

Court File No. CV-15-53227100CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HEATHER DREW

Plaintiff

- and -

WALMART CANADA INC. and PNI DIGITAL MEDIA INC.

Defendants

Proceeding under the *Class Proceeding Act*, 1992, S.O. 1992, c.6, as amended.

NATIONAL CLASS ACTION SETTLEMENT AGREEMENT

Made as of the 10th day of February, 2017

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NATIONAL CLASS ACTION SETTLEMENT AGREEMENT

RECITALS

WHEREAS Heather Drew, on her own behalf and in her capacity as the representative plaintiff in Ontario Court File No. CV-15-532271-00CP and the defendants, Wal-Mart Canada Corp. (incorrectly named as Walmart Canada Inc. in the statement of claim) and PNI Digital Media Inc., wish to enter into this Settlement Agreement providing for the settlement of all claims arising from the Data Security Incident on the terms and conditions set forth herein, including those claims brought in the Saskatchewan Proceeding;

AND WHEREAS Class Counsel have conducted settlement negotiations through multiple meetings and telephone conferences with the Defendants;

AND WHEREAS the Parties intend by this Settlement Agreement to resolve all past, present and future claims of the Class Members in any way arising out of or relating to the Data Security Incident;

AND WHEREAS the Defendants, notwithstanding their consent to the certification of the Ontario Proceeding conditionally for settlement approval purposes and approval of this Settlement Agreement, have denied and continue to deny any wrongdoing or liability of any kind to Class Members;

AND WHEREAS the Plaintiff and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to Class Members and is fair, reasonable, and in the best interests of Class Members based on an analysis of the facts and law applicable to the claims of Class Members, taking into account the extensive burdens and expense of litigation, including the risks and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective and assured method provided in this Settlement Agreement of resolving the claims of the Class Members;

AND WHEREAS the Defendants have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending multiple and protracted litigation, and to resolve finally and completely the pending and potential claims of Class Members;

NOW THEREFORE, subject to the approval of the Ontario Court, this Settlement Agreement embodies the terms of the resolution of the Proceedings on a Canada-wide basis, including past, present and future claims, against the Defendants and Released Parties in any way arising out of or relating to the Data Security Incident.

SECTION 1 DEFINITIONS

1.1 Definitions

Unless a particular section of this Settlement Agreement explicitly provides for another interpretation, the following terms as used in this Settlement Agreement, including its recitals, shall have the meanings set forth below. Terms used in the singular shall be deemed to include

the plural, and *vice versa*. Feminine pronouns and female references shall be deemed to include the masculine, and *vice versa*, where appropriate.

- (a) "**Administration Costs**" shall mean all reasonable costs of appropriate notice of the proposed settlement and of the approved settlement as to be determined by the Ontario Court and all reasonable costs of a Claims Administrator to administer the settlement in accordance with the Settlement Agreement, payable by the Defendants up to a maximum amount of \$250,000.00.
- (b) "**Approval Notice**" shall mean the Court approved notice which advises Class Members of the approval of this Settlement Agreement. The Approval Notice will be agreed upon by all parties at a later date.
- (c) "**Approval Notice Date**" shall mean the date on which the Approval Notice is first provided to Class Members, which date shall be agreed upon by all parties or such other period as may be approved by the Ontario Court.
- (d) "**Approval Order**" shall mean the order of the Ontario Superior Court of Justice which approves this Settlement Agreement.
- (e) "**Approved Claimants**" shall mean Claimants who are approved by the Claims Administrator for payments pursuant to this Settlement Agreement.
- (f) "**Claim**" shall mean a completed, signed and dated claim form as developed by the Claims Administrator in consultation with Class Counsel, together with the supporting documentation or alternative supporting documentation as will be agreed upon by all parties.
- (g) "**Claimants**" shall mean all Class Members who make a Claim under this Settlement Agreement, excluding the Opt-Outs.
- (h) "**Claim Period**" shall mean 90 days from the date of the Approval Notice.
- (i) "**Claims Administrator**" shall mean the person or entity appointed by the Ontario Court as provided in section 9.
- (j) "**Class**" shall mean all persons resident or situated in Canada who used the Website during the period from June 1, 2014 to July 10, 2015.
- (k) "**Class Counsel**" shall mean the law firm of Flaherty McCarthy LLP.
- (l) "**Class Members**" shall mean members of the Class.
- (m) "**Class Period**" shall mean June 1, 2014 to July 10, 2015.
- (n) "**Conditional Certification Order**" shall mean the order obtained by Class Counsel on December 22, 2016, in contemplation of the execution of this Settlement Agreement, which among other things: (a) certified the Ontario Proceeding as a class

action with a national class; (b) described the Class and all Class Members; and (c) appointed Heather Drew as the representative plaintiff for the Class.

- (o) **"Counsel Fees"** shall mean legal fees, disbursements, and applicable taxes in an all-inclusive amount of \$250,000.00 in respect of all legal services provided by Class Counsel for the benefit of the Class to be approved by the Ontario Court.
- (p) **"CPA"** shall mean the *Class Proceedings Act, 1992, SO 1992, c 6*, as amended.
- (q) **"Credit Monitoring"** shall mean payments made by the Defendants for a valid Claim during the Claim Period by Class Members for (i) reimbursement for a subscription to a credit monitoring and/or an identity theft monitoring program made subsequent to receiving notification of the Data Security Incident for which the Claimant has not already been reimbursed by another source, or (ii) a one year Equifax Complete Premier Plan or reasonably equivalent credit monitoring plan selected by the Defendants with approval of Class Counsel, on the basis set out herein.
- (r) **"Data Security Incident"** shall mean the unauthorized access to PNI's data centre environment that managed and hosted the Website.
- (s) **"Defendants"** shall mean PNI Digital Media Inc., PNI Digital Media ULC, Walmart Canada Inc. and Wal-Mart Canada Corp (incorrectly named as Walmart Canada Inc. in the statement of claim).
- (t) **"Defendants' Counsel"** shall mean the law firms of Stikeman Elliott LLP and Torys LLP.
- (u) **"Effective Date"** shall mean the date described in section 5.
- (v) **"Final Order"** shall mean either (1) the Approval Order, once the time to appeal or to seek permission to appeal the Approval Order has expired without any appeal being taken, or (2) if an appeal from the Approval Order is taken, the affirmation of the Approval Order in its entirety, without modification, by the court to which such an appeal may be taken.
- (w) **"Final Saskatchewan Order"** shall mean either (1) the Saskatchewan Order, once the time to appeal or to seek permission to appeal the Saskatchewan Order has expired without any appeal being taken, or (2) if an appeal from the Saskatchewan Order is taken, the affirmation of the Saskatchewan Order in its entirety, without modification, by the court to which such an appeal may be taken.
- (x) **"Hearing Notice"** shall mean the Court approved national notice which advises Class Members of the hearing in Ontario to approve this Settlement Agreement.
- (y) **"Notice Plan"** shall mean the method by which the Hearing Notice and Approval Notice are disseminated which shall be by email to Class Members at the email addresses that Class Members provided when conducting transactions on the

Website. If any emails to any Class Members are returned as undelivered, the Hearing Notice and Approval Notice shall be disseminated to those specific Class Members in writing at the postal addresses provided when the Class Members conducted transactions on the Website.

- (z) **"Ontario Court"** shall mean the Ontario Superior Court of Justice.
- (aa) **"Ontario Proceeding"** shall mean the action commenced in the Ontario Court bearing file no. CV-15-532271-00CP in which Heather Drew is the plaintiff and Wal-Mart Canada Corp. (incorrectly named as Walmart Canada Inc. in the statement of claim) and PNI Digital Media Inc. are the defendants.
- (bb) **"Opt-Out"** shall mean a person who would have been a Class Member except for his or her timely and valid request for exclusion pursuant to the process set out in section 10 of this Settlement Agreement.
- (cc) **"Opt-Out Deadline"** shall mean the date 45 days after the provision to Class Members of the Hearing Notice, or such other date as may be approved by the Ontario Court.
- (dd) **"Opt-Out Form"** shall mean a completed, signed and dated form requesting exclusion from the Proceedings as developed by the Claims Administrator in consultation with Class Counsel.
- (ee) **"Opt-Out Report"** shall mean the report to be provided by the Claims Administrator within ten (10) days of the Opt-Out Deadline advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form.
- (ff) **"Opt-Out Threshold"** shall mean the number of persons who properly exercise their right to opt-out in accordance with the terms of the Settlement Agreement and any orders of the Ontario Court which is fixed by way of a supplementary agreement to be signed by the Parties and kept confidential subject to the direction of the Ontario Court.
- (gg) **"Parties"** shall mean the plaintiff in the Ontario Proceeding, Class Counsel and the Defendants.
- (hh) **"PNI"** shall mean PNI Digital Media Inc. and PNI Digital Media ULC.
- (ii) **"Proceedings"** shall mean the Ontario Proceeding and the Saskatchewan Proceeding.
- (jj) **"Recovery of Expenses"** shall mean payments made by the Defendants for a valid Claim made during the Claim Period by Class Members for reimbursement for out-of-pocket losses, unreimbursed charges and time spent remedying issues fairly traceable to the Data Security Incident on the basis set out herein.

- (kk) **"Released Parties"** shall mean PNI and Walmart, as well as their respective predecessors, successors, parents, subsidiaries, affiliates, associated companies and divisions, and each of their respective current and former shareholders, officers, directors, employees, lawyers, attorneys, agents, insurers, reinsurers, trustees, assigns, owners, consultants, suppliers, distributors and partners.
- (ll) **"Saskatchewan Court"** shall mean the Court of Queen's Bench for Saskatchewan.
- (mm) **"Saskatchewan Order"** shall mean the order described in Section 3.1.
- (nn) **"Saskatchewan Proceeding"** shall mean the action commenced in the Saskatchewan Court bearing file no. QBG 2015 of 2015 in which Sherry Banadyga is the plaintiff and Wal-Mart Canada Corp. and PNI Digital Media Inc. are the defendants.
- (oo) **"Settled Claims"** shall mean any and all claims of Class Members, against the Released Parties, whether or not assigned and whether known or unknown, asserted or un-asserted, regardless of the legal theory, existing now or in the future, in any way arising out of or relating to, directly or indirectly, the Data Security Incident. Such claims include, without limitation, all claims for damages or remedies of whatever kind or character, including, without limitation, compensatory, punitive, aggravated, exemplary, statutory and multiple damages or penalties of any kind, known or unknown, that are now or may be recognized by law including, without limitation, claims for costs or interest.
- (pp) **"Settlement Agreement"** shall mean this agreement.
- (qq) **"Settlement Payment"** shall mean all payments required to be made by the Defendants on notice by the Claims Administrator as set out in this Settlement Agreement, Administrative Costs as set out in this Settlement Agreement and court-approved fees for Class Counsel as provided for in this Settlement Agreement.
- (rr) **"Settlement Value"** shall mean the cumulative maximum total amounts available for Credit Monitoring, Recovery of Expenses and Administration Costs.
- (ss) **"Walmart"** shall mean Wal-Mart Canada Corp. (incorrectly named as Walmart Canada Inc. in the Ontario Proceeding).
- (tt) **"Website"** shall mean Walmart's Photocentre website www.walmartphotocentre.ca.

SECTION 2 **CONDITIONAL CERTIFICATION OF THE ONTARIO PROCEEDING**

2.1 In the event that a Final Order is not obtained the Conditional Certification Order will be set-aside and revoked.

SECTION 3 STAY OF THE SASKATCHEWAN PROCEEDING

3.1 The Defendants will make an application to the Saskatchewan Court for an order staying the Saskatchewan Proceeding.

SECTION 4 THE ORDERS APPROVING THIS AGREEMENT

4.1 This Settlement Agreement is subject to and conditional upon obtaining, in addition to the Conditional Certification Order, the Final Saskatchewan Order, the Approval Order and the Final Order.

4.2 The Parties will agree upon and ask the Ontario Court to approve the Hearing Notice, the dissemination of which will trigger an opt-out period. The order approving the Hearing Notice will:

- (a) appoint the Claims Administrator;
- (b) require that the Hearing Notice be disseminated in accordance with the terms of the Notice Plan;
- (c) declare the Opt-Out Deadline as the deadline for opting-out; and
- (d) declare that any Class Member who does not opt out by the Opt-Out Deadline shall be bound by the Approval Order and this Settlement Agreement.

4.3 Class Counsel will, following the end of the opt-out period, seek the Approval Order, which will:

- (a) declare that this Settlement Agreement is fair, reasonable and in the best interests of the Class Members;
- (b) approve this Settlement Agreement and order the Parties and Class Members to comply with it;
- (c) require that the Approval Notice be disseminated in accordance with the terms of the Notice Plan;
- (d) approve the Counsel Fees;
- (e) provide a full release of the Defendants in a form acceptable to them; and
- (f) make such further and other orders as to the approval, implementation and administration of this Settlement Agreement as the Ontario Court may deem just.

SECTION 5 EFFECTIVE DATE OF SETTLEMENT AGREEMENT

5.1 This Settlement Agreement becomes effective once the Final Saskatchewan Order and the Final Order have both been obtained.

SECTION 6 SETTLEMENT BENEFITS

6.1 Credit Monitoring

The Defendants will pay for a one year Equifax Complete Premier Plan, or reasonably equivalent credit monitoring plan, selected by the Defendants with approval of Class Counsel, for any Class Member who makes a valid claim within the Claim Period and will reimburse any Class Member who can demonstrate that he or she subscribed to a credit monitoring and/or identity theft monitoring program after being notified of the Data Security Incident for which he or she has not already been reimbursed by any other source, provided the claim for reimbursement is valid as determined by the Claims Administrator and made within the Claim Period. Notwithstanding the foregoing, the maximum cumulative total available under this Settlement Agreement for Credit Monitoring is \$350,000.00 to be distributed in the order in which the Claim was made. Once \$350,000.00 has been paid in Claims related to Credit Monitoring the Defendants' obligation pursuant to this section 6.1 of the Settlement Agreement is fulfilled and the Defendants have no further obligations with respect to this section.

6.2 Recovery of Expenses

The Defendants will pay for valid claims made during the Claim Period for reimbursement made by Class Members for out-of-pocket losses, unreimbursed charges and time spent remedying issues fairly traceable to the Data Security Incident on the following basis:

- (a) any Class Member making a Claim must attest that he or she has not already been compensated, in part or in full, for any asserted loss, by insurance, an employer, a financial institution or in any other manner;
- (b) the total amount eligible to be received by any one Class Member is a maximum of \$5,000.00;
- (c) any Class Member making a claim for out-of-pocket losses or unreimbursed charges may receive \$15/hr for up to five hours of time spent remedying those losses or charges, if he or she can provide documented evidence of such losses; if he or she cannot provide documented evidence of such losses, the Class Member may receive \$15/hr for up to two hours of time spent remedying the losses or charges; and
- (d) notwithstanding the foregoing, the maximum cumulative total available under this Settlement Agreement for the Recovery of Expenses is \$400,000.00 to be distributed in the order in which the Claim was made. Once \$400,000.00 has been paid in Claims related to Recovery of Expenses the Defendants' obligation

pursuant to this section 6.2 of the Settlement Agreement is fulfilled and the Defendants have no further obligations with respect to this section.

6.3 Funding of Payments to Approved Claimants

6.3.1 Any payments for Credit Monitoring as set out in section 6.1 shall be made by the Defendants for any Class Members with valid Claims, as determined by the Claims Administrator, within thirty days of notification by the Claims Administrator, following the close of the Claim Period, of the number of Class Members who made a valid claim for enrollment in the credit monitoring program or for reimbursement.

6.3.2 Any payments for Recovery of Expenses as set out in section 6.2 shall be made by the Defendants for any Class Members with valid Claims, as determined by the Claims Administrator, within thirty days of notification by the Claims Administrator, following the close of the Claim Period, of the number of Class Members who made a valid claim and the value of each valid claim.

6.3.3 The entitlements of Approved Claimants shall be determined by a Claims Administrator to be appointed by the Ontario Court.

SECTION 7 EFFECT OF THIS SETTLEMENT AGREEMENT NOT BEING APPROVED

7.1 If a Final Order is not obtained from the Ontario Court or the Final Saskatchewan Order is not obtained:

- (a) this Settlement Agreement shall be null and void and shall have no force or effect, and the Parties shall not be bound by its terms;
- (b) any Conditional Certification Order made by the Ontario Court shall be set aside and all of the Parties shall maintain their rights to seek and oppose the certification of the Proceedings;
- (c) the Defendants will have no obligation to pay any fees granted to Class Counsel in conjunction with this Settlement Agreement; and
- (d) all negotiations, statements and proceedings relating to this Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties; the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed.

SECTION 8 NOTICES TO THE CLASS

8.1 The form, contents and method of dissemination of the Hearing Notice and the Approval Notice shall be agreed upon by the parties and approved by the Ontario Court. The cost of the Hearing Notice is included in Administrative Costs and shall be considered a non-refundable expense if this Settlement Agreement is not approved by the Ontario Court.

8.2 The Parties shall cooperate, assist one another and undertake all reasonable actions in order to ensure that all notices provided for herein are timely disseminated.

SECTION 9 CLAIMS ADMINISTRATION

9.1 Appointment of a Claims Administrator

The Parties shall propose a Claims Administrator to be appointed by the Ontario Court for the purpose of administering Claims and paying Approved Claimants as provided for in this Settlement Agreement.

9.2 Claims Administration

The Claims Administrator shall be responsible for implementing the Notice Plan and for administering claims in the manner to be agreed upon by the Parties and approved by the Ontario Court.

9.3 Confidentiality Obligations

The Claims Administrator and any person employed or retained by the Claims Administrator to assist in administering Claims and paying Approved Claimants must sign and observe a confidentiality statement in a form mutually agreeable to the Parties, by which such persons agree to keep confidential any information concerning Class Members. The Claims Administrator shall institute procedures to ensure that the identity of all Class Members and all information regarding their claims shall be kept confidential and not provided to persons except as may be provided in this Settlement Agreement or otherwise required by law.

9.4 Removal of the Claims Administrator

The Claims Administrator shall be subject to removal by the Ontario Court for cause, on motion by any of the Parties.

9.5 Liability of the Claims Administrator

The Claims Administrator shall not be held liable, absent negligence or fraud, in respect of the implementation and administration of this Settlement Agreement and any related accounting.

9.6 Defendants Have No Responsibility or Liability for Administration

Except for the obligation to pay for Administrative Costs, Credit Monitoring and the Recovery of Expenses as set out in this Settlement Agreement, the Defendants shall have no responsibility for and no liability whatsoever with respect to the administration and implementation of the Settlement Agreement. The Defendants shall pay a maximum cumulative total of \$250,000.00 to the Claims Administrator on account of Administrative Costs, upon receipt of invoices and appropriate supporting documentation of Administrative Costs incurred, within 90 days of receipt of any invoice and appropriate supporting documentation. Once \$250,000.00 has been paid in Administrative Costs the Defendants' obligation pursuant to

this section 9.6 of the Settlement Agreement is fulfilled and the Defendants have no further obligations with respect to this section.

SECTION 10 OPT-OUT PROVISIONS

10.1 Members of the Class may exercise their right to opt out of the Class pursuant to section 9 of the CPA by submitting an Opt-Out Form to the Claims Administrator by regular first class mail or courier, post-marked or submitted to the courier, as the case may be, before the Opt-Out Deadline.

10.2 The Claims Administrator shall provide the Parties with the Opt-Out Report, advising as to the number of Opt-Outs, the reasons for their opting-out, if known, and a copy of all information provided, including the Opt-Out Form within 10 days of the Opt-Out Deadline.

10.3 Class Members who do not opt out shall be bound by this Settlement Agreement and, in the absence of a timely Claim, shall not be entitled to any payment under this Settlement Agreement.

10.4 The Defendants shall maintain their right to terminate the Settlement Agreement in the event that more Class Members opt-out of the proceedings than provided for in a confidential agreement entered into by the Parties contemporaneously with the execution of this Settlement Agreement (and which shall be deemed to be part of this Settlement Agreement). The Defendants shall also maintain their right to waive the Opt-Out Threshold.

10.5 Class Counsel shall not act for Opt-Outs.

SECTION 11 SUBMITTING CLAIMS

11.1 Claims shall be submitted by Claimants by the Claim Deadline in a manner to be determined the Claims Administrator.

SECTION 12 WAIVER OF LIMITATION DEFENCE

12.1 Except as provided herein, no Class Member shall be considered ineligible to receive a payment pursuant to this Settlement Agreement on the basis of any statute of limitation or repose, prescription period or any other limitation or prescription defence.

12.2 Nothing in this Settlement Agreement shall constitute or be deemed to constitute a waiver by the Defendants of defences based on statutes of limitation or repose, prescription periods or any other limitation or prescription defence with respect to any Class Member who opts out.

SECTION 13 AMENDMENTS TO THE SETTLEMENT AGREEMENT

13.1 The Parties may amend the Settlement Agreement in writing, by consent and subject to the approval of the Ontario Court.

SECTION 14 LEGAL FEES AND DISBURSEMENTS

14.1 Counsel Fees shall be approved by the Ontario Court in conjunction with granting the Approval Order. As set out in section 7.1, any approved Counsel Fees shall not be payable if a Final Order is not obtained from the Ontario Court or the Final Saskatchewan Order is not obtained.

14.2 Class Members who retain lawyers to assist them in making their individual Claims pursuant to this Settlement Agreement or to appeal the classification or rejection of their Claim, shall be responsible for the legal fees and expenses of such lawyers.

SECTION 15 EXCLUSIVE REMEDY/EFFECT ON CLAIMS

15.1 This Settlement Agreement shall be the exclusive remedy for all Class Members who do not opt out.

15.2 On the Effective Date, every Settled Claim against the Released Parties shall be conclusively compromised, settled and released, and all Class Members who have not opted out shall be barred from initiating, asserting or prosecuting any Settled Claims against any other person, corporation or entity which might claim against any of the Released Parties damages and/or contribution and indemnity and/or other relief under the provisions of any statute, the common law, or any other statute for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature.

15.3 In consideration of the Settlement Payment as aforesaid, Class Counsel agree, on behalf of Class Members, that any prosecution of a Settled Claim in breach of section 15.2 shall cause irreparable harm to Defendants and other Released Parties, in respect of which a stay or injunction is an appropriate remedy. For the same consideration, Class Counsel agrees, on behalf of Class Members, to cooperate with Defendants and Released Parties in seeking such a stay or injunction.

SECTION 16 MISCELLANEOUS PROVISIONS

16.1 Ongoing Authority

The Ontario Court shall retain exclusive and continuing jurisdiction over the Ontario Proceeding for the purpose of supervising the approval, implementation and administration of this Settlement Agreement.

16.2 Motions for Directions

Any one or more of the Parties may apply to the Ontario Court for directions in respect of any matter in relation to this Settlement Agreement. All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

16.3 Recitals

The Parties represent and warrant that the recitals referred to in section 1 are accurate and agree that they form part of this Settlement Agreement.

16.4 Entire Agreement

This Settlement Agreement constitutes the entire agreement by and among the Parties with regard to the subject matter of this Settlement Agreement and, on the Effective Date, shall supersede any previous agreements and understandings between the Parties with respect to the subject matter of this Settlement Agreement.

16.5 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or its representative has the authority to bind the Party with respect to the matters set forth herein and has read and understood the Settlement Agreement;
- (b) the terms of the Settlement Agreement and the effects thereof have been fully explained to him, her or its representative by his, her or its counsel; and
- (c) he, she or its representative fully understands each term of the Agreement and its effect.

16.6 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, the Agreement on behalf of the Party for whom he or she is signing.

16.7 Counterparts

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

16.8 Party Notification

Any notification, request, instruction or other document to be given by any Party to any other Party to this Settlement Agreement (other than class notification to be provided in accordance with the Notice Plan and as otherwise set out in section 16.9 herein) shall be in writing,

- (a) if to the Defendants, jointly to the attention of Stikeman Elliott LLP, Attention: David Byers, 5300 Commerce Court West, 199 Bay Street, Toronto, ON M5L 1B9 and Torys LLP, Attention: John Laskin, 79 Wellington St. West, 30th Floor, Box 270, TD South Tower, Toronto, ON M5K 1N2
- (b) if to the Plaintiff or Class Members, to the attention of Flaherty McCarthy LLP, Attention: Sean A. Brown, Toronto-Dominion Centre, 95 Wellington Street West, 10th Floor, Suite 1000, Toronto, ON M5J 2N7 or to other recipients as the Ontario Court may order.

16.9 Class Member Notification

All communications from the Claims Administrator to Class Members may be made by email and sent to the email address provided by Class Members when they conducted transactions on the Website. In the event that the Claims Administrator receives notice that an email was not delivered, that Class Member shall receive notice by postal mail to the mailing address provided by the Class Member to the Claims Administrator or, where no mailing address has been provided to the Claims Administrator, to the mailing address provided by the Class Member when he or she conducted transactions on the Website. Where the contact information provided on the Website is no longer current, Class Members will be advised to provide current information to the Claims Administrator.

16.10 Currency

All dollar amounts set out in this Settlement Agreement are in Canadian Dollars.

16.11 Governing Law

For the purpose of the settlement of the Proceedings, this Settlement Agreement shall be governed by the laws of Ontario.

16.12 Severability

If any provision of this Settlement Agreement is held to be void or invalid, the same shall not affect any other provision and the remainder shall be effective as though such provision had not been contained herein.

16.13 Dates

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Ontario Court.

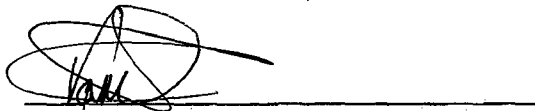
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Date: February 10, 2017



Sean A. Brown
FLAHERTY MCCARTHY LLP
Class Counsel

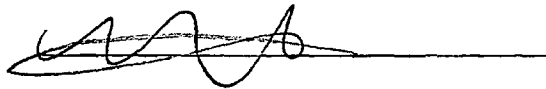
Date: February 11, 2017



per: David Byers
STIKEMAN ELLIOTT LLP

Lawyers for the Defendant, PNI Digital Media Inc.

Date: February 10, 2017



per John Laskin
TORYS LLP

Lawyers for the Defendant, Wal-Mart Canada
Corp. (incorrectly named as Walmart Canada Inc.
in the statement of claim)