

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE GLUSTEIN

) **MONDAY, the 7TH day**
)
) **of OCTOBER, 2019**



BETWEEN:

KALEVI HAIKOLA

Plaintiff

-and-

THE PERSONAL INSURANCE COMPANY and
DESJARDINS GENERAL INSURANCE GROUP INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Certification, Settlement, and Counsel Fee Approval Motions)

THIS MOTION made by the Plaintiff, on consent, for an order certifying this action as a class proceeding; approving the settlement of this action pursuant to section 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the “CPA”), in accordance with the terms of the Settlement Agreement between the Plaintiff and the Defendants dated June 28, 2019 (the “Settlement Date”); approving the Plaintiff’s proposed notice plan pursuant to section 17 of the CPA; and an order granting the Plaintiff an honorarium in the amount of \$15,000 for his efforts in prosecuting this action on a *quantum meruit* basis,

AND THIS MOTION made by Class Counsel for approval of their fees and disbursements under a contingency agreement between the Plaintiff and Class Counsel dated November 7, 2017 in the amount of \$500,000, plus HST of \$65,000 and \$20,000 for disbursements inclusive of HST, were heard this day at the Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Plaintiff and Class Counsel's motion records, including the Affidavit of John Kingman Phillips, sworn September 4, 2019, the Affidavit of Kalevi Haikola, sworn September 5, 2019, the Settlement Agreement dated June 28, 2019 and attached to this Order as **Appendix 1** (the "Settlement Agreement"), and the combined factum and brief of authorities of the Plaintiff and Class Counsel, filed, and on hearing the submissions of Class Counsel and counsel for the Defendants;

AND ON BEING ADVISED that CA2 Class Action Claims Administration has consented to act as the Claims Administrator;

AND ON BEING ADVISED that the Public Interest Advocacy Centre has consented to accept any *cy-près* award for use in its privacy advocacy endeavors;

AND ON BEING ADVISED that the Defendants consent to this Order, without any admission of liability whatsoever:

CERTIFICATION

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6, for settlement purposes only.

2. **THIS COURT ORDERS** that the “Class” is defined as:

All persons who: (1) were insured by The Personal Insurance Company (“The Personal”) under a valid automobile insurance policy between January 2012 and May 2019; (2) made an automobile insurance claim under that policy with The Personal during that time; and (3) consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal’s claims management process (the “Class”).

3. **THIS COURT ORDERS** that the cause of action asserted on behalf of the Class is breach of contract.

4. **THIS COURT ORDERS** that Kalevi Haikola shall be appointed as Representative Plaintiff on behalf of the Class.

5. **THIS COURT ORDERS** that the following common issues shall be certified for settlement purposes only:

- (a) Did the Defendants breach their contracts with the class members by failing to comply with an implied term to comply with the *Personal Information Protection and Electronic Documents Act*.
- (b) If so, are the Defendants, or either of them, liable in damages to the Class?

6. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a written request to opt out to the Claims Administrator which must be postmarked, if sent by mail, or received if sent by fax, e-mail, or courier, on or before December 6, 2019 (the “Opt Out Deadline”, which will be 60 days from the date of the Order) and any opt out forms received by the Claims Administrator after this date will not be accepted or valid.

7. **THIS COURT ORDERS** that an opt out must contain:

- (a) The full name and mailing address of the proposed Class member; and
 - (b) The Class member's automobile insurance policy number(s) with The Personal,
8. **THIS COURT ORDERS** that any Class members who validly opt out of this action by the Opt Out Deadline, are not bound by the Settlement Agreement and shall no longer participate in, or have the opportunity in the future to participate in, this action or the Settlement Agreement, and are excluded from the Class.
9. **THIS COURT ORDERS** that within 10 business days of the Opt Out Deadline, the Claims Administrator shall provide to Class Counsel and counsel for the Defendants the names of persons who have delivered valid opt out notices and a copy of the opt out notices.

SETTLEMENT APPROVAL

10. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement at Appendix 1 is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.
11. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
12. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to Section 29(3) of the *Class Proceedings Act, 1992*, SO 1992, c 6 and shall be implemented in accordance with its terms.
13. **THIS COURT ORDERS** that the Defendants shall pay \$2,250,000 in full and final settlement of the Released Claims (the "Settlement Amount").

14. **THIS COURT ORDERS** that \$50,000, all inclusive, of the Settlement Amount shall be paid to Class Counsel for the Plaintiff's costs in respect of the Federal Court judicial review proceeding under Federal Court file number T-1161-18 (the "Related Proceedings"), with the remaining \$2,200,000 of the Settlement Amount to comprise the "Settlement Fund".
15. **THIS COURT ORDERS AND DECLARES** that the Releasors have agreed not to make or continue any claim, complaint, demand, action, suit or proceedings arising out of or relating to the subject matter of the Released Claims against the Releasees or any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Releasees, but the Released Claims do not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.
16. **THIS COURT ORDERS AND DECLARES** that, without limiting the foregoing, each Class Member, whether or not he or she submits a claim for compensation under the Settlement Agreement, is deemed to have completely and unconditionally released and forever discharged the Releasees from any and all Released Claims.
17. **THIS COURT ORDERS AND DECLARES** that, without limiting the foregoing, each Class Member, whether or not he or she submits a claim under the Settlement Agreement, is forever barred and enjoined from continuing, commencing, instituting, or prosecuting any and all manner of claims, complaints, demands, actions, investigations, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever

incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum asserting against any of the Defendants or Releasees any claims that relate in any manner to or constitute any Released Claims. However, the Released Claims do not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.

18. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement at Appendix A, is binding upon the Plaintiff and each Class Member, whether or not they submit a claim to participate in the distribution of the Settlement Fund, including those Class Members who are minors or mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.
19. **THIS COURT ORDERS AND DECLARES** that any Other Action commenced in Ontario by any Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

APPOINTMENT OF CLAIMS ADMINISTRATOR

20. **THIS COURT ORDERS AND DECLARES** that the Claims Administrator shall be CA2 Class Action Claims Administration.

21. **THIS COURT ORDERS** that the Claims Administrator shall maintain confidentiality over and shall not share the information provided pursuant to this Order with any other person, including, but not limited to any lawyer (except Class Counsel and any lawyers retained by the Claims Administrator), unless doing so is necessary for effecting the Notice Protocol and facilitating the claims administration process in accordance with the Settlement Agreement.
22. **THIS COURT ORDERS** that the Claims Administrator shall use the information provided pursuant to this Order for the sole purpose of effecting the Notice Plan and facilitating the claims administration process in accordance with the Settlement Agreement, and for no other purpose.
23. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Order, or the administration of the Settlement Agreement and this Order except with leave of this Court.
24. **THIS COURT ORDERS** that the Claims Administrator shall provide notice of this Order pursuant to the Notice Plan, facilitate the claims administration process, and report to the Court and the Parties in accordance with the terms of the Settlement Agreement.
25. **THIS COURT ORDERS** that the Claims Administrator shall pay its Administration Expenses from the Settlement Fund, from time to time, as the Administration Expenses are incurred.

26. **THIS COURT ORDERS** that the Claims Administrator shall deliver a final report to this Court and the Parties upon the completion of the administration of the Settlement Agreement, detailing the total funds received and the disbursement thereof, the total number of claimants, the amount paid to each claimant, and the amount paid *cy-pres*, if any.

NOTICE PLAN

27. **THIS COURT ORDERS** that the short form Notice of Court Order is hereby approved substantially in the form in Schedule D of the Settlement Agreement, and shall be disseminated in accordance with the Notice Plan provided in this Court's order dated July 10, 2019 (the "Notice Order").
28. **THIS COURT ORDERS** that the long form Notice of Court Order is hereby approved substantially in the form in Schedule E of the Settlement Agreement, and shall be disseminated in accordance with the Notice Plan provided in the Notice Order.

PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION

29. **THIS COURT ORDERS AND DECLARES** that this Order is an order compelling the production of information by the Defendants, the Claims Administrator, and Class Counsel within the meaning of applicable privacy laws, including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.
30. **THIS COURT ORDERS AND DECLARES** that the information to be provided by the Defendants, Class Counsel, or the Claims Administrator pursuant to the terms of this Order without the consent of the Class members satisfies the requirements of any privacy laws in

any jurisdiction in Canada allowing such information to be disclosed under the terms of a court order.

31. **THIS COURT ORDERS AND DECLARES** that the Defendants and the Releasees, the Claims Administrator, and Class Counsel are hereby released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of any personal information required by the terms of this Order.

CLASS COUNSEL FEE APPROVAL AND PLAINTIFF'S HONORARIUM

32. **THIS COURT ORDERS** that the fees and disbursements of Class Counsel for the Class Action are hereby fixed at a total of \$585,000.00, being \$500,000 for fees for the class action, \$65,000 for HST, and \$20,000 for disbursements and applicable taxes, which are a first charge upon the Settlement Fund, and may be deducted before the balance is transferred to the Claims Administrator.
33. **THIS COURT ORDERS** that the Plaintiff is awarded an honorarium of \$15,000 on a *quantum meruit* basis for the contributions that he has made in the prosecution of this action for the benefit of the Class as a whole, including in proceedings before the Privacy Commissioner of Canada, and this amount shall be paid from the Settlement Fund before Class Counsel transfers the net Settlement Fund to the Claims Administrator
34. **THIS COURT ORDERS** that Class Counsel shall, within 10 days of this order becoming Final, transfer the balance of the Settlement Fund, including the interest accrued in the Account, and less Class Counsel's fees, accrued Administration Expenses, and the

Plaintiff's honorarium, to the Claims Administrator to be held in trust for the benefit of the Class, pending distribution to the Class Members in accordance with the Distribution Protocol at Schedule H of the Settlement Agreement.

CY-PRES PAYMENT

35. **THIS COURT ORDERS** that any residual amount remaining in the Settlement Fund after all Class members' claims and Administration Expenses have been paid, shall be paid, *cy-près*, to the Public Interest Advocacy Centre for use in its privacy advocacy endeavors.

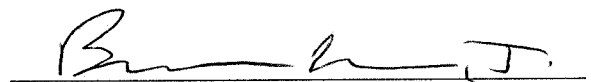
DISMISSAL OF ACTION

36. **THIS COURT ORDERS AND ADJUDGES** that this action shall be dismissed against the Defendants without costs and with prejudice.
37. **THIS COURT DECLARES** that, notwithstanding the foregoing, this Court shall retain its supervisory jurisdiction over the administration of this settlement.

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

OCT 08 2019

PER/FAR



B. Glustein J.



APPENDIX 1

[Settlement Agreement]

SETTLEMENT AGREEMENT

Made as of June 28, 2019

Between:

KALEVI HAIKOLA

(the Plaintiff)

-and-

**THE PERSONAL INSURANCE COMPANY and
DESJARDINS GENERAL INSURANCE GROUP INC.**

(the Defendants)

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RECITALS

- A. WHEREAS the Plaintiff commenced a proposed class action in Federal Court on February 27, 2018, bearing Federal Court file no. T-382-18 as against the Defendants, which shall be discontinued as a term of this Settlement Agreement (the "Federal Court Action");
- B. WHEREAS in furtherance of this Settlement Agreement the Plaintiff will commence an action in Ontario Superior Court for the purposes of certifying for settlement purposes, on consent, a class proceeding (the "Superior Court Action") (together, with the Federal Court Action, the "Class Action");
- C. WHEREAS the Class Action asserts claims against the Defendants on behalf of the proposed Class in relation to the collection and/or use of the Class Members' credit score by The Personal Insurance Company ("The Personal") as part of the fraud prevention and detection processes of The Personal's automobile insurance claims management process;
- D. WHEREAS, the Defendants deny all the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein, but have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- E. WHEREAS the Defendants have agreed that, for the purposes only of effecting this settlement of the Class Action, they will consent to certification of this Action as a class proceeding with the Plaintiff appointed as the representative plaintiff;
- F. WHEREAS the Plaintiff brought an Access to Information Request to the Office of the Privacy Commissioner, and The Personal Insurance Company commenced a judicial review application in Federal Court bearing court file no. T-1161-18 in respect of the decision of the Privacy Commissioner to release certain documents to the Plaintiff (the "Related Proceedings"), and the Plaintiff has opposed the application;
- G. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on Class Counsel's analyses of the facts and law applicable to the Plaintiff's claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;
- H. WHEREAS the Plaintiff, Class Counsel, and the Defendants 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 Defendants, or evidence of the truth of any of the Plaintiff's allegations against the Defendants, which the Defendants expressly deny, nor any admission by or evidence against the Defendants as to the merits of the claims asserted in the Class Action; and

- I. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Ontario Superior Court of Justice (the Court);

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

ARTICLE I - DEFINITIONS

1.1 Definitions

- (a) ***Access to Information Request*** means the request for access to information made by the Plaintiff under the *Access to Information Act*, RSC 1985, c A-1 for certain records of the Privacy Commissioner of Canada's investigation of the Defendants under the Privacy Commissioner of Canada's file number PIPEDA-032166 / A-2017-00140/ST and which is the subject matter of a judicial review application commenced by the Defendants under Federal Court file number T-1161-18.
- (b) ***Account*** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel or the Claims Administrator, as the case may be, in which the Settlement Fund will be held for the benefit of the Class Members until distributed pursuant to the Distribution Protocol.
- (c) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel, the Claims Administrator, or otherwise, for the approval, implementation and operation of this Settlement Agreement including the costs of distribution of the Settlement Fund, the costs of all notices to the Class, and the costs of the claims administration, but excluding Class Counsel Fees.
- (d) ***Certification Order*** means the anticipated order of the Court certifying the Class Action as a class proceeding, as provided for as part of the Second Order.
- (e) ***Claim*** means the proposed class proceeding to be commenced by the Plaintiff in the Court after execution of this Settlement Agreement.
- (f) ***Claims Administrator*** means CA2 Class Action Claims Administration, or such other entity or person appointed by the Court to administer this Settlement Agreement and any of CA2 Class Action Claims Administration's employees or agents.
- (g) ***Class*** means the members of the Class as defined in the Certification Order, but excludes any person who validly opts out of the Class Action, and ***Class Member*** means any one thereof.

- (h) **Class Action** means the proposed class proceeding commenced by the Plaintiff in the Federal Court bearing Court File No. T-382-18, and any re-filed version of that Class Action in the Ontario Superior Court of Justice.
- (i) **Class Counsel** means Waddell Phillips Professional Corporation.
- (j) **Class Counsel Fees** include the fees, disbursements, costs, interest, HST and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action and the Related Proceedings.
- (k) **Court** means the Ontario Superior Court of Justice or the Federal Court.
- (l) **Defence Counsel** means the law firm of McCarthy Tétrault LLP.
- (m) **Defendants** means The Personal and Desjardins General Insurance Group Inc., and **Defendant** means either one thereof.
- (n) **Distribution Protocol** means the plan for distributing the Settlement Fund and accrued interest to the Class as approved by the Court.
- (o) **Effective Date** means (i) the date upon which the ability to appeal from the anticipated Second Order expires - namely, thirty (30) days after the Second Order is granted, unless the motion is unopposed, in which case the date which is the first business day after the Second Order is granted; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final Order, but an appeal from the Second Order shall not include any appeal that concerns only the issue of either Class Counsel's fees or disbursements for the purposes of establishing the Effective Date.
- (p) **Final** when used in relation to a Court Order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such Order.
- (q) **First Order** means the proposed order of the Court granting the following relief: (1) the Court's approval of the Notice of Hearing; and (2) the appointment of the Claims Administrator, which will be substantially in the form of **Schedule A** hereto or as modified by the Court.
- (r) **Notice of Hearing** means the short and long form of Notice of Hearing for Class Action Certification, Settlement Approval, and Counsel Fee Approval, approved by the Court to inform the Class of: (1) the date and location of the hearing to certify this action as a class proceeding and approve this Settlement Agreement; (2) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedules B and C** hereto or as modified by the Court; and (3) Class Counsel Fees.

- (s) **Notice of Court Order** means the short and long form of Notice of Class Action Certification, Settlement Approval, and Counsel Fee Approval approved by the Court to inform the Class Members of (1) the certification of this action as a class proceeding, (2) approval of this Settlement Agreement; (3) approval of Class Counsel Fees; (4) the process by which Class Members may opt out; and (5) the process by which the Class Members may apply to obtain compensation from the Settlement Fund, which will be substantially in the form of **Schedules D and E** hereto, or as modified by the Court.
- (t) **Other Actions** means any actions or court proceedings, other than the Class Action against any of the Releasees to the extent that such actions or proceedings relate to any claim asserted in the Class Action or that could have been asserted in the Class Action and includes the Related Proceedings, but does not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.
- (u) **Parties**, when capitalized, means the signatories to this Settlement Agreement, being the Plaintiff and the Defendants, and **Party** means any one thereof.
- (v) **Personal Information Procedures** means the procedures and systems implemented by The Personal starting in January 2012 for collecting and/or using Class Members' credit scores as part of the fraud prevention and detection needs of The Personal's automobile insurance claims management process.
- (w) **Related Proceedings** means the Access to Information Request and The Personal Insurance Company's judicial review application in Federal Court bearing court file no. T-1161-18 in respect of the decision of the Privacy Commissioner to release certain documents to the Plaintiff.
- (x) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly or indirectly, ever had, could have had, now have, or hereafter can, shall, or may have, relating in any way to the Personal Information Procedures, or relating to any conduct alleged (or which could have been alleged) in the Class Action and Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, whether in Canada or elsewhere, against the Releasees, or any one or more thereof, in connection with the Personal Information Procedures in any manner, including in connection with any legal proceedings relating to the Personal Information Procedures, and any claims for contribution or indemnity or other relief over and, for greater certainty, the

Released Claims do not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.

- (y) **Releasees** means the Defendants and their respective predecessors, successors, parents, subsidiaries, affiliates and past and current officers, directors, employees, agents and beneficiaries of any kind.
- (z) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind.
- (aa) **Second Order** means the anticipated order of the Court at **Schedule G** certifying the Ontario Superior Court Action as a class proceeding, approving the terms of this Settlement Agreement, and approving Class Counsel Fees.
- (bb) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (cc) **Settlement Date** means the date by which both parties have executed the Settlement Agreement.
- (dd) **Settlement Amount** means the all-inclusive amount of Two Million Two Hundred Fifty Thousand Canadian Dollars (CDN \$2,250,000.00), payable by the Defendants, inclusive of any interest earned on the Settlement Amount after it has been transferred to Class Counsel pursuant to Article V of this Settlement Agreement pending payment of the Settlement Fund to the Class.
- (ee) **Settlement Fund** means the Settlement Amount less \$50,000 in legal fees, inclusive of tax and disbursements, to be paid to Class Counsel for the Related Proceedings.

ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL

2.1 Best Efforts

The Parties shall use their best efforts to fulfill the terms of this settlement and to secure Court approval and implementation of the settlement including the final dismissal of the Class Action, with prejudice, and without costs.

2.2 Court Approval Required for Enforceable Agreement

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless and until this Settlement Agreement is approved by the Court.

ARTICLE III - SUPERIOR COURT ACTION

3.1 Commencing Ontario Superior Court Action

As soon as possible after this Settlement Agreement is executed, the Plaintiff shall issue and serve a statement of claim commencing a claim in the Ontario Superior Court. The statement of claim shall include only a claim for breach of contract and a single issue to be certified for settlement purposes. The Defendants will review and approve the draft statement of claim before it is issued.

3.2 Defendants' Obligations to Cooperate

The Defendants shall cooperate with the Plaintiff in commencing the Claim including:

- (a) Consenting to service of the Claim upon Defence Counsel; and
- (b) Waiving any defence to the Claim based upon the expiration of limitations periods, including those defences available under the *Limitations Act, 2002*, SO 2002, c 24, Sch. B, and similar legislation in other provinces, on the basis of the timing of the transfer of the action to Superior Court.

ARTICLE IV - SETTLEMENT APPROVAL

4.1 Motion for Approval of Notice of Hearing

As soon as possible after this Settlement Agreement is executed, the Plaintiff shall bring a motion for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** (being the draft order approving the Notice of Hearing and Appointment of Claims Administrator).

4.2 Motion for Approval of Notice of Court Order

As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing published, the Plaintiff shall bring a motion for an order substantially in the form of the draft Second Order at **Schedule G** (being the draft order certifying the Class Action as a class proceeding, approving this Settlement Agreement, and approving Class Counsel Fees).

ARTICLE V - SETTLEMENT BENEFITS

5.1 Payment of Settlement Amount

- (a) Within thirty (30) days of execution of this Settlement Agreement, the Defendants shall pay the Settlement Amount to Class Counsel in trust, for the benefit of the Class.
- (b) The Defendants' payment of the Settlement Amount will be in full satisfaction of the Released Claims against the Releasees.

- (c) Neither of the Defendants shall have any obligation to pay to the Plaintiff or to the Class any amount in addition to the Settlement Amount unless otherwise expressly provided for in this Agreement.
- (d) Class Counsel shall hold the Settlement Amount in trust in the Account and maintain the Account as provided for in this Settlement Agreement.
- (e) Class Counsel shall transfer the Settlement Amount less Class Counsel Fees and less any honorarium payable to the Plaintiff, as approved by the Court, to the Account of the Claims Administrator within ten (10) business days after an order substantially in the form of the Second Order becomes Final.
- (f) Class Counsel shall not pay out any of the Settlement Fund in the Account, except in accordance with this Settlement Agreement and as ordered or permitted under an order of the Court. Such an order shall only be obtained on notice to the Defendants.

5.2 Taxes and Interest

- (a) Except where otherwise provided in this Settlement Agreement, all interest earned on the Settlement Amount after it is transferred to Class Counsel, shall accrue to the benefit of the Class and shall become and remain part of the Settlement Fund.
- (b) Subject to Article 5.2(c), all Canadian taxes payable on any interest that accrues on the Settlement Fund in the Account or otherwise in relation to the Settlement Fund shall be the sole responsibility of the Class. The Claims Administrator shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Fund in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Fund shall be paid from the Account and deducted from the Settlement Fund.
- (c) The Defendants shall have no responsibility to make any income tax filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount after it has been transferred to class counsel, or on the Settlement Fund or pay any taxes on the monies in the Account, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount, including on the Settlement Fund, shall be paid to the Defendants as directed in writing by the Defendants, and in such case, each Defendant shall be responsible for the payment of all taxes on its proportionate share of such interest.

5.3 Litigation Compliance

- (a) The Plaintiff shall, as part of the resolution of the Class Action, consent to the dismissal of the Class Action on a with prejudice and without costs basis;
- (b) The Defendants shall consent to the dismissal of the Class Action on a with prejudice and without costs basis;

- (c) The Plaintiff shall consent to the discontinuance or dismissal of the Defendants' judicial review application in Federal Court under court file number T-1161-18 on a without costs basis;
- (d) The Plaintiff shall withdraw his Access to Information Request with the Privacy Commissioner of Canada under the Privacy Commissioner's file number PIPEDA-032166 / A-2017-00140/ST by providing notice to the Privacy Commissioner of Canada that this request is withdrawn.

ARTICLE VI - DISTRIBUTION OF THE SETTLEMENT FUND

6.1 Distribution Protocol

At the same time as the motion for certification and settlement approval, Class Counsel will seek a Court order for approval of the Distribution Protocol. The Distribution Protocol is set out at Schedule H hereto.

6.2 No responsibility for Administration or Fees

Neither the Releasees nor Defence Counsel shall have any responsibility, obligations, financial or otherwise, or liability whatsoever with respect to the Account, including but not limited to investment, distribution, or administration of monies in the Account, any Administration Expenses and/or Class Counsel Fees.

ARTICLE VII - TERMINATION OF SETTLEMENT AGREEMENT

7.1 Right of Termination

- (a) The Defendants shall, in their sole discretion, have the option to terminate this Settlement Agreement in the event that:
 - (i) the Plaintiff breaches any term of this Settlement Agreement the Defendants deem material;
 - (ii) A court refuses to grant an order dismissing the Class Action with prejudice and on a without costs basis;
 - (iii) The Court declines to issue an order substantially in the form of the Second Order (i.e. the Certification and Settlement Approval Order), declines to approve any part of the Settlement Agreement the Defendants deem material, or requires a change to the Settlement Agreement the Defendants deem material as a pre-condition to approval; or
 - (iv) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is altered on appeal in a manner deemed material by the Defendants.

- (b) The Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:
- (i) There is non-payment in full of the Settlement Amount into the Account by the date set out above in Article 5.1;
 - (ii) A Court refuses to grant an order dismissing the Class Action with prejudice on a without costs basis;
 - (iii) The Court declines to issue and order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement or requires a material change to the Settlement Agreement as a pre-condition to approval; or
 - (iv) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If the Defendants elect to terminate the Settlement Agreement pursuant to Article 7.1(a), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 7.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party(s) relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Articles 7.2 and 7.3, and the related Definitions in Article 1, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any motion for certification of the class or trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by the Court with respect to Class Counsel's fees and disbursements or with respect to the Distribution Protocol shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

7.2 If Settlement Agreement is Terminated

If this Settlement Agreement is terminated:

- (a) Any step taken by the Defendants or the Plaintiff in the Superior Court Action in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Federal Court Action; and
- (b) Any order made by the Court pursuant to this Settlement Agreement shall be set aside or vacated on the consent of the Parties, except for an order substantially in the form of the First Order, if it has been issued and the Notice of Hearing has already been published.

7.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated, Class Counsel or the Claims Administrator, as the case may be, shall return to the Defendants as directed in writing by the Defendants, all monies in the Account including accrued interest, but less:

- (a) The amount of any income taxes paid in respect of any interest earned on the Settlement Fund while on deposit in the Account; and
- (b) Any Administration Expenses that have been actually incurred as at the date of termination, including the costs of publishing any Notices, including the estimated costs or Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Court.

ARTICLE VIII - RELEASES AND DISMISSALS

8.1 Release of Releasees

Upon the Effective Date, and in consideration of the payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release the Releasees from the Released Claims.

8.2 No Further Claims

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

8.3 Dismissal of the Class Action

The action will be dismissed in accordance with the terms of Schedule G.

ARTICLE IX - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

9.2 Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, except in a proceeding to approve or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

ARTICLE X - NOTICE TO CLASS

10.1 Notice Required

The Plaintiff and the Class shall be given the following notices:

- (a) Notice of Hearing both in short form (**Schedule B**) and in long form (**Schedule C**);
- (b) Notice of Court Order both in short form (**Schedule D**) and in long form (**Schedule E**); and
- (c) Notice of termination of this Settlement Agreement if it is properly terminated pursuant to this Settlement Agreement, or as otherwise ordered by the Court in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the Notice of Termination of the Settlement Agreement, then in the form ordered by the Court.

The Defendants will be responsible for sending the Notice of Hearing in short form (**Schedule B**) only.

10.2 Costs of Disseminating Notice

The costs of disseminating each Notice, other than the short form Notice of Hearing, shall be paid from the Settlement Fund, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated.

10.3 Method of Disseminating Notices

The Notices required under Article 10.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule F** as approved by the Court or in a manner otherwise ordered by the Court.

ARTICLE XI - CLASS COUNSEL AND ADMINISTRATION FEES

11.1 Counsel Fees and Plaintiff's Honorarium

- (a) Class Counsel will seek the Court's approval of Class Counsel Fees and that the Class Counsel Fees and Administration Expenses may be paid from the Settlement Amount contemporaneously with approval of this Settlement Agreement before transferring the balance of the Settlement Amount to the Claims Administrator.
- (b) Class Counsel will seek the Court's approval for an honorarium to be paid to the Plaintiff in the amount of CAD \$15,000 on a *quantum meruit* basis for the contributions that he has made in the prosecution of this Class Action for the benefit of the Class as a whole (the Plaintiff's Honorarium), which may also be paid from the Settlement Fund before transferring the balance of the Settlement Fund to the Claims Administrator.

11.2 Administration Expenses

The Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiff or the Class, all of which shall be paid from the Settlement Amount, as approved by the Court.

ARTICLE XII - MISCELLANEOUS

12.1 Motions for Directions

- (a) Class Counsel, Defence Counsel, or the Claims Administrator may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement or Distribution Protocol at any time.
- (b) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

12.2 Headings, etc.

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

12.3 Computation of Time

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, the act may be done on the next day that is not a holiday.

12.4 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and Canada.

12.5 Entire Agreement

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 or agreement 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.

12.6 Amendments

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Defendants.

12.7 Binding Effect

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Defendants, the Releasors, and the Releasees once it is approved by a Final Order of the Court. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final Order of the Court.

12.8 Counterparts

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 PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

12.9 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which 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.

12.10 Language

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, a French translation of the Notices shall be prepared, the cost of which shall be paid for from the Settlement Fund. The Parties agree that such translation is for the convenience of French speaking Class Members.

12.11 Recitals

The Recitals to this Settlement Agreement form part of the Settlement Agreement.

12.12 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Draft First Order (the draft order approving the Notice of Hearing)
- (b) **Schedule B** – Short Form Notice of Hearing
- (c) **Schedule C** – Long Form Notice of Hearing
- (d) **Schedule D** - Short Form Notice of Court Order
- (e) **Schedule E** - Long Form Notice of Court Order
- (f) **Schedule F** – Notice Plan
- (g) **Schedule G** - Draft Second Order (the draft order certifying the Class Action as a class proceeding, approving this Settlement Agreement, and approving Class Counsel Fees)
- (h) **Schedule H** – Distribution Protocol and Administrator's Guidelines

12.13 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, 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 with respect to the first Party's decision to execute this Settlement Agreement.

12.14 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.15 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel: **For the Defendants and Defence Counsel:**

WADDELL PHILLIPS
Professional Corporation
36 Toronto Street
Suite 1120
Toronto, Ontario
M5C 2C5

Margaret L. Waddell
Telephone: 416-477-6979
Facsimile: 416-477-1657
marg@waddellphillips.ca

MCCARTHY TÉTRAULT LLP
Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto ON M5K 1E6

Christine L. Lonsdale
Telephone: 416-601-8019
Facsimile: 416-868-0673
Email: clonsdale@mccarthy.ca

12.16 Date of Execution

The Parties have executed this Settlement Agreement as of the date on the cover page.

Dated at Scarborough, Ontario this 28th day of June, 2019

KALEVI HAIKOLA
Plaintiff

Dated at Toronto, Ontario this 28th day of June, 2019

WADDELL PHILLIPS PROFESSIONAL CORPORATION
John-Otto Phillips

Lawyers for the Plaintiff, Kalevi Haikola

Dated at _____ this _____ day of June, 2019

THE PERSONAL INSURANCE COMPANY

Per: _____

I have authority to bind the Corporation

Dated at _____ this _____ day of June, 2019

DESJARDINS GENERAL INSURANCE GROUP INC.

Per: _____

I have authority to bind the Corporation

Dated at Toronto this 28th day of June, 2019

Christine Lonsdale

MCCARTHY TÉTRAULT LLP

Christine L. Lonsdale

Lawyers for the Defendants, The Personal Insurance Company and
Desjardins General Insurance Group Inc.

SCHEDULE A

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the ____ day
JUSTICE)
of _____, 2019

BETWEEN:

KALEVI HAIKOLA

Plaintiff

-and-

**THE PERSONAL INSURANCE COMPANY and
DESJARDINS GENERAL INSURANCE GROUP INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiff for an Order fixing the date of a certification and settlement approval motion, approving the short form and long form Notice of Hearing for Class Action Certification, Settlement Approval, and Counsel Fee Approval (“Notice of Hearing”), appointing a claims administrator, and approving the form, content, and method of dissemination of notice for the Notice of Hearing as set out in the Notice Plan, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion record of the Plaintiff, including the Settlement Agreement between the Plaintiff and the Defendants dated June 28, 2019 (the “Settlement Date”), the

Affidavit of John Kingman Phillips, sworn _____, 2019, and upon hearing the submissions of counsel for the Plaintiff and for the Defendants;

AND ON BEING ADVISED that CA2 Class Action Claims Administration has consented to its appointment as the Claims Administrator:

1. **THIS COURT ORDERS** that the capitalized terms in this Order, unless otherwise defined in this Order, shall have the meanings set out in the Settlement Agreement attached hereto as Appendix 1.
2. **THIS COURT ORDERS** that the Notice of Hearing are approved in the form attached hereto as Appendix 2 and Appendix 3, respectively.
3. **THIS COURT ORDERS** that the Notice of Hearing shall be translated into French, the cost of which shall be paid from the Settlement Fund, regardless of whether the Settlement Agreement is approved.
4. **THIS COURT ORDERS** that the Notice Plan, setting out the plan for dissemination of the Notice of Hearing, is approved in the form attached hereto as Appendix 4 and the Notice of Hearing shall be disseminated in accordance with the Notice Plan. The costs of the short form Notice of Hearing shall be paid by the Defendants. The costs of the long form Notice of Hearing and all other notices shall be paid from the Settlement Fund, regardless of whether the Settlement Agreement is approved.
5. **THIS COURT ORDERS** that CA2 Class Action Claims Administration is appointed as the Claims Administrator pending this Court's hearing of a motion to approve the Settlement Agreement.

6. **THIS COURT ORDERS** that within 15 days of this Order, the Defendants will provide to the Claims Administrator or to Class Counsel a complete list (the "List"), to the extent available from their records, of: The names of all persons who: (a) were insured by The Personal Insurance Company ("The Personal") under a valid automobile insurance policy between January 2012 and May 2019; (b) made an automobile insurance claim under that policy with The Personal between January 2012 and May 2019; and (c) consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process.
7. **THIS COURT ORDERS THAT** for each person on the List, the Defendants shall provide to the Claims Administrator or to Class Counsel the following information: (a) their last known mailing address and email address; (b) the date they commenced a claim under their automobile insurance policy; and (c) the automobile insurance policy number that was applicable during the time they commenced a claim under their automobile insurance policy.
8. **THIS COURT ORDERS** that the Claims Administrator shall use the information provided pursuant to paragraphs 6 and 7 of this Order for the sole purpose of effecting the Notice Plan and facilitating the claims administration process in accordance with the Settlement Agreement, if approved by the Court at the certification and settlement approval motion, and for no other purpose.
9. **THIS COURT ORDERS AND DECLARES** that this Order constitutes an Order compelling the production of the information outlined in paragraph 6 by the Defendants within the meaning of applicable privacy laws, and that this Order satisfies the

requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.

10. **THIS COURT ORDERS AND DECLARES** that compliance with this Order meets any requirement under applicable privacy laws for the Defendants to provide any notice to persons of disclosure of the information required in this Order without consent.
11. **THIS COURT ORDERS AND DECLARES** that the Defendants are released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes, and regulations in relation to the disclosure of personal information required by this Order.
12. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Defendants or the Claims Administrator or any of their respective past and current officers, directors, employees, parents, subsidiaries, agents, partners, associates, representatives, predecessors, successors, beneficiaries or assigns for any matter in any way relating to the implementation of this Order.
13. **THIS COURT ORDERS** that the Certification and Settlement Approval Hearing shall take place on _____, 2019, at _____, Toronto, Ontario.

APPENDIX 1

[Settlement Agreement]

APPENDIX 2

[Short Form Notice of Hearing for Certification, Settlement Approval, and Class Counsel Fee Approval, with Defendants' covering letter – **Settlement Agreement, Schedule B**]

APPENDIX 3

[Long Form Notice of Hearing for Certification, Settlement Approval, and
Class Counsel Fee Approval, with Defendants' covering letter – **Settlement
Agreement, Schedule C**]

APPENDIX 4

[Notice Plan – Settlement Agreement, Schedule F]

SCHEDULE B

NOTICE OF HEARING (SHORT FORM)

For Class Action Certification, Settlement Approval, and Counsel Fee Approval

HAIKOLA v. THE PERSONAL INSURANCE COMPANY CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

IF YOU:

(1) Were insured by The Personal Insurance Company ("The Personal") under a valid automobile insurance policy between January 2012 and May 2019; (2) made an automobile insurance claim under that policy with The Personal during that time; and (3) consented to the collection and/or use of your credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process, this notice is for you.

You have received this notice because The Personal has ascertained from its records that you are among those persons who fall within the class definition of the proposed Class Action.

MOTION FOR CERTIFICATION FOR SETTLEMENT PURPOSES

The Plaintiff will make a motion in the Ontario Superior Court of Justice on _____, 2019 at the Osgoode Hall Courthouse, 130 Queen St W, Toronto, ON, at 10:00 am EST, to certify this action as a class action in order to effect a settlement with the Defendants and to approve the proposed Settlement. Under the proposed Settlement, the defendants will pay \$2,250,000.00 (the "Settlement Amount") to the class in full and final settlement of all claims against them in return for a release and a dismissal of the Class Action.

At the hearing, Class Counsel will ask the Court to approve their fees for the Class Action in the amount of \$500,000, plus Class Counsel's disbursements and taxes. The Plaintiff and Class Counsel will also ask that Mr. Haikola receive an honorarium in the amount of \$15,000. Both amounts will be deducted from the Settlement Fund.

The Plaintiff and Class Counsel will ask the Court to approve Class Counsel's fees in the amount of \$50,000, inclusive of tax and disbursements, for the Related Proceedings. This will be taken out of the Settlement Amount, with the remaining \$2,200,000 comprising the "Settlement Fund".

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against The Personal or Desjardins. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

WHAT THE CLASS ACTION IS ABOUT

This action is known as *Haikola v. The Personal Insurance Company et al*, Ontario Superior Court File No. _____ (the "Class Action"). The Class Action was commenced as a Federal Court action under Federal Court file number T-382-18 and has been recommenced in the Ontario Superior Court for settlement purposes. The Federal Court action will be discontinued as part of the settlement.

Starting in January 2012, The Personal requested consent from insureds to collect and/or use their credit score in order to assist in the detection and prevention of fraud as part of its automobile insurance claims management process. If it obtained the insured's consent to do so, The Personal collected and/or used that insured's credit score information.

Further to a complaint brought by Kalevi Haikola, the Office of the Privacy Commissioner (the "OPC") delivered a report in March 2017. It concluded that The Personal breached certain principles of PIPEDA. The OPC made recommendations. The Personal changed its procedures so that it no longer collects and/or uses its insureds' credit score as part of the fraud prevention and detection needs of The Personal's automobile insurance claims management process.

Mr. Haikola (the "Plaintiff") commenced the Class Action against The Personal and its parent company Desjardins General Insurance Group Inc. ("Desjardins"), alleging that the defendants had breached the privacy rights of the Class, and sought damages for the Class. The defendants deny any liability and deny the truth of the allegations made against them.

The Plaintiff also brought an access to information request to the OPC. This was the subject of a separate court proceeding in which The Personal sought judicial review of the Commissioner's decision to release documents to the Plaintiff (the "Related Proceedings").

Please note that this Class Action is unrelated to the disclosure of personal information outside Desjardins without authorization that was announced on June 20, 2019. That matter impacted Desjardins caisse members only.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against the defendants. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

Further information, including a long form notice setting out your rights as a proposed class member, may be obtained from this action's website at <http://personalprivacyclassaction.ca>.

If you have questions about the settlement, or your potential entitlement under the settlement, please contact the Claims Administrator. If you have questions about this action, please contact Class Counsel.

CLAIMS ADMINISTRATOR

CA2 Inc.
9 Prince Arthur Avenue
Toronto, ON M5R 1B2
info@classaction2.com
Tel: 1-800-***-****

Attn: Personal Privacy Class Action

CLASS COUNSEL

WADDELL PHILLIPS PC
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5
reception@waddellphillips.ca
Tel: 1-800-684-5545

Fax: 416-477-1657

Attn: Personal Privacy Class Action

*** Please note that the Court offices cannot answer any questions about the matters in this notice. Please do not contact the Court regarding this notice. ***

SCHEDULE C

NOTICE OF HEARING (LONG FORM)

For Class Action Certification, Settlement Approval, and Counsel Fee Approval

HAIKOLA v. THE PERSONAL INSURANCE COMPANY CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

WHAT THIS NOTICE CONTAINS

A. BASIC INFORMATION

1. Who is this Notice for?
2. What is the Class Action about?
3. Why is there a Notice?
4. What is the Settlement?
5. What are the Settlement benefits?
6. What fees do Class Counsel seek to have approved?
7. How will the proposed Settlement be distributed?

B. YOUR OPTIONS

1. What happens if I do nothing?
2. What if I don't agree with the Settlement, Class Counsel fees or disbursements, or the Plaintiff's honorarium?

C. THE LAWYERS REPRESENTING YOU

1. Do I have a lawyer in the case?
2. How will the lawyers be paid?

D. GETTING MORE INFORMATION

A. BASIC INFORMATION

1. Who is this Notice for?

This Notice is for all persons who:

- were insured by The Personal Insurance Company ("The Personal") under a valid automobile insurance policy between January 2012 and May 2019;
 - made an automobile insurance claim under that policy with The Personal between January 2012 and May 2019; and
 - consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process.
- (The "Class")

If you received a short form version of this notice, that is because The Personal has identified you from its records as one of its insureds who falls within the Class definition, or you have identified yourself to Class Counsel or the Claims Administrator as a potential Class member.

2. What is the Class Action about?

This action is known as *Haikola v. The Personal Insurance Company et al*, Ontario Superior Court File No. _____ (the "Class Action"). The Class Action was commenced as a Federal Court action under Federal Court file number T-382-18 and has been recommenced in the Ontario Superior Court for settlement purposes. The Federal Court action will be dismissed as part of the settlement.

Starting in January 2012, The Personal requested consent from insureds to collect and/or use their credit score in order to assist in the detection and prevention of fraud as part of its automobile insurance claims management process. If it obtained the insured's consent to do so, The Personal collected and/or used that insured's credit score information.

Further to a complaint brought by Kalevi Haikola, the Office of the Privacy Commissioner (the "OPC") delivered a report in March 2017. It concluded that The Personal breached certain principles of PIPEDA. The OPC made recommendations and The Personal changed its procedures so that it no longer collects and/or uses its insureds' credit score as part of the fraud prevention and detection needs of The Personal's automobile insurance claims management process.

Mr. Haikola (the "Plaintiff") commenced the Class Action against The Personal and its parent company Desjardins General Insurance Group Inc. ("Desjardins"), alleging that the defendants had breached the privacy rights of the Class, and sought damages for the Class. The defendants deny any liability and deny the truth of the allegations made against them.

The Plaintiff also brought an access to information request to the OPC. This was the subject of a separate court proceeding in which The Personal sought judicial review of the OPC's decision to release documents to the Plaintiff (the "Related Proceedings").

Please note that this Class Action is unrelated to the disclosure of personal information outside Desjardins without authorization that was announced on June 20, 2019. That matter impacted Desjardins caisse members only.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against defendants. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

3. Why is there a Notice?

The Plaintiff is bringing a motion in the Ontario Superior Court of Justice to have this lawsuit "certified" as a class action for settlement purposes and to have the Court approve the proposed Settlement. Certification means that the lawsuit meets the requirements for a class action under the Ontario *Class Proceedings Act, 1992*. When an action is certified in Ontario, certain legal rights of Class members are affected unless they opt out of the action.

If you are included in the Class, you have legal rights before the Court decides whether to certify the Class Action and to approve the settlement. This Notice explains these things.

The motion for the Court to certify the Class Action, approve the Settlement reached between the Plaintiff and defendants, and to approve Class counsel fees will be heard on _____, **2019** at the **Osgoode Hall Courthouse, 130 Queen St. W., Toronto, ON**, at 10:00 am EST (the Hearing).

4. What is the Settlement?

The parties have reached a proposed settlement of the Class Action (the "Settlement").

Before the Settlement will be effective, however, it must be approved by the Court. This will require the Court both to certify this Class Action as a class action and then to approve the Settlement. If the Settlement is not approved by the Court, or if this Class Action is not certified as a class action, the parties will return to their pre-settlement positions, and the motion for certification will be argued by the parties on a contested basis at a later date.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against defendants. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

5. What are the Settlement benefits?

Under the proposed Settlement, the Defendants will pay \$2,250,000.00 to the Class (the "Settlement Amount") in full and final settlement of all claims against them in return for a release and a dismissal of the Class Action. The Settlement Amount includes all legal fees, interest, and the costs of administering the settlement. If approved, the Settlement Amount, less administration costs, lawyers' fees, and an honorarium for the Plaintiff (if allowed), will be distributed to the Class on a *pro rata* basis.

A *pro rata* distribution means that the amount payable to each Class member under the Settlement will depend on how many Class members submit valid claim forms. Any Class Member who is still an insured of The Personal does not need to complete a claim form. They will automatically be included in the distribution of the Settlement Fund.

The Settlement can be reviewed at: <http://personalprivacyclassaction.ca>.

6. What fees do Class counsel seek to have approved?

Class Counsel will request that the Court approve payment of its legal fees for the Related Proceedings out of the Settlement Amount in the amount of \$50,000 (inclusive of HST and disbursements), with the remaining \$2,200,000 comprising the "Settlement Fund".

Class Counsel will ask the Court to approve \$500,000 for payment of legal fees in the Class Action, together with their disbursements, and any applicable taxes, from the Settlement Fund. Class Counsel have been working on a contingency fee basis and have not been paid for their efforts since the Class Action was started.

In addition, the Plaintiff and Class Counsel will request that the Plaintiff receive a \$15,000 honorarium from the Settlement Fund in recognition of the significant efforts he has taken in the interests of the Class members.

7. How will the proposed Settlement Fund be distributed?

If the Court certifies this Class Action and approves the Settlement, there will be another notice explaining how to either exclude yourself from the Class Action, or how to make a claim for compensation from the Settlement Fund. Any Class Member who is still an insured of The Personal will not need to complete a claim form. They will automatically be included in the distribution of the Settlement Fund, unless they choose to opt out of the Class Action.

B. YOUR OPTIONS

At this time, you may choose to await the decision of the Court at the Hearing or you may elect to object to the certification of this Class Action, the Settlement, Class Counsel's proposed fees, or the Plaintiff's honorarium.

1. What happens if I do nothing at all?

You do not have to do anything to participate in the Class Action. If the Settlement is approved by the Court you will be notified about how to ask for a portion of the net Settlement Fund. You will be legally bound by all orders and judgments of the Court, and you will not be able separately to sue the defendants regarding the legal claims made in this case.

2. What if I don't agree with the Settlement, Class Counsel fees or disbursements, or the Plaintiff's honorarium?

If you want to remain in the Class, but object to the proposed Settlement, the payment of an honorarium to Mr. Haikola, or the amount of Class Counsel's fees and expenses, you should do so by setting out your objection in writing addressed to Class Counsel at the address below, by no later than 2 business days prior to the hearing date. If you do so, Class Counsel will bring your objections to the attention of the Court.

You may also attend at the hearing where you may raise any objection to the Court. You may bring your own lawyer, if you wish; however, legal fees you incur will not be paid by Class Counsel or from the Settlement Fund.

C. THE LAWYERS REPRESENTING YOU

1. Do I have a lawyer in the case?

Waddell Phillips Professional Corporation is the law firm for the representative plaintiff and represents the interests of the Class as a whole.

2. How will the lawyers be paid?

You will not have to pay any of the fees and expenses of Class Counsel. Class Counsel's fees and expenses will be deducted from the Settlement Fund if the Settlement is approved and in the amount decided upon by the Court.

D. GETTING MORE INFORMATION

How do I get more information?

Further information may be obtained from this action's website at <http://personalprivacyclassaction.ca>.

If you have questions about this action, please contact Class Counsel.

If you have questions about the settlement, or your potential entitlement under the settlement, please contact the Claims Administrator:

CLAIMS ADMINISTRATOR

CA2 Inc.
9 Prince Arthur Avenue
Toronto, ON M5R 1B2
info@classaction2.com
Tel: 1-800-***-****
Attn: Personal Privacy Class Action

CLASS COUNSEL

WADDELL PHILLIPS PC
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5
reception@waddellphillips.ca
Tel: 1-800-684-5545
Fax: 416-477-1657
Attn: Personal Privacy Class Action

*** Please note that the Court offices cannot answer any questions about the matters in this notice. Please do not contact the Court regarding this notice. ***

SCHEDULE D

NOTICE OF COURT ORDER (SHORT FORM)

Order for Class Action Certification, Settlement Approval, and Counsel Fee Approval

HAIKOLA v. THE PERSONAL INSURANCE COMPANY CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

WHO THIS NOTICE IS FOR

This Notice is for all persons who: (1) were insured by The Personal Insurance Company ("The Personal") under a valid automobile insurance policy between January 2012 and May 2019; (2) made an automobile insurance claim under that policy with The Personal during that time; and (3) consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process (the "Class").

You have received this notice because The Personal has ascertained from its records that you are among those persons who fall within the Class definition. You do not need to take any further action to establish that you are a member of the Class.

WHAT THE ACTION IS ABOUT

Starting in January 2012, The Personal requested consent from insureds to collect and/or use their credit score in order to assist in the detection and prevention of fraud as part of its automobile insurance claims management process. If it obtained the insured's consent to do so, The Personal collected and/or used that insured's credit score information.

Further to a complaint brought by Kalevi Haikola, the Office of the Privacy Commissioner (the "OPC") delivered a report in March 2017. It concluded that The Personal breached certain principles of PIPEDA. The OPC made recommendations. The Personal changed its procedures so that it no longer collects and/or uses its insureds' credit score as part of the fraud prevention and detection needs of The Personal's automobile insurance claims management process.

Mr. Haikola (the "Plaintiff") commenced a class action (the "Class Action") against The Personal and its parent company, Desjardins General Insurance Group Inc. ("Desjardins"), alleging that the defendants had breached the privacy rights of the Class, and sought damages for the Class. The defendants deny any liability and deny the truth of the allegations made against them.

The Plaintiff also brought an access to information request to the OPC. This was the subject of a separate court proceeding in which The Personal sought judicial review of the Privacy Commissioner's decision to release documents to the Plaintiff (the "Related Proceedings").

Please note that this Class Action is unrelated to the disclosure of personal information outside Desjardins without authorization that was announced on June 20, 2019. That matter impacted Desjardins caisse members only.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against defendants. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

CERTIFICATION

The Court has certified the Class Action on consent as a class action, for the purposes of facilitating a negotiated settlement of the Class Action. Mr. Haikola was appointed as the representative plaintiff for the Class.

SETTLEMENT APPROVED

The parties have negotiated a settlement of the Class Action and the Related Proceedings (the "Settlement"), which has been approved by the Court as fair, reasonable and in the best interests of the Class.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against The Personal or Desjardins. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement had not been approved, they would have defended the Class Action and oppose certification of the action as a class proceeding.

THE SETTLEMENT TERMS

This Notice provides a summary of the Settlement terms. Further details of the Settlement including a copy of the Settlement Agreement and the Court's certification and settlement approval order may be accessed at: [claims administrator's website] or <https://waddellphillips.ca/class-actions/the-personal-privacy-class-action/>.

Under the Settlement, the defendants will pay \$2,250,000 (the "Settlement Amount") in full and final settlement of all claims against them and will receive a release and a dismissal of the Class Action and the Related Proceedings. The Settlement Amount includes all legal fees, interest, and the costs of administering the settlement of the Action.

\$50,000 of the Settlement Amount will be paid to the lawyers for Mr. Haikola, for the costs of the Related Proceedings. The balance of \$2,200,000 is the "Settlement Fund".

\$500,000 plus HST and disbursements in the amount of \$_____ will be paid from the Settlement Fund to Class Counsel for their legal fees. This is approximately ____% of the Settlement Fund. Class Counsel have not been paid since this action was commenced, and have been working on a contingency fee arrangement that called for them to be paid 25% of the proceeds of any settlement or judgment. The Court has found that fees and disbursements of \$_____ are fair and reasonable.

The Court has also approved an honorarium of \$_____ to be paid from the Settlement Fund to the representative plaintiff, Mr. Haikola, for his efforts in bringing the Class Action for the benefit of the class, acting as the representative plaintiff and for bringing the Related Proceedings.

The balance of the Settlement Fund, less the costs of administering the Settlement will be distributed to all Class Members who deliver a valid claim form before the Claim Deadline on a *pro rata* basis. Any Class member who is still an insured of The Personal does not need to complete a claim form. They will automatically be included in the distribution of the Settlement Fund, unless they choose to opt out of the Class Action.

The Claim Deadline is: [date], after which time no further claim forms will be accepted or valid.

If you are not a current insured of The Personal, or do not deliver a claim form by the Claim Deadline to the Claims Administrator, then you will not be able to receive a portion of the Settlement Fund.

Claim forms are available for download at:

- [claims administrator's website] or <https://waddellphillips.ca/class-actions/the-personal-privacy-class-action/> or
- a hard copy may be requested by contacting the Claims Administrator at: CA2 Inc., 9 Prince Arthur Avenue, Toronto, ON M5R 1B2 [claims administrator's email].

The amount that each Class Member will receive will depend upon the total number of valid claims received by the Claims Administrator, and the total costs of the claims administration process. It is estimated that if all Class Members submit valid claims, they will receive approximately \$150 each. Any amount remaining in the Settlement Fund after the claims administration process is complete will be transferred to the Public Interest Advocacy Center, a non-profit and charity that provides legal and research services on behalf of consumer interests.

YOUR OPTIONS

| | |
|--|--|
| <p>STAY IN THIS LAWSUIT</p> | <p>Share in the Settlement Fund. Give up certain rights.</p> <p>You do not have to do anything to become a Class Member.</p> <p>If you wish to receive a portion of the Settlement Fund, you must complete a claim form and deliver it to the Claims Administrator by the Claim Deadline. Class Members who are still insured by The Personal do not need to complete a claim form. Such persons will automatically be included in the distribution of the Settlement Fund and the Claims Administrator will directly mail settlement cheques to their last known address on record with The Personal. If you are uncertain if The Personal has your correct mailing address, or if you will be changing addresses in the near future, please contact the Claims Administrator.</p> <p>You will be legally bound by the Court order approving the settlement and dismissing the Action, including the release granted to the defendants. You may not pursue any claim, complaint, demand, action or suit against the defendants or related entities for the same claims that were raised or could have been raised in the Action.</p> |
|--|--|

| | |
|---|--|
| <p>REMOVE YOURSELF FROM THIS LAWSUIT (OPT-OUT)</p> | <p>Get out of this lawsuit. Get no money or other benefits from it. Keep rights.</p> <p>If you do not want to be involved in this Action, you must opt-out. You will then no longer be part of the Class. You will not be entitled to share in the Settlement Fund, and you will not be bound by the Court's order approving the Settlement and granting the release to the defendants. You will keep any existing right to bring claims against the defendants on your own about the same legal claims.</p> <p>If you want to exclude yourself from this Action, you must send a written notice to the Claims Administrator <u>by no later than [Opt Out Date]</u>.</p> <p>An opt out notice must be signed by you, and include your full name, address and, if known, the policy number for your motor vehicle insurance policy issued by The Personal.</p> <p>The opt out notice must be sent by no later than [Opt Out Date] to:</p> <p style="text-align: center;">The Personal Privacy Class Action c/o CA2 Inc. 9 Prince Arthur Avenue Toronto, Ontario M5R 1B2 info@classaction2.com</p> |
|---|--|

Further information about this Notice or the Action may be obtained from Class Counsel's website at <http://personalprivacyclassaction.ca>.

If you have questions about the settlement, or your potential entitlement under the settlement, please contact the Claims Administrator.

If you have questions about this action or "opting out" please contact Class Counsel.

CLAIMS ADMINISTRATOR

CA2 Inc.
9 Prince Arthur Avenue
Toronto, ON M5R 1B2
info@classaction2.com
Tel: 1-800-***-****
Attn: The Personal Privacy Class Action

CLASS COUNSEL

WADDELL PHILLIPS PC
36 Toronto Street, Suite 1120
Toronto, ON M5C 2C5
reception@waddellphillips.ca
Tel: 1-800-684-5545
Fax: 416-477-1657
Attn: The Personal Privacy Class Action

*** Please note that the Court office cannot answer any questions about the matters in this notice. Please do not contact the Court regarding this notice. ***

SCHEDULE E

NOTICE OF COURT ORDER (LONG FORM)

Order for Class Action Certification, Settlement Approval, and Counsel Fee Approval

HAIKOLA v. THE PERSONAL INSURANCE COMPANY CLASS ACTION

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.
YOU MAY NEED TO TAKE PROMPT ACTION.**

WHAT THIS NOTICE CONTAINS

A. BASIC INFORMATION

1. Who is this Notice for?
2. Why is there a Notice?
3. What is the Action about?
4. What is the Settlement?
5. What are individual Class Members entitled to from the Settlement?
6. What fees were approved for Class Counsel?
7. What is the Plaintiff's honorarium?

B. MAKING A CLAIM

1. Who is entitled to make a claim for a portion of the Settlement?
2. How do I make a claim?
3. What if I opt out?
4. Who determines if I have a valid claim?

C. OPTING OUT

1. What if I don't want to be in the Class?
2. What if I do nothing at all?

D. GETTING MORE INFORMATION

E. CLAIM FORM

F. OPT-OUT FORM

A. BASIC INFORMATION

1. Who is this Notice for?

This Notice is for all persons who:

- were insured by The Personal Insurance Company (The Personal) under a valid automobile insurance policy between January 2012 and May 2019;
- made an automobile insurance claim under that policy with The Personal between January 2012 and May 2019; and,
- consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal's claims management process.

(The "Class")

If you received a short form version of this notice, this is because The Personal has identified you from its records as one of its insureds who fall within the Class definition, or you have identified yourself to Class Counsel or the Claims Administrator as a potential Class member.

2. Why is there a Notice?

On _____, 2019, this lawsuit was certified by the Ontario Superior Court as a class action (for settlement purposes). In addition, the Court approved a settlement of this Class Action (the "Settlement"), fees payable to Class Counsel, and an honorarium for the Plaintiff. The Settlement was found by the Court to be fair, reasonable, and in the best interests of the Class.

This Notice advises Class members that this Class Action was certified as a class action, that the Settlement was approved, and that Class Counsel's fees and disbursements, together with an honorarium for the Plaintiff, were approved. It provides information about the terms of the approved Settlement and the process whereby Class members may submit a claim. It also provides information about how to opt out of this Class Action for Class members who may wish to do so.

3. What is the Class Action about?

Starting in January 2012, The Personal requested consent from insureds to collect and/or use their credit score in order to assist in the detection and prevention of fraud as part of its automobile insurance claims management process. If it obtained the insured's consent to do so, The Personal collected and/or used that insured's credit score information.

Further to a complaint brought by Kalevi Haikola, the Office of the Privacy Commissioner (the "OPC") delivered a report in March 2017. It concluded that The Personal breached certain principles of PIPEDA. The OPC made recommendations. The Personal changed its procedures so that it no longer collects and/or uses its insureds' credit score as part of the fraud prevention and detection needs of The Personal's automobile insurance claims management process.

Mr. Haikola (the "Plaintiff") commenced a class action (the "Class Action") against The Personal and its parent company, Desjardins General Insurance Group Inc. ("Desjardins"), alleging that the defendants had breached the privacy rights of the Class, and sought damages for the Class. The defendants deny any liability and deny the truth of the allegations made against them.

The Plaintiff also brought an access to information request to the OPC. This was the subject of a separate court proceeding in which The Personal sought judicial review of the Privacy Commissioner's decision to release documents to the Plaintiff (the "Related Proceedings").

Please note that this Class Action is unrelated to the disclosure of personal information outside Desjardins without authorization that was announced on June 20, 2019. That matter impacted Desjardins caisse members only.

The Settlement is a compromise of disputed claims in order to achieve an early full and final resolution of the Class Action and without any admission or findings of liability or wrongdoing against defendants. The defendants deny any liability and deny the truth of the allegations made against them. If the Settlement is not approved, they will defend the Class Action and oppose certification of the action as a class proceeding.

4. What is the Settlement?

The parties have negotiated a settlement of the Class Action, as well as the Related Proceedings (the "Settlement"), which has been approved by the Court as fair, reasonable, and in the best interests of the Class. The Settlement is a compromise of disputed claims, without any admission or findings of liability or any wrongdoing whatsoever by the defendants. The defendants deny any liability and deny the truth of the allegations made against them, and if the Settlement had not been approved, they would be defending the Class Action and opposing certification of the Class Action.

Under the Settlement, the defendants will pay \$2,250,000.00 (the "Settlement Amount") to the Class in full and final settlement of all claims against them, including a release and a dismissal of the Class Action and the Related Proceedings. The Settlement Amount includes all legal fees, interest, and administration costs. Of the Settlement Amount, \$50,000 will be paid to Class Counsel for their fees in the Related Proceedings, inclusive of tax and disbursements. The Settlement Amount less the \$50,000 will be the "Settlement Fund".

5. What are individual Class Members entitled to from the Settlement?

The amount that each Class member will receive from the Settlement Fund will depend upon the total number of valid claim forms received by the Claims Administrator, and the total costs of the claims administration process. On the basis of information provided by The Personal, Class Counsel estimates that if all Class members submit a valid claim form, each Class member will receive up to approximately \$150. Any amount remaining in the Settlement Fund after the claims administration process will be transferred to the Public Interest Advocacy Center, a non-profit and charity that provides legal and research services on behalf of consumer interests.

Further details of the Settlement including a copy of the Settlement Agreement and the Court's certification and settlement approval order may be accessed at <http://personalprivacyclassaction.ca>.

6. What fees were approved for Class Counsel?

The Court has approved as fair and reasonable: (1) Class Counsel's fees of \$_____ plus HST for its costs in the Class Action; and (2) Class Counsel's disbursements in the amount of \$_____; and (3) an honorarium for Mr. Haikola in the amount of \$_____, to be paid out of the Settlement Fund.

Class Counsel's legal fees of \$_____ is approximately ____% of the Settlement Fund. Class Counsel have not been paid since this action was commenced and have been working under a contingency fee arrangement that called for them to be paid 25% of the proceeds of any settlement or judgment. Class Counsel has borne all expenses and risks prosecuting this Class Action to date.

Class Counsel is also being paid \$50,000 for costs in respect of the Related Proceedings, to be paid out of the Settlement Amount.

7. What is the Plaintiff's honorarium?

Courts, in appropriate cases, may award an honorarium to a representative plaintiff who has made considerable efforts in prosecuting a class action in the benefits of a class. In this case, the Court has approved an honorarium of \$_____ to be paid from the Settlement Fund to the representative plaintiff, Mr. Haikola for his efforts in bringing the Class Action for the benefit of the class, acting as the representative plaintiff, and bringing the Related Proceedings.

B. MAKING A CLAIM

1. Who is entitled to make a claim for a portion of the Settlement?

All Class members who do not opt out of this action are entitled to share in the net Settlement Fund, after deduction of legal fees, applicable taxes, disbursements, the Plaintiff's honorarium, and Administration Expenses. Each Class member who submits a valid claim form will receive one equal share of the Settlement. Any Class member who is still an insured of The Personal does not need to complete a claim form. They will automatically be included in the distribution of the Settlement Fund, unless they choose to opt out of the Class Action.

For example, if 8,000 Class members submit claim forms or are automatically included in the settlement as current insureds of The Personal, each Class member will receive 1/8000th of the net Settlement Fund. The total amount paid out to each Class member will therefore depend on the total number of valid claims received and the total costs of the Settlement.

2. How do I make a claim?

Class Members who are current insureds of The Personal do not need to do anything to make a claim. They will be automatically included in the distribution of the Settlement Fund, unless they choose to opt out of the Class Action. Such Class Members should ensure that they have notified The Personal and the Claims Administrator of their current address.

Class Members who are no longer customers of The Personal and who wish to receive compensation must mail or email a completed Claim Form to the Claims Administrator or complete an online Claim Form at the Claims Administrator's website at: http://_____. A Claim Form is provided with this Notice. In addition, the Claim Form is available for download at the Claims Administrator's website.

The Claim Deadline is _____, 2019 at 11:59 pm. After this time, no further claim forms will be accepted or valid. If you do not deliver a claim form by the Claim Deadline, then you will not be able to receive a portion of the Settlement Fund.

3. What if I opt out?

If you elect to exclude yourself from this Class Action (opt out), you are no longer a Class member and cannot participate in the Settlement. You will be entitled to commence your own claim, subject to the expiry of any limitations periods. You are advised to seek legal advice before opting out.

4. Who determines if I have a valid claim?

The Claims Administrator will have the sole discretion to determine if a submitted claim is a valid claim relying upon records provided to it from The Personal (the "Class Member List").

If you believe you are a Class member and the Claims Administrator advises you that you are not included in the Class Member List provided to the Claims Administrator, you have the right to prove that you are a Class member by submitting to the Claims Administrator:

- a. Proof of a valid motor vehicle insurance with The Personal that was in effect during the Class Period, such as a pink slip or copy of the insurance policy;
- b. Documentary evidence demonstrating that you made an automobile insurance claim to The Personal during the Claim Period; and
- c. Documentary evidence from a credit reporting agency (e.g. Equifax) demonstrating that The Personal accessed your credit score during the time that the claimant's automobile insurance claim was open. (

C. OPTING OUT

You have to decide whether to stay in the Class or whether to remove yourself, and you have to decide this by no later than _____, 2019.

1. What if I don't want to be in the Class?

If you decide you do not want to participate in the lawsuit, you must remove yourself - this is sometimes referred to as "opting out". If you remove yourself, you will not receive any money or benefit that may be obtained as a result of this lawsuit or the Settlement. You will not be bound by any Court orders and you keep your right to sue the defendants regarding the issues in this case. You cannot change your mind later and opt back into the Class Action.

Please note that after _____, 2019 the right to opt out of this action expires.

To remove yourself from this Class Action, complete the Opt Out Form included with this notice. The Opt Out Form must be sent to the Claims Administrator by email, mail, or courier at the address provided below.

You may obtain a copy of this Opt Out Form at: <http://personalprivacyclassaction.ca>.

Your Opt Out Form must be received by _____, 2019. If your Opt Out Form is not received by this date, then you will be a Class member and bound by any decisions of the Court in the Class Action.

2. What if I do nothing at all?

You do not have to do anything to stay in the Class Action. You will be legally bound by all orders and judgments of the Court, and you will not be able separately to sue the defendants regarding the legal claims made in this case. You will be entitled to claim compensation under the Settlement, which was approved by the Court by completing a valid Claim Form (provided with this notice letter).

If you do not opt out of this Class Action, you will remain a Class member.

To receive compensation you must submit a valid Claim Form before the Claim Deadline, unless you are a current

insured of The Personal. If you do not submit a valid Claim Form, you will nevertheless still be bound by the Settlement and the Court's Orders in this Class Action, but you will not be paid any compensation.

Class Members who are current insureds of The Personal do not need to do anything to make a claim. They will be automatically included in the distribution of the Settlement Fund, unless they choose to opt out of the Class Action.

D. OBTAINING MORE INFORMATION

Further information about this Notice or about the Action may be obtained from Class Counsel's website at <http://personalprivacyclassaction.ca>.

If you have questions about the settlement, or your potential entitlement under the settlement, please contact the Claims Administrator. If you have questions about this action or "opting out" please contact Class Counsel.

| <u>CLAIMS ADMINISTRATOR</u> | <u>CLASS COUNSEL</u> |
|---|---|
| <p>CA2 Inc. 9 Prince Arthur Avenue Toronto, ON M5R 1B2 info@classaction2.com Tel: 1-800-***-**** Attn: Personal Privacy Class Action</p> | <p>WADDELL PHILLIPS PC 36 Toronto Street, Suite 1120 Toronto, ON M5C 2C5 reception@waddellphillips.ca Tel: 1-800-684-5545 Fax: 416-477-1657 Attn: Personal Privacy Class Action</p> |

*** Please note that Claim Forms and Opt Out Forms should be sent directly to the Claims Administrator. These forms should not be sent to Class Counsel ***

THE PERSONAL CLASS ACTION CLAIM FORM

[NTD: TO BE DEVELOPED WITH CA2 CLAIMS ADMINISTRATION]

THE PERSONAL PRIVACY CLASS ACTION OPT OUT FORM

This is NOT a claim form.

Completing this OPT-OUT FORM will exclude you from the lawsuit and you will not receive any compensation in the Settlement.

Do not complete this form if you wish to claim a payment from the net Settlement Fund.

To:

The Claims Administrator re: The Personal Class Action

CA2 Inc.
9 Prince Arthur Avenue
Toronto, Ontario M5R 1B2
info@classaction2.com

I understand that by opting out, I am confirming that I do not wish to participate in the *Haikola v. The Personal Insurance Company* class proceeding.

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

| | |
|---|--|
| Name | |
| Mailing Address | |
| Phone Number | |
| Email Address (optional) | |
| Automobile Insurance Policy Number with The Personal | |

| | |
|--|--|
| Date of Starting Accident Benefit Claim with The Personal | |
|--|--|

Optional: Reason for Opting-Out: Please explain your reason(s) for opting-out.

Date _____

Signature of Witness

Signature of Class Member Opting-Out

Name:

Name:

Print Name

Print Name

Note: To opt out of this Action, this form must be properly completed and received by the Claims Administrator by no later than _____, 2019.

SCHEDULE F

NOTICE PLAN

A. NOTICE OF HEARING

Defendants' Notice to Class

1. The Defendants will send the short form Notice of Hearing for Class Action Certification, Settlement Approval, and Counsel Fee Approval (English and French versions) (the "Short Form Notice of Hearing") by regular mail to the last known mailing address of all Class Members.

Cover Letter Advising of Status as Class Member

2. Included with the Short Form Notice of Hearing will be a cover letter which will include an explanation that the Defendants have identified the Class member as an individual who meets the criteria for being a Class member, which is why that individual is receiving the Short Form Notice of Hearing.

Other Forms of Notice

3. Class Counsel will post an update to their firm website for this action (<http://personalprivacyclassaction.ca>) advising of the hearing for certification of the action for settlement purposes and explaining its import, setting out the key terms of the proposed settlement, and providing a link to the long form Notice of Hearing for Class Action Certification, Settlement Approval, and Counsel Fee Approval (English and French versions) (the "Long Form Notice of Hearing"). Class Counsel will post/tweet/link the Short Form Notice of Hearing to their LinkedIn and Twitter accounts.
4. Class Counsel will provide a copy of the Short Form Notice of Hearing to all interested putative Class Members who have contacted them and will provide the Long Form Hearing Notice to any Class member who requests it.
5. Class Counsel will issue a press release advising of the pending hearing for certification, settlement approval, and counsel fee approval, including a summary of the core terms of the Settlement Agreement and a link to the Settlement Agreement and Long Form Notice of Hearing, within 14 days of the court granting the First Order (the order approving this notice plan). Before issuing the press release, Class Counsel will obtain the defendants' approval of the press release.

B. NOTICE OF COURT ORDER

Class Members List

6. The Defendants will provide Class Counsel and the Claims Administrator with a list (in Microsoft Excel 2010 or later format) of: (a) the names of all known Class Members; (b) the last known mailing address and email address for all known Class Members; (c) the automobile insurance policy number with The Personal for each known Class member; and (d) the date that all known Class Members commenced a claim under their automobile insurance policy (the "Class Members List"). The Class Members List will be provided to Class Counsel and the Claims Administrator within 15 days of the First Order (the order fixing the date for certification and approving the notice of hearing).

Claims Administrator's Mail Notice to the Class

7. If the Settlement is approved, the Claims Administrator will mail the short form Notice of Court Order for Class Action Certification, Settlement Approval, and Class Counsel Fee Approval (English and French versions) (the "Short Form Notice of Court Order") to the last known address of all Class Members listed in the Class Members List provided by the Defendants.

Claims Administrator's Email Notice to the Class

8. Where the Defendants do not have a last known address for a Class member, or where mail is returned undeliverable, the Claims Administrator will send the Short Form Notice of Court Order by email to the last known email address of such Class Members.

Other Forms of Notice

9. Class Counsel will post an update to their firm websites advising of the settlement approval and explaining its import, setting out the key terms of the settlement, explaining the procedure for making a claim for part of the Settlement Fund, including how to contact the Claims Administrator. Class Counsel will post a link to a copy of the Short Form Notice of Court Order and long form Notice of Court Order for Class Action Certification, Settlement Approval, and Counsel Fee Approval (the "Long Form Notice of Court Order"), and the executed Settlement Agreement on its website. Class Counsel will provide a copy of the proposed update to counsel for the Defendants 7 days in advance of posting and an opportunity to comment on the posting.
10. Class Counsel will issue a press release advising of the certification, settlement approval, and counsel fee approval, including a summary of the core terms of the Settlement Agreement with links to a copy of the Short Form Notice of Court Order, the Long Form Notice of Court Order, and the Claim's Administrator's web pages, within 14 days of the court granting the Second Order. Before issuing the press release, Class Counsel will obtain the defendants' approval of the press release, which shall be provided within 7 days of the draft being provided to the Defendants.

SCHEDULE G

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) _____, the ____ day
JUSTICE)
of _____, 2019

B E T W E E N:

KALEVI HAIKOLA

Plaintiff

-and-

**THE PERSONAL INSURANCE COMPANY and
DESJARDINS GENERAL INSURANCE GROUP INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

O R D E R

(Certification, Settlement, and Counsel Fee Approval Motions)

THIS MOTION made by the Plaintiff, on consent, for an order certifying this action as a class proceeding; approving the settlement of this action pursuant to section 29(2) of the *Class Proceedings Act, 1992*, SO 1992, c 6 (the “CPA”), in accordance with the terms of the Settlement Agreement between the Plaintiff and the Defendants dated June 28, 2019 (the “Settlement Date”); approving the Plaintiff’s proposed notice plan pursuant to section 17 of the CPA; and an order

granting the Plaintiff an honorarium in the amount of \$15,000 for his efforts in prosecuting this action on a *quantum meruit* basis,

AND THIS MOTION made by Class Counsel for approval of their fees and disbursements in this action under a contingency agreement between the Plaintiff and Class Counsel dated November 7, 2017 in the amount of \$500,000, plus HST of \$65,000 and \$_____ for disbursements, were heard this day at the Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the motion records of the parties, including the Affidavit of John Kingman Phillips, sworn _____, 2019, the Affidavit of Kalevi Haikola, sworn _____, 2019, the Settlement Agreement dated June 28, 2019 and attached to this Order as **Appendix 1** (the "Settlement Agreement"), and the facts and briefs of authorities of the Plaintiff and Class Counsel, filed, and on hearing the submissions of Class Counsel and counsel for the Defendants;

AND ON BEING ADVISED that CA2 Class Action Claims Administration has consented to act as the Claims Administrator;

AND ON BEING ADVISED that the Public Interest Advocacy Centre has consented to accept any *cy-près* award for use in its privacy advocacy endeavors;

AND ON BEING ADVISED that the Defendants consent to this Order, without any admission of liability by the Defendants whatsoever:

CERTIFICATION

1. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to sections 2 and 5 of the *Class Proceedings Act, 1992*, SO 1992, c 6, for settlement purposes only.
2. **THIS COURT ORDERS** that the “Class” is defined as:

All persons who: (1) were insured by The Personal Insurance Company (“The Personal”) under a valid automobile insurance policy between January 2012 and May 2019; (2) made an automobile insurance claim under that policy with The Personal during that time; and (3) consented to the collection and/or use of their credit score by The Personal or its agents as part of the fraud prevention and detection needs of The Personal’s claims management process (the “Class”).
3. **THIS COURT ORDERS** that the cause of action asserted on behalf of the Class is breach of contract.
4. **THIS COURT ORDERS** that Kalevi Haikola (the “Plaintiff”) shall be appointed as Representative Plaintiff on behalf of the Class.
5. **THIS COURT ORDERS** that the following common issues shall be certified for settlement purposes only:
 - (a) Did the Defendants breach their contracts with the class members by failing to comply with an implied term to comply with the *Personal Information Protection and Electronic Documents Act*.
 - (b) If so, are the Defendants, or either of them, liable in damages to the Class?

6. **THIS COURT ORDERS** that Class members may opt out of this class proceeding by delivering a written request to opt out to the Claims Administrator which must be postmarked, if sent by mail, or received if sent by fax, e-mail, or courier, on or before _____, 2019 (the “Opt Out Deadline”, which will be 60 days from the date of the Order) and any opt out forms received by the Claims Administrator after this date will not be accepted or valid.
7. **THIS COURT ORDERS** that an opt out must contain:
 - (a) The full name, mailing address, and telephone number of the proposed Class member;
 - (b) The Class member’s automobile insurance policy number(s) with The Personal; and
 - (c) The date(s) of the automobile insurance claim made by the Class member under the automobile insurance policy with The Personal.
8. **THIS COURT ORDERS** that any Class members who validly opt out of this action by the Opt Out Deadline, are not bound by the Settlement Agreement and shall no longer participate in, or have the opportunity in the future to participate in, this action or the Settlement Agreement, and are excluded from the Class.
9. **THIS COURT ORDERS** that within 10 business days of the Opt Out Deadline, the Claims Administrator shall provide to Class Counsel and counsel for the Defendants the names of persons who have delivered valid opt out notices and a copy of the opt out notices.

SETTLEMENT APPROVAL

10. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement at Appendix 1 is incorporated by reference into this Order and that unless otherwise defined in this Order, capitalized terms in this Order shall have the meanings set out in the Settlement Agreement.
11. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Class.
12. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to Section 29(3) of the *Class Proceedings Act, 1992*, SO 1992, c 6 and shall be implemented in accordance with its terms.
13. **THIS COURT ORDERS** that the Defendants shall pay \$2,250,000 in full and final settlement of the Released Claims (the "Settlement Amount").
14. **THIS COURT ORDERS** that \$50,000, all inclusive, of the Settlement Amount shall be paid to Class Counsel for the Plaintiff's costs in respect of the Federal Court judicial review proceeding under Federal Court file number T-1161-18 (the "Related Proceedings"), with the remaining \$2,200,000 of the Settlement Amount to comprise the "Settlement Fund".
15. **THIS COURT ORDERS AND DECLARES** that the Releasers have agreed not to make or continue any claim, complaint, demand, action, suit or proceedings arising out of or relating to the subject matter of the Released Claims against the Releasees or any other person, corporation or entity which might claim damages and/or contribution and indemnity and/or any relief whatsoever, including relief of a monetary, declaratory or

injunctive nature, from one or more of the Releasees, but the Released Claims do not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.

16. **THIS COURT ORDERS AND DECLARES** that, without limiting the foregoing, each Class Member, whether or not he or she submits a claim for compensation under the Settlement Agreement, is deemed to have completely and unconditionally released and forever discharged the Releasees from any and all Released Claims.
17. **THIS COURT ORDERS AND DECLARES** that, without limiting the foregoing, each Class Member, whether or not he or she submits a claim under the Settlement Agreement, is forever barred and enjoined from continuing, commencing, instituting, or prosecuting any and all manner of claims, complaints, demands, actions, investigations, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (including Class Counsel Fees), or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum asserting against any of the Defendants or Releasees any claims that relate in any manner to or constitute any Released Claims. However, the Released Claims do not include any claims that any Class Members may have arising from an unrelated action for disclosure without authorization of personal information outside Desjardins that was announced on June 20, 2019.

18. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement at Appendix A, is binding upon the Plaintiff and each Class Member, whether or not they submit a claim to participate in the distribution of the Settlement Fund, including those Class Members who are minors or mentally incapable, and the requirements of Rule 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.
19. **THIS COURT ORDERS AND DECLARES** that any Other Action commenced in Ontario by any Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

APPOINTMENT OF CLAIMS ADMINISTRATOR

20. **THIS COURT ORDERS AND DECLARES** that the Claims Administrator shall be CA2 Class Action Claims Administration.
21. **THIS COURT ORDERS** that the Claims Administrator shall maintain confidentiality over and shall not share the information provided pursuant to this Order with any other person, including, but not limited to any lawyer (except Class Counsel and any lawyers retained by the Claims Administrator), unless doing so is necessary for effecting the Notice Protocol and facilitating the claims administration process in accordance with the Settlement Agreement.

22. **THIS COURT ORDERS** that the Claims Administrator shall use the information provided pursuant to this Order for the sole purpose of effecting the Notice Plan and facilitating the claims administration process in accordance with the Settlement Agreement, and for no other purpose.
23. **THIS COURT ORDERS AND DECLARES** that no person may bring any action or take any proceeding against the Claims Administrator or any of its employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Settlement Agreement, the implementation of this Order, or the administration of the Settlement Agreement and this Order except with leave of this Court.
24. **THIS COURT ORDERS** that the Claims Administrator shall provide notice of this Order pursuant to the Notice Plan, facilitate the claims administration process, and report to the Court and the Parties in accordance with the terms of the Settlement Agreement.
25. **THIS COURT ORDERS** that the Claims Administrator shall pay its Administration Expenses from the Settlement Fund, from time to time, as the Administration Expenses are incurred.
26. **THIS COURT ORDERS** that the Claims Administrator shall deliver a final report to this Court and the Parties upon the completion of the administration of the Settlement Agreement, detailing the total funds received and the disbursal thereof, the total number of claimants, the amount paid to each claimant, and the amount paid *cy-pres*, if any.

NOTICE PLAN

27. **THIS COURT ORDERS** that the short form Notice of Court Order is hereby approved substantially in the form in Schedule D of the Settlement Agreement, and shall be disseminated in accordance with the Notice Plan provided in this Court's order dated _____, 2019 (the "Notice Order").
28. **THIS COURT ORDERS** that the long form Notice of Court Order is hereby approved substantially in the form in Schedule E of the Settlement Agreement, and shall be disseminated in accordance with the Notice Plan provided in the Notice Order.

PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION

29. **THIS COURT ORDERS AND DECLARES** that this Order is an order compelling the production of information by the Defendants, the Claims Administrator, and Class Counsel within the meaning of applicable privacy laws, including that it satisfies the requirements of section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5.
30. **THIS COURT ORDERS AND DECLARES** that the information to be provided by the Defendants, Class Counsel, or the Claims Administrator pursuant to the terms of this Order without the consent of the Class members satisfies the requirements of any privacy laws in any jurisdiction in Canada allowing such information to be disclosed under the terms of a court order.

31. **THIS COURT ORDERS AND DECLARES** that the Defendants and the Releasees, the Claims Administrator, and Class Counsel are hereby released from any and all obligations pursuant to any and all applicable privacy laws, including common law, statutes and regulations in relation to the disclosure of any personal information required by the terms of this Order.

CLASS COUNSEL FEE APPROVAL AND PLAINTIFF'S HONORARIUM

32. **THIS COURT ORDERS** that the fees and disbursements of Class Counsel for the Class Action are hereby fixed at a total of \$_____, being \$_____ for fees for the class action, \$_____ for HST, and \$_____ for disbursements and applicable taxes, which are a first charge upon the Settlement Fund, and may be deducted before the balance is transferred to the Claims Administrator.
33. **THIS COURT ORDERS** that the Plaintiff is awarded an honorarium of \$_____ on a *quantum meruit* basis for the contributions that he has made in the prosecution of this action for the benefit of the Class as a whole, including in proceedings before the Privacy Commissioner of Canada, and this amount shall be paid from the Settlement Fund before Class Counsel transfers the net Settlement Fund to the Claims Administrator
34. **THIS COURT ORDERS** that Class Counsel shall, within 10 days of this order becoming Final, transfer the balance of the Settlement Fund, including the interest accrued in the Account, and less Class Counsel's fees, accrued Administration Expenses, and the Plaintiff's honorarium, to the Claims Administrator to be held in trust for the benefit of the Class, pending distribution to the Class Members in accordance with the Distribution Protocol at Schedule H of the Settlement Agreement.

CY-PRES PAYMENT

35. **THIS COURT ORDERS** that any residual amount remaining in the Settlement Fund after all Class members' claims and Administration Expenses have been paid, shall be paid, *cy-près*, to the Public Interest Advocacy Centre for use in its privacy advocacy endeavors.

DISMISSAL OF ACTION

36. **THIS COURT ORDERS AND ADJUDGES** that this action shall be dismissed against the Defendants without costs and with prejudice.
37. **THIS COURT DECLARES** that, notwithstanding the foregoing, this Court shall retain its supervisory jurisdiction over the administration of this settlement.
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APPENDIX 1

[Settlement Agreement]

SCHEDULE H

DISTRIBUTION PROTOCOL AND ADMINISTRATOR'S GUIDELINES

1. All Class Members who submit a valid Claim Form by the Claims Deadline are Eligible Class Members and will be entitled to an equal share of the net Settlement Fund. All Class Members who remain insureds of The Personal are automatically Eligible Class Members and are not required to submit a Claim Form.
2. The Claims Administrator shall determine whether a claimant is an Eligible Class Member using the Class Member List provided by the Defendants and comparing the List of Class Members to Claim Forms received.
3. The Claims Administrator will promptly provide notice to any claimant who is not on the Class Member List that they are not an Eligible Class Member (the "Disqualification Notice").
4. Any person who receives a Disqualification Notice will have 30 days from the date the Disqualification Notice is delivered to establish to the satisfaction of the Claims Administrator that they are an Eligible Class Member by producing to the Claims Administrator all of the following:
 - a. Proof of a valid motor vehicle insurance with The Personal that was in effect during the Class Period, such as a pink slip or copy of the insurance policy;
 - b. Documentary evidence demonstrating that the claimant made an automobile insurance claim to The Personal during the Claim Period.
 - c. Documentary evidence from a credit reporting agency (e.g. Equifax) demonstrating that The Personal accessed the claimant's credit score during the time that the claimant's automobile insurance claim was open.

The Claims Administrator shall determine if the claimant is an Eligible Class Member on the basis of the documentation produced by the claimant, applying the civil evidentiary standard of the balance of probabilities. The Claims Administrator will provide notice to the claimant regarding whether or not he or she has been accepted as an Eligible Class Member within 30 days of receipt of the claimant's document productions (the decision review period).

There will be no right of appeal from the decision of the Claims Administrator with respect to qualification or disqualification as an Eligible Class Member.

5. The Claims Administrator shall have the absolute discretion to accept otherwise valid claim forms received within 25 days after the Claims Deadline, if the Class Member provides a reasonable explanation for the delay in the submission of the claim form arising from circumstances beyond the Class Member's control. The decision of the Claims Administrator to accept or reject any late claim forms shall not be subject to review or appeal.

6. As soon as possible following 30 days after the expiry of the Claims Period and the last 30 day decision review period have both expired, the Claims Administrator will distribute the net Settlement Funds to the Eligible Class Members on a pro rata basis by sending to each Eligible Class Member a cheque or electronic fund transfer, as elected by the Claims Administrator.
7. Six months after the last cheque has been delivered to Eligible Class Members, and any uncashed settlement cheques have become stale-dated, any amount remaining in the Settlement Fund shall be paid, *cy-près*, to the Public Interest Advocacy Centre to be allocated towards its services in respect of consumer privacy issues.
8. The Claims Administrator will report to the Court regarding the disposition of the Net Settlement Fund to Eligible Class Members, including the number of Eligible Class Members to whom payments were made, the results of any determinations regarding disqualification notices, the payment of the Settlement Administration Expenses, and the distribution of any remaining Settlement Fund *cy-pres*, to the Public Interest Advocacy Centre. The report to the Court shall be delivered to Class Counsel, the lawyers for the Defendants and to the Court as soon as practicable after the completion of the Settlement administration.

KALEVI HAIKOLA
Plaintiff

-and-

THE PERSONAL INSURANCE COMPANY et al.
Defendants

Court File No. CV-19-0062297400CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER

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