KING'S BENCH FOR SASKATCHEWAN

Citation: **2025 SKKB 10**

Date: **2025 01 15**
File No.: QBG-RG-00679-2018
Judicial Centre: Regina

BETWEEN:

CRYSTAL WATCH

PLAINTIFF/APPLICANT

- and -

LIVE NATION ENTERTAINMENT INC., LIVE NATION WORLDWIDE INC., TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA LP, TICKETMASTER L.L.C., THE V.I.P. TOUR COMPANY, TICKETSNOW.COM INC., and TNOW ENTERTAINMENT GROUP INC.

DEFENDANTS/RESPONDENTS

Appearing:

E.F. Anthony Merchant, K.C., Iqbal S. Brar, and Dr. Jaclynn Watters	for the plaintiff/applicant
Chris Richter and James Gotowiec	for the defendants/respondents

JUDGMENT
January 15, 2025

MITCHELL J.

I. OVERVIEW

[1] The representative plaintiff, Crystal Watch [plaintiff], applies pursuant to s. 38 of *The Class Actions Act*, SS 2001, c C-12.01 [*CAA*] for an order approving the proposed settlement agreement dated August 8, 2024 [settlement agreement] as against Live Nation Entertainment Inc., Live Nation Worldwide Inc., TicketMaster Canada Holdings ULC, TicketMaster Canada LP, TicketMaster L.L.C., The V.I.P. Tour Company, Ticketsnow.com, Inc., and TNow Entertainment Group Inc. [defendants].

Additionally, the plaintiff seeks an order approving the Settlement Claims Notice, Notice Plan, Class Counsel Fees, and an honorarium for the plaintiff.

[2] This action was commenced by way of a statement of claim issued on December 2, 2015.

[3] As set out in her second amended statement of claim filed on August 6, 2019, the plaintiff alleges, amongst other things, that the defendants breached the *Competition Act*, RSC 1985, c C-34; consumer protection legislation from all Provinces in Canada, as well as *The Ticket Sales Act*, SS 2010, c T-13.1, when selling and distributing tickets to members of the public for events in Saskatchewan and the rest of Canada.

[4] I certified certain aspects of the plaintiff's proposed class action in a fiat indexed at *Watch v Live Nation Entertainment Inc.*, 2022 SKKB 259 [*Watch 2022*]. In that fiat, I certified the "drip pricing claim". "Drip pricing" is the practice of building hidden fees and surcharges into the online purchasing process, which are only revealed once the purchaser moves closer to the actual purchase. However, I declined to certify the "Trade Desk", or secondary market claim.

[5] Subsequently, both the plaintiff and the defendants obtained leave to appeal my certification decision to the Saskatchewan Court of Appeal. See: *Live Nation Entertainment Inc. v Crystal Watch* (31 July 2023) Saskatchewan, CACV4119 (Sask CA); and *Crystal Watch v Live Nation Entertainment Inc.* (31 July 2023) Saskatchewan, CACV4120 (Sask CA). The hearing of those appeals originally scheduled for April 2024 have been adjourned pending approval of the settlement agreement.

[6] Concurrent with this litigation, counsel for the parties engaged in a mediation process commencing in late 2022 and continuing well into 2023. These sessions were guided by the Honourable Warren K. Winkler, O.C., O. Ont., K.C. At its

conclusion, the parties did not reach a resolution of this dispute, yet settlement negotiations continued into 2024.

[7] Ultimately, the parties achieved the proposed settlement agreement for the Saskatchewan litigation and executed it on August 8, 2024. This settlement agreement, of course, was subject to Court approval.

[8] After hearing submissions from counsel respecting the appropriateness of the settlement agreement on December 6, 2024, I reserved my decision.

[9] On December 30, 2024, I issued my order approving the settlement agreement in its entirety. I determined it to be fair and reasonable, and in the best interests of the class members. Accordingly, I approved it pursuant to s. 38 of the *CAA*.

[10] I also approved the contingency fee retainer agreement made between the plaintiff and class counsel pursuant to ss. 41(2) of the *CAA*.

[11] Finally, and after some hesitation, I approved the proposed honorarium for the plaintiff as fair and reasonable in these circumstances.

[12] In my endorsement accompanying the order, I advised the parties written reasons explaining my conclusions would follow. I now provide those reasons.

II. BACKGROUND

A. Events Leading to the Settlement Agreement

[13] As noted, counsel for the plaintiff commenced this class action on March 7, 2018, and filed a more detailed second amended statement of claim on August 6, 2019.

[14] A five-day certification hearing was held in September 2020.

[15] Certain aspects of the proposed class action were certified: *Watch 2022*. As noted, an appeal and a cross-appeal were launched against this certification decision, and those proceedings are currently adjourned pending approval of the settlement agreement achieved in this matter.

[16] Concurrently, the parties participated in a mediation process conducted by the Honourable Warren Winkler, attempting to resolve this litigation. This process did not result in a settlement. However, following its conclusion, the parties continued arms-length and hard-fought negotiations into 2024.

[17] At the conclusion of those negotiations, a proposed settlement agreement was achieved.

B. The Settlement Agreement

[18] The settlement agreement was completed and executed on August 8, 2024.

[19] At the risk of oversimplifying its detailed provisions, the settlement agreement included the following significant terms:

a) A claims process to compensate certain members of the settlement class with a credit voucher that can be used to make a ticket purchase from TicketMaster in the form of a single, transferable, non-refundable, and non-cash controvertible electronic gift-card of $45, with the final value to be determined in accordance with the settlement agreement with no expiry date but subject to certain terms and conditions;

b) Only a "Credit Eligible Class Member" defined in the settlement agreement as an individual who purchased a ticket from January 1,

2018, through June 30, 2018, will be eligible to claim a credit voucher once the settlement agreement is approved;

c) The global settlement agreement has a total value of $6,027,000. This amount will be subject to deductions for administration expenses, class counsel fees, and disbursements, the plaintiff's honoraria, and applicable taxes as approved; and

d) At the conclusion of the distribution process should any of the settlement amount remain, this amount will be paid out in the form of cash or cheque, on a *cy-près* basis, to organization(s) selected by TicketMaster and the plaintiff subject to further Court approval.

[20] Class counsel legal fees, disbursements, and all applicable taxes are to be paid out of the global settlement amount. Class counsel have requested Court approval of legal fees in the amount of $1,725,000 and applicable taxes, as well as disbursements in the amount of $83,829.04.

[21] Counsel have also requested an honorarium for the representative plaintiff, Ms. Watch, in the amount of $25,000.

C. Events Leading to the Settlement Hearing

[22] On October 15, 2024, this Court issued an order, the terms of which included amending the certification of this class action for settlement purposes; appointing RicePoint Administration Inc. as the claims administrator [Claims Administrator]; the pre-approval notice program and respective notices.

[23] Following the issuance of this order, the Claims Administrator sent e-mails to 3,504,697 putative class members who had been identified by the defendants. Of those e-mails, 3,273,604 were successfully delivered and 231,093 were not. This

meant that approximately 93.4% of the putative class received notice of this settlement agreement.

[24] Notifications were also included on other news and social websites including CTV, Toronto.com, and DailyHive.com.

[25] As of December 3, 2024, the Claims Administrator received 37 valid opt-out elections and 1 valid objection.

[26] At the approval hearing held on December 6, 2024, counsel for the plaintiff, and for the defendants made oral submissions supporting the settlement agreement and urged me to approve it. Counsel for the defendants took no position respecting the fees requested by class counsel or for the proposed honorarium for the plaintiff.

III. LAW RESPECTING CLASS ACTION SETTLEMENTS

[27] Section 38 of the *CAA* provides that a class proceeding may only be settled with approval of the Court. Upon approval, class members who have not opted out are bound by the terms of settlement.

[28] It is well-settled that only a proposed settlement deemed to be fair, reasonable, and in the best interests of the class members as a whole may be approved. See: *Driediger v Ashley Furniture Industries Inc.*, 2010 SKQB 437, [2011] 8 WWR 804 [*Driediger*]; and *Perdikaris v Purdue Pharma Inc.*, 2018 SKQB 86 at para 14, 17 CPC (8th) 119 [*Perdikaris*].

[29] Public policy favors settling complex consumer protection disputes. There is a strong presumption of fairness in matters where a proposed final settlement has been negotiated by experienced class counsel at arm's length and presented to the Court for approval. Such counsel are in a unique position to assess the risks and rewards

of the litigation, and their recommendations should be accorded considerable weight by a reviewing Court. See, for example: *Wilson v Depuy International Ltd.*, 2018 BCSC 1192 at para 60 [*Wilson*]; and *McLean v Cathay Pacific Airways Limited*, 2021 BCSC 1456 at para 27 [*McLean*], quoting *Jones v Zimmer GMBH*, 2016 BCSC 1847 at para 36, 92 CPC (7th) 65 [*Jones*].

[30] To satisfy this standard, a proposed settlement need only fall within a zone of reasonableness. Perfection in all respects is neither expected nor demanded. See: *Perdikaris* at para 14; and *Driediger* at para 11, quoting *Parsons v Canadian Red Cross Society* (1999), 40 CPC (4th) 151 (QL) (Ont Sup Ct) at para 69.

[31] That said, when called upon to approve a proposed settlement agreement pursuant to s. 38 of the *CAA*, which is agreed to by all parties, a reviewing Court should not function simply as a "rubber stamp". See, for example: *Hardwick v Blue Buffalo Company Ltd.*, 2021 ONSC 5297 at para 12 [*Hardwick*]. Rather, like any proposed settlement agreement, such an agreement must be scrutinized with care. See: *Dabbs v Sun Life Assurance Co. of Canada* (1998), 40 OR (3d) 429 (QL) (Ont Gen Div) at para 30, aff'd (1998), 165 DLR (4th) 482 (Ont CA), quoted in *Driediger* at para 12.

[32] A reviewing Court cannot change or alter in any way the terms of the negotiated settlement presented to it. All it can do is either approve or reject the proposed settlement agreement. See, for example: *Jones* at para 37; and *Wilson* at para 60.

[33] Canadian Courts have identified a non-exhaustive list of factors for consideration when assessing the reasonableness of a proposed settlement. These include:

a) The likelihood of recovery or the likelihood of success;

b) The amount and nature of discovery evidence;

c) Settlement terms and conditions;

d) Recommendations and experience of counsel;

e) Future expense and likely duration of litigation;

f) Recommendations of neutral parties, if any;

g) Number of objectors and nature of objections;

h) Presence of good faith and absence of collusion;

i) Degree and nature of communications by counsel and the representative plaintiffs with class members during litigation;

j) Information conveying to the Court the dynamics of, and the positions taken by the parties during litigation; and

k) If counsel fees were negotiated, how big a factor are they.

See for example: *Fakhri v Alfalfa's Canada Inc. cba Capers*, 2005 BCSC 1123 at para 8, 47 BCLR (4th) 379; *Wilson* at para 61; *McLean* at para 29; *Perdikaris* at paras 19; and *Fiddler v Janssen Inc.*, 2023 SKKB 29 at para 20 [*Fiddler*].

[34] In *Jeffery v Nortel Networks*, 2007 BCSC 69 at para 28, 68 BCLR (4th) 317 [*Jeffery*], for example, Groberman J. (as he then was) helpfully distilled the many factors relevant when approving a class action settlement agreement into the following "four broad questions":

> [28] …
>
> - Has counsel of sufficient experience and ability undertaken sufficient investigations to satisfy the court that the settlement is based on a proper analysis of the claim?

- Is there any reason to believe that collusion or extraneous considerations have influenced negotiations such that an inappropriate settlement may have been reached?

- On a cost/benefit analysis, are the plaintiffs well-served by accepting the settlement rather than proceeding with the litigation? and

- Has sufficient information been provided to the members of the class represented by representative plaintiffs, and, if so, are they generally favourably disposed to the settlement?

See also: *Perdikaris* at para 19, quoting *Driediger* at para 13, and *Fiddler* at para 20.

IV. ANALYSIS

A. Should the Settlement Agreement Be Approved?

[35] I have carefully reviewed the various affidavits filed on this application, as well as the settlement agreement itself. I have also considered the helpful oral submissions of counsel. I am persuaded that the settlement agreement is fair, reasonable, and in the best interests of the class members as a whole for the following reasons.

1. Risks of Proceeding to Trial

[36] Plaintiff's counsel acknowledged both the procedural and substantive risks they faced should this matter proceed to trial. Such a trial would require evidence from expert witnesses, some of them from outside Canada whose attendance might have to have been compelled. As well, any judgment following the common issues trial would be amenable to appeal as of right. A further appeal to the Supreme Court of Canada would be plausible.

[37] Plaintiff's counsel were also alive to the significant legal challenges they faced. They acknowledged, for example, that the issue of "deception" raised in the

pleadings was an individual issue which could be difficult to prove in many cases, particularly where the claimant had utilized the websites on previous occasions.

[38] They conceded, as well, that the "ultimate" defense which the defendants would proffer, namely that purchasers could have ended their purchases once they became aware of the extra fees, was a powerful one. It would be a hard-fought battle at trial to overcome this line of argument. At least, the settlement agreement offers compensation to all purchasers without needing to prove they were deceived or forced to purchase the tickets even knowing about the additional fees.

[39] I am persuaded that in view of these evidentiary and substantive hurdles, the settlement is not only reasonable but likely the best result class counsel could achieve for class members. Put another way, counsel have demonstrated that on a cost/benefit analysis the plaintiff and other class members are well-served by accepting this proposed settlement rather than proceeding to litigating their claims any further. This is an important factor in the analysis. See, especially: *Driediger* at para 13, quoting *Jeffery* at para 28.

2. Arms Length Settlement Negotiations

[40] This settlement was achieved with the agreement and endorsement of both the plaintiff and the defendants. While this fact, in and of itself, is not determinative of the reasonableness of the settlement, it is a significant consideration. See, for example: *Hardwick* at para 12.

[41] It is obvious that the parties seriously entered into settlement negotiations and conducted negotiations in sincere efforts to achieve a resolution to this dispute over a period of many months.

[42] Counsel for the plaintiff, and for the defendants are senior experienced and respected class action lawyers. At the hearing, both Mr. Merchant and Mr. Richter

submitted that in their respective assessments, this settlement, achieved only after lengthy and difficult negotiations conducted in good faith, was fair and reasonable in these circumstances.

3. Number and Nature of Objections

[43] The evidence presented at the hearing demonstrated that of the many notifications sent to potential class members advising them of the settlement agreement, a wide swath of them – approximately 93% or 3,273,604 were successfully contacted. Of this number, only one objection to the settlement agreement was registered.

[44] This objector opposed receiving a credit rather than a cash payment. He did not dispute the amount of the award, only the method of its payment. In the context of this settlement agreement, this objection is minimal, and does not affect the reasonableness of the settlement agreement.

[45] The fact that there was no meritorious objection to the settlement agreement lends further credence to its reasonableness.

4. Conclusion

[46] Accordingly, for these reasons I am satisfied the settlement agreement should be approved pursuant to s. 38 of the *CAA*. I so order.

B. Should Counsel Fees and the Representative Plaintiff's Honorarium Be Approved?

1. Law

[47] Pursuant to s. 41 of the *CAA*, Court approval is also required for counsel fees. In its relevant parts, s. 41 reads as follows:

Agreements respecting fees and disbursements

41(1) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must:

(a) state the terms under which fees and disbursements are to be paid;

(b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class action; and

(c) state the method by which payment is to be made, whether by lump sum or otherwise.

(2) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved by the Court, on the application of the lawyer.

[48] In *Carruthers v Purdue Pharma*, 2022 SKKB 214 at paras 95-96 [*Carruthers*], the Court said this regarding the appropriateness of class counsel fees:

> [95] As stated by Warren K. Winkler, Paul M. Perell, Jasminka Kalajdzic & Alison Warner in *The Law of Class Actions in Canada* (Toronto: Thompson Reuters, 2014) at 399:
>
> > At its core, the fairness and reasonableness of the fees awarded in respect of class proceedings is to be determined in light of the risk undertaken by the lawyer in conducting the litigation and the degree of success or result achieved. [Footnote omitted]
>
> [96] Factors which have been found by courts to be worthy of consideration when determining whether a fee is fair and reasonable include:
>
> 1. the factual and legal complexities of the claim;
>
> 2. the risks undertaken, including the possibility that the action might not succeed;
>
> 3. the degree of responsibility of class counsel;
>
> 4. the monetary value of the matters at issue;

> 5. the degree of skill and competence demonstrated by class counsel;
>
> 6. the result achieved; and
>
> 7. the contingency fee agreement.
>
> See: *Sweetland v Glaxosmithkline Inc.*, 2019 NSSC 136 at para 28.

See also: *Smith Estate v National Money Mart Company*, 2011 ONCA 233 at para 80, 106 OR (3d) 37.

[49] Turning to the issue of proposed honoraria for representative plaintiffs, *Carruthers* at para 112 endorsed the non-exhaustive list of factors set out in *Robinson v Rochester Financial Limited*, 2012 ONSC 911 at para 43, [2012] 5 CTC 24, to assist in determining the reasonableness of such honoraria. Those factors include:

> [43] …
>
> (a) active involvement in the initiation of the litigation and retainer of counsel;
>
> (b) exposure to a real risk of costs;
>
> (c) significant personal hardship or inconvenience in connection with the prosecution of the litigation;
>
> (d) time spent and activities undertaken in advancing the litigation;
>
> (e) communication and interaction with other class members; and
>
> (f) participation at various stages in the litigation, including discovery, settlement negotiations and trial.

See also: *Fiddler* at para 33.

[50] In *Redublo v CarePartners*, 2022 ONSC 1398 at para 114, the Court, after reviewing recent Canadian jurisprudence and academic commentary, offered for

consideration the following extensive litany of factors:

> [114] In summary, therefore, I would award an honorarium where a representative plaintiff, or other involved class member, has provided competent service coupled with positive results to the class. In assessing the quantum of the honorarium, I would consider the factors laid out in [*Hodge v Neinstein*, 2019 ONSC 439], plus additional factors. For convenience, I set out all of these factors below:
>
> a. Did the representative plaintiff have active involvement in the initiation of the litigation and retainer of counsel?
>
> b. Was the representative plaintiff exposed to a real risk of costs?
>
> c. Did the representative plaintiff suffer significant personal hardship or inconvenience in connection with the litigation?
>
> d. Did the representative plaintiff suffer direct financial losses or incur out-of-pocket costs that she would not have incurred as an individual litigant?
>
> e. Did the representative plaintiff take on a role that was extraordinarily onerous, or potentially traumatic, or that put her at risk of suffering additional harms?
>
> f. How much time did the representative plaintiff spend, and what activities did she undertake in advancing the litigation?
>
> g. How did the representative plaintiff communicate and interact with other class members?
>
> h. What was the extent of the representative plaintiff's participation at various stages in the litigation, including discovery, settlement negotiations and trial?
>
> i. How does the settlement or judgment benefit the class?
>
> j. Is the proposed honorarium an amount that does not create an actual or perceived conflict with the class?

k. Are there objectors to the proposed honorarium and if so, what are the nature of their objections?

2. Analysis

2.1 Class Counsel Fees

[51] In the Second Affidavit of Jaclyn Watters sworn December 3, 2024 [Watters Affidavit], it is averred at para. 42 that six lawyers at Merchant Law Group LLP worked extensively on this class action since its inception in 2018. Four of these lawyers – E.F.A. Merchant, K.C.; Evatt F.A. Merchant, K.C.; Anthony Tibbs; and Iqbal Brar – are seasoned class action lawyers. All told, counsel have docketed 2,529.66 hours in the prosecution of this lawsuit and anticipate a considerable number of additional hours to conclude the settlement approval process with the Claims Administrator, and to address inquiries which may come to class counsel. See: Watters Affidavit at para. 66.

[52] Class counsel are requesting legal fees of $1,725,000 (exclusive of applicable taxes) and $83,829.04 (exclusive of applicable taxes) in out-of-pocket disbursements related to the prosecution and settlement of this action.

[53] It is apparent that counsel have devoted considerable time and effort on behalf of the class members and achieved a fair and reasonable settlement for them, taking into account the evidentiary challenges they had to confront. I accept the counsel fee which is proposed exceeds the accepted benchmark for class counsel legal fees of approximately 25% of a global settlement amount, an amount which Canadian Courts view as "a reasonable standard fee agreement in class proceedings litigation". See, for example: *Carruthers* at para 99; and *Helm v Toronto Hydro-Electric System Limited*, 2012 ONSC 2602 at para 22, 40 CPC (7th) 310. Yet, it is in line with the contingency fee agreement with the plaintiff of approximately 33%.

[54] I am also aware that more recently, flexibility in assessing the

appropriateness of class counsel legal fees has evolved. In Jasminka Kalajdzic & Brandon Schaufele, "Windfalls or Just Rewards: Class Action Fee Ratios in Ontario" (2024) 102 Can Bar Rev 618, a timely academic study of class counsel legal fees in Ontario, the authors conclude at 642-643:

> Whether a median fee ratio of 25% is 'too high' is a function of many considerations, beyond the net return to class members in a given case. As judges in Ontario have long recognized, fair and reasonable compensation must be sufficient to provide a real economic incentive to lawyers to take on a class proceeding and to do it well. The fee must be sufficient to compensate for the pursuit of meritorious but risky claims, and to make up for high opportunity costs associated with a portfolio of such cases. …
>
> … Economic incentives are needed for smaller and mega-settlements in order to fulfill class actions' access to justice promise.
>
> [Citations omitted]
>
> [Emphasis added]

[55] While this case does not involve a mega-settlement, it has proved to be a legitimate consumer protection lawsuit which could only have been viably prosecuted as a class action. Class counsel deserve an economic incentive for pursuing this claim to its successful resolution.

[56] Accordingly, I am persuaded that requested fees for class counsel, as well as the disbursements paid out, are fair and reasonable, and should be approved pursuant to s. 41 of the *CAA*. I so order.

2.2 Honorarium for the Plaintiff

[57] Class counsel also seeks approval of an honorarium for the plaintiff, Ms. Crystal Watch, in the amount of $25,000 paid from the settlement amount.

[58] The evidence presented on this application establishes that the plaintiff

was very active in the prosecution of this lawsuit. She identified the problem of "drip pricing" in the online ticket sales offered by the defendants which formed the basis for the claim. From the beginning, she agreed to be the representative plaintiff, and voluntarily participated in the planning and strategizing of this action.

[59] Class counsel advised that in his experience, Ms. Watch was one of the most actively engaged representative plaintiffs in pressing her litigation forward. Her activities included:

i. Assisting in drafting and reviewing affidavits supporting the certification application which ultimately comprised over 5,500 pages;

ii. Attending numerous conferences with lawyers at the Merchant Law Group to discuss litigation strategy, the evidence including expert evidence, and preparing for cross-examination on affidavits filed by the defendants;

iii. Preparing for and attending at the cross-examination on her affidavits by counsel for the defendants;

iv. Reviewing and instructing counsel during the mediation process; without prejudice negotiations with defendants' counsel, and the appeal of the certification decision, including providing an additional affidavit in support of a fresh evidence application; and

v. Reviewing the proposed settlement agreement and instructing counsel on its contents.

[60] Based on this information, I am satisfied that Ms. Watch was extremely engaged in the prosecution of this lawsuit. She willingly assumed the responsibilities

related to serving as the representative plaintiff, appears to have discharged those responsibilities in a most competent manner, and rendered all necessary assistance to class counsel.

[61] That said, the amount proposed – $25,000 – initially gave me pause. However, at the hearing, class counsel advised that in recent class action settlements honoraria for representative plaintiffs, like legal fees for class counsel, have increased. For example, in *Matthews v La Capitale Civil Service Mutual* (12 December 2022) Vancouver BC, VLC-S-S-1810216 (BC Vancouver Registry), two representative plaintiffs each received an honorarium of $25,000. See: Watters Affidavit at para. 98 and Exhibit "G". See further: *Toth v Canada*, 2019 FC 125 ($50,000 honorarium for the representative plaintiff).

[62] After further consideration, I concluded that the amount of the honorarium proposed in this case was appropriate because of the significant role the plaintiff played in initiating this litigation, and her exceptionally active participation throughout its prosecution. I also note that no member of the class filed an objection to this honorarium.

[63] Accordingly, I am persuaded that the honorarium for the representative plaintiff, Ms. Crystal Watch, in this matter in the amount of $25,000 is fair and reasonable in these circumstances, and I approve it.

C. Approval of Notice and Notice Plan

1. Law

[64] Sections 21 and 24 of the *CAA* require notice be given in certain circumstances including after certification and sets out various matters a Court should consider when determining when and by what means such notice shall be given (ss. 21(3)-(5)). Notices must be approved by the Court before being disseminated to class

members (*CAA*, s 25).

[65] The *CAA* contemplates notice of the certification of a class proceeding, as well as a settlement of such a proceeding, be given to class members "so they can understand the proceeding, its financial consequences, its binding effect if they do not opt out, and their right to opt out": *Johnson v Ontario*, 2022 ONCA 725 at para 34, 475 DLR (4th) 344. The law is clear that adequate notice to class members must be given. Yet, the lack of actual notice to any particular class member does not prevent the class from being bound by the settlement (except for opt outs) where sufficient efforts have been made to provide adequate notice. See: *3113736 Canada Ltd. v Cozy Corner Bedding Inc.*, 2020 ONCA 235 at para 31, 77 CBR (6th) 1; and *Fiddler* at para 46.

2. Analysis

[66] In the Watters Affidavit, the proposed notice respecting this settlement as well as the distribution plan is described at para. 46(a) and (b). Copies of the Notice Program as well as the Claims Notice were appended to the proposed draft order as Schedules "A" and "B", respectively. These notices are clear and should be easily understood by potential class members.

[67] The Class Administrator, RicePoint Administration Inc., will be responsible for administering the distribution process to class members.

[68] I am persuaded that dissemination of these notices provide reasonable and adequate notice to all potential class members, particularly given the modest amount recoverable under the settlement.

[69] Accordingly, I approve the notices and the notice plan pursuant to s. 25 of the *CAA*.

V. ORDER

[70] Accordingly, I make the following orders:

(a) That the Settlement Agreement dated August 8, 2024, is fair, reasonable, and in the best interests of the class as a whole and is approved pursuant to s. 38 of the *CAA*;

(b) That class counsel legal fees in the amount of $1,725,000 plus applicable taxes are fair, reasonable, and approved pursuant to s. 41 of the *CAA*;

(c) That out-of-pocket disbursements in the amount of $83,829.04 exclusive of applicable taxes are fair, reasonable, and approved pursuant to s. 41 of the *CAA*;

(d) That an honorarium in the amount of $25,000 for the representative plaintiff, Ms. Crystal Watch, to be paid from the settlement amount is fair, reasonable, and approved pursuant to s. 41 of the *CAA*;

(e) That the notices to Claims Notice and the Notice Program is acceptable and approved pursuant to s. 25 of the *CAA*; and

(f) That the draft order filed by class counsel may issue.

J.
G.G. MITCHELL