice shall be disseminated in accordance with the Phase I Notice Plan.

**ARTICLE 3
CERTIFICATION, SETTLEMENT, AND FEE APPROVAL**

3.1 Certification and Settlement Approval Motion

- (1) Following the Execution Date, the Plaintiff shall take steps to expeditiously schedule the Certification and Settlement Approval Motion seeking a draft order in the form attached as Schedule “B”.
- (2) Class Counsel will provide draft motion materials to the Defendants for comment at least 20 days before the applicable filing deadline. The Defendants will provide any comments to Class Counsel at least 7 days prior to the filing deadline.
- (3) The Certification and Settlement Approval Motion will seek to certify the Action for settlement purposes on the basis of the following sole common issue: “Are the Plaintiff and Class Members entitled to compensation?”

3.2 Fee Approval Motion

- (1) Class Counsel shall seek to have the Fee Approval Motion heard at the same time as the Certification and Settlement Approval Motion.

3.3 Defendants' Position on Motions

- (1) The Defendants shall:
 - (a) cooperate with the Plaintiff in bringing the Certification and Settlement Approval Motion; and
 - (b) take no position on the Fee Approval Motion.

3.4 Date When Settlement Final

- (1) This Settlement shall become final on the Effective Date.

3.5 Costs

- (1) Each Party shall bear its own costs of the Certification and Settlement Approval Motion and Fee Approval Motion.

3.6 Pre-Motion Confidentiality

- (1) Until materials to bring the Phase I Notice Approval Motion are served and filed, the Parties shall keep the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as:
 - (a) required for the purposes of financial reporting, communications with insurers or indemnitors, and/or the preparation of financial records (including tax returns and financial statements);
 - (b) necessary to give effect to its terms; or
 - (c) required by law.

ARTICLE 4 PHASE II NOTICE AND OPT-OUT

4.1 Phase II Notice Dissemination by Settlement Administrator

- (1) Within 10 days of the Effective Date, the Settlement Administrator shall implement the Phase II Notice Plan, disseminating the:

- (a) Phase II Notice, containing hyperlinks to the Opt-Out Form and Settlement Distribution Form.

4.2 Mode of Dissemination

- (1) The documents listed in section 4.1(1) shall be disseminated in accordance with the Phase II Notice Plan.

4.3 Opt-Out Procedure

- (1) As part of the Certification and Settlement Approval Motion, Class Counsel shall seek the Court's approval of the Distribution Protocol, including the Opt-Out Procedure.
- (2) Class Members who deliver a valid Opt-Out Form to the Settlement Administrator by the Opt-Out Deadline shall not be members of the Settlement Class and shall have no further right to participate in the Action or to share in the distribution of funds as a result of the Settlement.

4.4 Reservations of Legal Rights

- (1) The Defendants reserve all of their legal rights and defences with respect to any Class Member who validly opts-out from the Action.

ARTICLE 5 PAYMENTS

5.1 Administration Expenses Payment

- (1) The Defendants will pay the Administration Expenses Payment to the Settlement Administrator in accordance with the timing required by the Settlement Administrator.

5.2 Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium

- (1) 20 days before the Effective Date, Class Counsel shall provide their wire transfer information and a completed United States Internal Revenue Service Form W-9 (or a completed United States Internal Revenue Service Form W-8BEN-E, W-8BEN, W-8ECI, W-8IMY, or W-8EXP, as applicable) to counsel for the Defendants.

- (2) Within 20 days after the Effective Date, the Defendants shall pay to Class Counsel the Court-approved amounts for the:
 - (a) Class Counsel Fee;
 - (b) Class Counsel Disbursements; and
 - (c) Representative Plaintiff Honorarium.
- (3) After the payment in section 5.2(2), the Defendants will notify the Settlement Administrator of the Net Settlement Funds.

5.3 Distribution Protocol

- (1) The Distribution Protocol sets out the procedure by which the:
 - (a) Settlement Administrator will determine and make payments to Settlement Class Members from the Net Settlement Funds; and
 - (b) Defendants will make payments to the Settlement Administrator, not to exceed the Net Settlement Funds, to fund payments to Settlement Class Members and pay any Excess Administration Expenses.

5.4 No Further Payments

- (1) The Defendants will make no payments other than for:
 - (a) the Administration Expenses Payment;
 - (b) the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium; and
 - (c) funding Base Payments and Eligible Economic Loss Claim Payments and any Excess Administration Expenses, in amounts not to exceed, in aggregate, the Net Settlement Funds.

5.5 Maximum Settlement Commitment

- (1) In making the payments under sections 5.4(1)(b) and 5.4(1)(c), the Defendants shall not be obligated to pay more, in aggregate, than the Maximum Settlement Commitment.

ARTICLE 6 STEPS TO GIVE EFFECT TO SETTLEMENT AGREEMENT

6.1 Reasonable Efforts

- (1) The Parties shall take all reasonable steps to give effect to this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal to take effect on the Payment Date with prejudice of the Action on a without costs basis as against the Defendants, including cooperating with the Plaintiff's efforts to obtain the approvals and Orders required from the Court and the implementation of this Settlement Agreement.
- (2) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

6.2 Action in Abeyance

- (1) Other than the Phase I Notice Approval Motion, Certification and Settlement Approval Motion, the Fee Approval Motion, and any motion under sections 6.1 or 11.1, unless otherwise agreed, the Parties agree to hold in abeyance all steps in the Action unless the Settlement Agreement is terminated in accordance with its terms.

ARTICLE 7 RELEASES AND DISMISSALS

7.1 Release of the Releasees

- (1) On the Effective Date, and in consideration of the Maximum Settlement Commitment and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and absolutely release, relinquish, and discharge the Releasees from the Released Claims.

- (2) The Parties acknowledge that the Plaintiff and Settlement Class Members may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally, and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.
- (3) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Settlement Class against any person other than the Releasees.
- (4) The effect of the Release in this Article is subject to the Parties' rights of termination set out in this Settlement Agreement.

7.2 No Further Claims

- (1) After the Effective Date, the Releasors shall not, in respect of any Released Claim, institute, continue, maintain, intervene in, or assert, either directly or indirectly, in Nova Scotia or elsewhere, on their own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, for relief from the Releasees, whether pursuant to statute or at common law or equity. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.
- (2) Class Counsel is not, as of the date of this Settlement Agreement, representing and will not in future represent plaintiffs in any other proceeding against the Defendants related to any matter which was or could have been raised in the Action.

7.3 Material Term

- (1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated in this section shall be considered a "**Material Term**" of the Settlement

Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination under section 9.1.

ARTICLE 8 EFFECT OF SETTLEMENT

8.1 No Admission of Liability or Concessions

- (1) The Plaintiff and the Defendants expressly reserve all of their rights if the Settlement is not approved, is terminated, or otherwise fails to take effect for any reason.
- (2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission or concession by the:
 - (a) Defendants of any fact, fault, omission, wrongdoing or liability, or the truth of any of the claims or allegations made or which could have been made against them in the Action, or the application of the applicable laws to any of the claims made in the Action, or of any weakness in the defences of the Defendants to any of the claims or allegations made or which could have been made against them in the Action; or
 - (b) Plaintiff, Class Counsel or the Class of any weakness in the claims of the Plaintiff and the Class.

8.2 Agreement Not Evidence or Presumption

- (1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction as evidence, a presumption, concession, or admission of anything save as set out in section 8.2(2).

- (2) Notwithstanding section 8.2(1), this Settlement Agreement may be referred to or offered as evidence:
- (a) to obtain the Orders or directions from the Court contemplated by this Settlement Agreement;
 - (b) in a proceeding to enforce the Settlement Agreement;
 - (c) to defend against the assertion of Released Claims; or
 - (d) as required by law.

ARTICLE 9 TERMINATION

9.1 Right of Termination

- (1) The Parties shall each have the right to terminate this Settlement Agreement by delivering a written notice within 30 days of one of the following events:
- (a) the Court:
 - (i) declines to approve this Settlement Agreement and that decision becomes a Final Order;
 - (ii) approves a settlement that is, in the opinion of any Party, materially inconsistent with the terms of this Settlement Agreement, including without limitation a settlement that excludes a Material Term or approves a Material Term with substantial amendment; or
 - (iii) approves this Settlement Agreement but the Order is reversed on appeal and the reversal becomes a Final Order;
 - (b) the Defendants fail to make payments in accordance with the Distribution Protocol; or
 - (c) the Plaintiff makes public the terms of the Settlement Agreement in breach of section 3.6

- (2) If an event described in section 9.1(1)(a) occurs, the Parties agree to make best efforts to attempt to resolve any issues in furtherance of resolution of the Action on such modified terms as may be required to obtain the Court's approval.
- (3) Any Order, ruling or determination made or rejected by the Court with respect to the Class Counsel Fee, Class Counsel Disbursements or Representative Plaintiff Honorarium shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.
- (4) Any Order, ruling or determination made or rejected by the Court that modifies the Maximum Settlement Commitment, the Phase I Notice Plan, or the Phase II Notice Plan, shall be deemed to be a material modification of this Settlement Agreement, providing a basis for the termination of this Settlement Agreement.
- (5) Except as provided for in section 9.4(2), if a Party exercises the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

9.2 Steps Required on Termination

- (1) If this Settlement Agreement is terminated after the Court has heard or decided a motion contemplated herein, the Plaintiff shall, within 30 days of either Party delivering a written notice of termination, on notice to the other Parties, bring a motion to the Court for an Order:
 - (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions listed in section 9.4(2); and
 - (b) setting aside all prior Orders related to the Settlement.
- (2) Subject to section 9.4(2), the Parties shall consent to the Order(s) sought in any motion made under section 9.2.

9.3 Notice of Termination

- (1) If this Settlement Agreement is terminated after dissemination of the Phase I or Phase II Notice, notice of the termination will be given to the Class.

9.4 Effect of Termination

- (1) If the Settlement Agreement is terminated in accordance with its terms:
 - (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
 - (b) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
 - (c) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.
- (2) Notwithstanding the provisions of section 9.4, if this Settlement Agreement is terminated, the provisions of sections 3.6, 8.1, 8.2, 9.1(2), 9.1(5), 9.2, 9.3, 9.4, 9.5, 9.6, 11.1, 11.3, 11.4, 11.5, 11.6, 11.7, 11.10, 11.11, 11.15, and 11.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately, except pursuant to section 9.4(3).
- (3) In the event of termination by either Party, the Parties shall seek direction from the Court as to responsibility between the Parties for payment of any and all Administration Expenses incurred up to that date or to be reasonably incurred, including any Administration Expenses associated with disseminating notice of termination, except in the following circumstances:
 - (a) If the Defendants fail to make payment in accordance with the Distribution Protocol, all Administration Expenses incurred up to that date shall be payable by the Defendants to the Settlement Administrator; and

- (b) If the Plaintiff makes public the terms of the Settlement Agreement in breach of section 3.6, all Administration Expenses incurred up to that date shall be payable by the Plaintiff to the Settlement Administrator.

9.5 Disputes Relating to Termination

- (1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Parties.

9.6 Handling of Confidential Information in the Event of Termination

- (1) In the event of termination, it is understood and agreed that all documents and information exchanged by the parties in order to reach the Settlement are and remain subject to settlement privilege.
- (2) In the event of termination, within 30 days of the notice of termination being delivered or the Order described in section 9.2(1) being issued (if applicable), Class Counsel and the Defendants and their counsel shall destroy all documents or other materials provided by the other party or containing or reflecting information derived from such documents for the purposes of reaching and implementing this Settlement. Class Counsel and the Defendants and their counsel shall provide the other party with a written certification of such destruction. Nothing contained in this section shall be construed as requiring any party to destroy any of its work product. However, any documents or information provided by the Parties or Class Counsel in connection with this Settlement Agreement may not be disclosed to any person in any manner, or used, directly or indirectly, by Class Counsel, the Defendants or their counsel or any other person in any way for any reason, without the express prior written permission of the applicable party. Class Counsel, the Defendants and their counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of the party that discloses such documents and information.

ARTICLE 10
REPORTING BY SETTLEMENT ADMINISTRATOR AND CLASS COUNSEL

10.1 Administrator's Report

- (1) As outlined in the Distribution Protocol, the Settlement Administrator shall provide the Administrator's Report to the Parties.

10.2 Final Report of Settlement Administrator

- (1) On the Administration End Date the Settlement Administrator shall provide the Final Report to the Parties.

10.3 Report to Court

- (1) Class Counsel shall, within 90 days after the Administration End Date, provide to the Court via letter a report providing information about the distribution of the Net Settlement Funds.

ARTICLE 11
MISCELLANEOUS

11.1 Motions for Directions

- (1) Any of the Parties may apply to the Court for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

11.2 Modification by the Court

- (1) Subject to the right to terminate this Settlement Agreement under section 9.1, to the extent any term in this Settlement Agreement is modified by the Court, such modification shall take precedence over this Settlement Agreement, which shall continue to be valid and enforceable to the fullest extent permitted by law.

11.3 Computation of Time

- (1) In this Settlement Agreement, unless a contrary intention appears, time shall be computed as follows:
 - (a) where there is a reference to a number of days it means calendar days;
 - (b) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (c) in the case where the time for doing an act expires on a day listed in Rule 94.02(1) of the *Nova Scotia Civil Procedure Rules*, Royal Gaz Nov 19, 2008, the act may be done on the next weekday when the office of the Court prothonotary is open.

11.4 Ongoing Jurisdiction

- (1) The Parties agree that the Court shall retain jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

11.5 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Nova Scotia and the laws of Canada applicable therein.

11.6 Severability

- (1) Subject to section 11.6(2) any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.
- (2) The following are not severable:

- (a) Material Terms; and
- (b) any term giving rise to a right of termination as set out in section 9.1;

11.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of the Settlement, unless expressly incorporated herein.

11.8 Amendments

- (1) 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 after the Certification and Settlement Approval Motion must be approved by the Court, subject to the direction of the Court.

11.9 Binding Effect

- (1) If the Settlement is approved by the Court and becomes final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class, the Defendants, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendants shall be binding upon all of the Releasees.

11.10 Counterparts

- (1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

11.11 Negotiated Agreement

- (1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the Parties, through counsel. Each of the Parties 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 in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

11.12 Language

- (1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.
- (2) Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Distribution Form, the Opt-Out Form, the Phase I Notice, and the Phase II Notice, the cost of which shall be an Administration Expense. In the event of any dispute as to the interpretation of this Settlement Agreement, only the English version shall govern.

11.13 Currency

- (1) All monetary amounts in this Settlement Agreement are in Canadian dollars.

11.14 Recitals

- (1) The recitals to this Settlement Agreement are incorporated into, and form part of, this Settlement Agreement.

11.15 Acknowledgements

- (1) The Parties affirm and acknowledge that:

- (a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;
- (c) they or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of the Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

11.16 Authorized Signatures

- (1) Each of the undersigned represents that they are fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement on behalf of the Parties identified above their respective signatures and their law firms.

11.17 Notice

- (1) Any notice, instruction, motion for court approval or motion for directions or Orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, or overnight letter to:

For the Plaintiff, the Class, the Settlement Class, or Class Counsel:

Wagners
1869 Upper Water Street
Historic Properties, Suite PH301
Halifax, NS B3J 1S9

Raymond Wagner, KC
Maddy Carter
Kate Boyle

For the Defendants:

Torys LLP
79 Wellington St. West
TD South Tower, 33rd floor
Toronto, ON M5K 1N2


Molly M Reynolds
Tel: (416) 865-8135
Fax: (416) 865-7380

Tel: (902) 425-7330
Fax: (902) 422-1233
Email:
raywagner@wagners.co
mcarte@wagners.co
kboyle@wagners.co
Class Counsel


Email: mreynolds@torys.com
Counsel for the Defendants

This Settlement Agreement is executed by:

Christopher Purvis on his own behalf and on behalf of the Class, by his counsel

Name of Authorized Signatory: Kate Boyle
Signature of Authorized Signatory:  August 2, 2024
Class Counsel

Dell USA LP and Dell Canada Inc., by their counsel

Name of Authorized Signatory: Molly Reynolds
Signature of Authorized Signatory:  August 6, 2024
Torys LLP
Counsel for the Defendants

Schedules

Schedule "A" – Draft Order Approving Phase I Notice

Schedule "A" – Settlement Agreement

Schedule "B" – Phase I Notice

Schedule "C" – Phase I Notice Plan

Schedule "B" – Draft Order Approving Certification and Settlement

Schedule "A" – Settlement Agreement

Schedule "B" – Opt-Out Form

Schedule "C" – Phase II Notice

Schedule "D" – Phase II Notice Plan

Schedule "C" - Draft Order for the Fee Approval Motion

Schedule "D" - Distribution Protocol

Schedule "E" - Settlement Distribution Form

SCHEDULE "A" to Settlement Agreement

Form 78.05

2020

Hfx No. 500912

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

CHRISTOPHER PURVIS

PLAINTIFF

- AND -

DELL USA L.P., a body corporate, and **DELL CANADA INC.**, a body corporate

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S 2007, c. 28

ORDER APPROVING PHASE I NOTICE

BEFORE THE HONOURABLE JUSTICE JOHN KEITH

THIS MOTION is made by the Plaintiff, on consent of the Defendants, for an Order: (i) approving the form and contents of notice to Class Members of a hearing to approve a proposed Settlement Agreement dated *, 2024 (the "Settlement Agreement") ("Phase I Notice"); (ii) approving the method by which the Phase I Notice will be disseminated (the "Phase I Notice Plan"); (iii) authorizing and approving disclosure of the Notice List and Class Contact List to the Settlement Administrator; and (iv) appointing the Settlement Administrator.

ON READING the materials filed on this motion:

1. **THIS COURT DECLARES** that, except as otherwise stated, this Order incorporates and adopts the definitions set out in the proposed Settlement Agreement, attached as Schedule “A”.

Approval of the Phase I Notice

2. **THIS COURT ORDERS** that the form and content of the Phase I Notice, attached as Schedule “B”, is approved as it satisfies the requirements of sections 22 and 38 of the *Class Proceedings Act*, S.N.S. 2007, c. 28.

Approval of the Phase I Notice Plan

3. **THIS COURT DECLARES** that the Phase I Notice Plan attached hereto as Schedule “C” is hereby approved and shall be implemented.

Notice List, Class Contact List

4. **THIS COURT ORDERS** that disclosure and use of the Notice List and Class Contact List are hereby allowed, approved, permitted and directed for the sole purpose of implementing Phase I Notice and, if the Settlement Agreement is approved, Phase II Notice and the Settlement Agreement, and the Notice List and Class Contact List may be provided by the Defendants and Class Counsel, respectively, to the Settlement Administrator solely for this aforementioned purpose.
5. **THIS COURT ORDERS** that the Notice List and Class Contact List shall only be used to the extent that is reasonably necessary for purposes of administration of the Settlement, and that if the Settlement is terminated, no record of the Notice List or Class Contact List or information therein shall be retained by the Settlement Administrator.

Objections to the Settlement

6. **THIS COURT ORDERS** that any Class Member may object to the proposed settlement or the payment of legal fees to Class Counsel by submitting a written objection to Wagners no later than the Objection Deadline of forty-five (45) calendar days after the date of implementation of the Phase I Notice Plan.

Appointment of Settlement Administrator

7. **THIS COURT ORDERS** that RicePoint Administration Inc. (“RicePoint”) shall be appointed as the Settlement Administrator.
8. **THIS COURT ORDERS** that there shall be no costs of this motion.

, 2024.

Prothonotary

**SCHEDULE "A" to Draft Phase I Notice Order
SETTLEMENT AGREEMENT**

SCHEDULE “B” to Draft Phase I Notice Order

PHASE I NOTICE

NOTICE OF CLASS ACTION SETTLEMENT APPROVAL HEARING

Purvis v. Dell USA L.P & Dell Canada Inc.,
Supreme Court of Nova Scotia, Hfx. No. 500912

NOTICE OF PROPOSED SETTLEMENT

A class action was filed in the Supreme Court of Nova Scotia on October 1, 2020 against Dell USA LP and Dell Canada Inc. arising from the theft of customer information from a service provider used by the Defendants and the use of that information by third parties to carry out targeted tech support scam calls, as referenced in letters sent by the Defendants to affected individuals on April 2, 2018 and January 25, 2019 (the “Dell Notices”). The class action alleged negligence, intrusion upon seclusion, and vicarious intrusion upon seclusion in relation to the data thefts, and sought compensation for the alleged privacy breaches.

The parties have reached a proposed settlement which would provide benefits to the 14,179 individuals to whom the Defendants sent the Dell Notices (the “Class”). Further details are contained in the proposed Settlement Agreement.

The Court must approve the settlement before it can be implemented. The Court must be satisfied that the settlement is fair, reasonable and in the best interests of the Class. The Court must also certify the class action. The hearing of the motion to certify the class action and approve the Settlement Agreement will be held on *, 2024 at The Law Court Buildings, 1815 Upper Water Street in Halifax, Nova Scotia.

TERMS OF PROPOSED SETTLEMENT

The Defendants have agreed to pay up to \$2,100,000 to compensate eligible Class Members and pay the administration costs and legal fees.

If approved, the Settlement Agreement will provide up to two types of compensation to Class Members who qualify.

Base Payments: All Class Members will be eligible for a payment of \$85 upon return of a Distribution Form in accordance with the Distribution Protocol. The Distribution Form will be made available to eligible Class Members if the settlement is approved.

Economic Loss Claim Payments: Up to \$3,000 will be paid to Class Members who can establish that, as a result of the data thefts, they incurred a fraudulent credit card or other banking charge, or costs to remediate computers or technological equipment, and who provide the necessary supporting documentation by the applicable deadline. A Class Member can receive no more than \$3,000 under this category. Amounts for approved economic losses may be reduced based on the number of approved claims and other costs of administration.

Further terms and conditions of eligibility for compensation are outlined in the proposed Settlement Agreement.

LEGAL FEES

At the hearing, Wagners will be seeking the Court's approval of legal fees in the amount of *% of * plus applicable taxes for their work in relation to this class action and settlement, in addition to reimbursement of expenses paid by class counsel. Wagners will also seek approval of payment of an honorarium to the Representative Plaintiff in the amount of \$3,000.

PARTICIPATION IN SETTLEMENT

If the Settlement Agreement is approved, the notification process and distribution process will be administered by a third-party claims administrator, RicePoint. If the Settlement Agreement is approved, eligible Class Members will automatically receive notification from RicePoint along with a link to the Distribution Form that must be completed and returned by the applicable deadline in order to receive compensation.

UPDATE YOUR CONTACT INFORMATION IF EMAIL ADDRESS HAS CHANGED SINCE JANUARY 2019

If you were sent one or both of the Dell Notices but your email address has changed since that time, and you believe you are an eligible Class Member, you must contact RicePoint immediately to ensure that your new email address is on file. They will verify if you are in fact a Class Member, and will include your updated contact information in further notices. If you do not contact RicePoint with your updated email address, you will likely not receive any compensation.

If you would like to update your contact information, please contact RicePoint:

[insert info]

WHO IS INCLUDED, AND WHAT IF I DON'T WANT TO PARTICIPATE IN THE SETTLEMENT?

If approved, the proposed settlement will include the 14,179 individuals to whom the Defendants sent the Dell Notices on April 2, 2018 and January 25, 2019.

If you do not want to participate in the settlement, you do not need to do anything. You can simply choose not to submit a claim for compensation.

If, however, you want to **opt-out** of the class action so that your claim is not released and you preserve any legal claim you may have relating to the data thefts, then you will have an opportunity to opt-out by sending an opt-out form to the Settlement Administrator (contact information below) to be received on or before the Opt-Out Deadline. There is no ability to opt-out unless and until the Action is certified and the proposed Settlement Agreement is approved.

SETTLEMENT APPROVAL HEARING AND YOUR RIGHT TO PARTICIPATE

If you wish to object to the proposed settlement or the payment of legal fees to Class Counsel, you may submit a written objection, referencing this class action, to Wagners no later than [objection deadline]. Objections received by the deadline will be provided to the Court for consideration at the hearing. You may also attend the settlement approval hearing and, subject to the direction of the Court, you may be able to make a submission to the Court.

A Class Member who wishes to object to the settlement or legal fees shall provide in their objection:

- Full name, mailing address, email address of person who is objecting;
- A brief statement of the nature and reasons for the objection;
- A declaration that the person believes they are a member of the Class and the basis for that belief;
- Whether the person intends to appear at the approval hearing.

MORE INFORMATION

For a copy of the proposed Settlement Agreement or to ask questions relating to it please visit Wagners' website at www.wagners.co [NTD: insert precise webpage] or contact Wagners at the below contact information:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Telephone: 1-800-465-8794/902-425-7330
Email: classaction@wagners.co

This notice has been approved by the Supreme Court of Nova Scotia.

Do not contact the Court about this notice.

SCHEDULE “C” to Draft Phase I Notice Order

PHASE I NOTICE PLAN

Phase I Notice shall be disseminated by the following methods:

1. Direct Notice
 - a. The Settlement Administrator shall send the Phase I Notice directly to Class Members according to the process outlined in the Distribution Protocol.
2. Indirect Notice
 - a. The Defendants will publish the Phase I Notice on the legal notices page of their Canadian website.
 - b. Class Counsel will issue a media release, including through Class Counsel’s social media accounts (LinkedIn, Facebook) summarizing the contents of the Phase I Notice and attaching a copy of the Phase I Notice.
 - c. Class Counsel will publish the Phase I Notice on the Wagners’ website along with a copy of the Settlement Agreement.

SCHEDULE "B" to Settlement Agreement

Form 78.05

2024

Hfx No. 500912

SUPREME COURT OF NOVA SCOTIA

Between:

CHRISTOPHER PURVIS

PLAINTIFF

and

DELL USA L.P., a body corporate, and **DELL CANADA INC.**, a body corporate

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c.28

**ORDER APPROVING CERTIFICATION FOR PURPOSES OF SETTLEMENT AND
SETTLEMENT**

BEFORE THE HONOURABLE JUSTICE JOHN KEITH

THIS MOTION, heard the * day of * , 2024, at the Law Courts at 1815 Upper Water Street in Halifax, Nova Scotia, was made by the Plaintiff, on consent of the Defendants, for an Order, *inter alia*, certifying the within action as a class proceeding for settlement purposes, approving the settlement agreement entered into by the parties and attached hereto as Schedule "A" (the "Settlement Agreement"), approving the Opt-Out Form attached hereto as Schedule "B", approving the notice of certification and settlement attached hereto as Schedule "C" (the "Phase II

Notice”), and the Phase II Notice Plan attached hereto as Schedule “D”, and dismissing this action as against the Defendants effective on the Payment Date;

AND UPON READING the materials filed on this motion and upon hearing the submissions of counsel;

AND UPON BEING ADVISED THAT the Plaintiff and the Defendants consent to this Order;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement and Schedules thereto apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

Certification for Settlement Purposes

3. The Action is certified as a class proceeding for settlement purposes only.
4. The Class is certified as follows:

Any person to whom the Defendants sent notices of the Data Thefts on April 2, 2018 and January 25, 2019.

5. The Plaintiff, Christopher Purvis, is appointed as the representative party.
6. The following common issue is hereby certified:

Are the Plaintiff and Class Members entitled to compensation?

Opting-Out

7. The Opt-Out Form attached as Schedule “B” is approved.
8. Class Members may opt-out of the Action by completing, executing and sending the Opt-Out Form to the Settlement Administrator on or before the Opt-Out Deadline.
9. Any Class Member who validly opts-out of the Action shall have no further right to participate in the Action or to share in the distribution of any funds received under the Settlement Agreement.
10. No further right to opt-out of the Action will be provided.

Approval of Settlement Agreement

11. This Order, including the Settlement Agreement, is binding upon each Class Member including individuals who are minors or mentally incapable and the requirements of Rule 36.06 of the *Nova Scotia Civil Procedure Rules* are dispensed with;
12. The Settlement Agreement is fair, reasonable and in the best interests of the Class.
13. The Settlement Agreement attached as Schedule “A” is approved pursuant to section 38 of the *Class Proceedings Act* and shall be implemented and enforced in accordance with its terms.
14. For certainty, the Distribution Protocol attached as Schedule “D” to the Settlement Agreement is approved and shall be implemented in accordance with its terms.

Approval of Phase II Notice and Phase II Notice Plan

15. The Phase II Notice and Phase II Notice Plan attached hereto as Schedules “C” and “D” are approved.

Effect of Settlement

16. The release as provided for in Article 7 of the Settlement Agreement is approved.
17. For the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the Parties consent to the jurisdiction of this Court for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, subject to the terms and conditions set out in the Settlement Agreement and this Order.
18. Upon the Payment Date, this action is dismissed, without costs and with prejudice.

Report to Court

19. Class Counsel shall, within 90 calendar days after the Administration End Date, provide to the Court via letter a report providing information about the distribution of the Net Settlement Funds.

Issued _____

Prothonotary

SCHEDULE "A" to Draft Settlement Approval Order
SETTLEMENT AGREEMENT

SCHEDULE "B" to Draft Settlement Approval Order

2020

Hfx No. 500912

SUPREME COURT OF NOVA SCOTIA

Between:

CHRISTOPHER PURVIS

PLAINTIFF

- AND -

DELL USA L.P., a body corporate, and DELL CANADA INC., a body corporate

DEFENDANTS

PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, S.N.S 2007, C. 28

OPT-OUT FORM
DEADLINE – _____

I, _____, **do not** want to be included in the class action settlement against the Defendants, Dell USA L.P. and Dell Canada Inc., with respect to privacy breaches occurring in June and November 2017 whereby information about Dell customers was breached.

I understand that by opting out of this class proceeding I am confirming that I do NOT wish to participate in this class proceeding. I do NOT wish to receive any benefit from the Settlement Agreement.

I understand that I must return this form through the RicePoint claims portal at [insert RicePoint portal URL], by email, or by mail by no later than [deadline], or else it will NOT be valid. If returned by email, this opt-out form must be sent no later than [deadline] and emailed to [insert RicePoint email] If returned by mail, this opt-out form must be postmarked no later than [deadline] and mailed to:

[Set out RicePoint address information]

I understand that any individual claim I may have must be commenced within an applicable limitation period or else it will be legally barred. I understand that the filing of this class proceeding suspended the running of the limitation period from the time the class proceeding was filed. The limitation period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

My information is as follows:

Print Name: _____

Address: _____

Email Address: _____

Address: _____

Telephone: _____

Signature: _____

Date: _____

Schedule "C" to Draft Settlement Approval Order

PHASE II NOTICE

NOTICE OF CLASS ACTION SETTLEMENT APPROVAL

Purvis v. Dell USA L.P & Dell Canada Inc.,
Supreme Court of Nova Scotia, Hfx. No. 500912

NOTICE OF SETTLEMENT APPROVAL

A settlement has been reached and approved by the Supreme Court of Nova Scotia in a class action filed on October 1, 2020 against Dell USA LP and Dell Canada Inc. arising from the theft of customer information from a service provider used by the Defendants and the use of that information by third parties to carry out targeted tech support scam calls, as referenced in letters sent by the Defendants to affected individuals on April 2, 2018 and January 25, 2019 (the "Dell Notices"). The class action alleged negligence, intrusion upon seclusion, and vicarious intrusion upon seclusion in relation to the data thefts, and sought compensation for the alleged privacy breaches.

The Settlement Agreement obtained approval by the Supreme Court of Nova Scotia following a hearing on * at The Law Courts Building, 1815 Upper Water Street in Halifax, Nova Scotia.

You are receiving this notice because you are eligible to submit a claim for compensation under the Settlement Agreement. Your contact information was provided by Dell so you can be notified of your legal options.

The Settlement Agreement can be reviewed at the website of Class Counsel, Wagners, at www.wagners.co [NTD: insert precise webpage].

WHO IS AFFECTED BY THE SETTLEMENT?

The Settlement applies to the 14,179 individuals to whom the Defendants sent the Dell Notices (the "Class"). Further details are contained in the Settlement Agreement.

WHAT ARE THE TERMS OF THE SETTLEMENT?

The Defendants have agreed to pay up to \$2,100,000 to compensate eligible Class Members and pay the administration costs and legal fees.

The Settlement Agreement provides up to two types of compensation to Class Members who qualify.

Base Payments: All Class Members are eligible for a payment of \$85 upon completion of the Distribution Form here [NTD: link to online claim] in accordance with the Distribution Protocol.

Economic Loss Claim Payments: Up to \$3,000 will be paid to Class Members who can establish that, as a result of the data thefts, they incurred a fraudulent credit card or other banking charge, or costs to remediate computers

or technological equipment, and who provide the necessary supporting documentation by the applicable deadline. A Class Member can receive no more than \$3,000 under this category. Amounts for approved economic losses may be reduced based on the number of approved claims and other costs of administration.

Further terms and conditions of eligibility for compensation are outlined in the Settlement Agreement.

HOW DO I GET PAID?

You must complete the Distribution Form here [NTD: link to online claim] which must be submitted by the deadline of *.

WHO REPRESENTS ME?

Class Counsel is Wagners, a law firm in Halifax, Nova Scotia.

WHAT ARE THE LEGAL FEES?

Class Counsel's legal fees, disbursements and applicable taxes will be paid out of the settlement. The Court has approved payment of Class Counsel legal fees and disbursements and applicable taxes in the amount of \$XX. You will not be charged legal fees to collect your compensation.

WHAT IF I DON'T WANT TO PARTICIPATE IN THE SETTLEMENT, OR WANT TO OPT-OUT?

If you do not want to participate in the settlement, you do not need to do anything. You can simply choose not to submit a claim for compensation.

If you want to **opt-out** of the class action so that your claim is not released and you preserve any legal claim you may have relating to the data thefts, you must send an opt-out form to the Settlement Administrator (contact information below) to be received on or before the Opt-Out Deadline of *. An opt-out form can be found here: [NTD: insert]

SETTLEMENT ADMINISTRATOR

The Court has appointed RicePoint to be the Settlement Administrator. If you have questions about the claim process, please contact RicePoint at:

[NTD: insert]

MORE INFORMATION

For a copy of the Settlement Agreement or to ask questions relating to the Settlement Agreement, please visit Wagners' website at www.wagners.co [NTD: insert precise webpage] or contact Wagners at the below contact information:

Wagners
1869 Upper Water Street
Suite PH 301, Pontac House
Historic Properties
Halifax NS B3J 1S9
Telephone: 1-800-465-8794/902-425-7330
Email: classaction@wagners.co

This notice has been approved by the Supreme Court of Nova Scotia.

Do not contact the Court about this notice.

Schedule “D” to Draft Settlement Approval Order

PHASE II NOTICE PLAN

Phase II Notice shall be disseminated by the following methods:

1. Direct Notice

- a. The Settlement Administrator shall send the Phase II Notice, Opt-Out Form, and Settlement Distribution Form directly to Class Members according to the process outlined in the Distribution Protocol.

2. Indirect Notice

- a. The Defendants will publish the Phase II Notice on the legal notices page of their Canadian website.
- b. Class Counsel will issue a media release, including through Class Counsel’s social media accounts (LinkedIn, Facebook) summarizing the contents of the Phase II Notice and attaching a copy of the Phase II Notice.
- c. Class Counsel will publish the Phase II Notice on the Wagners’ website along with a copy of the Settlement Agreement and the Opt-Out Form.

SCHEDULE "C" to Settlement Agreement

Form 78.05

2020

Hfx No. 500912

SUPREME COURT OF NOVA SCOTIA

Between:

CHRISTOPHER PURVIS

PLAINTIFF

- AND -

DELL USA L.P., a body corporate, and **DELL CANADA INC.**,
a body corporate

DEFENDANTS

Proceeding under the *Class Proceedings Act*, S.N.S. 2007, c. 28

**ORDER APPROVING CLASS COUNSEL FEES
AND CLASS COUNSEL DISBURSEMENTS**

BEFORE THE HONOURABLE JUSTICE JOHN KEITH

THIS MOTION, heard this * day of *, 2024, at the Law Courts at 1815 Upper Water Street in Halifax, Nova Scotia, was made by the Representative Plaintiff for an Order approving Class Counsel Fees and Class Counsel Disbursements arising from a settlement agreement dated *, 2024 (the "**Settlement Agreement**");

UPON READING the materials filed with this Motion and on hearing the submissions of Class Counsel;

AND WHEREAS any capitalized terms used in this Order and not otherwise defined have the meanings given to them in the Settlement Agreement;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Class Counsel Fees in the amount of \$426,064.50 (30% of the Base Fund and Economic Loss Fund) plus applicable taxes of \$63,909.68, for a total of \$489,974.18, are approved as fair and reasonable and shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.
2. Class Counsel Disbursements in the amount of \$XXX, inclusive of applicable taxes, are approved as fair and reasonable and shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.
3. There are no costs of this motion.

, 2024.

Prothonotary

SCHEDULE "D" to Settlement Agreement

DISTRIBUTION PROTOCOL
IN THE MATTER OF *CHRISTOPHER PURVIS V. DELL USA LP*
AND DELL CANADA INC.

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PART I - DEFINITIONS

1. In this Distribution Protocol any capitalized terms not defined below have the definitions set out in the Settlement Agreement.

- (a) “**Action**” means the Halifax action styled *Christopher Purvis v Dell USA LP and Dell Canada Inc.*, commenced in the Supreme Court of Nova Scotia bearing Hfx No. 500912;
- (b) “**Adjusted Payment**” means adjusted Eligible Economic Loss Claim Payments as determined in **Appendix B**;
- (c) “**Administration**” has the meaning set out in paragraph 2 of this Distribution Protocol;
- (d) “**Administration End Date**” means the date that is seven months after the Payment Date;
- (e) “**Administration Expenses**” means all fees, disbursements, expenses, costs, and taxes owed to the Settlement Administrator for its services administering the Settlement;
- (f) “**Administration Expenses Payment**” means the sum of \$100,000.00 to be paid by the Defendants to the Settlement Administrator, separate and apart from the Maximum Settlement Commitment;
- (g) “**Base Payment**” means the sum of \$85.00 to be paid from the Maximum Base Fund to each member of the Settlement Class who completes a valid and timely Settlement Distribution Form in accordance with this Distribution Protocol;
- (h) “**Class**” or “**Class Members**” mean the 14,179 individuals whose email addresses are listed on the Notice List;
- (i) “**Class Contact List**” means the list containing the names and contact information of the individuals who have contacted Wagners expressing interest in the Action, which information may be shared with the Settlement Administrator for the purposes of effecting notice and implementing the Settlement Agreement;

- (j) “**Class Counsel**” means Wagners;
- (k) “**Court**” means the Supreme Court of Nova Scotia;
- (l) “**Data Thefts**” means the theft of customer information from the Service Provider and the use of that information by third parties to carry out targeted tech support scam calls, as publicly disclosed by the Defendants on April 2, 2018 and January 25, 2019;
- (m) “**Defendants**” means Dell USA LP and Dell Canada Inc;
- (n) “**Distribution Protocol**” means this document;
- (o) “**Economic Loss Claim Supporting Documents**” means the documents defined in section 20(a)(i);
- (p) “**Effective Date**” means the date when the Court’s Order approving the Settlement Agreement becomes a Final Order;
- (q) “**Election Deadline**” means the date set in section 13;
- (r) “**Eligible Economic Loss Claim**” means a claim by a member of the Settlement Class for:
 - (i) a fraudulent credit card charge or other banking charge or financial loss incurred as a result of the Data Thefts; and/or
 - (ii) costs incurred to remediate or replace computers or technological equipment as a result of the Data Thefts;
- (s) “**Eligible Economic Loss Claim Payment**” means the sum, not exceeding \$3,000.00, to be paid to a Settlement Class Member who, in the opinion of the Settlement Administrator, has proven an Eligible Economic Loss Claim in accordance with this Distribution Protocol;
- (t) “**Excess Administration Expenses**” means any portion of Administration Expenses that exceeds the Administration Expenses Payment and which shall be paid from the Maximum Settlement Commitment;
- (u) “**Excess Base Fund**” means the amount determined in **Appendix A**;

- (v) “**Excess Economic Loss Fund**” means the amount determined in **Appendix A**;
- (w) “**Final Order**” means an Order after the later of: (i) the time for appeal has expired, and (ii) any appeals have been resolved;
- (x) “**Maximum Base Fund**” means the all-inclusive sum, not to exceed \$1,205,215.00, committed by the Defendants for Base Payments;
- (y) “**Maximum Economic Loss Fund**” means the all-inclusive sum, not to exceed \$215,000.00, committed by the Defendants for Eligible Economic Loss Claim Payments;
- (z) “**Net Settlement Funds**” means the amount available from the Maximum Base Fund and Maximum Economic Loss Fund to be distributed to Settlement Class Members as Base Payments and Eligible Economic Loss Claim Payments and to pay any Excess Administration Expenses, after deducting the Class Counsel Fee, Class Counsel Disbursements, and Representative Plaintiff Honorarium;
- (aa) “**Notice List**” means the list of email addresses for Class Members provided by the Defendants under section 5;
- (bb) “**Opt-Out Deadline**” means the date set in section 12;
- (cc) “**Opt-Out Form**” means the document attached as Schedule “B” to the Draft Order Approving Certification and Settlement (Schedule “B” to the Settlement Agreement”);
- (dd) “**Parties**” means the Plaintiff and the Defendants;
- (ee) “**Payment Date**” means the date that the Settlement Administrator first distributes payment to the Settlement Class Members, which shall be no later than 10 calendar days after the Settlement Administrator receives the Settlement Transfer Amount from the Defendants;
- (ff) “**Payment Direction**” means the Settlement Administrator’s direction to the Defendants directing the Defendants to pay the Settlement Transfer Amount to the Settlement Administrator (the Payment Direction will include the Settlement Administrator’s wire instructions);

- (gg) “**Plaintiff**” means Christopher Purvis;
- (hh) “**Remaining Economic Loss Fund**” means the amount determined in **Appendix A**;
- (ii) “**Service Provider**” means the third-party company used in the past by the Defendants to provide customer support services to customers;
- (jj) “**Settlement Administrator**” means RicePoint or such other third party administrator agreed upon by the parties and approved by the Court;
- (kk) “**Settlement Agreement**” means the settlement agreement entered into by the Parties and approved by the Court in the Action;
- (ll) “**Settlement Class**” means the Class except any person who validly opts-out of this Action;
- (mm) “**Settlement Distribution Form**” means the document attached as Schedule “E” to the Settlement Agreement;
- (nn) “**Settlement Transfer Amount**” means the amount determined in **Appendix A**; and
- (oo) “**Total Economic Loss Amount**” means the amount determined in **Appendix A**.

PART II - GENERAL PRINCIPLES

2. This Distribution Protocol is intended to govern (the “**Administration**”):
 - (a) notice to the Class of the proposed settlement (i.e. Phase I Notice);
 - (b) notice to the Class of certification and settlement approval (i.e. Phase II Notice);
 - (c) opt-outs by Class Members; and
 - (d) distribution of payments under the Settlement Agreement to Settlement Class Members.
3. The Administration will:

- (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 record-keeping wherever possible; and
- (c) where practicable, draw on methods of communication already available between the Parties and Class Members.

PART III - INFORMATION TO BE PROVIDED

4. Class Counsel will:

- (a) notify the Settlement Administrator of the date of issuance of the Phase I Notice Approval Order and the Effective Date; and
- (b) provide the Class Contact List to the Settlement Administrator as necessary to aid in distributing the Phase I and Phase II Notices and to otherwise further the implementation of the Settlement Agreement for the benefit of the Class.

5. The Defendants will:

- (a) provide the Notice List to the Settlement Administrator within 10 calendar days after the date of issuance of the Phase I Notice Approval Order; and
- (b) notify the Settlement Administrator of the amount of the Net Settlement Funds, within 20 calendar days after the Effective Date.

PART IV - PHASE I NOTICE

6. Within 20 calendar days of receiving the Notice List from the Defendants the Settlement Administrator will implement the Phase I Notice Plan, including sending the Phase I Notice by email to the email addresses recorded on the Notice List.

7. Within 10 calendar days after completing the above, the Settlement Administrator will notify the Parties of email addresses which were undeliverable (the “**Undeliverable List**”).

8. The Parties will work with the Settlement Administrator to update the email addresses on the Undeliverable List in the following manner:

- (a) Within 45 calendar days after notification under section 7 above:
 - (i) Class Counsel will review their Class Contact List to confirm whether an updated email address or mailing address is available for any Class Member on the Undeliverable List. Class Counsel will provide any such updated contact information to the Settlement Administrator; and
 - (ii) The Defendants will review their customer database to confirm whether an updated email address or mailing address is reasonably available for any Class Member on the Undeliverable List. The Defendants will provide any such updated contact information to the Settlement Administrator.
- (b) Within 5 calendar days after receipt of any updated contact information under section 8(a), the Settlement Administrator will send by email or standard mail, as applicable, the material in section 6 to Class Members on the Undeliverable List for whom updated contact information was identified; and
- (c) Within 5 calendar days after completing section 8(b), if there are any additional undeliverable addresses, Class Counsel and the Defendants will confer and attempt to agree on a reasonable solution.

9. After implementation of the Phase I Notice Plan, the Settlement Administrator will record any updated contact information provided by a Class Member who contacts the Settlement Administrator if the Class Member:

- (a) Directly received the Phase I Notice; or
- (b) Learned of the Phase I Notice without having received it (e.g., through a means of indirect notice), and is subsequently confirmed to be a Class Member by the Settlement Administrator following its standard authentication protocol.

10. For the purposes of implementing the Phase II Notice Plan, the Settlement Administrator will continue to update the email addresses on the Notice List as a result of information obtained

through the processes set out in sections 8-9 up to the time of implementation of the Phase II Notice Plan.

PART V - PHASE II NOTICE AND OPT-OUT

Dissemination

11. Within 10 calendar days after the Effective Date, the Settlement Administrator will send the following documents by email to the email addresses recorded on the Notice List as such Notice List has been updated through the steps outlined in section 8 above:

- (a) Phase II Notice, containing hyperlinks to the Opt-Out Form and Settlement Distribution Form.

12. The “**Opt-Out Deadline**” will be 60 calendar days after the date of implementation of the Phase II Notice Plan.

13. The “**Election Deadline**” will be 90 calendar days after the date of implementation of the Phase II Notice Plan.

Opt-Out Procedure

14. The Settlement Administrator will accept Opt-Out Forms that meet the following conditions:

- (a) complete;
- (b) sent on or before the Opt-Out Deadline; and
- (c) signed with a pen or electronic signature.

15. Within 5 calendar days after the Opt-Out Deadline, the Settlement Administrator will report to the Parties the names of each Class Member who has opted-out of the Action.

PART VI - SETTLEMENT ADMINISTRATION

Forms Deadline

16. Settlement Distribution Forms must be:

- (a) received electronically by the Settlement Administrator on or before the Election Deadline; or
- (b) if sent by mail, postmarked on or before the Election Deadline and received within 15 calendar days of the Election Deadline.

Adjudication of Claims

17. Within 30 calendar days after the Election Deadline, the Settlement Administrator will complete the review of claims for Base Payments, as follows:

- (a) The Settlement Administrator will review each Settlement Distribution Form submitted by a Settlement Class Member individually and determine whether each Settlement Distribution Form has been properly completed;
- (b) A Settlement Distribution Form will be properly completed where the Settlement Class Member has filled-out each field, including:
 - (i) name;
 - (ii) method of settlement payment distribution;
 - (iii) email address or mailing address to receive settlement payments; and
 - (iv) declaration of eligibility for settlement payments as a Settlement Class Member.

18. For greater certainty, Settlement Class Members are not required to submit any proof or supporting documents to support a claim for a Base Payment.

19. Within 5 calendar days of completing section 17 above, the Settlement Administrator will notify the Parties of the number and total sum of Base Payments to be made.

20. Within 60 calendar days after the Election Deadline, the Settlement Administrator will complete the adjudication of Eligible Economic Loss Claims, as follows:

- (a) The Settlement Administrator will review each Eligible Economic Loss Claim submitted by a Settlement Class Member individually and determine whether the Settlement Class Member is entitled to an Economic Loss Claim Payment, based

on the Economic Loss Claim Supporting Documents and information in the Settlement Distribution Form;

- (i) Economic Loss Claim Supporting Documents shall consist of:
 - (A) in the case of a claim for a fraudulent credit card or other banking charge or financial loss:
 - (I) copies of credit card or banking statements showing a fraudulent charge or payment that is from the period between June 2017 to February 28, 2019; and
 - (II) a statutory declaration that the fraudulent charge or payment:
 - (1) was unauthorized and the Class Member did not receive any authorized goods or services in exchange for the payment; (2) was not reimbursed by the Class Member's financial institution or any other person; and (3) is reasonably related to the Data Thefts, insofar as the credit card or banking charge or other financial loss was incurred after the Class Member:
 - a. provided direct access to their computer to a third party who contacted the Class Member after the Data Thefts purporting to be a Dell representative, and such third party obtained credit card or banking information without authorization through this access to the Class Member's computer; or
 - b. provided the applicable credit card or banking information to a third party who contacted the Class Member after the Data Thefts purporting to be a Dell representative; or
 - (B) in the case of costs incurred to remediate or replace computers or technological equipment:

- (I) copies of receipts or invoices showing repairs or purchases completed between June 2017 and February 28, 2019; and
 - (II) a statutory declaration that the repairs or purchase: (1) would not have been performed had unauthorized third parties not contacted Class Members following the Data Thefts; (2) were not reimbursed by the Class Member's financial institution or any other person; and (3) reasonably related to the Data Thefts, insofar as they relate to:
 - a. services to remove malware, spyware, or fake anti-virus software that could have been installed by unauthorized third parties who contacted Class Members following the Data Thefts;
 - b. the purchase of anti-virus software after a third party contacted the Class Member after the Data Thefts purporting to be a Dell representative; or
 - c. the required purchase of a replacement device due to the activities of unauthorized third parties who contacted Class Members following the Data Thefts; and
 - (C) other supporting documentation to supplement the documents referred to in sections 20(A) and 20(B) above that the Class Member reasonably believes supports their Economic Loss Claim, not to exceed an additional 5 pages.
- (b) If the Settlement Administrator determines a Settlement Class Member is entitled to an Eligible Economic Loss Claim Payment, the Settlement Administrator will determine whether the Settlement Class Member is entitled to the full amount claimed or a lesser amount, though in no case will any Eligible Economic Loss Claim Payment exceed \$3,000.00.

21. Within 5 calendar days after completing section 20 above, the Settlement Administrator will notify the Parties of the number and total sum of Eligible Economic Loss Claim Payments and calculate the Settlement Transfer Amount in accordance with **Appendix A**.

22. There will be no appeal from the Settlement Administrator's determinations under sections 17-20.

23. In adjudicating claims under sections 17-20, the Settlement Administrator may make reasonable efforts to contact Settlement Class Members who have submitted an incomplete Settlement Distribution Form and allow them 15 calendar days for the information to be provided.

Adjust Economic Loss Claim Payments, If Necessary

24. If the Total Economic Loss Amount is:

- (a) greater than the Remaining Economic Loss Fund, or the Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund), the Settlement Administrator will adjust Eligible Economic Loss Claim Payments under **Appendix B**.
- (b) less than the Remaining Economic Loss Fund, or the Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund), then no adjustment under **Appendix B** will be performed.

Report to Parties and Settlement Transfer Amount Direction

25. Within 5 calendar days after completing section 24, the Settlement Administrator will report to the Parties (the "**Administrator's Report**"):

- (a) Settlement Transfer Amount, as determined in **Appendix A**; and
- (b) a breakdown of the Settlement Administrator's calculations sufficiently detailed to allow the Parties to independently confirm the Settlement Transfer Amount.

26. Within 10 calendar days after receiving the Administrator's Report, the Parties shall either:

- (a) confirm the Settlement Transfer Amount; or

(b) provide comments on the calculation of the Settlement Transfer Amount.

27. If there are comments on the Settlement Administrator's calculation of the Settlement Transfer Amount, the Parties and the Settlement Administrator will cooperate diligently to resolve any issues with the calculation.

28. After the Parties confirm the Settlement Transfer Amount, the Settlement Administrator will issue the Payment Direction to the Defendants.

29. Within 45 calendar days after the Payment Direction is received, the Defendants will pay the Settlement Transfer Amount to the Settlement Administrator. The Defendants will have no obligation to pay further amounts to the Settlement Administrator.

30. Where the Settlement Administrator requires clarification to carry out any stage of the Administration, they shall seek clarification from the Parties, who shall cooperate diligently to provide further direction and agree to adjust any timelines accordingly, if necessary.

PART VII - PAYMENT OF CLAIMS

31. Within 10 calendar days after receiving the Settlement Transfer Amount, the Settlement Administrator shall distribute to the Settlement Class, following the method of distribution indicated in Settlement Class Members' Settlement Distribution Forms:

- (a) Base Payments; and
- (b) Eligible Economic Loss Claim Payments or Adjusted Payments, if an adjustment is required by section 24.
- (c) The date of distribution shall be the Payment Date.

32. Before the settlement payments have expired, the Settlement Administrator will send a follow-up communication to Settlement Class Members who have not redeemed their payments.

33. Where a Settlement Class Member disputes that they have received their settlement payment, as calculated by the Settlement Administrator, the Settlement Administrator will be responsible for determining:

- (a) if the settlement payment was sent to the Settlement Class Member by email money transfer, whether the email money transfer was accepted;
- (b) if the settlement payment was sent as a cheque by standard mail, whether the cheque was deposited; or
- (c) if an error by the Settlement Administrator resulted in failure to properly issue the settlement payment.

34. If the Settlement Administrator determines that either section 33(a) or 33(b) applies to a Settlement Class Member's complaint, the Settlement Administrator will have no obligation to re-issue payment.

35. If the Settlement Administrator determines that section 33(c) applies to a Settlement Class Member's complaint, the Settlement Administrator will re-issue payment at its own cost.

36. The "**Administration End Date**" will be 7 months after the Payment Date.

37. Before the Administration End Date, payments that are not deliverable or which expire or become stale dated may be reissued on the Settlement Class Member's request, in addition to the Settlement Administrator sending the follow-up communication as outlined in section 32.

38. After the Administration End Date, neither the Parties nor the Settlement Administrator will have any further obligation to process disputes or complaints raised by Settlement Class Members relating to the Administration.

39. On the Administration End Date, the Settlement Administrator will:

- (a) return to the Defendants any unused Net Settlement Funds;
- (b) render a final invoice for the Administration Expenses; and
- (c) provide the Final Report on Administration to the Parties.

Appendix A - Calculation of Settlement Transfer Amount

The Settlement Administrator will calculate the Settlement Transfer Amount as follows:

1. ***Determine Inputs***

- (a) Determine the total amount required to make Base Payments to Settlement Class Members who submitted valid and timely Settlement Distribution Forms and subtract that amount from the Maximum Base Fund—any remainder is the “**Excess Base Fund.**”
- (b) Determine the total amount required to make all Eligible Economic Loss Claim Payments (the “**Total Economic Loss Amount**”) and subtract that amount from the Maximum Economic Loss Fund—any remainder is the “**Excess Economic Loss Fund.**”

2. ***Determine Administration Expenses and Deduct Excess Administration Expenses***

- (a) Provide an invoice to date of Administration Expenses incurred and an updated estimate of future Administration Expenses to be incurred up to the Administration End Date, i.e. the total Administration Expenses.
- (b) If the sum of amounts required to make Base Payments to Settlement Class Members, the Total Economic Loss Amount, and the Administration Expenses incurred to date exceed the Net Settlement Funds, the Settlement Administrator will provide and the Parties will agree on a fixed sum to cover future Administration Expenses up to the Administration End Date. If the total Administration Expenses up to the Administration End Date are estimated to exceed the Administration Expenses Payment, the excess amount will be the “**Excess Administration Expenses.**”
- (c) If there are Excess Administration Expenses, deduct the Excess Administration Expenses from:
 - (i) first, the Excess Base Fund, if any;
 - (ii) second, the Excess Economic Loss Fund, if any;

- (iii) third, if the Excess Base Fund and Excess Economic Loss Fund do not cover all the Excess Administration Expenses, the Total Economic Loss Amount will be reduced by the amount required to pay the balance of the Excess Administration Expenses, resulting in the “**Remaining Economic Loss Fund**” and the Eligible Economic Loss Claim Payments will be adjusted as described in Appendix B.

3. ***Determine the Settlement Transfer Amount***

- (a) The “**Settlement Transfer Amount**” is the sum of the following (the total cannot exceed the Net Settlement Funds):
 - (i) Excess Administration Expenses;
 - (ii) amount required to make all Base Payments to Settlement Class Members who submitted valid and timely Settlement Distribution Forms; and
 - (iii) amount required to make all Eligible Economic Loss Claim Payments after accounting for any pro rata adjustment described in Appendix B.

Appendix B – Adjustment to Eligible Economic Loss Claim Payments, If Necessary

If an adjustment is required by section 24 of the Distribution Protocol, the Settlement Administrator will:

1. ***Determine the Pro Rata Factor***

- (a) Divide the Total Economic Loss Amount into percentage shares for each Eligible Economic Loss Claim Payment—the result is the “**Pro Rata Factor**” for each Eligible Economic Loss Claim Payment:

2. ***Determine the Adjusted Payment***

- (a) Apply the Pro Rata Factor for each Eligible Economic Loss Claim Payment to the Remaining Economic Loss Fund or Maximum Economic Loss Fund (where **Appendix A** resulted in no Remaining Economic Loss Fund)—the result is the adjusted payment for each Eligible Economic Loss Claim Payment.

SCHEDULE "E" to Settlement Agreement

SETTLEMENT DISTRIBUTION FORM

You must complete this form and return it through the RicePoint claims portal at **[insert RicePoint portal URL]** or by mail to **[insert Ricepoint mailing address]** by no later than **[Election Deadline date]** in order to receive a Base Payment and Eligible Economic Loss Claim Payment, if applicable, under the Settlement in this Action.

You may claim BOTH a Base Payment and an Eligible Economic Loss Claim. Eligible Economic Loss Claims must be accompanied by the required supporting documentation.

PART I – BASE PAYMENT

I, _____ (please print legal name), affirm that I received one or both of the April 2, 2018 and January 25, 2019 notices sent by email by Dell regarding the Data Thefts.

1. Distribution Preference: Payments under this Settlement will be distributed by email money transfer ("**E-Transfer**") or cheque sent by mail. To receive a Base Payment (CAD\$85.00), you must elect your preferred method of distribution.

I will accept a Base Payment by E-Transfer: Yes

No, I will accept a Base Payment by cheque

2. E-Transfer Email Address: If you selected "Yes" to Question 1 above, please provide your email address below:

Email Address _____

Confirm Email Address: _____

You will receive a personal password from RicePoint, which you will need in order to deposit your E-Transfer.

3. Cheque Mailing Address: If you selected "No" to Question 1 (Distribution Preference) above, please provide your mailing address below to receive your payment by cheque:

Street Address _____

City _____

Province _____

Postal Code _____

Date: (yyyy/mm/dd): _____

Signature _____

PART II – ELIGIBLE ECONOMIC LOSS CLAIM

Complete this section if you believe you incurred:

1. A fraudulent credit card charge or other banking charge or financial loss incurred as a result of the Data Thefts; and/or
2. Costs incurred to remediate or replace computers or technological equipment as a result of the Data Thefts.

SUPPORTING DOCUMENTS ARE REQUIRED TO VERIFY YOUR ELIGIBLE ECONOMIC LOSS CLAIM. IF YOU DO NOT HAVE SUPPORTING DOCUMENTS, YOUR ELIGIBLE CONOMIC LOSS CLAIM WILL BE REJECTED.

If you believe either of these categories applies to you, and you have the required supporting documentation, complete the section below to submit an Eligible Economic Loss Claim.

I, _____ (please print legal name), affirm that, as a result of the Data Thefts, I have incurred (select all that apply):

- fraudulent credit card charges or other banking charges or financial loss; and/or
- costs to remediate or replace computers or technological equipment.

The amount of my Eligible Economic Loss Claim is CAD\$_____. (Note that Eligible Economic Loss Claim Payments will be determined by the Settlement Administrator and are capped at CAD\$3,000.00 per Settlement Class Member, and may be reduced depending upon the number of approved claims. As a result, you may receive less than your eligible economic losses.)

Supporting Documentation: To complete your Eligible Economic Loss Claim, you must provide supporting documentation of the amounts claimed above. If you do not, your claim will be rejected. Supporting documentation must relate to costs incurred from June 2017 to February 28, 2019 and must consist of:

1. copies of credit card/banking statements showing a fraudulent charge or payment from the period June 2017 to February 28, 2019, and a completed Statutory Declaration in the form attached as Appendix "A" to this document; and/or
2. copies of receipts or invoices showing repairs and/or replacements or purchases of equipment completed between June 2017 and February 28, 2019, and a completed Statutory Declaration in the form attached as Appendix "A" to this document.

You may also provide other supporting documentation that you feel supports your claim, up to an additional 5 pages.

Describe all supporting documentation proving your Eligible Economic Loss Claim below. **You must attach copies of the supporting documents when submitting this form:**

Document	Amount
a. _____	\$ _____
b. _____	\$ _____
c. _____	\$ _____
d. _____	\$ _____
e. _____	\$ _____

I acknowledge that if my Eligible Economic Loss Claim is accepted by the Settlement Administrator, any payment will be issued to me in the same manner I have selected above for distribution of my Base Payment.

Date: (yyyy/mm/dd): _____

Signature

APPENDIX "A" – STATUTORY DECLARATION

You must complete this Statutory Declaration and return it along with your completed Settlement Distribution Form through the RicePoint claims portal at **[insert RicePoint portal URL]** or by mail to **[insert RicePoint mailing address]** by no later than **[Election Deadline date]** in order to submit an Eligible Economic Loss Claim under the Settlement in this Action.

I, _____ (please print legal name), solemnly declare that, as a result of the Data Thefts, I have incurred (select all that apply):

the fraudulent credit card charges or other banking charges or financial loss detailed in my completed and attached Settlement Distribution Form, and that such charge(s) and/or payment(s):

1. Were unauthorized and I did not receive any goods or services in exchange for the payment(s);
2. Were not reimbursed by my financial institution or any other person; and
3. Were reasonably related to the Data Thefts, insofar as the credit card or banking charge(s) or other financial loss was incurred after I:
 - a. provided direct access to my computer to a third party who contacted me following the Data Thefts purporting to be a Dell representative, and such third party obtained credit card or banking information without authorization through this access to my computer; or
 - b. provided credit card or banking information to a third party who contacted me after the Data Thefts purporting to be a Dell representative;

the costs to remediate or replace computers or technological equipment detailed in my completed and attached Settlement Distribution Form, and that such repair(s) or purchase(s):

1. Would not have been performed had unauthorized third parties not contacted me following the Data Thefts;
2. Were not reimbursed by my financial institution or any other person; and
3. Were reasonably related to the Data Thefts, insofar as they relate to:
 - a. Services to remove malware, spyware, or fake anti-virus software that were installed by unauthorized third parties who contacted me following the Data Thefts;
 - b. The purchase of anti-virus software after a third party contacted me following the Data Thefts purporting to be a Dell representative; or
 - c. The required purchase of a replacement device due to the activities of unauthorized third parties who contacted me following the Data Thefts;

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME at the
City of _____
In the _____
Of _____
This ___ day of _____, 20__.

Signature

Print Name

A COMMISSIONER, ETC.