Court File No. CV-20-00641059-00CL
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ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

OBJECTION

to

ALLOCATION of COSTS on a PRO RATA BASIS

re: the Settlement surrounding the winding up of PACE Securities, PACE Financial, and First Hamilton Holdings, et al

October 4, 2021 **submitted by: David Miller**

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PART I.

A. Introduction

In the matter of the Motion to Allocate Costs on a "Pro rata" basis,

- this objection is a request to the Court to:
  - deny the motion for a *"Pro rata allocation of costs"*, and
  - substitute an alternative allocation, based on the *"Flat fee allocation of costs"* or "*Equal fee allocation of costs*" substantially as visioned by Schedule 1, included below.

For greater certainty:

- this objection pertains only to the mathematical formulas used to "allocate **costs**" and how those costs are applied. Schedule 1 provides the details of the proposed flat fee or equal fee alternative to allocate costs.

- this objection does not pertain to the allocation of *gross settlement funds on a Pro rata basis*.

  The allocation of the "gross settlement dollars" using a proportionate formula was, and continues to be, recommended.

B. About the filer of this objection

This objection is submitted by, David Miller, 71, retired, a 50+ year PACE Credit Union member, an investor in First Hamilton Holdings. My background is in Information Technology (IT).

I am not a lawyer, although Representative Counsel, unknowingly through the numerous Motions filed, has provided me with some schooling the past 14 months.

In 2019, I was an unknowing, unsophisticated investor that (erroneously) understood my principal was insured. Only the interest was to be at risk. I trusted my bank and their salespeople. I've learned a lot since. My Preferred share investment in First Hamilton Holdings was held in 2 accounts; $63,500 in a registered TFSA, and $586,500 under a corporation non-registered account. The aggregate being $650,000.

This represents the bulk of my retirement savings. Since the demise of PACE Securities et al, I have been forced to adapt my lifestyle to living pension cheque to pension cheque. One had to adapt with no revenue from these investments in 2020 and 2021.

C. Definitions

i. ***"Gross settlement funds on a Pro rata basis"*** means a proportional mathematical formula based on:

- a claimant's original & validated investment, in dollars multiplied by the gross total settlement available, in dollars divided by the total validated investment claims, in dollars. OR

$$\frac{\text{(Claimant's Original and Validated Investment in \$\$)} \times \text{(Gross Total Settlement in \$\$)}}{\text{Total Validated Investment Claims in \$\$}}$$

ii. ***"Pro rata allocation of costs"*** **or** ***"Pro rata cost allocation"*** – a proportional mathematical formula based on:

- the total permitted Lawyer Fees, in dollars multiplied by a claimant's original & validated investment, in dollars divided by the total validated investment claims, in dollars. OR

$$\frac{\text{(Total Permitted Lawyer's Fees in \$\$)} \times \text{(Claimant's Original and Validated Investment in \$\$)}}{\text{Total Validated Investment Claims in \$\$}}$$

iii. ***"Flat fee allocation of costs"*** **or** ***"Flat fee cost allocation"*** **or** ***"Equal fee allocation of costs"*** – a proportional mathematical formula based on:

- the total permitted Lawyer Fees, in dollars divided by total number of Unique Households. OR

$$\frac{\text{Total Permitted Lawyer's Fees in \$\$}}{\text{Total Number of Unique Households}}$$

iv. **"Representative Counsel" or "PRRR"** means the law firm of **Paliare Roland Rosenberg Rothstein LLP**

PART II.

A. ***<u>What is the objective</u> when allocating or distributing costs ?***

Collectively, what is Representative Counsel, the Investor Claimants, and the Court trying to accomplish ?

1. The objective, as I understand it, should be:

   - allocate or distribute the costs of this action to each claimant household in proportion to services consumed. In other words, allocate the costs equally to each household.

2. To accomplish this objective, the distribution needs to be done:

   - fairly for each and every claimant household, without discrimination of any kind
   - quickly
   - efficiently
   - without regard to one's financial status or financial situation
   - without creating onerous additional administrative expense

3. Why, in proportion to services consumed ?

   Each and ever claimant household contributed to the costs in equal portions. There was and is no difference among claimant households during this action. Each claimant household contributed equally, thus it appears reasonable that each claimant household pays an equal share of the costs.

4. Why consider claimant household versus individual accounts ?

   In many cases, one household will have several accounts. It is reasonable to assume this was done for convenience, or for tax purposes, or income splitting among spouses and/or children. A pro rata or flat fee arrangement by individual account puts an undue burden on that household. It can be argued that only a household contributed to the overall costs. It seems unfair that a household with 5-6 accounts should endure 5-6 times the cost. Thus the proposed Schedule 1 Order includes and suggests <u>Unique Households</u> be used when allocating costs.

B. *Pro rata Cost Allocation is a TAX*

5. The mathematical formula behind Pro rata, as applied to the costs in this action, is a TAX levied against each claimant account.

Pro rata cost allocation TAX			
(estimated) Final Lawyer Fees		**Total Original Claims**	**TAX applied to each claimant to cover lawyer fees**
$ 5,000,000	divided by	$ 46,856,600	**10.671%**
$ 6,000,000	divided by	$ 46,856,600	**12.805%**

6. This TAX bears no relationship to the services provided by Representative Counsel or the services consumed by a claimant's account.

7. It is my understanding, private, non-government corporations do not have the authority to levy taxes, no matter how thinly guised. Yet, that is what is proposed in this action, a tax levied against each client account.

8. On this basis alone, the application of this TAX should be denied.

C. *Pro rata Cost Allocation results in Price Discrimination*

9. As visioned in the current Motion Application, pro rata cost allocation also results in a "price discrimination" scheme being levied against each and every PRRR client.

10. Each client account is about to receive a vastly different charge, in terms of dollars, for lawyer fees. Yet, each client received and consumed exactly the same legal services from PRRR.

11. Price discrimination may not be illegal, however I believe there is a moral obligation to charge each client equally, particularly when the services received are identical.

12. When you all eat from the same dinner buffet, the expectation is you all pay exactly the same price.

PART III.

A. Sample Profiles of Investor Claimants

1. Claimant Statistics Chart

For completeness, the following chart, Figure 1, shows what I believe to be a breakout of claimant accounts. The data was compiled from charts and other data provided by Representative Counsel and/or Farber's:

Lower Band	Upper Band	Count	Running Count	Sum	Running Sum	Average
$ -	$ 500.00	1	1	$ 500	$ 500	$ 500
$ -	$ 1,000.00	4	5	$ 4,000	$ 4,500	$ 1,000
$ 1,000.01	$ 4,999.99	13	18	$ 40,130	$ 44,630	$ 3,087
$ -	$ 5,000.00	7	25	$ 35,000	$ 79,630	$ 5,000
$ 5,000.01	$ 10,000.00	73	98	$ 674,650	$ 754,280	$ 9,242
$ 10,000.01	$ 15,000.00	36	134	$ 482,430	$ 1,236,710	$ 13,401
$ 15,000.01	$ 25,000.00	81	215	$ 1,641,720	$ 2,878,430	$ 20,268
$ 25,000.01	$ 50,000.00	145	360	$ 5,605,590	$ 8,484,020	$ 38,659
$ 50,000.01	$ 74,999.99	63	423	$ 3,810,960	$ 12,294,980	$ 60,491
$ 75,000.00	$ 99,999.99	46	469	$ 3,959,000	$ 16,253,980	$ 86,065
$ -	$ 100,000.00	47	516	$ 4,700,000	$ 20,953,980	$ 100,000
$ 100,000.01	$ 200,000.00	52	568	$ 8,132,250	$ 29,086,230	$ 156,389
$ 200,000.01	$ 500,000.00	35	603	$ 12,057,190	$ 41,143,420	$ 344,491
$ 500,000.01	$ 750,000.00	5	608	$ 3,040,180	$ 44,183,600	$ 608,036
$ 750,000.01	$ 1,000,000.00	1	609	$ 1,000,000	$ 45,183,600	$ 1,000,000
$ 1,000,000.01	Maximum	1	610	$ 1,673,000	$ 46,856,600	$ 1,673,000
	Totals	610		$ 46,856,600		
Figure 1						

2. Excerpt - Motion Record from Representative Counsel - December 22, 2020

17. The following three examples are recent communications received from Investor Claimants that are also illustrative of the communications received from Investor Claimants at large:

(a) RM is a 71 year old retired clerk who worked at Enbridge and earned $42,000 in his last year of active employment. He and his wife invested all their money—about $120,000—in the Preferred Shares. He says that they worked hard to save that money, and scrimped their whole lives. He describes the loss as life-changing and terrible for them. They have been looking for financial help. He expressed frustration with the Credit Union and says that they have done nothing but talk. He needs a resolution.

(b) CK and JK are husband and wife. They retired in March 2020. Together they had invested nearly half a million dollars in the Preferred Shares, representing approximately half of their retirement savings. Their financial plan is dependent on those funds, and they need to know the time frame for resolution so that they can plan accordingly.

(c) JS and DS are husband and wife. They are both 75 years old and retired. They invested $175,000 in the Preferred Shares – which represents a substantial portion of their retirement savings. They are both long time members of the Credit Union. They say they would not have invested in PFL if the company had not been owned by the Credit Union. They are very concerned by the Credit Union's failure to deal with their losses in a timely manner. They are worried that if this process is dragged out, they won't be alive by the time a resolution is reached.

The above households represent just a small sample of the unsophisticated and vulnerable "mom & pop" investors that went "all in", invested, and lost a substantial portion of their retirement savings.

It is these people who are being asked via the mathematics behind "pro rata cost allocation" to subsidize the lawyer fees for those that had very little invested.

This TAX just adds to their burden.

The mathematics behind "flat fee cost allocation" favours no one with respect to cost sharing. Every household contributes equally towards the lawyer fees.

B. Hardship Investors

"Hardship" cases should **NOT** be a consideration when allocating costs. Taken individually, each investor case would be:

- unique
- subject to abusers of the process. If given the opportunity, most savvy investors will jump on the "hardship" bandwagon, in hopes of extracting more
- time consuming
- expensive to identify, and
- difficult to properly vette

none of which, we can afford to do.

However, I recognize the Court may be asked by proponents of "pro rata cost allocation" to acknowledge and consider the presence of "hardship" investors when allocating costs. If we were to take a realistic look at a cross-section of investors, where on the chart do the vast majority of hardship cases exist ?

An analysis of a few sample investments might be in order.

Sample Amount Invested	2019 Potential Revenue - pre-tax @ 5%-7%	2019 Potential Revenue – post-tax @ a modest 30% tax rate, ignoring any dividend gross ups and tax credits	2020 Actual Revenue	2021 Actual Revenue
$ 10,000	$ 500 - $ 700	$ 350 - $ 490	$0	$0
$ 25,000	$ 1250 - $ 1750	$ 875 - $ 1225	$0	$0
$ 50,000	$ 2500 - $ 3500	$ 1750 - $ 2450	$0	$0
$ 75,000	$ 3750 - $ 5250	$ 2625 - $ 3675	$0	$0
$ 100,000	$ 5000 - $ 7000	$ 3500 - $ 4900	$0	$0

Figure 2

Depending upon ones view of the above post-tax revenue, 2019 investments in the amounts >$50,000 start to generate meaningful annual revenue.

In 2020 and 2021, hardship case or not, these Preferred share investments generated $0 in revenue.

Investments in the amounts <$50,000 generate insignificant revenue on their own, and are more likely than not, to be a small part of another larger portfolio that we are not privy to.

Thus one could reasonably conclude, it is more likely than not, that the vast majority of “hardship” cases reside in the investment area >$50,000 where the claimants went “all in” and had their entire investment portfolio tied to this one action at PACE Securities, et al.

C. Small $$ Investor Household

During a few conversations I had with a very limited number of small $$ investors, the head of the household volunteered they had already written off their PFL/FHH investments and moved on. Why ? Because their investments were small, the annual income was small, and they could afford too.

They also revealed they were anxious to join as a “free ride” with the larger claimant group because, one day, it might mean some “unexpected” money, with no risk on their part.

Regardless of the small sample size of conversations, or one’s specific circumstances, or their amount invested, it is still clear that each small $$ investor household and large $$

investor household contributed equally to the overall costs of this action. Accordingly, it is my opinion, there is reasonable justification to allocate costs on that basis.

D. Effect of Flat Fee Cost Allocation on Small $$ Investor Households

Multiple requests for access to appropriately redacted but precise investor claimant data has been denied to those raising this objection. As a result, I am not able to perform a comprehensive analysis of the data and I have been relegated to using best estimates.

With the adoption of flat fee cost allocation, it is my best estimate there are approximately 89 households that would receive no payout.

This is due to the aggregated low $$ value of their investments. Lawyer fees attributed to “flat fee” will take up an estimated $10,000-$12,000 of any payout.

Should the Court be concerned with a small $$ investor household being left behind, I would again suggest:

- the small $$ portfolios (as did all portfolios) generated $0 in revenue for the years 2020 and 2021. Therefore, it is more likely than not, that the vast majority of small $$ investor households have portfolios, located elsewhere, to fall back on.

E. Greed / Bias Perception

Throughout the cost allocation process, much criticism has been directed at those supporting a flat fee cost allocation.

Bias exists in <u>both</u> camps:

- with pro rata cost allocation, the disparity is clear. Those with less invested:
    - want to pay significantly less for the services they consumed.
    - expect to be subsidized by those that had more invested.

- flat fee cost allocation proposes only that each household pay for the services they received and consumed. Given that each household consumed legal services in equal proportions, I would ask the Court to allocate the costs of legal services, equally.

Figures 3 and 4 below, outline the disparity in lawyer fees. Figure 3 reflects lawyer fees @ $5,000,000 threshold while Figure 4 reflects the lawyer fees @ $6,000,000 threshold.

The break even point is ~ $93,150 in both cases.

Disparity in Lawyer Fees - Pro rata cost allocation vs Flat Fee cost allocation - @ $ 5,000,000 threshold

(estimated) Number of UNIQUE Hosueholds	(estimated) Final Lawyer Fees	Gross Settlement	Total Original Claims		Total $$ Lost
503	$ 5,000,000	$ 40,000,000	$ 46,856,600		$ 11,856,600

Sample of Household Original Investments	Gross Settlement Recovery on Pro rata basis	TAXED @ 10.671% (estimated) Pro rata Lawyer Fees	(estimated) Flat Fee Lawyer Fees	Net Settlement Recovery (based on Pro rata Lawyer Fees)	Net Settlement Recovery (based on Flat Fee Lawyer Fees)	Contribution to Settlement (using Pro rata basis)	Contribution to Settlement (using Flat Fee basis)	
$ 5,000	$ 4,268	$ 534	$ 9,940	$ 3,734	$ -	$ 1,266	$ 5,000	
$ 10,000	$ 8,537	$ 1,067	$ 9,940	$ 7,470	$ -	$ 2,530	$ 10,000	
$ 15,000	$ 12,805	$ 1,601	$ 9,940	$ 11,204	$ 2,865	$ 3,796	$ 12,135	
$ 25,000	$ 21,342	$ 2,668	$ 9,940	$ 18,674	$ 11,402	$ 6,326	$ 13,598	
$ 50,000	$ 42,683	$ 5,335	$ 9,940	$ 37,348	$ 32,743	$ 12,652	$ 17,257	
$ 75,000	$ 64,025	$ 8,003	$ 9,940	$ 56,022	$ 54,085	$ 18,978	$ 20,915	
$ 93,150	$ 79,519	$ 9,940	$ 9,940	$ 69,579	$ 69,579	$ 23,571	$ 23,571	<<<<<
$ 100,000	$ 85,367	$ 10,671	$ 9,940	$ 74,696	$ 75,427	$ 25,304	$ 24,573	
$ 250,000	$ 213,417	$ 26,677	$ 9,940	$ 186,740	$ 203,477	$ 63,260	$ 46,523	
$ 500,000	$ 426,834	$ 53,354	$ 9,940	$ 373,480	$ 416,894	$ 126,520	$ 83,106	
$ 750,000	$ 640,251	$ 80,031	$ 9,940	$ 560,220	$ 630,311	$ 189,780	$ 119,689	
$ 1,000,000	$ 853,668	$ 106,709	$ 9,940	$ 746,959	$ 843,728	$ 253,041	$ 156,272	

Figure 3

Disparity in Lawyer Fees - Pro rata cost allocation vs Flat Fee cost allocation - @ $ 6,000,000 threshold					
(estimated) Number of UNIQUE Hosueholds	(estimated) Final Lawyer Fees	Gross Settlement	Total Original Claims		Total $$ Lost
503	$ 6,000,000	$ 40,000,000	$ 46,856,600		$ 12,856,600

Sample of Household Original Investments	Gross Settlement Recovery on Pro rata basis	TAXED @ 12.805% (estimated) Pro rata Lawyer Fees	(estimated) Flat Fee Lawyer Fees	Net Settlement Recovery (based on Pro rata Lawyer Fees)	Net Settlement Recovery (based on Flat Fee Lawyer Fees)	Contribution to Settlement (using Pro rata basis)	Contribution to Settlement (using Flat Fee basis)	
$ 5,000	$ 4,268	$ 640	$ 11,928	$ 3,628	$ -	$ 1,372	$ 5,000	
$ 10,000	$ 8,537	$ 1,281	$ 11,928	$ 7,256	$ -	$ 2,744	$ 10,000	
$ 15,000	$ 12,805	$ 1,921	$ 11,928	$ 10,884	$ 877	$ 4,116	$ 14,123	
$ 25,000	$ 21,342	$ 3,201	$ 11,928	$ 18,141	$ 9,414	$ 6,859	$ 15,586	
$ 50,000	$ 42,683	$ 6,403	$ 11,928	$ 36,280	$ 30,755	$ 13,720	$ 19,245	
$ 75,000	$ 64,025	$ 9,604	$ 11,928	$ 54,421	$ 52,097	$ 20,579	$ 22,903	
$ 93,150	$ 79,519	$ 11,928	$ 11,928	$ 67,591	$ 67,591	$ 25,559	$ 25,559	<<<<<
$ 100,000	$ 85,367	$ 12,805	$ 11,928	$ 72,562	$ 73,439	$ 27,438	$ 26,561	
$ 250,000	$ 213,417	$ 32,013	$ 11,928	$ 181,404	$ 201,489	$ 68,596	$ 48,511	
$ 500,000	$ 426,834	$ 64,025	$ 11,928	$ 362,809	$ 414,906	$ 137,191	$ 85,094	
$ 750,000	$ 640,251	$ 96,038	$ 11,928	$ 544,213	$ 628,323	$ 205,787	$ 121,677	
$ 1,000,000	$ 853,668	$ 128,050	$ 11,928	$ 725,618	$ 841,740	$ 274,382	$ 158,260	

Figure 4

F. Bucketing of Investor Claimants

I fully concur with Representative Counsel's statement, quoted from their Motion Record:

"At no time in the course of our engagement leading up to the Settlement, would we have entertained a proposal to segregate or "bucket" Investor Claimants."

Throughout the course of this action every attempt has been made to treat every Investor Claimant equally.

Why are we deviating from that now, and putting Investor Claimants into buckets when allocating costs ?

The mathematics behind "pro rata cost allocation" clearly creates two (2) buckets:

- one bucket of investors with < $93,150 invested, and
- one bucket of investors with > $93,150 invested.

The results being:

- those claimants with > $93,150 invested subsidize those with < $93,150 invested.

This pits one "bucket" of investor claimants in direct opposition of the other. A situation "flat fee cost allocation" avoids.

The mathematics behind "flat fee cost allocation" maintains Representative Counsel's original intent, no segregation or bucketing of Investor Claimants. Every claimant household is treated equally with respect to costs. Again, when we all eat at the same dinner buffet, the expectation is we all pay exactly the same price.

PART IV.

A. Legal Precedent

In discussions with Representative Counsel, it has been suggested that there is legal precedent for "pro rata allocation of costs". This may be true, but I do not believe that is the only answer.

Nevertheless, in settlement cases, there also appears to be recent legal precedent for "flat fee allocation of costs". I refer specifically to the February 2021, PayPal Currency Conversion Class Action Settlement, where approximately 4 million claimants, all with varying degrees of damages, settled for gross $10 million with $2.5 million in legal fees.

The settlement documents indicate a pro rata allocation, yet the mathematical formula ordered by the Court is in fact, "flat fee".

Reference….. Appendix "A" - Schedule G - Distribution Protocol of the PayPal Settlement

https://www.paypalclassactionsettlement.ca/docs/en/PayPal%20Settlement_Distribution%20Protocol%20(Schedule%20G).pdf

> Quotes from Schedule G:
>
> 1. The Settlement Fund will be distributed pro rata to Class Members who meet the criteria of the Active Group set out in paragraph 2.
>
> 6. Each Active Group Member will be entitled to an equal share of the Settlement Fund (the "pro rata amount"). The pro rata amount will be determined by dividing the Settlement Fund by the number of Active Group Members, and is currently estimated to be in the range of CAD $1.85.

As quoted, Item #1 and #6 of that distribution protocol both state pro rata. However item #6 defines pro rata "as an equal share" and is calculated by "dividing the Settlement Fund by the number of Active Group Members." This is equivalent to "flat fee", inasmuch as the Ordered payout was:

$$\frac{\text{(Gross Settlement Funds} - \text{Total Lawyer Fees)}}{\text{number of Active Group members}} = \text{Individual Claimant Payout}$$

which is, mathematically, exactly the same as:

$$\frac{\text{Gross Settlement Funds}}{\text{number of Active Group Members}} - \frac{\text{Total Lawyer Fees}}{\text{number of Active Group Members}} = \text{Individual Claimant Payout}$$

written (Gross Settlement Funds "divided by" number of Active Group Members) "minus" (Total Lawyer Fees "divided by" number of Active Group Members) = Individual Claimant Payout .

I would suggest that this is sufficient legal precedent for the Court to:

- allocate the Gross Settlement Funds using the standard pro rata formula, and
- allocate the costs using the flat fee formula; Total Lawyer Fees divided by number of Unique Households.

B. Implementation of Schedule 1 Proposal

It is my understanding, the master investor claimant data list, maintained by Representative Counsel or possibly by the Liquidator, Ernst & Young, is generally in a spreadsheet format.

If this is the case, there are spreadsheet tools that can be used to avoid any perceived, onerous, mathematical efforts in implementing the flat fee proposal described in Schedule 1.

I again offer my services, without charge, to Representative Counsel or their assignee to suggest effective ways it might be done. They are free to have any suggested method independently verified.

C. Summary and Recommendations

It is my desire that the Court takes into consideration:

- pro rata cost allocation is an unjust TAX levied against the most vulnerable
- private corporations do not have the authority to levy taxes, even when thinly guised as pro rata cost allocation
- there is legal precedent to allocate costs, equally, on a flat fee basis
- flat fee avoids “bucketing” of investors and their households
- each household received and consumed <u>exactly</u> the same service from Representative Counsel
- that a flat fee cost allocation scenario is fair, reasonable, and just for the vast majority of harmed households

and issues an Order that:

- costs are to be allocated on a flat fee basis to each household, substantially to that outlined within Schedule 1, included below.

SCHEDULE 1

DISTRIBUTION PROTOCOL

1. Preliminary Calculations and Adjustments

    a) eliminate claims having gifted shares.

    b) eliminate claims having related shares. These would be any defendants holding investment shares in PACE Securities, PACE Financial, and/or First Hamilton Holdings.

    c) of the remaining claims, determine the number of Unique Households represented by those claims.

    Unique Households would be determined by the mailing address on file at the Liquidator's, Ernst & Young or Representative Counsel. A claim with the same mailing address as another claim qualifies for consolidation into the same Unique Household. This number becomes the "Unique Households" in determining the flat fee distribution of costs. The intent is to allocate only 1 share of the overall costs to one household, and avoid the situation where one household may have 2 to 6 accounts, and be charged multiple times.

    Alterations to mailing address(es) occurring after the official start of mediation, April 21, 2021, will not be considered for Unique Households purposes. Corrections to mailing address(es) which are not designed to circumvent the Unique Household calculation should be permitted at Representative Counsel's sole discretion.

2. Gross Payout on any individual claim

    a) the formula for gross payout of an individual claim is based on pro rata:

    $$\frac{\text{(Claimant's Original Investment in \$\$)} \times \text{(Gross Total Settlement in \$\$)}}{\text{Total Investment Claims in \$\$}}$$

    b) the result being the Gross Payout for that individual claim

3. Flat Fee Allocation of Costs to an individual claim

   a) the base formula for allocating cost on a flat fee basis is:

   $$\frac{\text{Total Permitted Lawyer's Fees in \$\$}}{\text{Total Number of Unique Households}}$$

   (written Total Permitted Lawyer Fees in $$ divided by Total Number of Unique Households)

   b) divide the result of 3.a) by the number of individual claims held at that Unique Household

   c) the result of 3.b) equals the flat fee allocated to that individual claim.

4. Net Payout to an individual claim

   a) the net payout process will proceed in a sorted order, such that all claims will be processed one at a time, in ascending order:
      - starting by Unique Household with the total lowest value claim, and
      - individual claims within that Unique Household, starting with the lowest claim until all claims in that Unique Household are complete.

   b) the net payout to an individual claim is determined by subtracting the results of 3.c) above from the results of 2.b) above:

   Gross Payout minus Flat Fee Allocation of Costs = Net Payout

   c) if, at any time, the Net Payout of an individual claim becomes negative, the Flat Fee Allocation of Costs will be adjusted such that:

      - the Net Payout of that individual claim will revert to “zero”.

      - no claimant will be asked to make up any negative difference.

      - any negative amount will:

        1) first, be allocated equally to the remaining claims within the same Unique Household.

        2) second, any remaining negative amount will be added back to the overall pool of Flat Fee costs, where it will be redistributed equally amongst all remaining Unique Households.

APPENDIX "A"

PAYPAL CURRENCY CONVERSION CLASS ACTION SETTLEMENT

SCHEDULE G

DISTRIBUTION PROTOCOL

1. The Settlement Fund will be distributed pro rata to Class Members who meet the criteria of the Active Group set out in paragraph 2.

2. A Class Member is a member of the Active Group if they satisfy the following criteria:

    a. Person who are Canadian residents who purchased goods or services between January 14, 2017 and August 8, 2018, using the Defendants' payment system in a currency other than the currency in which the goods or services were offered for sale;

    b. who are PayPal accountholders;

    c. whose account was still open as of August 2020;

    d. who completed at least one transaction with their PayPal account between August 9, 2019 and January 1, 2021; and

    e. whose account is not restricted as of the date of payment.

3. The Defendants will identify the members of the Active Group using PayPal's records and applying the criteria in paragraph 2.

4. The Defendants Shall create an Active Group Member List which will contain the following information:

    a. Full name; and

    b. Email address.

5. The Active Group Member List will be provided to Class Counsel and the Claims Administrator within seven (7) days of the Second Order (the order approving this Settlement Agreement).

6. Each Active Group Member will be entitled to an equal share of the Settlement Fund (the "pro rata amount"). The pro rata amount will be determined by dividing the Settlement Fund by the number of Active Group Members, and is currently estimated to be in the range of CAD $1.85.

7. Within 14 days after the Settlement Amount is transferred into the Account, PayPal will commence the distribution of the Settlement Fund on a pro rata basis by depositing the Amount directly into Active Group Members' PayPal accounts. PayPal has begun preparations for this process as of the date on which the Parties executed the Settlement Agreement. PayPal will engage a designated team to

complete the distribution as soon as reasonably possible, though it is anticipated that this process will require several months.

8. As per Article 5.4(a) of the Settle Agreement, PayPal will provide monthly progress reports by email to the Claims Administrator and class counsel regarding the number of payments completed and amounts distributed.

9. It is agreed and understood that the Amounts deposited in the Active Group Members' PayPal accounts will be available for the Active Group Member to use as they see fit and will not revert to PayPal. PayPal undertakes to not introduce or modify any policy or practice that could result in reversion of the Amounts to PayPal for a period of 36 months following the completion of the distribution.

10. Sixty (60) days after the last payment has been made by the Defendants to Active Group Members, the Defendants shall pay any amount remaining in the Settlement Fund as follows:

    a. 20% to the Fonds d'aide;

    b. 80% to the Law Foundation of Ontario.

11. As per Article 5.4(b) of the Settle Agreement, within ninety (90) days following the distribution of the Settlement Fund in accordance with the Distribution Protocol, the Claims Administrator will confirm the following (the "**Rendering of Account**") in a report:

    a. The number of Class Members in the Ontario Action who were paid out of the Settlement Fund;

    b. The amount distributed to Class Members in the Ontario Action;

    c. The number of Class Members in the Quebec Action who were paid out of the Settlement Fund;

    d. The amount distributed to each Class Member in the Quebec Action; and

    e. The balance, if any, remaining from the Settlement Fund.