



Court File No.: CV-18-00076745-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

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TUESDAY, THE 6<sup>TH</sup>

JUSTICE SMITH

DAY OF APRIL, 2021

B E T W E E N :

MELISSA MALLETTE

Plaintiff

and

BANK OF MONTREAL

Defendant

Proceeding under the *Class Proceedings Act*, 1992

**ORDER  
(Settlement Approval and Distribution Protocol Approval)**

**THIS MOTION** made by the plaintiff for an Order approving the settlement agreement entered into by the Parties and dismissing this action (the “**Ontario Action**”) as against the defendant, was heard this day by videoconference.

**ON READING** the materials filed, including the settlement agreement dated October 3, 2020, as amended by an Addendum to the Settlement Agreement dated December 14, 2020, attached to this Order as **Schedule “A”** (collectively, the “**Settlement Agreement**”) and the distribution protocol attached to this Order as **Schedule “B”** (the “**Distribution Protocol**”), and on hearing the submissions of counsel for the plaintiff and for the defendant;

**AND ON BEING ADVISED** that a related action, *Wilson v Bank of Montreal*, bearing court file number CV-18-599876-00CP (the “**Wilson Action**”), was stayed by order of this Court dated August 23, 2018;

**AND ON BEING ADVISED** that the deadline for objecting to the Settlement Agreement has passed and there have been eleven written objections to the Settlement Agreement;

**AND ON BEING ADVISED** that the deadline for opting out of the Ontario Action has expired and that one hundred and thirty persons have validly and in a timely manner exercised the right to opt out;

**AND ON BEING ADVISED** that the Parties consent to this Order;

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement and Distribution Protocol apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement or between this Order and the Distribution Protocol, this Order shall prevail.

3. **THIS COURT ORDERS** that this Order, including the Settlement Agreement, is binding upon each member of the Class including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Ontario Action.

4. **THIS COURT ORDERS** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.

5. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to section 27.1 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

6. **THIS COURT ORDERS** that, upon the Effective Date, each member of the Settlement Class shall be deemed to have consented to the dismissal of any other actions he, she or it has commenced as against the Releasees, without costs and with prejudice.

7. **THIS COURT ORDERS** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

8. **THIS COURT ORDERS** that, for the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role and the defendant attorns to the jurisdiction of this Court for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order, and subject to the terms and conditions set out in the Settlement Agreement and this Order.

9. **THIS COURT ORDERS** that no Releasors shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement, to the administration, investment, or distribution of the Settlement Benefits, or to the Distribution Protocol.

10. **THIS COURT ORDERS** that the Settlement Benefits and the Settlement Administration Expenses Fund shall be held in the Trust Account by the defendant for the benefit of Class Members and after the Effective Date the Settlement Benefits may be used, as directed by this Court, to pay Class Counsel Fees and Class Counsel Disbursements incurred for the benefit of the Class.

11. **THIS COURT ORDERS** that Epiq (the “**Administrator**”) is appointed to administer the Settlement Agreement on behalf of the Defendant in accordance with the Distribution Protocol, pursuant to section 27.1(14) of the *Class Proceedings Act, 1992*.

12. **THIS COURT ORDERS** that the Distribution Protocol is hereby approved and shall be implemented in accordance with its terms.

13. **THIS COURT ORDERS** that the settlement amounts paid in accordance with the Settlement Agreement shall be distributed by the Defendant in accordance with the Distribution Protocol.

14. **THIS COURT ORDERS** that any residual amount attributable to Class Members who are not Quebec residents remaining in the Settlement Amount after payment of Class Counsel Fees, Class Counsel Disbursements and distribution to the Class, and to be distributed in accordance with section 12(j) of the Distribution Protocol shall be paid, cy près, as follows:

- (a) 50% to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) for the purposes outlined in its proposal submitted to Class Counsel and approved by the Court; and
- (b) 50% to Pro Bono Canada to fund its national access to justice initiatives.

15. **THIS COURT ORDERS** that all information received from Settlement Class Members collected, used and retained by the Defendant for the purpose of administering the Settlement Agreement is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 (PIPEDA). The information provided by the Settlement Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Settlement Class Member, except in accordance with the Settlement Agreement, orders of this Court and/or the Distribution Protocol.

16. **THIS COURT ORDERS** that the Administrator shall prepare a report to the Court in accordance with s. 26(12) of the *Class Proceedings Act, 1992*.

17. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

18. **THIS COURT ORDERS** that the approval of the Settlement Agreement is contingent upon approval by the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved by the Quebec Court, and the Quebec Action has been declared settled out of court with prejudice and without costs as against the Settling Defendants by the Quebec Court. If such order is not secured in Quebec, this Order shall be null and void and without prejudice to the rights of the Parties to proceed with the Ontario Action and any agreement between the Parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

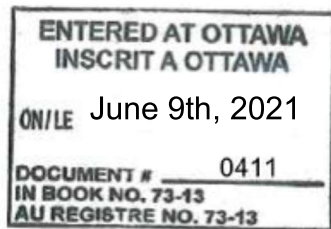
19. **THIS COURT ORDERS** that the Order of this Court dated October 7, 2020 shall be varied by adding the bolded and underlined language as follows:

5. **THIS COURT ORDERS** that the Class is certified as follows:

Any person **other than a resident of Quebec** who is a current or former client of BMO whose Personal Information was impacted as a result of the Data Breach.

20. **THIS COURT ORDERS** that, upon the Effective Date, the Ontario Action be and is hereby dismissed, without costs and with prejudice.

21. **THIS COURT ORDERS** that the Wilson Action be and is hereby dismissed, without costs and with prejudice, and a copy of this Order shall be placed in that Court file.



  
\_\_\_\_\_  
The Honourable Justice Smith

SCHEDULE "A"

***Mallette v Bank of Montreal***

**Ontario Superior Court of Justice File No CV-18-00076745-00CP**

Proceeding under the *Class Proceedings Act, 1992*

***Beauvais-Lamy v Bank of Montreal***

**Superior Court of Québec File No. 500-06-000944-187**

**SETTLEMENT AGREEMENT**

Made as of October 3, 2020

Between

**MELISSA MALLETTE and HUGO BEAUVAIS-LAMY**

(the “Plaintiffs”)

and

**BANK OF MONTREAL**

(the “Defendant”)

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## RECITALS

**WHEREAS**, on May 28, 2018, the Defendant disclosed the Data Breach, which impacted the Personal Information of the Class Members;

**AND WHEREAS** the Plaintiff in Ontario commenced the Ontario Action on behalf of Class Members for, *inter alia*, class-wide compensation for intrusion upon seclusion, breaches of Provincial Privacy Legislation, negligence, breach of contract, and breaches of Part III of the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes;

**AND WHEREAS** a parallel proposed class proceeding was commenced in Ontario, styled *Jay Wilson v Bank of Montreal*, Superior Court of Justice File No. CV-18-00599876-00CP, which proceeding was stayed by Order of the Court on August 23, 2018, in favour of the Ontario Action, such that the plaintiff in that proceeding is a member of the Class in this Action and is covered by this Settlement;

**AND WHEREAS** the Plaintiff in Québec commenced the Québec Action on behalf of Class Members for compensation for breaches of Provincial Privacy Legislation, breach of contract, and breaches of the *Consumer Protection Act*, which Québec Action has the effect of protecting the rights and interests of Québec Class Members;

**AND WHEREAS** the Defendant, voluntarily and beginning before the Actions were issued: (a) did, and will continue to reimburse Class Members for all unauthorized transactions carried out in their accounts with the Defendant as a direct result of the Data Breach; and (b) offered Class Members complimentary credit monitoring and identity theft insurance at the expense of the Defendant, for a period of two years after the date of public disclosure of the Data Breach;

**AND WHEREAS** the Parties have contemplated in this Settlement Agreement the resolution of the claims of all Class Members including those resident in Québec; have noted that the Québec Action has been stayed in favour of the Ontario Action; and Class Counsel have negotiated this Settlement Agreement in consultation with Siskinds, Desmeules, Avocats, counsel for the Plaintiff in the Québec Action;

**AND WHEREAS** the Defendant has disputed its liability and it does not admit, by the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Actions and otherwise denies all liability under any pleaded or possible cause of action and asserts that it has complete defences in respect of the merits of the Actions;

**AND WHEREAS** the Parties, through their counsel, have engaged in arm's-length settlement discussions and negotiations with a view to resolving the Actions;

**AND WHEREAS**, during and in the course of those settlement discussions and negotiations, the Defendant made the Representations to the Plaintiffs and Class Counsel, on which the Plaintiffs and Class Counsel have relied reasonably in reaching the Settlement;

**AND WHEREAS**, as a result of those settlement discussions and negotiations, the Parties have reached this Settlement, and they have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiffs, both individually and on behalf of the Settlement Class, subject to the approval of the Courts;

**AND WHEREAS** the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiffs and the Settlement Class in the Actions, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

**AND WHEREAS** Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims including specifically the Defendant's Representations, having regard to the burdens and expense in prosecuting the Actions, including the time, risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;

**AND WHEREAS** the Parties have intended and acknowledge that the Settlement provides compensation to the Settlement Class through a simplified, convenient and proportionate procedure;

**AND WHEREAS** the Parties therefore wish to and hereby finally resolve the Actions as against the Defendant, without admission of liability, and without any admission by the Defendant that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Actions;

**AND WHEREAS** the Parties acknowledge that the Settlement is contingent on approval by both the Ontario Court and the Québec Court as provided for in this Settlement Agreement, and entered into with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Actions in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

**AND WHEREAS** the Plaintiffs and the Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against, the Defendant, or evidence of the truth of any of the Plaintiffs' allegations, which allegations are expressly denied by the Defendant;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Actions shall be settled, or settled and dismissed with prejudice, each without costs paid by or to the Plaintiffs, the Settlement Class or the Defendant, subject to the approval of the Courts, on the following terms and conditions:

#### **SECTION 1 – DEFINITIONS**

For the purposes of this Settlement Agreement, including the Recitals hereto:

- (1) **"Actions"** means the Ontario Action and the Québec Action;
- (2) **"BMO"** means the Defendant, Bank of Montreal;

- (3) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (4) “**Claims Administrator**” means the firm proposed by the Defendant and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such firm.
- (5) “**Class**” and “**Class Members**” mean any person who is a current or former client of BMO whose Personal Information was impacted as a result of the Data Breach;
- (6) “**Class Counsel**” means Siskinds LLP, Siskinds, Desmeules, Avocats, Sotos LLP and JSS Barristers;
- (7) “**Class Counsel Disbursements**” means the disbursements, interest and applicable taxes incurred by Class Counsel in the prosecution of the Actions;
- (8) “**Class Counsel Fees**” means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person, and includes both Class Counsel Fees - Fixed and Class Counsel Fees - Claimable;
- (9) “**Class Counsel Fees - Claimable**” means that portion of Class Counsel Fees calculable, by reference to an Order approving Class Counsel Fees, on the Settlement Funds - Claimable;
- (10) “**Class Counsel Fees - Fixed**” means that portion of Class Counsel Fees calculable, by reference to an Order approving Class Counsel Fees, on the Settlement Funds - Fixed;
- (11) “**Certification and Notice Approval Motions**” means the motions for an Order of each Court:
- (a) certifying (or authorizing) the Actions for the purposes of the Settlement;
  - (b) approving the form, content and manner of distribution of the Notice;
  - (c) setting out the Opt-Out Procedure;

- (d) fixing the Opt-Out Deadline; and
  - (e) such other relief as the Parties may request;
- (12) **“Consumer Protection Act”** means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A and the *Consumer Protection Act*, CQLR c P-40.1, as amended;
- (13) **“Court”** means, as the context requires, the Ontario Court or the Québec Court (together herein, the **“Courts”**);
- (14) **“CPA”** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;
- (15) **“Data Breach”** means the unauthorized access by third-party cyber-criminals to the Class Members’ Personal Information through the Defendant’s computer systems and networks, which was publicly disclosed by the Defendant on May 28, 2018;
- (16) **“Effective Date”** means the later of the dates upon which the Order of each Court approving the Settlement Agreement becomes a Final Order;
- (17) **“Equivalent Consumer Protection Statutes”** means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Fair Trading Act*, RSA 2000, c F-2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM c B120, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, each as amended;
- (18) **“Execution Date”** means the date on which the last of the Parties signs this Settlement Agreement;
- (19) **“Existing Compensation Obligation”** means BMO’s existing commitment, apart from the obligations set out in this Settlement Agreement, to compensate all Class Members for the sum of any unauthorized withdrawal reasonably attributable to the Data Breach;
- (20) **“Fee and Disbursement Approval Date”** means the date when the court’s Order approving the Class Counsel Fees and Class Counsel Disbursements becomes a Final Order;

(21) **“Final Order”** means the later of the dates upon which each Court grants an Order approving this Settlement Agreement and the time to appeal each Order has expired without any appeal being taken, or if an appeal is taken, all appeals and any time period for a further appeal has concluded;

(22) **“Net Settlement Funds”** means the Net Settlement Funds - Fixed and the Net Settlement Funds - Claimable;

(23) **“Net Settlement Funds - Fixed”** means the Settlement Funds - Fixed less applicable Class Counsel Fees and Class Counsel Disbursements (for greater certainty, excluding Settlement Administration Expenses and the Settlement Administration Expenses Fund);

(24) **“Net Settlement Funds - Claimable”** means the Settlement Funds - Claimable less applicable Class Counsel Fees and Class Counsel Disbursements (for greater certainty, excluding Settlement Administration Expenses and the Settlement Administration Expenses Fund);

(25) **“Notice”** means the form or forms of notice, as agreed by the Parties and approved by the Courts, which inform(s) the Class Members of:

- (a) the principal elements of the Settlement;
- (b) the Court’s certification or authorization of the Actions for the purposes of the Settlement;
- (c) the date and location of the Settlement Approval Motions;
- (d) the Opt-Out Procedure;
- (e) the Opt-Out Deadline;
- (f) the Class Counsel Fees and Class Counsel Disbursements to be requested by Class Counsel; and
- (g) the process for objecting to the Settlement should any Class Member(s) wish to do so;

(26) **“Ontario Action”** means *Melissa Mallette v Bank of Montreal*, commenced in the Ontario Court at Ottawa bearing the Court File No. CV-18-00076745-00CP;

(27) **“Ontario Court”** means the Ontario Superior Court of Justice;

(28) **“Opt-Out Deadline”** means the date which is sixty (60) days after the completion of mailings by BMO in accordance with s. 5.1(1), which completion date shall be provided by BMO to Class Counsel;

(29) **“Opt-Out Procedure”** means the procedure to be fixed by Order of the Courts by which any Class Member(s) who wish(es) to do so may opt out of the Actions;

(30) **“Parties”** means the Plaintiffs and the Defendant, each being a party to this Settlement Agreement;

(31) **“Personal Information”** means information about an identifiable individual;

(32) **“Provincial Privacy Legislation”** means the *Privacy Act*, RSBC 1996, c 373, *The Privacy Act*, CCSM c P125, the *Privacy Act*, RSNL 1990, c P-22, *The Privacy Act*, RSS 1978, c P-24, the *Civil Code of Québec*, CQLR, c CCQ-1991, the *Charter of Human Rights and Freedoms*, CQLR, c C-12, and the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, each as amended;

(33) **“Québec Action”** means *Beauvais-Lamy v Bank of Montreal*, commenced in the Québec Court at Montreal bearing the Court File No. 500-06-000944-187;

(34) **“Québec Court”** means the Superior Court of Québec;

(35) **“Released Claims”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual, representative or otherwise in nature, whether personal or subrogated, damages of any kind including compensatory, punitive or other damages, whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties, and lawyers’ fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen,



actual or contingent, and liquidated or unliquidated, in law, under statute or at equity, that the Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with any alleged conduct related to, arising from, or described in the Actions on account of, arising out of or resulting from the Data Breach. The Released Claims do not include:

- (a) the Existing Compensation Obligation; or
- (b) any obligations under this Settlement Agreement.

(36) “**Releasees**” means, jointly and severally, individually and collectively, the Defendant and its respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, principals, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, stockholders, shareholders, agents, employed or retained lawyers, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing;

(37) “**Releasors**” means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class and their respective successors, heirs, executors, administrators, trustees and assigns;

(38) “**Representations**” means the following representations which the Defendant explicitly made to the Plaintiffs and Class Counsel during the negotiation of this Settlement Agreement, in good faith and with a reasonable belief in their accuracy:

- (a) The Data Breach impacted Personal Information of 113,151 Class Members;

- (b) The Personal Information of 3,195 individual BMO clients (described below as the Group 1 Claimants), including their date of birth and SIN, was posted online by unauthorized individuals following the attack that resulted in the Data Breach;
  - (c) The Personal Information including date of birth and SIN of a further 59,750 individual BMO clients (described below as the Group 2 Claimants) was accessed by unauthorized individuals during the Data Breach;
  - (d) The Personal Information not including date of birth and SIN of a further 50,206 individual BMO clients (described below as the Group 3 Claimants) was accessed by unauthorized individuals during the Data Breach;
  - (e) As a result of the Data Breach, unauthorized transactions were recorded in the accounts of 3,566 individual BMO clients (described below as the Group 4 Claimants);
  - (f) To date, all Class Members who have been the victim of unauthorized transactions in their BMO accounts related to the Data Breach have been made whole by BMO in respect of any such unauthorized transaction; and
  - (g) Notwithstanding this Settlement Agreement, BMO will maintain its Existing Compensation Obligation;
- (39) **“Settlement”** means the settlement provided for in this Settlement Agreement;
- (40) **“Settlement Administration Expenses”** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and including the Settlement Administration Expenses Fund, but excluding Class Counsel Fees and Class Counsel Disbursements;
- (41) **“Settlement Administration Expenses Fund”** means the sum of \$250,000.00 to be allocated by the Defendant to fund Settlement Administration Expenses, which amount is separate from and in addition to the Settlement Benefits;

(42) **“Settlement Agreement”** means this agreement, including the Recitals hereto;

(43) **“Settlement Approval Motions”** means the motions for an Order of each Court:

- (a) approving the Settlement;
- (b) approving the manner of distribution of the Net Settlement Funds;
- (c) dismissing the Ontario Action with prejudice and without costs and declaring the Québec Action settled out of Court without costs; and
- (d) such other relief as the Parties may request;

(44) **“Settlement Benefits”** means the sum of the Settlement Funds - Claimable and the Settlement Funds - Fixed, which are calculated as follows:

| Claimant Group | Settlement Funds - Fixed per Claimant  | Settlement Funds - Claimable per Claimant   |
|----------------|--|---|
| Group 1        | <b>\$1,000 – in two parts: (i) to compensate the first 20 hours spent at \$18/hr; and (ii) a \$640 inconvenience amount.</b> | <b>Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 20 hours addressing issues arising from the Data Breach.</b> |
| Group 2        | <b>\$144 – to compensate the first 8 hours spent at \$18/hr.</b>   | <b>Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 8 hours addressing issues arising from the Data Breach.</b>  |
| Group 3        |  | <b>Up to 5 hours at \$18/hr for those who certify they spent time addressing issues arising from the Data Breach.</b>                               |
| Group 4        | <b>\$270 – to compensate for 15 hours spent at \$18/hr.</b>  |   |
| <b>Totals</b>  | <b>\$12,757.540.00</b>   | <b>\$8,465,535.00</b>   |

Where:

**“Group 1 Claimants”** are those Class Members whose Personal Information was accessed by unauthorized individuals and posted to the Internet. According to the Defendant’s Representations this group comprises 3,195 members;

**“Group 2 Claimants”** are those Class Members whose Personal Information including date of birth and SIN was accessed by unauthorized individuals. According to the Defendant’s Representations this group comprises 59,750 members;

**“Group 3 Claimants”** are those Class Members whose Personal Information not including date of birth and SIN was accessed by unauthorized individuals. According to the Defendant’s Representations this group comprises 50,206 members; and

**“Group 4 Claimants”** are those Class Members whose BMO accounts recorded an unauthorized transaction attributable to the Data Breach, each of whom is also a Group 1 Claimant, Group 2 Claimant or Group 3 Claimant. According to the Defendant’s Representations this group comprises 3,566 members.

Each of the Group 1, 2, 3, and 4 Claimants constitutes a **“Claimant Group”**

(45) **“Settlement Class”** means the Class Members except any person who validly opts out of the Actions;

(46) **“Settlement Funds - Claimable”** means that portion of the Settlement Benefits that is payable by the Defendant subject to claims made by Class Members, in the maximum all-inclusive sum of \$8,465,535.00; and

(47) **“Settlement Funds - Fixed”** means that portion of the Settlement Benefits that is payable by the Defendant to the Class Members directly, without any requirement to make a claim, in the all-inclusive sum of \$12,757,540.00.

## **SECTION 2– PAYMENT AND ADMINISTRATION**

### **2.1 The Settlement Benefits**

(1) Subject to and following the Final Order approving the Settlement, the Settlement Benefits shall be distributed in accordance with s. 7 of this Settlement Agreement.

### **2.2 Claims Administration**

(1) As soon as practicable after the Execution Date, BMO shall appoint a Claims Administrator.

(2) Within seven (7) business days of the Courts' granting the Settlement Approval Motions, BMO shall establish a Trust Account containing the Settlement Funds – Fixed and the Settlement Administration Expenses Fund.

(3) BMO and the Claims Administrator shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

(4) Subject to s. 2.2(5), BMO shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Benefits while in the Trust Account, including any obligation to report taxable income to the Bank (but not to Class Members).

(5) The Plaintiffs and Class Counsel shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any Settlement Benefits or pay any taxes on the monies in the Trust Account.

### **2.3 The Settlement Administration Expenses Fund**

(1) BMO may use the Settlement Administration Expenses Fund to fund the Settlement Administration Expenses in relation to this Settlement Agreement.

(2) BMO shall be responsible for all Settlement Administration Expenses, including costs of notices, even if such expenses exceed the Settlement Administration Expenses Fund.

(3) In the event that this Settlement Agreement is not approved by both Courts or is otherwise terminated in accordance with its terms, BMO shall account to Class Counsel and the Ontario Court for the use of the Settlement Administration Expenses Fund.

(4) BMO shall account to the Ontario Court and to the Parties for all payments it makes from the Settlement Administration Expenses Fund.

## **2.4 No Further Payments**

(1) The Settlement Benefits and the Settlement Administration Expenses Fund shall be paid by the Defendant in full satisfaction of the Released Claims against the Releasees.

(2) Subject to the Defendant's obligations in furtherance of the approval and implementation of this Settlement Agreement, as set out herein, the Releasees shall have no obligation to pay any amount in addition to the Settlement Benefits and the Settlement Administration Expenses Fund, for any reason, pursuant to or in furtherance of this Settlement Agreement, excepting their Existing Compensation Obligations.

(3) The Plaintiffs, the Class Members and Class Counsel, including their heirs, executors, predecessors, successors, assigns and agents, have no personal obligation to pay anything to the Defendant or any of the Releasees in relation to this Settlement Agreement or the Actions.

## **SECTION 3 – CERTIFICATION AND NOTICE APPROVAL MOTION**

### **3.1 Common Issue and Materials**

(1) As soon as reasonably practicable after the Execution Date, Class Counsel will bring the Certification and Notice Approval Motions, in the Ontario Action first.

(2) The sole common issue to be certified on the Certification and Notice Approval Motions shall be as follows:

“Did the Defendant owe the Plaintiffs and Class Members a duty of care in respect of the Data Breach?”

### **3.2 Consent Required**

(1) Upon agreement by the Parties to the terms of a draft Order to be proposed to each Court, the Defendant shall consent to the Certification and Notice Approval Motions solely for the purposes of implementing the Settlement, and the Defendant's consent shall not be taken to be an admission of liability or legal responsibility for the pleaded damages and losses.

(2) If this Settlement is not approved by both Courts or it is terminated in accordance with its terms, the Parties shall consent to an Order of each Court vacating and setting aside any relief granted by the Courts by way of the Certification and Notice Approval Motions.

### **3.3 Costs**

(1) Each Party shall bear its own costs of the Certification and Notice Approval Motions.

### **3.4 Pre-Motion Confidentiality**

(1) Until the first Certification and Notice Approval Motion is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

## **SECTION 4 – OPT-OUT PROCEDURE AND DEADLINE**

### **4.1 Court Approval of Opt-Out Process and Deadlines**

(1) Class Counsel shall seek each Court's approval of the following opt-out process as part of the Certification and Notice Approval Motions:

- (a) Class Members seeking to opt out of the Actions must do so within sixty (60) days from the first date of distribution of the Notice, by sending a complete and validly executed written election to opt out to Siskinds LLP at an email address to be identified in the Notice, received on or before the Opt-Out Deadline. The written

election to opt out must be sent by the Class Member or the Class Member's designee and must include the following information:

- (i) the Class Member's full name, current address, email address and telephone number;
  - (ii) if the Class Member seeking to opt out is a corporation, the name of the corporation and the position of the individual submitting the request to opt out on behalf of the corporation, and confirmation that the individual has the necessary authority to do so;
  - (iii) a statement to the effect that the Class Member wishes to be excluded from the Actions; and
  - (iv) the reason(s) for opting out.
- (b) Class Members who opt out of the Actions shall not be members of the Settlement Class, and shall have no further right to participate in the Actions or to share in the distribution of funds received as a result of the Settlement; and
- (c) Within ten (10) days of the Opt-Out Deadline, Siskinds LLP shall provide a report to the Defendant containing the names of each person who has validly and timely opted out of the Actions.
- (d) The Defendant shall not be required to pay Settlement Benefits in respect of any Class Member who validly opts out of the Actions.

(2) Under article 580 of the *Code of Civil Procedure* of Québec, a class member eligible to opt out pursuant to this section, who does not discontinue an originating application having the same subject matter as the Actions before the Opt-Out Deadline has expired, is deemed to have opted out.



#### **4.2 Reservations of Legal Rights**

(1) The Defendant reserves all of its legal rights and defences with respect to any Class Member who validly opts out from the Actions, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against BMO arising out of the Data Breach.

### **SECTION 5 – NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT**

#### **5.1 Mode of Dissemination**

(1) Subject to ss. 5.1(2)-(5), the Notice shall be disseminated as follows;

- (a) sent by the Defendant by direct mail;
- (b) in the event a Class Member is no longer a client of the Defendant, the Defendant shall send the Notice to such Class Member at the last known mailing address in the Defendant's records;
- (c) where Notice is provided directly to each Class Member by the Defendant pursuant to ss. 5.1(1)(a) or (b), that Notice shall advise each Class Member into which Claimant Group(s) they fall; and
- (d) Class Counsel shall post the Settlement Approval Hearing and Opt-Out Notices to their websites and may, seven (7) days after the issuance of the Order resulting from the Certification and Notice Approval Motion (or at an earlier date if agreed to by counsel for the Defendant), post one message on their respective Twitter, Instagram and Facebook accounts to direct Class Members to their websites in connection with the settlement approval hearing and opt-out notices. The text of that message shall be as agreed to with counsel for the Defendant.

- (2) Class Counsel shall review and comment on template notices before they are sent.
- (3) Class Counsel shall provide a copy of the settlement approval hearing and opt-out notice to any person who has contacted them in respect of the Actions.
- (4) All direct notices mailed by the Defendant shall have the appearance and format of communications regularly distributed by the Defendant such that it will be identifiable by Class Members as having originated with the Defendant.
- (5) All direct notices mailed by the Defendant shall be in the language in which the Defendant customarily communicates or communicated with the Class Member as a customer.

## **SECTION 6 – SETTLEMENT APPROVAL**

### **6.1 The Settlement Approval Motions**

- (1) As soon as reasonably practicable, Class Counsel shall bring the Settlement Approval Motions, first in the Ontario Action.

### **6.2 Where Consent Required**

- (1) Upon agreement by the Parties to the terms of a draft Order to be proposed to each Court, the Defendant shall consent to the Settlement Approval Motions concerning the Courts' approval of the Settlement and the distribution of the Net Settlement Funds and the Defendant's consent shall not be taken to be an admission of liability or legal responsibility for the pleaded damages and losses.
- (2) That consent does not extend to any aspect of the Settlement Approval Motions that concerns Class Counsel Fees or Class Counsel Disbursements, on each of which the Defendant shall take no position.

### **6.3 Form of Order Approving Settlement Agreement**

- (1) The Orders approving this Settlement Agreement shall be as agreed to by the Parties or in such form or manner as agreed to by the Parties and approved by the Court.

#### **6.4 Date Upon Which Settlement Is Final**

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

#### **6.5 Costs**

- (1) Each Party shall bear its own costs of the Settlement Approval Motions and any other motion, if necessary, contemplated in this section.

#### **6.6 Dismissal, Discontinuance or Declaration of Settlement Out of Court of Actions**

- (1) Contemporaneously with the Settlement Approval Motions, the Plaintiffs shall bring a motion for an order dismissing the following matters with prejudice and without costs:

- (a) the Ontario Action; and
- (b) in the instance of the Ontario Action, also the parallel proceeding styled *Jay Wilson v Bank of Montreal*, Superior Court of Justice File No. CV-18-00599876-00CP,

and a motion for an order declaring the Québec Action settled out of Court without costs.

- (2) The Parties agree to take such other steps as may be required by the Courts to effect the dismissal or declaration of settlement out of Court of the Actions.

### **SECTION 7 – DISTRIBUTION OF SETTLEMENT FUNDS**

#### **7.1 Distribution of Settlement Funds**

- (1) Members of the Settlement Class shall be eligible for the relief provided in this Settlement Agreement.
- (2) Each member of the Settlement Class shall be a “**Claimant**” for the purposes of receiving compensation from the Settlement Benefits.
- (3) For the purpose of distribution of Settlement Benefits, Claimants shall be sorted into one or more of the four Claimant Groups.

(4) The Defendant represents that it has diligently and in good faith identified into which group, or groups, each Claimant falls, and has a reasonable belief in the accuracy of those Claimant Groups.

(5) The Settlement Benefits shall be divided and distributed among the members of the Settlement Class in accordance with the procedure set out in ss. 7.3 to 7.6.

(6) Within sixty (60) days of the Effective Date, the Defendant shall initiate a “**Claims Process**” for Settlement Class Members to make claims in respect of the Settlement Funds – Claimable.

(7) The Parties acknowledge that while compensation is being provided to the Claimants for time spent and inconvenience in responding to the Data Breach and its consequences for the purposes of the consent resolution of the Actions, the allocation of such funds for those purposes is without admission of liability by the Defendant, and without any admission by the Defendant that Class Members are entitled, at law, to compensation or payment for any of the losses and damages alleged in the Actions.

## **7.2 Class Counsel’s Fees and Disbursements**

(1) Class Counsel shall bring motions for approval of Class Counsel Fees and Class Counsel Disbursements contemporaneously with or immediately following the Settlement Approval Motions. Class Counsel shall seek the Courts’ approval of Class Counsel Fees and Class Counsel Disbursements to be paid as a first charge on the Settlement Benefits.

(2) Class Counsel is not precluded from making additional motion(s) for fees or expenses incurred as a result of implementing the terms of this Settlement Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Benefits.

(3) The Defendant acknowledges that it is not a party to the motions concerning the approval of Class Counsel Fees and Class Counsel Disbursements. The Defendant acknowledges that it will have no involvement in the approval process to determine the amount of Class Counsel Fees and Class Counsel Disbursements, and that it will not take any position or make submissions to the Courts concerning Class Counsel Fees and Class Counsel Disbursements.

(4) The procedure for, and the allowance or disallowance by the Courts of, any requests for Class Counsel Fees and Class Counsel Disbursements to be paid out of the Settlement Benefits are not part of the Settlement provided for herein, and are to be considered by the Courts separately from its consideration of the fairness, reasonableness and adequacy of the Settlement provided for herein.

(5) Any order in respect of Class Counsel Fees and Class Counsel Disbursements, or any appeal from any order relating thereto or any modification thereof, shall not operate to terminate or cancel the Settlement Agreement or affect or delay the Settlement of the Actions as provided herein.

(6) Unless this Settlement Agreement is terminated in accordance with its terms, all amounts awarded on account of Class Counsel Fees and Class Counsel Disbursements shall be paid from the Settlement Benefits.

### **7.3 Calculation of Net Settlement Funds - Fixed**

(1) Within sixty (60) days of the Effective Date or the Fee and Disbursement Approval Date (whichever is later), the Defendant shall calculate the compensation owing to each Settlement Class member from the Settlement Funds - Fixed by dividing the Net Settlement Funds – Fixed in accordance with the per Claimant amounts and number of Affected Persons set out in Table 1, below (the “**Compensation Calculation**”);

Table 1

| <b>Claimant Group</b> | <b>Affected Persons</b> | <b>Settlement Funds - Fixed per Claimant</b>  |
|-----------------------|-------------------------|---|
| Group 1               | 3,195                   | \$1,000 – in two parts: (i) to compensate the first 20 hours spent at \$18/hr; and (ii) a \$640 inconvenience amount. |
| Group 2               | 59,750                  | \$144 – to compensate the first 8 hours spent at \$18/hr.   |
| Group 3               | 50,206                  | -   |
| Group 4               | 3,566                   | \$270 – to compensate for 15 hours spent at \$18/hr.  |

(2) The payments in Table 1 are intended to reflect time spent and inconvenience in responding to the Data Breach and its consequences.

- (a) After performing the Compensation Calculation, the Defendant shall provide Class Counsel with a table substantially in the form of Table 1 showing the compensation amounts resulting from the Compensation Calculation;
- (b) Within 15 days of receipt of same, Class Counsel shall approve the result of the Compensation Calculation or raise an objection; and
- (c) Counsel for the Defendant and Class Counsel shall reasonably cooperate to resolve any objection within 15 days.

#### **7.4 Distribution of Settlement Funds - Fixed**

(1) After receiving Class Counsel's approval under s. 7.3(2)(b), or any objection is resolved under s. 7.3(2)(c), the Defendant shall distribute the Settlement Funds - Fixed as soon as reasonably practicable, according to the following process:

- (a) The Defendant shall pay Class Counsel Fees – Fixed and Class Counsel Disbursements, as awarded by the Courts, to Siskinds LLP, in trust, by wire transfer;
  - (b) Where the Claimant is a current client of the Defendant, the Defendant shall pay the Net Settlement Funds - Fixed directly to the Group 1, 2 and 4 Claimants by mailing a cheque for each Claimant's share of the Net Settlement Funds - Fixed directly to that Claimant, without the need for any application by those Claimants;
  - (c) Where the Claimant is not a current client of the Defendant, the Defendant shall send a cheque in the amount of the Claimant's share of the Net Settlement Funds - Fixed to such Claimant at the last known mailing address in the Defendant's records, unless newer and better information has been received for the Claimant, in which case the newer and better information shall be used; and
  - (d) In the event a Claimant is no longer a client of the Defendant, and the Defendant has no last known mailing address in its records for that Claimant, the Defendant shall provide its best information about that Claimant to Class Counsel, as authorized by the Order of the Court(s), to facilitate Class Counsel making additional efforts to locate the Claimant.
- (2) When mailing cheques to Claimants, the Defendant shall:
- (a) send a personalized letter in the form that BMO usually uses to mail its customers to the last known mailing address, with instructions for Claimants to update their addresses;
  - (b) in the covering letter, include contact information of Class Counsel to allow claimants to confirm the legitimacy of the letter; and
  - (c) in the covering letter, advise the Claimants that they may choose to apply for a portion of the Settlement Funds – Claimable, and must make a claim through the Claims Process by a specified deadline. The deadline to make a claim through the

Claims Process shall not be sooner than three (3) months after the date of the mailing.

(3) Within two (2) months after all cheques are sent in accordance with 7.4(1), the Defendant shall report to Class Counsel the total number of letters returned as undeliverable or returned to sender or analogous designation, as well as the particulars of the contact information used, to facilitate Class Counsel making additional efforts to locate the Claimant. Class Counsel shall have one (1) month to make efforts to locate the Claimant, and BMO will mail cheques to any additional Claimants located, in accordance with s. 7.4(2).

#### **7.5 Claims Process for Settlement Funds - Claimable**

(1) The Net Settlement Funds - Claimable shall be distributed among the Group 1 Claimants, Group 2 Claimants and Group 3 Claimants, upon application by those Claimants through the Claims Process.

(2) The Parties shall agree on a method by which, and a timeframe during which, Claimants may advance a claim for compensation from the Settlement Funds - Claimable. The Parties agree that the Claims Process shall be as manageable and accessible as is practicable. The Parties further agree that the Claims Process will at a minimum:

- (a) Permit Claimants to access the Claims Process via a dedicated and bilingual website;
- (b) Require that each Claimant provide only as much personal information as necessary to confirm their identity as a Class Member;
- (c) Require of Claimants only a certification as to time spent addressing issues arising from the Data Breach, by way of a claim form, and will not require other proof; and
- (d) Provide Claimants with a reasonable timeframe of at least three (3) months from the date Claimants are given notice of the Claims Process during which they may submit claims.



(3) In the event the Parties cannot agree on a method and timeframe for the Claims Process, the Parties shall apply to the Ontario Court for advice and direction.

(4) At the conclusion of the Claims Process, the Parties will agree on the calculation of the Settlement Funds - Claimable, which calculation shall be the sum of the funds due to all Claimants with approved claims in the Claims Process.

#### **7.6 Distribution of Settlement Funds - Claimable**

(1) Within thirty (30) days after the calculation of the Settlement Funds - Claimable has been agreed by the Parties or fixed by the Courts, the Defendant shall deposit the required sum to the Trust Account, and then make a distribution of the Settlement Funds - Claimable as follows:

- (a) The Defendant shall pay Class Counsel Fees - Claimable and Class Counsel Disbursements (if applicable), as awarded by the Courts, to Siskinds LLP, in trust, by wire transfer;
- (b) The Defendant shall pay the Net Settlement Funds - Claimable to the Group 1, 2 and 3 Claimants by mailing a cheque for each Claimant's share of the Net Settlement Funds - Claimable directly to that Claimant.

(2) Two (2) months after all cheques are mailed pursuant to 7.6(1)(b), the Defendant shall report to Class Counsel the total number of: cheques returned as undeliverable or return to sender or similar designation, as well as the particulars of the contact information used or on file, to facilitate Class Counsel making additional efforts to locate the Claimants. Class Counsel shall have one (1) month to make efforts to locate these Claimants, remind them of the Claims Process, and BMO will mail cheques to any additional Claimants who make claims or whose updated contact information is located, in accordance with s. 7.4(2).

#### **7.7 Communication of Class Members' Information for Purposes of Implementing Settlement**

(1) Prior to the date of the above distributions, to the extent Class Counsel has received or receives credible updated contact information for any person claiming to be a Settlement Class

Member, Class Counsel shall be authorized to and shall provide such information to the Defendant for the purpose of delivery of the Claimant's compensation.

(2) The Defendant shall use any information received pursuant to ss. 7.7(1) above solely for the purpose of implementing the Settlement Agreement.

## **7.8 Final Calculation and Cy-Près Distribution**

(1) Settlement cheques issued by the Defendant that are not deliverable to or cashed by a Claimant(s) or which are not cashed by a Claimant within six (6) months of issuance will become stale-dated, ineligible for redemption, and shall not be reissued.

(2) Forthwith after the date on which all uncashed settlement cheques have become stale-dated and ineligible for redemption, the Defendant shall advise on the total dollar value of cheques cashed from Net Settlement Funds – Fixed. If the total dollar value of cheques cashed from Net Settlement Funds – Fixed is 95% or more of the Net Settlement Funds – Fixed, the balance retained in trust shall be paid to the Defendant within thirty (30) days thereafter, subject to the percentage payable to the Fonds d'aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives on the part of the balance attributable to Quebec members.

(3) If the total value of cheques cashed from Net Settlement Funds – Fixed is less than 95% of the Net Settlement Funds – Fixed, the balance of funds not paid to Claimants shall be distributed cy-près to such organization as the Courts may order, subject to the percentage payable to the Fonds d'aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives on the part of the balance attributable to Quebec members.

## **SECTION 8 – STEPS TO EFFECTUATE SETTLEMENT AGREEMENT**

### **8.1 Reasonable Efforts**

(1) The Parties shall take all reasonable steps to effectuate this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal with prejudice of the Ontario Action and a declaration of settlement out of Court of the Québec Action on a without costs basis

as against the Defendant, including cooperating with the Plaintiffs' efforts to obtain the approval and orders required from the Courts and the implementation of this Settlement Agreement.

(2) The Parties agree that, if necessary to give effect to this Settlement Agreement in provinces outside of Ontario (including Québec), they will co-operate in entering into such further documentation and agreements using language as required to effect the agreed-upon results, and applying to the Courts for directions.

(3) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

## **8.2 Mechanics of Administration**

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by agreement between the Parties, each acting reasonably, or by the Courts on motions brought by any Party where necessary.

## **8.3 Actions in Abeyance**

(1) Until the Parties have obtained the Final Order or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Actions other than the Certification and Notice Approval Motion and the Settlement Approval Motion contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

# **SECTION 9 – RELEASES AND DISMISSALS**

## **9.1 Release of the Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Benefits and for other valuable consideration set forth in this Settlement Agreement, the Releasors forever and absolutely release, relinquish and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had,

now have, or hereafter can, shall, or may have, excepting the obligations created by this Settlement Agreement and the Existing Compensation Obligation.

(2) The Plaintiffs and the Class acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

(3) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by the Class against any person other than the Releasees.

## **9.2 No Further Claims**

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Ontario or elsewhere, on his or her own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute or at common law or equity in respect of any Released Claim.

(2) Upon the Effective Date, each member of the Settlement Class shall be deemed to irrevocably consent to the dismissal, without costs, with prejudice and without reservation, of his, her or its action against the Releasees.

(3) Except as provided for in s. 9.1(1), this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Class Members against any person other than the Releasees.

## **9.3 Material Term**

(1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated

in this section shall be considered a material term of the Settlement Agreement and the failure of the Courts to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to s. 11 of the Settlement Agreement.

## **SECTION 10 – EFFECT OF SETTLEMENT**

### **10.1 No Admission of Liability or Concessions**

(1) The Plaintiffs and the Defendant expressly reserve all of their rights if the Settlement is not approved, is terminated or otherwise fails to take effect for any reason.

(2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be:

- (a) an admission or concession by the Defendant of any fact, fault, omission, wrongdoing or liability, or of the truth of any of the claims or allegations made or which could have been made against it in the Actions, or of the application of any of the pleaded statutes to any of the claims made in the Actions, or of the entitlement of any Class Member to compensation or payment for any of the losses and damages alleged in the Actions; or
- (b) an admission or concession by the Plaintiffs, Class Counsel or the Class of any weakness in the claims of the Plaintiffs and the Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered from the Defendant after the trial of the Actions.

### **10.2 Agreement Not Evidence or Presumption**

(1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction:

- (a) against the Defendant, as evidence, or a presumption of a concession or admission of anything set out in s. 10.1(2)(a); or
  - (b) against the Plaintiffs, Class Counsel, or the Class, as evidence, or a presumption, of a concession or admission:
    - (i) of any weakness in the claims of the Plaintiffs and the Class; or
    - (ii) that the consideration to be given hereunder represented the amount that could or would have been recovered from the Defendant after trial of the Actions.
- (2) Notwithstanding s. 10.2(1) this Settlement Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Courts contemplated by this Settlement Agreement, in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as may be necessary, or as otherwise required by law.

## **SECTION 11 – TERMINATION**

### **11.1 Right of Termination**

- (1) In the event that:
- (a) either Court declines to approve this Settlement Agreement or any material part hereof;
  - (b) either Court issues an order approving this Settlement Agreement that is materially inconsistent with the terms of the Settlement Agreement; or
  - (c) an Order approving this Settlement Agreement is reversed on appeal and the reversal becomes a Final Order;

the Plaintiffs and Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice within thirty (30) days following an event described above, subject to the Parties using best efforts and good faith to attempt to

resolve any issues in furtherance of resolution of the Actions on such modified terms as may be required to obtain the Courts' approval, except that the Defendant shall have no obligation to negotiate any increase to the compensation provided for by this Settlement Agreement.

(2) In addition, if the Settlement Benefits are not paid in accordance with ss. 2.1, the Plaintiffs shall have the right to terminate this Settlement Agreement by delivering a written notice to the Defendant.

(3) Any order, ruling or determination made or rejected by either Court with respect to Class Counsel Fees, Class Counsel Disbursements, or Settlement Administration Expenses shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide a basis for the termination of this Settlement Agreement.

(4) Except as provided for in ss. 11.1(3) and 11.4(2), if the Plaintiffs or the Defendant exercises the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

## **11.2 Steps Required on Termination**

(1) If this Settlement Agreement is terminated after either Court has heard or decided any motion in the settlement approval process, either the Defendant or the Plaintiffs shall, as soon as reasonably practicable after termination, on notice to the other Party, bring a motion to the Court(s) for Orders:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in ss. 11.1(3) and 11.4(2); and
- (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior orders or judgments sought from and entered by the Courts in accordance with the terms of this Settlement Agreement.

(2) Subject to s. 11.4(2), the Parties shall consent to the order(s) sought in any motion made under s. 11.2(1).

### **11.3 Notice of Termination**

(1) If this Settlement Agreement is terminated, a notice of the termination will be given to the Class Members, the form and content of which notice is to be agreed upon by the Parties or as ordered by the Courts.

(2) The notice of termination, if necessary, shall be disseminated in a manner agreed upon by the Parties or as ordered by the Courts.

### **11.4 Effect of Termination**

(1) In the event this Settlement Agreement is terminated in accordance with its terms:

- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) the Claims Administrator shall, within thirty (30) days of the written notice pursuant to s. 11.1(1), return to the Defendant the Settlement Benefits it has paid to the Claims Administrator, plus all accrued interest thereon, but less the Defendant's proportional share of the costs of notices required by s. 5, or for motions pursuant to ss. 3.3(1) and 6.5(1), and any translations required by s. 12.13(1).
- (c) the Parties will cooperate in seeking to have all prior orders or judgments sought from and entered by the Courts, in accordance with the terms of this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise;
- (d) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;



- (e) all statutes of limitation applicable to the claims asserted in the Actions shall be deemed to have been tolled during the period beginning with the execution of this Settlement Agreement and ending with the day on which the Final Order(s) contemplated by s. 11.2 are entered; and
- (f) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

(2) Notwithstanding the provisions of s. 11.2, if this Settlement Agreement is terminated, the provisions of ss. 2.2, 3.3, 6.5, 10.1, 10.2, 11.1, 11.2, 11.3, 11.4, 11.5, 11.6, 12.1, 12.3, 12.4, 12.5, 12.6, 12.8, 12.9, 12.10, 12.12, 12.13, 12.15, 12.16, 12.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

#### **11.5 Disputes Relating to Termination**

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

#### **11.6 Handling of Confidential Information in the Event of Termination**

(1) In the event of a valid termination, it is understood and agreed that all documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available.

(2) In the event of termination, within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Defendant or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide counsel for the Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this section shall

be construed as requiring Class Counsel to destroy any of their work product. However, any documents or information provided by the Defendant in connection with the negotiation, administration and termination of this Settlement Agreement may not be disclosed to any person in any manner, or used, directly or indirectly, by Class Counsel or any other person in any way for any reason, including the prosecution of the Actions, without the express prior written permission of the Defendant. Class Counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel that discloses such documents and information.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

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

### **12.2 Headings, etc.**

- (1) In this Settlement Agreement:
  - (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;
  - (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement; and
  - (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

### **12.3 Computation of Time**

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday as “holiday” is defined in the *Rules of Civil Procedure*, RRO 1990, Reg 194, the act may be done on the next day that is not a holiday.

### **12.4 Ongoing Jurisdiction**

(1) The Courts shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

### **12.5 Governing Law**

(1) Subject to s. 12.5(2), this Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

(2) Notwithstanding s. 12.5(1), for matters relating specifically to the Québec Action, the Québec Court shall apply the law of its own jurisdiction and the laws of Canada applicable therein.

### **12.6 Severability**

(1) Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

### **12.7 Entire Agreement**

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

### **12.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Court(s) with jurisdiction over the matter to which the amendment relates.

### **12.9 Binding Effect**

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

### **12.10 Counterparts**

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

### **12.11 Survival**

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

#### **12.12 Negotiated Agreement**

(1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **12.13 Language**

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais*. Nevertheless, if required to by a Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Benefits. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

#### **12.14 Transaction**

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing any errors of fact, of law and/or of calculation.

#### **12.15 Recitals**

(1) The recitals to this Settlement Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

#### **12.16 Acknowledgements**

(1) Each Party hereby affirms and acknowledges that:

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

#### **12.17 Authorized Signatures**

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

#### **12.18 Notice**

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

**For the Plaintiffs, the Class and Class Counsel in the Proceeding:**

**Siskinds LLP**

Barristers and Solicitors  
680 Waterloo Street  
London, ON N6A 3V8

Michael G. Robb

Tel: (519) 660-7872

Fax: (519) 660-7873

Email: [michael.robb@siskinds.com](mailto:michael.robb@siskinds.com)

**Sotos LLP**

180 Dundas Street West  
Suite 1200  
Toronto, ON M5G 1Z8

David Sterns

Tel: (416) 977-0007

Fax: (416) 977-0717

Email: [dsterns@sotosllp.com](mailto:dsterns@sotosllp.com)

**JSS Barristers**

800, 304 8 Avenue SW  
Calgary, AB T2P 1C2

Carsten Jensen, QC, FCI Arb

Tel: (403) 571-1526

Fax: (403) 571-1528

Email: [jensenc@jssbarristers.ca](mailto:jensenc@jssbarristers.ca)

**Siskinds, Desmeules, Avocats**

43 rue de Buade, bureau 320  
Québec City, QC G1R 4A2

Caroline Perrault

Tel: (418) 694-2009

Fax: (418) 694-0281

Email: [caroline.perrault@siskinds.com](mailto:caroline.perrault@siskinds.com)

**For the Defendant:**

**McCarthy Tétrault LLP**

Counsel for the Defendant

**IN WITNESS OF WHICH** the Settling Parties have executed this Settlement Agreement.

**Melissa Mallette on her own behalf and on behalf of the Class, by her counsel**

Name of Authorized Signatory:

Jean-Marc Leclerc

Signature of Authorized Signatory:

[Signature]

Class Counsel

**Hugo Beauvais-Lamy, by his counsel**

Name of Authorized Signatory:

Caroline Perrault

Signature of Authorized Signatory:

Siskinds Desmeules per AM  
Siskinds, Desmeules, Avocats

**Bank of Montreal, by its counsel**

Name of Authorized Signatory:

Dana Dubois - McCarthy Tétrault LLP

Signature of Authorized Signatory:

McCarthy Tétrault LLP per DR  
McCarthy Tétrault LLP  
Counsel for Bank of Montreal



**ADDENDUM TO THE SETTLEMENT AGREEMENT EXECUTED ON  
OCTOBER 3, 2020**

Made as of December 14, 2020

Between

MELISSA MALLETTE (Ontario File No CV-18-00076745-00CP) and  
HUGO BEAUVAIS-LAMY (Québec File No. 500-06-000944-187)

(the “**Plaintiffs**”)

and

BANK OF MONTREAL

(the “**Defendant**”)

---

**RECITALS**

**WHEREAS** the Parties executed a Settlement Agreement on October 3, 2020, which contains certain defined terms used in this Addendum;

**AND WHEREAS** the Settlement Agreement provides at paragraph 12.8 that it may not be modified or amended except in writing and on consent of all Parties;

**AND WHEREAS** on November 9, 2020, a hearing took place on the Certification and Notice Approval Motion in the Québec Action, during which, the Québec Court requested amendments regarding 2.3 and 7.5 of the Settlement Agreement;

**NOW THEREFORE**, the Parties agreed on the following amendments:

1. The paragraph 2.3 (3) is modified as follows:
  - (3) In the event that this Settlement Agreement is not approved by both Courts or is otherwise terminated in accordance with its terms, BMO shall account to Class Counsel and ~~the Ontario~~ both Courts for the use of the Settlement Administration Expenses Fund.
2. The paragraph 2.3 (4) is modified as follows:
  - (4) BMO shall account to the ~~Ontario Courts~~ and to the Parties for all payments it makes from the Settlement Administration Expenses Fund.
3. The paragraph 6.3 (1) is modified as follows:
  - (1) The Orders approving this Settlement Agreement shall be as agreed to by the Parties or in such form or manner as agreed to by the Parties and approved by the Courts.
4. The paragraph 7.1 (6) is modified as follows:

- (6) Within seventy (70) days of the Effective Date, the Defendant shall initiate a **"Claims Process"** for Settlement Class Members to make claims in respect of the Settlement Funds – Claimable.
5. The paragraph 7.3 (1) is modified as follows:
  - (1) Within forty-five (45) days of the Effective Date or the Fee and Disbursement Approval Date (whichever is later), the Defendant shall calculate the compensation owing to each Settlement Class member from the Settlement Funds - Fixed by dividing the Net Settlement Funds – Fixed in accordance with the per Claimant amounts and number of Affected Persons set out in Table 1, below (the **"Compensation Calculation"**);
6. The paragraph 7.3 (2) b) and c) is modified as follows:
  - b) Within 10 days of receipt of same, Class Counsel shall approve the result of the Compensation Calculation or raise an objection; and
  - c) Counsel for the Defendant and Class Counsel shall reasonably cooperate to resolve any objection within 10 days.
7. The paragraph 7.5 (3) is modified as follows:
  - (3) In the event the Parties cannot agree on a method and timeframe for the Claims Process, the Parties shall apply to the Ontario Courts for advice and direction.
8. The paragraph 7.8 (2) is modified as follows:
  - (2) Forthwith after the date on which all uncashed settlement cheques have become stale-dated and ineligible for redemption, the Defendant shall advise on the total dollar value of cheques cashed from Net Settlement Funds – Fixed. If the total dollar value of cheques cashed from Net Settlement Funds – Fixed is 95% or more of the Net Settlement Funds – Fixed, the balance retained in trust and not attributable to Québec members shall be paid to the Defendant within thirty (30) days thereafter. In the event that part of the balance is attributable to Québec members, that part of the balance shall be distributed cy-près to such organization chosen by BMO and approved by the Québec Court or as the Québec Court may order, subject to the percentage payable to the Fonds d'aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives.
9. All other terms of the Settlement Agreement remain unchanged.

**IN WITNESS OF WHICH** the Settling Parties have executed this Addendum to the Settlement Agreement.

**Melissa Mallette on her own behalf and on behalf of the Class, by her counsel**

Name of Authorized Signatory:

---

Signature of Authorized Signatory:

---

Class Counsel

**Hugo Beauvais-Lamy, by his counsel**

Name of Authorized Signatory:

Siskinds, Desmeules, Avocats per "Caroline  
Perrault"

---

Signature of Authorized Signatory:



---

Siskinds, Desmeules, Avocats

**Bank of Montreal, by its counsel**

Name of Authorized Signatory:

McCarthy Tétrault LLP per "Dana M Peebles"

---



Signature of Authorized Signatory:

---

McCarthy Tétrault LLP  
Counsel for Bank of Montreal

## **SCHEDULE "B"**

### **DISTRIBUTION PROTOCOL**

#### **IN THE MATTER OF BMO DATA BREACH CLASS ACTION**

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## PART I - DEFINITIONS

1. For the purpose of this Distribution Protocol, the following definitions will apply:
  - (a) “**Actions**” means the Ontario Action and the Québec Action, as defined in the Settlement Agreement.
  - (b) “**Administration**” has the meaning set out in paragraph 2 of this Distribution Protocol.
  - (c) “**BMO**” means the Defendant, Bank of Montreal, as defined in the Settlement Agreement.
  - (d) “**Claimant**” means each member of the Class for the purposes of receiving compensation from the Net Settlement Funds. Claimant also means each member of a Claimant Group, as defined below.
  - (e) “**Claimant Group**” means any or each of the following groups:
    - (i) “**Group 1 Claimants**” are those Class Members whose Personal Information was accessed by unauthorized individuals and posted to the Internet. According to BMO, this group comprises 3,195 members;
    - (ii) “**Group 2 Claimants**” are those Class Members whose Personal Information including date of birth and SIN was accessed by unauthorized individuals. According to BMO, this group comprises 59,750 members;
    - (iii) “**Group 3 Claimants**” are those Class Members whose Personal Information not including date of birth and SIN was accessed by unauthorized individuals. According to BMO, this group comprises 50,206 members; and
    - (iv) “**Group 4 Claimants**” are those Class Members whose BMO accounts recorded an unauthorized transaction attributable to the Data Breach, each

of whom is also a Group 1 Claimant, Group 2 Claimant or Group 3 Claimant. According to BMO, this group comprises 3,566 members.

- (f) “**Claim Form**” means the form developed for the administration of the Net Settlement Funds - Claimable that a Class Member must complete and submit by the Filing Deadline, as defined below.
- (g) “**Claim Expiry Date**” means the date six months after the date of distribution of the Net Settlement Fund – Claimable cheques under s.12(f) of this Protocol.
- (h) “**Claims Administrator**” means Epiq, the firm appointed by the Courts to administer the Settlement Agreement and the Distribution Protocol in accordance with their provisions, as approved by the Courts, and any employees of this firm.
- (i) “**Class**” or “**Class Members**” means any person who is a current or former client of BMO whose Personal Information was impacted as a result of the Data Breach, excluding an Opt-Out Member. All Class Members are also Claimants.
- (j) “**Class Counsel**” means Siskinds LLP, Siskinds, Desmeules, Avocats, Sotos LLP and JSS Barristers, as defined in the Settlement Agreement.
- (k) “**Class Counsel Disbursements**” bears the meaning ascribed to it in the Settlement Agreement.
- (l) “**Class Counsel Fees**”, including “**Class Counsel Fees – Claimable**” and “**Class Counsel Fees – Fixed**” as applicable, bears the meaning ascribed to them in the Settlement Agreement.
- (m) “**Costs of Administration**” means all costs associated with the Administration, including but not limited to the costs of giving notice, including notice of the Settlement Agreement and the claims process, collecting and reporting on the Opt-Outs, distributing the Net Settlement Funds and otherwise administering the Settlement Agreement.

- (n) **“Court”** means, as the context requires, the Ontario Court or the Québec Court (together herein, the **“Courts”**), as defined in the Settlement Agreement.
- (o) **“Distribution Protocol”** means this plan for distributing the Net Settlement Funds.
- (p) **“Effective Date”** means the later of the dates upon which the Orders of each Court approving both the Settlement Agreement and the Distribution Protocol become Final Orders.
- (q) **“Filing Deadline”** means the date by which Claim Forms must be electronically or in paper form received in order for Class Members to be considered for settlement benefits under the Distribution Protocol, which date shall be three (3) months after the first publication of the notice advising Class Members of the Administration.
- (r) **“Final Order(s)”** means the later of the dates upon which each Court grants Orders approving both the Settlement Agreement and this Distribution Protocol, and the time to appeal each Order has expired without any appeal being taken, or if an appeal is taken, all appeals and any time period for a further appeal has concluded.
- (s) **“Net Settlement Funds”** means the Net Settlement Funds –Fixed and the Net Settlement Funds – Claimable, as defined in the Settlement Agreement.
- (t) **“Net Settlement Funds – Claimable”** means the Net Settlement Funds – Claimable, as defined in the Settlement Agreement.
- (u) **“Net Settlement Funds – Fixed”** means the Net Settlement Funds – Fixed, as defined in the Settlement Agreement.
- (v) **“Notice”** has the meaning set out in paragraph 12(b) of this Distribution Protocol.
- (w) **“Ontario Action”** means *Melissa Mallette v Bank of Montreal*, commenced in the Ontario Court at Ottawa bearing the Court File No. CV-18-00076745-00CP, as defined in the Settlement Agreement.

- (x) **“Ontario Court”** means the Ontario Superior Court of Justice, as defined in the Settlement Agreement.
- (y) **“Opt-Out”** or **“Opt-Out Member”** or **“Opt-Outs”** means a person or persons who validly and timely opted out of the Actions or, for Québec residents, a person who is deemed to have opted out under article 580 of the *Code of Civil Procedure*.
- (z) **“Parties”** means the Plaintiffs and BMO.
- (aa) **“Personal Information”** means information about an identifiable individual, as defined in the Settlement Agreement.
- (bb) **“Plaintiffs”** means Melissa Mallette and Hugo Beauvais-Lamy.
- (cc) **“Québec Action”** means *Beauvais-Lamy v Bank of Montreal*, commenced in the Québec Court at Montreal bearing the Court File No. 500-06-000944-187, as defined in the Settlement Agreement.
- (dd) **“Québec Court”** means the Superior Court of Québec, as defined in the Settlement Agreement.
- (ee) **“Settlement”** or **“Settlement Agreement”** means the settlement agreement entered into by the Plaintiffs and BMO dated October 3, 2020, and any Addendum thereafter.
- (ff) **“Settlement Administration Expenses”** means Settlement Administration Expenses, as defined in the Settlement Agreement.
- (gg) **“Settlement Administration Expenses Fund”** means the sum of \$250,000.00 to be allocated by BMO to fund Settlement Administration Expenses, which amount is separate from and in addition to the Settlement Benefits, as defined in the Settlement Agreement.



- (hh) **“Settlement Benefits”** means the sum of the Settlement Funds – Claimable and the Settlement Funds – Fixed, which are calculated as follows before netting out approved Class Counsel Fees and Class Counsel Disbursements:

| <b>Claimant Group</b> | <b>Settlement Funds - Fixed per Claimant</b>  | <b>Settlement Funds - Claimable per Claimant</b>   |
|-----------------------|---|--|
| Group 1               | \$1,000 – to compensate the first 20 hours spent at \$18/hr and a \$640 inconvenience amount. | Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 20 hours addressing issues arising from the Data Breach. |
| Group 2               | \$144 – to compensate the first 8 hours spent at \$18/hr                                      | Up to 3.5 additional hours at \$18/hr for those who certify they spent in excess of 8 hours addressing issues arising from the Data Breach.  |
| Group 3               |   | Up to 5 hours at \$18/hr for those who certify they spent time addressing issues arising from the Data Breach.                               |
| Group 4               | \$270   |  |

- (ii) **“Settlement Funds – Claimable”** means that portion of the Settlement Benefits that is payable by BMO subject to claims made by Class Members, inclusive of Class Counsel Fees, Class Counsel Disbursements, Settlement Administration Expenses, fees, costs and expenses in the maximum all-inclusive sum of \$8,465,535.00.
- (jj) **“Settlement Funds – Fixed”** means that portion of the Settlement Benefits that is payable by BMO to the Class Members directly, without any requirement for claims made, inclusive of Class Counsel Fees, Class Counsel Disbursements, Settlement Administration Expenses, fees, costs and expenses in the all-inclusive sum of \$12,757,540.00.

## **PART II - GENERAL PRINCIPLES OF THE ADMINISTRATION**

2. This Distribution Protocol is intended to govern the administration process to distribute the Net Settlement Funds recovered in the Actions pursuant to the Settlement Agreement (the “**Administration**”).

3. The Administration shall:

- (a) implement and conform to the Settlement Agreement, orders of the Courts and this Distribution Protocol;
- (b) employ secure, paperless, web-based systems with electronic record-keeping;
- (c) rely on BMO’s assurances that it has diligently and in good faith identified in which Claimant Group or Groups each Claimant falls, and that it has a reasonable belief in the accuracy of those Claimant Groups; and
- (d) where practicable, draw on methods of communication already available between BMO and the Class Members who are or were its clients.

4. As soon as practicable after the Execution Date, BMO shall appoint a Claims Administrator.

5. Within seven (7) business days of the Courts’ granting the Settlement Approval Motions, BMO shall establish a Trust Account containing the Settlement Funds – Fixed.

## **PART III - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – FIXED**

6. Within forty-five (45) days of the Effective Date or the Fees and Disbursement Approval Date (whichever is later), BMO shall calculate the compensation owing to each Settlement Class member from the Settlement Funds - Fixed by dividing the Net Settlement Funds – Fixed and any honorarium the Ontario Court may award to the representative plaintiff in accordance with the per Claimant amounts and number of Affected Persons in each Claimant Group (the “**Compensation Calculation**”). BMO shall provide Class Counsel with the compensation amounts resulting from the Compensation Calculation.

7. Within ten (10) days of receipt of the compensation amounts from BMO, Class Counsel shall approve the result of the Compensation Calculation or raise an objection.
8. Counsel for BMO and Class Counsel shall reasonably cooperate to resolve any objection within ten (10) days.
9. After receiving Class Counsel's approval of the Compensation Calculation or any objection is resolved under paragraph 8, BMO shall distribute the Net Settlement Funds - Fixed to the Claimants as soon as reasonably practicable, according to the following process:
  - (a) BMO shall pay Class Counsel Fees – Fixed and Class Counsel Disbursements as awarded by the Courts;
  - (b) Where the Claimant is a current client of BMO, BMO shall pay the Net Settlement Funds - Fixed directly to the Group 1, 2 and 4 Claimants by mailing a cheque for each Claimant's share of the Net Settlement Funds - Fixed directly to that Claimant, without the need for any application by those Claimants;
  - (c) Where the Claimant is not a current client of BMO, BMO shall send a cheque in the amount of the Claimant's share of the Net Settlement Funds - Fixed to such Claimant at the last known mailing address in BMO's records, unless newer and better information has been received for the Claimant, in which case the newer and better information shall be used; and
  - (d) In the event a Claimant is no longer a client of BMO, and BMO has no last known mailing address in its records for that Claimant, BMO shall provide its best information about that Claimant to Class Counsel, as authorized by the Orders of the Courts, to facilitate Class Counsel making additional efforts to locate the Claimant.
10. Within two (2) months after all cheques are sent in accordance with paragraphs 9(a)-(c), BMO shall report to Class Counsel the total number of letters returned as undeliverable or returned to sender or analogous designation, as well as the particulars of the contact information used, to facilitate Class Counsel making additional efforts to locate the Claimant. Class Counsel shall have

one (1) month to make efforts to locate the Claimant, and BMO will mail cheques to any additional Claimants located.

#### **PART IV - ADMINISTRATION OF THE NET SETTLEMENT FUNDS – CLAIMABLE**

11. Within seventy (70) days of the Effective Date, BMO shall initiate a “**Claims Process**” for Settlement Class Members to make claims in respect of the Settlement Funds – Claimable. The Net Settlement Funds – Claimable shall be distributed among the Group 1, 2, and 3 Claimants following the receipt of their valid Claim Forms before the Filing Deadline.

12. Generally, the Administration of the Net Settlement Funds – Claimable will be as follows:

##### **A. CLAIMS PROCESS FOR THE NET SETTLEMENT FUNDS - CLAIMABLE**

###### **(a) Step 1: Creation of a bilingual website portal to accommodate the Administration and creation of the Claim Form**

The Claims Administrator will create an information page and webpage form that Class Members can access in order to file a Claim Form, as specified in Exhibits “A”, “B”, and “C”.

Class Members can contact the Claims Administrator, in French or English, at no charge, with questions about how to complete the Claim Form.

###### **(b) Step 2: Notice of the Claims Process**

(i) The Parties will prepare a form of notice, as approved by the Courts (the “**Claims Notice**”), which describes: (i) the Class Member’s membership in the Class; (ii) the approval of the Settlement Agreement by the Courts; (iii) the process by which the Net Settlement Funds – Fixed will be allocated and distributed; (iv) the process by which the Net Settlement Funds – Claimable will be claimed, allocated and distributed; (v) the process to complete and file the Claim Form; and (vi) the Filing Deadline for the Claim Form.

(ii) The Claims Notice shall be mailed directly to Class Members by BMO.

- (iii) Class Counsel shall post the Claims Notice to their websites and social media channels including Twitter, Facebook and such other channels as are regularly used by the Class Counsel firms.
- (iv) Class Counsel shall provide a copy of the Claims Notice to any person who has contacted them in respect of the Actions.
- (v) All Claims Notices mailed by BMO shall have the appearance and format of communication regularly distributed by BMO such that it will be identifiable by Class Members as having originated with BMO.
- (vi) All Claims Notices mailed by BMO shall be in the language in which BMO customarily communicates or communicated with the Class Member as a client.
- (vii) Class Counsel should post the Claims Notice to the Registre des actions collectives of the Superior Court of Québec.

(c) **Step 3: Filing of a Claim Form**

- (i) Subject to further Courts orders, all Claim Forms must be received on or before the Filing Deadline and Claim Forms submitted after the Filing Deadline shall be rejected.
- (ii) All Claim Forms submitted through the online claims portal shall be deemed to have been received upon transmission.
- (iii) All Claim Forms submitted by mail shall be accepted if the postmark date pre-dates the Filing Deadline. If the postmark is illegible, any Claim Form received by mail within four (4) business days after the Filing Deadline will be accepted, subject to verification by the Claims Administrator.
- (iv) All Claim Forms submitted by courier shall be accepted if the package was marked as received by the courier prior to the Filing Deadline. If the marking is illegible, any Claim Form received by courier within two (2)

business days after the Filing Deadline will be accepted, subject to verification by the Claims Administrator.

**(d) Step 4: Deficiency and Error Correction**

If the Claims Administrator finds that deficiencies exist in a Claim Form, so long as the Claimant is a Class Member, BMO or the Claims Administrator shall forthwith notify the Claimant of the deficiencies. The Claimant will have ten (10) days after being informed of a deficiency to correct the deficiency. Within ten (10) days after the Claimant submits corrected information, the Claims Administrator shall, acting in good faith, determine in its sole discretion whether the deficiency has been corrected adequately. The Claims Administrator's determination shall be final, and there shall be no right of appeal or review.

**(e) Step 5: Calculation of the Settlement Funds - Claimable**

- (i) Based on the valid Claim Forms received before the Filing Deadline or otherwise accepted, BMO will calculate the Settlement Funds – Claimable per Claimant. BMO will tally the total Settlement Funds – Claimable per Claimant of all Claimants in order to determine the total Settlement Funds – Claimable.
- (ii) The results of BMO's calculations under paragraph 12(e)(i) will be presented to Class Counsel for confirmation in Microsoft Excel, or such other format as agreed to by the Parties. Where Class Counsel disputes BMO's calculation, and the Parties cannot agree on a correct calculation, the Plaintiff shall bring a motion before the Courts for determination of the matters that remain in dispute after all calculations have been completed.
- (iii) Within thirty (30) days after the calculation of the Settlement Funds - Claimable has been agreed by the Parties or fixed by the Courts, BMO shall deposit the required sum to the Trust Account.

**(f) Step 6: Calculation of the Net Settlement Funds – Claimable**

- (i) After the calculation of the Settlement Funds – Claimable has been completed, the sum of the Class Counsel Fees – Claimable shall be determined, according to the Orders of the Courts.
- (ii) BMO shall pay to Class Counsel, from the Settlement Funds – Claimable, the Class Counsel Fees – Claimable and Class Counsel Disbursements (if applicable), as awarded by the Courts.
- (iii) At the same date, the sum of the Class Counsel Fees – Fixed shall be adjusted, each according to the Orders of the Courts. BMO and Class Counsel shall then make such payments or return of funds as necessary to match the sum of Class Counsel Fees – Fixed.
- (iv) The amount remaining of the Settlement Funds – Claimable after the payments set out in paragraph 12(f)(ii) above shall form the Net Settlement Funds – Claimable.
- (v) BMO shall be responsible for all Settlement Administration Expenses, including costs of notices, even if such expenses exceed the Settlement Administration Expenses Fund.

**B. DISTRIBUTION OF THE NET SETTLEMENT FUNDS – CLAIMABLE**

**(g) Step 7: Distribution of the Net Settlement Funds – Claimable to Class Members with BMO banking accounts**

BMO shall make a distribution of the Net Settlement Funds – Claimable among the Group 1, 2 and 3 Claimants by mailing a cheque in the amount of each Claimant's share of the Net Settlement Funds – Claimable to the Claimant's address.

**(h) Step 8: Distribution of the Net Settlement Funds – Claimable to Class Members without BMO banking accounts**

- (i) In the event a Claimant is no longer a BMO client, BMO or the Claims Administrator shall mail a cheque in the amount of the Claimant's share of the Net Settlement Funds – Claimable to such Claimant at the address provided in the Claim Form.
- (ii) In the event of such payments pursuant to paragraph 12(h)(i), two (2) months after all cheques are sent, BMO shall report to Class Counsel the total number cheques returned as undeliverable or returned to sender or analogous designation as well as the particulars of the contact information used to facilitate Class Counsel making additional efforts to locate the Claimant. Class Counsel shall have one (1) month to make efforts to locate the Claimant, and BMO will mail cheques to any additional Claimants located.

**C. CONCLUSION OF ADMINISTRATION**

**(i) Step 9: Final Calculation of Class Counsel Fees**

After the Claims Expiry Date, If the total dollar value of cheques cashed from Net Settlement Funds – Fixed is 95% or more of the Net Settlement Funds – Fixed, the balance retained in trust by the Claims Administrator and not attributable to Québec members shall be paid to BMO within thirty (30) days thereafter. In the event that part of the balance is attributable to Québec members, that part of the balance shall be distributed *cy-près* to such organization proposed by BMO and approved by the Québec Court or as the Québec Court may order, subject to the percentage payable to the Fonds d'aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives.

**(j) Step 10: Payments via *cy-près* and to the Fonds d'aide aux actions collectives**



- (i) After the Claims Expiry Date, if the total value of cheques cashed from Net Settlement Funds – Fixed is less than 95% of the Net Settlement Funds – Fixed, the balance of funds not paid to Claimants shall be distributed by *cy-près* to an organization approved by the Courts, subject to the percentage payable to the Fonds d’aide aux actions collectives under the Regulation respecting the percentage withheld by the Fonds d’aide aux actions collectives on the part of the balance attributable to Québec members.

## **PART V - CLASS COUNSEL**

- 13. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Distribution Protocol and the Claims Process.
- 14. During the Claims Process, the Claims Administrator will provide periodic updates to Class Counsel, every two (2) weeks or sooner upon material developments in the distribution process.
- 15. Class Counsel shall prepare a French translation of the Distribution Protocol, the cost of which shall be a Class Counsel Disbursement. In the event of any dispute as to the interpretation or application of this Distribution Protocol, only the English version shall govern.

## **PART VI - RESOLUTION OF DISPUTES**

- 16. Notwithstanding the foregoing, if Class Counsel have reasonable and material concerns about the Claims Process or Administration, they shall raise these concerns with BMO. If the Parties fail to resolve these concerns, either Party may move to the Courts further directions with respect to the distribution of the Settlement Benefits.

## **PART VII - CONFIDENTIALITY**

- 17. All information received from BMO or the Class Members is collected, used, and retained by the Claims Administrator and/or Class Counsel pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 for the purposes of administering their claims.

[PAGE ONE]

**BMO DATA INCIDENT CLASS ACTION SETTLEMENT – ONLINE CLAIM FORM FOR GROUP 1**

*[Introductory language as to the 2018 privacy incident and class action settlement]*("2018 Incident")

Your full name:

Date of birth  
(yyyy/dd/mm):

Further to BMO's recent letter, you have received compensation for 20 hours of time and inconvenience as a result of the 2018 Incident. If you spent more than 20 hours on tasks as a result of the 2018 Incident (above and beyond performing regular banking tasks including routinely checking your account statements), please click the link below to substantiate the total number of hours you spent as a result of the 2018 Incident. Pursuant to the settlement, you may be entitled to compensation for an additional 3.5 hours of time.

Click [here](#) [clicking on the link will direct the claimant to page two]

**[PAGE TWO]**

**Time Spent**

Please enter all of the tasks that you undertook in respect of the 2018 Incident. Please also enter the amount of time that you spent on each task.

| Task relating to the Incident | Time                                  |   |
|-------------------------------|---------------------------------------|---|
|                               | Hours                                 | Minutes                                 |
| [drop-down task menu]         | [drop-down in increments of one hour] | [drop-down in increments of 15 minutes] |
| Add any additional tasks:     | [drop-down in increments of one hour] | drop-down in increments of 15 minutes]  |
| <b>TOTAL</b>                  |                                       | [auto calculation of total]             |

**Attestation and Signature**

I hereby attest that I have not received any compensation for the time I have claimed above from insurance, an employer, BMO, another financial institution, or from any other source. [If partial compensation has been received, please indicate the sum here: \$\_\_\_\_\_, which will be deducted from this claim.]

I certify that the information I have provided in this Claim Form is true and correct.

Signature: 

[use mouse or stylus to draw signature]

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit this claim.

**Drop-down menu of tasks:**

1. Oral communications with BMO, including attending at a BMO branch
2. Written communications with BMO
3. Changing passwords to accounts, including your BMO Online Banking Account
4. Oral communications with a credit monitoring agency
5. Written communications with a credit monitoring agency
6. Reviewing credit reports
7. Oral communications with another financial institution (e.g. credit card company or mortgage company)
8. Written communications with another financial institution (e.g. credit card company or mortgage company)
9. Oral communications with other third parties (e.g. government)
10. Written communications with other third parties (e.g. government)
11. Other

[PAGE ONE]

**BMO DATA INCIDENT CLASS ACTION SETTLEMENT – ONLINE CLAIM FORM FOR GROUP 2**

*[Introductory language as to the 2018 privacy incident and class action settlement]*("2018 Incident")

Your full name:

Date of birth  
(yyyy/dd/mm):

Further to BMO's recent letter, you have received compensation for 8 hours of time and inconvenience as a result of the 2018 Incident. If you spent more than 8 hours on tasks as a result of the 2018 Incident (above and beyond performing regular banking tasks including routinely checking account statements), please click the link below to substantiate the total number of hours you spent as a result of the 2018 Incident. Pursuant to the settlement, you may be entitled to compensation for an additional 3.5 hours of time.

Click [here](#) [clicking on the link will direct the claimant to page two]

**[PAGE TWO]**

**Time Spent**

Please enter all of the tasks that you undertook in respect of the 2018 Incident. Please also enter the amount of time that you spent on each task.

| Task relating to the Incident | Time                                  |   |
|-------------------------------|---------------------------------------|---|
|                               | Hours                                 | Minutes                                 |
| [drop-down task menu]         | [drop-down in increments of one hour] | [drop-down in increments of 15 minutes] |
| Add any additional tasks:     | [drop-down in increments of one hour] | drop-down in increments of 15 minutes]  |
| <b>TOTAL</b>                  |                                       | [auto calculation of total]             |

**Attestation and Signature**

I hereby attest that I have not received any compensation for the time I have claimed above from insurance, an employer, BMO, another financial institution, or from any other source. [If partial compensation has been received, please indicate the sum here: \$\_\_\_\_\_, which will be deducted from this claim.]

I certify that the information I have provided in this Claim Form is true and correct.

Signature: 

[use mouse or stylus to draw signature]

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Submit this claim.



**Drop-down menu of tasks:**

1. Oral communications with BMO, including attending at a BMO branch
2. Written communications with BMO
3. Changing passwords to accounts, including your BMO Online Banking Account
4. Oral communications with a credit monitoring agency
5. Written communications with a credit monitoring agency
6. Reviewing credit reports
7. Oral communications with another financial institution (e.g. credit card company or mortgage company)
8. Written communications with another financial institution (e.g. credit card company or mortgage company)
9. Oral communications with other third parties (e.g. government)
10. Written communications with other third parties (e.g. government)
11. Other *[open field to type task]*

**BMO DATA INCIDENT CLASS ACTION SETTLEMENT – ONLINE CLAIM FORM FOR GROUP 3**

[Introductory language as to the 2018 privacy incident and class action settlement] ("2018 Incident")

Your full name:

Date of birth  
(yyyy/dd/mm):

Further to BMO's recent letter, you are eligible to claim compensation for up to 5 hours of time spent on tasks you undertook in respect of the 2018 Incident (above and beyond performing regular banking tasks including routinely checking account statements). Please identify and enter the amount of time that you spent on each task.

| Task relating to the Incident | Time                                  |   |
|-------------------------------|---------------------------------------|---|
|                               | Hours                                 | Minutes                                 |
| [drop-down task menu]         | [drop-down in increments of one hour] | [drop-down in increments of 15 minutes] |
| Add any additional tasks:     | drop-down in increments of one hour]  | [drop-down in increments of 15 minutes] |
| <b>TOTAL</b>                  | [auto calculation of total]           | [auto calculation of total]             |

**Attestation and Signature**

I hereby attest that I have not received any compensation for the time I have claimed above, from insurance, an employer, BMO, another financial institution, or from any other source. [If partial compensation has been received, please indicate the sum here: \$\_\_\_\_\_, which will be deducted from this claim.]

I certify that the information I have provided in this Claim Form is true and correct.

Signature:

[use mouse or stylus to draw signature]

Print Name:

\_\_\_\_\_

Date:

\_\_\_\_\_

Submit claim.

**Drop-down menu of tasks:**

1. Oral communications with BMO, including attending at a BMO branch
2. Written communications with BMO
3. Changing passwords to accounts, including your BMO Online Banking Account
4. Oral communications with a credit monitoring agency
5. Written communications with a credit monitoring agency
6. Reviewing credit reports
7. Oral communications with another financial institution (e.g. credit card company or mortgage company)
8. Written communications with another financial institution (e.g. credit card company or mortgage company)
9. Oral communications with other third parties (e.g. government)
10. Written communications with other third parties (e.g. government)
11. Other *[open field to type task]*

**MELISSA MALLETTTE**  
**Plaintiff**

-and-

**BANK OF MONTREAL**  
**Defendant**

**Court File No. CV-18-00076745-00CP**

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

PROCEEDING COMMENCED AT OTTAWA

**ORDER**  
**(Settlement Approval and Distribution Protocol Approval)**

**SOTOS LLP**

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