

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)	
)	
ALEX M. BODNARCHUK	)	<i>Jacqueline Horvat and Sarah Petersen for</i>
Plaintiff	)	the Plaintiff
- and -)	
)	
GUESTLOGIX INC., BRETT PROUD AND PATRICK LEUNG	)	<i>Lawrence E. Ritchie, Kevin O'Brien and</i>
Defendants	)	<i>Sonja Pavic for the Defendant, Guestlogix</i>
	)	Inc.
	)	<i>Andrea Gonsalves and Carlo Di Carlo for</i>
	)	the Defendant Brett Proud
	)	<i>Ellen Bessner for the Defendant Patrick</i>
	)	Leung
)	
Proceeding under the <i>Class Proceedings</i>	)	HEARD: In writing
<i>Act, 1992</i>)	

PERELL, J.

REASONS FOR DECISION

A. Introduction

[1] Pursuant to the *Class Proceedings Act, 1992*,¹ Alex M. Bodnarchuk sues Guestlogix Inc., Brett Proud, and Patrick Leung for secondary market misrepresentation pursuant to s. 138.8 (1) of the Ontario *Securities Act*.²

[2] This is a consent motion to certify the action for settlement purposes. Mr. Bodnarchuk seeks an Order :

- a. granting leave of the Court, pursuant to s. 138.8 (1) of the Ontario *Securities Act* (“OSA”) on consent and for settlement purposes only, to commence an action under

¹ S.O. 1992, c. 6.

² R.S.O. 1990, c. S.5.

s.138.3 of the Act, and if necessary, under the concordant provisions of the other provincial securities statutes as against the Defendants Guestlogix Inc. Brett Proud, and Patrick Leung;

b. certifying this Action as a class proceeding pursuant to ss. 2 and 5 of the *Class Proceedings Act, 1992* on consent and for settlement purposes only;

c. approving the form, content, and method of dissemination of the Short Form and Long-Form Notices of Certification and Settlement Approval Hearing and the Opt-Out Form;

d. appointing Spark LLP (“Class Counsel”) to administer opt-outs from and objections to the Action, if any;

e. setting the deadline by which Class Members may opt-out of the action;

f. setting the date for the hearing of the motion to approve the proposed settlement; and

g. appointing Class Counsel to manage the Escrow Account in accordance with the terms of the Agreement.

[3] For the following reasons, the motion is granted.

B. Facts

[4] GuestLogix was a publicly traded corporation, whose shares were listed on the Toronto Stock Exchange. Guestlogix was a reporting issuer in all of the provinces of Canada and was also a “responsible issuer” as defined under s. 138.1 of the Ontario *Securities Act* and the concordant provisions in the *Securities Acts* in the other provinces. Guestlogix was required to make regular disclosure regarding its operations and finances pursuant to Canadian securities laws.

[5] Brett Proud was co-founder of Guestlogix, and he was the President and Chief Executive Officer during the proposed Class Period until his resignation on September 16, 2015. Mr. Proud certified that Guestlogix’s annual filings for its 2014 fiscal year, as well as its interim filings for the first quarter of 2015, did not contain any misrepresentations. Mr. Proud is alleged to have made written and oral misrepresentations to investors during the Class Period.

[6] Patrick Leung was Guestlogix’s Chief Financial Officer during the Class Period. Mr. Leung certified that Guestlogix’s annual filings for its 2014 fiscal year, as well as its interim filings for the first quarter of 2015, did not contain any misrepresentations. Mr. Leung is alleged to have made written and oral misrepresentations to investors during the Class Period.

[7] This action was originally commenced by a different representative Plaintiff, Céline Tacnière, by issuance of the Statement of Claim on January 25, 2016.

[8] On February 9, 2016, Guestlogix applied for and received an order for protection pursuant to the *Companies’ Creditors Arrangement Act* (“CCAA”).³

[9] Guestlogix’s securities were delisted from the Toronto Stock Exchange at the close of business on March 18, 2016.

³ R.S.C., 1985, c. C-36.

[10] On September 12, 2016, Justice Morawetz approved a Plan of Compromise, dated July 29, 2016. Pursuant to the Plan of Compromise and CCAA Order, “Equity Claims” and “Director/Officer Claims” were to be released, effective on the date of the CCAA Order, with the exception of “Unaffected Claims”, amongst which are “Insured Claims”, all terms being defined in the Plan of Compromise.

[11] In the immediate action, on February 14, 2017, Mr. Bodnarchuk was added as a named Plaintiff and proposed representative plaintiff in a Fresh as Amended Statement of Claim.

[12] The Statement of Claim was amended again on April 23, 2019. The action is brought on behalf of the following:

The Plaintiff and all persons, other than Excluded Persons, who acquired Guestlogix’s securities in the period between June 8, 2015 to and including November 12, 2015 (the “Class Period”), and who held some or all of those securities at the close of trading on November 12, 2015 (the “Class” or “Class Members”).

“Excluded Persons” are defined as Guestlogix’s subsidiaries, affiliates, officers, directors, senior employees, and their respective legal representatives, heirs, predecessors, successors and assigns, as well as any member of the Individual Defendants’ immediate families, and any entity in which any of the foregoing has or had any legal or de facto controlling interest during the Class Period.

[13] The “Class Period” is defined in the Claim as the period from and including June 8, 2015 to and including November 12, 2015.

[14] The Statement of Claim alleges that during the Class Period, the Defendants made or authorized the making of misrepresentations and/or omissions of material facts relating to credit facilities in which Guestlogix had entered and concerning financial covenants pertaining to these credit facilities. The Plaintiff, on behalf of himself and the members of the proposed Class, claim damages from the Defendants for the alleged misrepresentations made in Guestlogix’s Class Period disclosure documents.

[15] In his affidavit for the motion now before the Court, Mr. Bodnarchuk testified that he asked to be the representative plaintiff in this action to ensure that the Defendants were held accountable for the alleged misrepresentations made to him and similarly-situated investors. He attested that he started this action in good faith and that he did not have any ulterior nor improper purpose for his initiation of the action.

[16] The Defendants have denied and continue to deny all liability and have indicated they may assert various statutory defences under Part XXIII.1 of the Ontario *Securities Act*.

[17] The Plaintiff has served his motion record for leave to commence a statutory secondary market securities claim under s. 138.8 of the Ontario *Securities Act*. The motion record includes an expert accounting report. The Defendants have served their responding motion record for the leave motion, which includes reports from an investment banking expert and an economics expert.

[18] After extensive arm’s-length negotiations and with the assistance of Clifford Lax as mediator, the Plaintiff and the Defendants have now reached a proposed settlement, as memorialized in the Settlement Agreement, to resolve the entire action. The Settlement Agreement is subject to Court approval pursuant to s. 29 of the *Class Proceedings Act, 1992*.

[19] The major terms of the Settlement Agreement are that the Defendants agree to pay or cause

to be paid the all-inclusive sum of \$1,275,000 for the benefit of the proposed Class. In return, the Plaintiff and the proposed Class (excluding people who may choose to opt-out) will provide a release to the Defendants.

[20] Under the terms of the Settlement Agreement, the parties consent to the granting of leave to proceed and the certification of this action as a class proceeding solely for the purposes of implementing the settlement agreement. In the event that the Settlement Agreement is not approved by this Court, the Settlement Agreement provides that: (a) the order granting leave and certifying the within Action as a class proceeding will be set aside; (b) the Plaintiff and Defendants will retain all of their legal rights and defences; and (c) the Plaintiff and Defendants will be restored to their respective positions prior to the execution of the Settlement Agreement.

[21] Under the terms of the Settlement Agreement, the Plaintiff is obliged to bring a motion seeking the Certification and First Notice Order, which if granted, will: (a) grant leave of the Court to proceed pursuant to the Ontario *Securities Act* for settlement purposes only; (b) certify the Action pursuant to the *Class Proceedings Act, 1992* for settlement purposes only; (c) appoint Class Counsel (or, if the Court deems it necessary, a third-party) to act as the administrator for any Opt-Out Parties; (d) set the Opt-Out deadline; (e) set the date for the hearing of the Approval Motion; (f) approve the form and content of, and authorize the manner of publication and dissemination of the Notices and Opt-Out Form; and (g) appoint Class Counsel to manage the Escrow Account in accordance with the terms of the Agreement.

[22] The Agreement further: (a) stipulates an Opt-Out Deadline of August 5, 2020; (b) specifies the information to be included in an opt-out request; and (c) provides that Class Members who opt-out shall be excluded from continuing participation in the action and the settlement contemplated under the Settlement Agreement.

[23] Pursuant to the Settlement Agreement, once the Certification and First Notice Order is granted by the Court and the Opt-Out Deadline has passed, the Plaintiff will bring a motion seeking the Approval Order, which will, among other things: (a) approve the Settlement and the proposed distribution of the Settlement Amount; (b) approve the form of, and authorize the manner of publication and dissemination of the Long-Form Notice of Settlement Approval and the Short-Form Notice of Settlement Approval; (c) appoint Class Counsel (or, if the Court deems it necessary, a third-party) to act as the claims administrator to distribute the Settlement Amount; and (d) dismiss the action as against the Defendants with prejudice and without costs. Thereafter, the Settlement Amount will be distributed by Class Counsel pursuant to the terms of the Agreement and the Plan.

[24] For the purposes of the motion for consent leave to proceed and for certification, the Plaintiff is advancing a single cause of action; namely: a statutory securities claim for secondary market misrepresentation pursuant to section 138.3 of OSA, and if necessary, the equivalent *Securities Acts* in other provinces.

[25] The Parties agree that this proceeding be certified, for settlement purposes only, on the basis of the following two common issues:

- a. Did Guestlogix's Class Period disclosure documents contain a misrepresentation within the meaning of the OSA?; and
- b. Did the statement released on November 12, 2015 correct the previously released impugned documents containing alleged misrepresentations within the meaning of the

OSA?

C. Leave under Part XXIII.1 of the Ontario Securities Act

[26] Part XXIII.1 of Ontario's *Securities Act* provides several statutory causes of action for secondary market misrepresentation. The objectives of Part XXIII.1 of the Ontario *Securities Act* are to deter misrepresentative disclosure and to provide a remedy for injured investors, while at the same time preventing strike suits against issuers.⁴

[27] Under s.138.8 (1) of the Ontario *Securities Act*, leave of the Court is required to proceed with a statutory misrepresentation cause of action. Section 138.8 (1) reads:

138.8 (1) No action may be commenced under s.138.3 without leave of the court granted upon motion with notice to each defendant. The court shall grant leave only where it is satisfied that,

(a) the action is being brought in good faith; and

(b) there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

[28] Thus, an action for secondary market misrepresentation under s. 138.3 of the OSA requires leave of the Court. Leave will be granted if the Court is satisfied that the action is brought in good faith and there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

[29] In the leave test, "good faith" has been interpreted to mean that the plaintiff has brought his or her action in the honest belief that he or she has an arguable claim, for reasons that are consistent with the purpose behind the statutory remedy, not for an oblique or collateral purpose, and with the genuine intention and capacity to prosecute the claim if leave is granted.⁵

[30] The reasonable possibility of success requirement of the leave test is a meaningful but low threshold, merits-based test that is more than a superficial examination of the merits of the plaintiff's statutory cause of action, but a meaningful examination of the evidence to ensure that the action has some merit.⁶ While relatively low, the test for leave is a different and more robust standard than the general threshold for the certification or authorization of a class action.⁷ The leave test is meant to create a robust deterrent screening mechanism with a reasoned consideration of the evidence from both parties so that cases without merit are prevented from proceeding.⁸

[31] For the purposes of the leave motion, the evidentiary burden placed on the plaintiff is considerably less than the burden of a trial or a mini-trial. In *Theratechnologies Inc. v. 121851*

⁴ *CIBC v. Green*, 2015 SCC 60 at para. 178; *Yip v. HSBC Holdings plc*, 2018 ONCA 626 at para. 13; *Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v. SNC-Lavalin Group Inc.*, 2015 ONCA 718 at para. 49.

⁵ *Dobbie v. Arctic Glacier Income Fund*, 2011 ONSC 25 at paras. 107-112; *Silver v. Imax Corp.*, [2009] O.J. No. 5573 at para. 308, leave to appeal refused [2011] O.J. 656 (Div. Ct.).

⁶ *Musicians' Pension Fund of Canada (Trustees of) v. Kinross Gold Corp.*, 2014 ONCA 901, aff'g 2013 ONSC 6864; *Green v. CIBC*, 2014 ONCA 90, var'g 2012 ONSC 3637, aff'd 2015 SCC 60, leave to appeal refused [2011] O.J. 656 (Div. Ct.); *Bradley v. Eastern Platinum Ltd.*, 2016 ONSC 1903 at para. 51.

⁷ *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18 at para. 35; *CIBC v. Green*, 2015 SCC 60 at paras. 120-123, 147, 212; *Goldsmith v. National Bank of Canada*, 2016 ONCA 22 at paras. 27-33, aff'g 2015 ONSC 2746.

⁸ *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18 at para. 38; *CIBC v. Green*, 2015 SCC 60 at paras. 120-123, 147, 212; *Mask v. Silvercorp Metals Inc.*, 2016 ONCA 641 at paras. 42-43, aff'g 2015 ONSC 5348; *Catucci v. Valeant Pharmaceuticals International Inc.*, 2017 QCCS 3870.

Canada Inc.,⁹ the Supreme Court of Canada described the plaintiff's burden. The Court said that the plaintiff should provide a plausible analysis of the legislation and some credible evidence in support for the claim. The Court said that the leave motion should not be treated as a mini-trial or be so onerous as to essentially replicate the demands of a trial. All that was required was sufficient evidence to persuade the Court that there is a reasonable possibility that the action will be resolved in the plaintiff's favour.

[32] Using the record of affidavit evidence and cross-examinations, the Court hearing the leave motion is entitled to weigh the evidence, but the Court must take into account that the leave motion involves merely a paper record and that the statutory leave test sets a low evidentiary threshold.¹⁰ The motions judge should be cognizant of the fact that full production has not been made and that the defendant may have relevant documentation and evidence that is not before the Court.¹¹

[33] On a leave motion, a full analysis of the evidence is unnecessary, and the plaintiff need only provide a plausible analysis of the applicable legislative provisions and some credible evidence in support of the claim sufficient to persuade the Court that there is a reasonable possibility that the action will be resolved in the plaintiff's favour.¹² The test is that leave should not be granted if having considered all the evidence and having regard to the limitations of the motions process, the plaintiff's case is so weak or has been so successfully rebutted by the defendant, that the plaintiff's case has no reasonable possibility of success.¹³

[34] Having reviewed the motion record, I am satisfied that the action has been brought in good faith and that for the purposes of effecting a settlement agreement whether there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff has also been established.

[35] Accordingly, I grant leave under Part XXIII.1 of the Ontario *Securities Act*.

D. Certification

[36] The Court is required to certify the action as a class proceeding where the following five-part test in s. 5 of the *Class Proceedings Act, 1992* is met: (1) the pleadings disclose a cause of action; (2) there is an identifiable class of two or more persons that would be represented by the representative plaintiff; (3) the claims of the class members raise common issues; (4) a class proceeding would be the preferable procedure for the resolution of the common issues; and (5) there is a representative plaintiff who: (a) would fairly and adequately represent the interests of the class; (b) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and (c) does not have, on the common issues for the class, an interest in conflict

⁹ *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18 at para. 39.

¹⁰ *Musicians' Pension Fund of Canada (Trustees of) v. Kinross Gold Corp.*, 2014 ONCA 901, aff'd 2013 ONSC 6864; *Green v. CIBC*, 2014 ONCA 90, var'g 2012 ONSC 3637, aff'd 2015 SCC 60.

¹¹ *Rahimi v. SouthGobi Resources Ltd.*, 2017 ONCA 719 at paras. 45-49.

¹² *Theratechnologies Inc. v. 121851 Canada Inc.*, 2015 SCC 18 at paras. 38-39; *Green v. CIBC*, 2015 SCC 60 at paras. 122, 147, and 212, aff'd 2014 ONCA 90, var'g 2012 ONSC 3637; *Goldsmith v. National Bank of Canada*, 2016 ONCA 22 at para. 34, aff'd 2015 ONSC 2746.

¹³ *Rahimi v. SouthGobi Resources Ltd.*, 2015 ONSC 5948, var'd 2017 ONCA 719; *Swisscanto Fondsleitung AG v. BlackBerry Ltd.*, 2015 ONSC 6434; *Mask v. Silvercorp Metals Inc.*, 2015 ONSC 5348, aff'd 2016 ONCA 641; *Coffin v. Atlantic Power Corp.*, 2015 ONSC 3686; *Goldsmith v. National Bank of Canada*, 2015 ONSC 2746, aff'd 2016 ONCA 22.

with the interests of other class members.

[37] The fact that an action is certified on consent for settlement purposes does not dispense with the need to meet the certification criteria but they may be less rigorously applied in a settlement context.¹⁴

[38] Pursuant to s. 5 (1) of the *Class Proceedings Act, 1992*, having reviewed the motion record, I am satisfied that all of the criteria for certification have been satisfied.

E. Conclusion

[39] Order to go as asked in the form of the Order attached as Schedule A to these Reasons for Decision.

[40] In the circumstances of the Covid-19 emergency, these Reasons for Decision are deemed to be an Order of the court that is operative and enforceable without any need for a signed or entered, formal, typed order.

[41] The parties may submit formal orders for signing and entry once the court re-opens; however, these Reasons for Decision are an effective and binding Order from the time of release.



Perell, J.

Released: June 17, 2020

¹⁴ *Osmun v. Cadbury Adams Canada Inc.*, [2009] O.J. No. 5566 at para. 21 (S.C.J.).

Schedule "A"

Court File No.: 16-CV-545118-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE) _____ DAY THE _____
)
 JUSTICE PAUL M. PERELL) DAY OF _____, 2020

B E T W E E N:

ALEX M. BODNARCHUK

Plaintiff

– and –

GUESTLOGIX INC., BRETT PROUD and PATRICK LEUNG

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER

(Motion in writing for certification pursuant to the *Class Proceedings Act, 1992* for settlement purposes only, and to set a date for the settlement approval motion, returnable June 16, 2020)

THIS MOTION, made by the plaintiff for an Order: (i) granting the plaintiff leave pursuant to s. 138.8(1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "OSA") for settlement purposes; (ii) certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA") for settlement purposes; (iii) setting the deadline for objections and opt-outs to be delivered to Class Counsel; (iv) setting the date for the hearing of the motion for settlement approval and approval of Class Counsel fees (the "Approval Motion"); (v) approving the form, content, and method of dissemination of the Notices of Certification and Settlement

Approval Hearing (the “Notices”); and (v) appointing Class Counsel to manage the Escrow account, was read this day at the courthouse located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement, attached to this Order as Schedule “A” (the “Agreement”), the motion record and factum of the Plaintiff;

AND ON BEING ADVISED that the Defendants consent to this Order for the purposes of settlement only:

1. THIS COURT DECLARES that for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Agreement apply to and are incorporated into this Order.

2. THIS COURT ORDERS that the Short-Form Notice of Certification and Settlement Approval Hearing (“Short-Form Notice”) and the Long-Form Notice of Certification and Settlement Approval Hearing (“Long-Form Notice”) shall be and are hereby approved substantially in the forms attached hereto as Schedules “B” and “C”, respectively.

3. THIS COURT ORDERS that within fifteen (15) days of the granting of this Order, the putative Class Members shall be given notice of this Order and the hearing of the Approval Motion by Class Counsel:

- (a) publishing the Short-Form Notice in at least ¼ page size in the business/legal section of the National Post;
- (b) disseminating the Short-Form Notice by press release;

- (c) posting the Long-Form Notice on its website; and
- (d) disseminating the Long Form Notice by email to any potential Class Member who has contacted Class Counsel and for whom Class Counsel has an email address.

4. THIS COURT ORDERS that leave of the Court is granted, pursuant to s. 138.8 of the OSA, for settlement purposes only, to commence an action under s. 138.3 of the OSA and, if necessary, under the concordant provisions of the other provincial securities statutes (the “Equivalent Securities Acts”) as against the Defendants.

5. THIS COURT ORDERS that this action is certified as a class proceeding for settlement purposes only pursuant to sections 2, 5, 6, and 29 of the CPA.

6. THIS COURT ORDERS that the certified cause of action for settlement purposes against all of the Defendants is under s. 138.3 of the OSA and the Equivalent Securities Acts.

7. THIS COURT ORDERS that the class that is certified, for the purposes of settlement only (the “Class”), is defined as:

All persons and entities, other than Excluded Persons^[1], who acquired securities of Guestlogix Inc. (“Guestlogix”) during the Class Period^[2], and who held some or all of those securities at the close of trading on November 12, 2015.

[1] “Excluded Persons” means Guestlogix’s subsidiaries, affiliates, officers, directors, senior employees, and their respective legal representatives, heirs, predecessors, successors and assigns, as well as any member of Defendant Proud or Leung’s immediate families, and any entity in which any of the foregoing has or had any legal or de facto controlling interest during the Class Period.

[2] "Class Period" means the period from June 8, 2015 to November 12, 2015, both dates inclusive.

8. THIS COURT ORDERS that Alex M. Bodnarchuk is appointed as the representative plaintiff for the Class.
9. THIS COURT ORDERS that the following two issues are common to the Class for purposes of settlement:
 - i. Did Guestlogix's Class Period disclosure documents contain a misrepresentation within the meaning of the OSA?; and
 - ii. Did the statements released on November 12, 2015 correct the previously released impugned documents containing alleged misrepresentations within the meaning of the OSA?
10. THIS COURT ORDERS that any Class Members who wish to exclude themselves from this Action can do so by submitting to Class Counsel an approved Opt-Out Form, substantially in the form attached hereto as Schedule "D" received by email on or before August 5, 2020 (the "Opt-Out Deadline").
11. THIS COURT ORDERS that the method of dissemination for the Opt-Out Form shall consist of publication on Class Counsel's website, and that such plan of dissemination is hereby approved.
12. THIS COURT ORDERS that any putative Class Members who validly opt-out of the Action by the Opt-Out Deadline, in accordance with paragraph 10 of this Order, are not bound by the

Agreement and shall no longer participate in or have the opportunity in the future to participate in this Action or the Agreement.

13. THIS COURT ORDERS that, within seven (7) days after the Opt-Out Deadline, Class Counsel shall report to the Court and provide counsel for the Defendants with a report containing the names of each person who has validly and timely opted out of the Action, the reason for the opt-out (if known), and a summary of the information delivered by such persons.

14. THIS COURT ORDERS that this Order is binding upon each Class Member who does not validly opt-out from this Action on or prior to the Opt-Out Deadline in accordance with paragraph 10 of this Order, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect of the Action.

15. THIS COURT ORDERS that the hearing of the Approval Motion shall take place on August 13, 2020 via video-conferencing methods such as Zoom or by conference call, as directed by this Court.

16. THIS COURT ORDERS that any Class Members who wish to file with the Court an objection to or comment on the proposed settlement or the request for approval of Class Counsel fees, shall email a statement to Class Counsel at the address indicated in the approved Notices no later than August 5, 2020.

17. THIS COURT ORDERS that only Class Members who email a statement indicating an objection to or comment on the proposed settlement or the request for approval of Class

Counsel fees, in accordance with paragraph 16, may participate in the hearing of the Approval Motion.

18. THIS COURT ORDERS that Spark LLP is appointed, until further order of the Court, to manage the Escrow Account in accordance with the terms of the Agreement and shall account to the Court and to the Defendants for all payments it makes from the Escrow Account in accordance with the Agreement.

19. THIS COURT ORDERS that the costs relating to the implementation of this order, including the costs associated with the publication of the Notices and any costs related to the administration of Opt-Out Forms, shall be paid by Class Counsel as such costs are incurred out of the settlement proceeds and such costs shall be Non-Refundable Expenses, as defined in the Settlement Agreement

20. THIS COURT DECLARES that the Parties may apply to this Court for directions in respect of the implementation of this Order or of the hearing of the Approval Motion, if necessary.

21. THIS COURT ORDERS that this Order shall be set aside, declared null and void, and be of no force and effect on a subsequent motion made by any party on notice to the other parties in the event that the Agreement is terminated in accordance with its terms.

The Honourable Justice Paul M. Perell

Schedule "A"

Court File No.: 16-CV-545118-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ALEX M. BODNARCHUK

Plaintiff

– and –

GUESTLOGIX INC., BRETT PROUD AND PATRICK LEUNG

Defendants

Proceeding under the Class Proceedings Act, 1992

SETTLEMENT AGREEMENT

(made as of the 11th day of June, 2020)

TABLE OF CONTENTS

SECTION 1: RECITALS..... 17

SECTION 2: DEFINITIONS..... 19

SECTION 3: APPROVAL AND NOTICE PROCESS 24

 BEST EFFORTS 24

 CERTIFICATION AND FIRST NOTICE MOTION 24

 APPROVAL MOTION AND NOTICE 25

 NOTICE OF TERMINATION 25

 REPORT TO THE COURT 25

SECTION 4: NON-REFUNDABLE EXPENSES..... 26

 PAYMENTS..... 26

 DISPUTES CONCERNING NON-REFUNDABLE EXPENSES 27

SECTION 5: SETTLEMENT BENEFIT 27

 PAYMENT OF SETTLEMENT AMOUNT..... 27

 SETTLEMENT AMOUNT TO BE HELD IN TRUST..... 28

 TAXES ON INTEREST 29

SECTION 6: NO REVERSION	29
SECTION 7: DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT	30
SECTION 8: EFFECT OF SETTLEMENT	31
NO ADMISSION OF LIABILITY	31
AGREEMENT NOT EVIDENCE.....	31
RESTRICTIONS ON CLASS COUNSEL.....	32
SECTION 9: CERTIFICATION AND LEAVE FOR SETTLEMENT ONLY	32
CONSENT TO CERTIFICATION AND LEAVE TO PROCEED	32
CERTIFICATION AND LEAVE TO PROCEED WITHOUT PREJUDICE.....	33
SECTION 10: OPTING OUT	34
AWARENESS OF ANY POTENTIAL OPT-OUTS	34
OPT-OUT PROCEDURE	34
NOTIFICATION OF NUMBER OF OPT-OUTS.	35
SECTION 11: TERMINATION OF THE AGREEMENT	36
GENERAL	36
ALLOCATION OF MONIES IN THE ESCROW ACCOUNT FOLLOWING TERMINATION	38
DISPUTES RELATING TO TERMINATION	39
NO RIGHT TO TERMINATE.....	39
SECTION 12: DETERMINATION THAT THE SETTLEMENT IS FINAL.....	39
SECTION 13: RELEASES AND JURISDICTION OF THE COURT	39
RELEASE OF RELEASEES.....	39
NO FURTHER CLAIMS.....	40
DISMISSAL OF THE ACTION	41
NO CLAIMS IN INTERIM	41
SECTION 14: ADMINISTRATION.....	41
CLASS COUNSEL TO ACT AS ADMINISTRATOR	41
APPOINTMENT OF THE REFEREE	42
CLAIMS PROCESS.....	42
DISPUTES CONCERNING THE DECISIONS OF CLASS COUNSEL	43
CONCLUSION OF THE ADMINISTRATION	43
SECTION 15: THE PLAN OF ALLOCATION	44
SECTION 16: THE FEE AGREEMENT AND CLASS COUNSEL FEES.....	45
MOTION FOR APPROVAL OF CLASS COUNSEL FEES AND DIRECTIONS FOR DISTRIBUTION OF THE REMAINDER OF THE SETTLEMENT AMOUNT.....	45
PAYMENT OF CLASS COUNSEL FEES AND DISTRIBUTION OF THE REMAINDER OF THE SETTLEMENT AMOUNT.....	46
SECTION 17: MISCELLANEOUS.....	46
MOTIONS FOR DIRECTIONS	46
DEFENDANTS HAVE NO RESPONSIBILITY OR LIABILITY FOR ADMINISTRATION.....	47

HEADINGS, ETC.....	47
GOVERNING LAW	48
SEVERABILITY.....	48
ENTIRE AGREEMENT	48
BINDING EFFECT	49
SURVIVAL	49
NEGOTIATED AGREEMENT	49
RECITALS	50
ACKNOWLEDGEMENTS	50
COUNTERPARTS	50
CONFIDENTIALITY AND COMMUNICATIONS.....	50
NO FRENCH TRANSLATION	51
NOTICE	52
DATE OF EXECUTION:.....	53

SETTLEMENT AGREEMENT

Subject to the approval of the Court as provided herein, the plaintiff and the Defendants agree that, in consideration of the promises and covenants set forth in this Agreement and upon the Approval Order becoming a Final Order, this Action will be settled and compromised on the terms and conditions contained herein.

SECTION 1: RECITALS

1.1 WHEREAS:

- a. The Plaintiff commenced this Action in Ontario against the Defendants, alleging that certain disclosure documents released by Guestlogix Inc. (“Guestlogix”) contained misrepresentations within the meaning of the OSA, with said misrepresentations alleged to have caused Guestlogix’s securities to trade at artificially high prices.
- b. The Defendants have denied and continue to deny all of the Plaintiff's claims in this Action, have vigorously denied any wrongdoing or liability of any kind whatsoever, and state that they would have actively and diligently pursued affirmative defences and other defences had this Action not been settled.
- c. The Plaintiff, with the benefit of advice from Class Counsel, has concluded that this Agreement, which resolves finally and completely the Action against all of the Defendants, is fair, reasonable and in the best interests of the Class based upon an analysis of the facts and law applicable to the issues in this Action, and taking into account factors including the burdens, complexities, risks and expense of continued litigation, including the determination of damages to the Class, the effect of applicable statutes of

limitations, the effect of recent case law, any potential appeals, and the potential risks to recovery in continuing the Action.

- d. The Defendants similarly have concluded that this Agreement is desirable in order to avoid the time, risk and expense of continuing with the litigation, including any potential appeals, and any other present or future litigation arising out of the facts that gave rise to this Action, and to resolve finally and completely the pending claims advanced or that could have been advanced against them in this Action.
- e. The Plaintiff and the Defendants, through counsel, have engaged in extensive arm's length settlement discussions and negotiations in respect of the Action for over a year.
- f. The Plaintiff and the Defendants intend to and hereby do finally resolve the Action and all the claims that were or could have been asserted in the Action, subject to the approval of the Court as hereinafter provided, without any admission of liability or wrongdoing whatsoever by the Defendants.
- g. The Plaintiff asserts that he is a suitable representative for the Class and will seek to be appointed as the representative plaintiff for the certified Class in this Action.

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, the Parties agree to the settlement set out herein.

SECTION 2: DEFINITIONS

2.1 For the purposes of this Agreement, including the Recitals and Schedules hereto:

1. **Action** means the action styled Bodnarchuk v. Guestlogix Inc., et al. filed in the Ontario Superior Court of Justice (Toronto Registry), Court File. No.: 16-CV-545118-00CP.

2. **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable relating to the approval, implementation and administration of this Agreement, including the costs of publishing and delivering all notices (if any), and any other expenses approved by the Court which shall all be paid from the Settlement Amount. For greater certainty, Administration Expenses include the Non-Refundable Expenses but do not include Class Counsel Fees.

3. **Agreement** means the within settlement agreement, including the Recitals and Schedules hereto.

4. **Approval Motion** means a motion to be brought by the Plaintiff, in the Court, for the Approval Order.

5. **Approval Order** means an order made by the Court:

- a. approving this Agreement and the proposed distribution of the Settlement Amount;
- b. approving the form of the Second Notice; and
- c. dismissing the Action as against the Defendants with prejudice and without costs, on the Effective Date;

in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably.

6. **Authorized Claimant** means any Class Member who has submitted a properly completed Claim Form and all required supporting documentation to Class Counsel on or before the Claims Bar Deadline and, pursuant to the terms of the Agreement, has been approved for compensation by Class Counsel in accordance with the Plan of Allocation.

7. **Certification and First Notice Motion** means a motion to be brought by the Plaintiff, in the Court, for the Certification and First Notice Order.

8. **Certification and First Notice Order** means an order:

- a. granting leave of the Court, pursuant to s. 138.8 of the OSA, to commence an action under s. 138.3 of the OSA for settlement purposes only;

- b. certifying the Action for settlement purposes only;
- c. approving the form, content and method of dissemination of the First Notice;
- d. prescribing opt-out procedures; and
- e. fixing the date for the Approval Motion

in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably.

9. **Claim Form** means the form to be approved by the Court which, when completed and submitted in a timely manner to Class Counsel, constitutes a Class Member's claim for compensation pursuant to the Settlement.

10. **Claims Bar Deadline** means the date by which each Class Member must submit a completed Claim Form and all required supporting documentation to Class Counsel, which date shall be set out in the Second Notice and which shall be at least ninety (90) days after the date on which the Second Notice is published.

11. **Class** or **Class Members** means all persons, other than Excluded Persons and Opt-Out Parties, who acquired Guestlogix's securities in the period between June 8, 2015 to and including November 12, 2015, and who held some or all of those securities at the close of trading on November 12, 2015.

12. **Class Counsel** means Spark LLP.

13. **Class Counsel Fees** means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel as well as a pro rata share of all interest earned on the Settlement Amount to the date of payment, as approved by the Court.

14. **Class Period** means the period from and including June 8, 2015 to and including November 12, 2015.

15. **Common Issues** means:

- a. Did Guestlogix's Class Period disclosure documents contain a misrepresentation within the meaning of the OSA?; and
- b. Did the statement released on November 12, 2015 correct the previously released impugned documents containing alleged misrepresentations within the meaning of the OSA?

16. **Company** means Guestlogix.

17. **Contributing Parties** means the Defendants and their insurer(s) funding the Settlement, if any.
18. **Counsel for the Defendants** means collectively, Osler, Hoskin & Harcourt LLP, Stockwoods LLP and Babin Bessner Spry LLP.
19. **Court** means the Ontario Superior Court of Justice.
20. **CPA** means the Class Proceeding Act, 1992, S.O. 1992, c. 6, as amended.
21. **Defendants** means, collectively, Guestlogix and the Individual Defendants.
22. **Effective Date** means the date on which both of the following occur or have occurred:
 - a. the Settlement Amount has been paid into the Escrow Account; and
 - b. the Defendants' collective right to terminate the Agreement has expired and the Approval Order becomes a Final Order.
23. **Eligible Shares** means the Shares purchased or otherwise acquired by a Class Member or Opt-Out Party during the Class Period and still held at the close of trading on November 12, 2015.
24. **Equivalent Securities Acts** means, collectively, the Securities Act, R.S.A. 2000, c. S-4, as amended; the Securities Act, R.S.B.C. 1996, c 418, as amended; The Securities Act, C.C.S.M. c. S50, as amended; the Securities Act, S.N.B. 2004, c. S-5.5, as amended; the Securities Act, R.S.N.L. 1990, c S-13, as amended; the Securities Act, R.S.N.S. 1989, c. 418, as amended; the Securities Act, R.S.P.E.I. 1988, c S-3.1, as amended; the Securities Act, R.S.Q. c V-1.1, as amended; and The Securities Act, 1988, S.S. 1988-89, c. S-42.2, as amended.
25. **Escrow Account** means the interest-bearing trust account of Class Counsel or, if directed by the Court, an interest-bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of a claims administrator appointed by the Court.
26. **Escrow Settlement Amount** means the Settlement Amount plus any interest accruing thereon after payment of all Non-Refundable Expenses.
27. **Excluded Persons** means Guestlogix's subsidiaries, affiliates, officers, directors, senior employees, and their respective legal representatives, heirs, predecessors, successors and assigns, as well as any member of the Individual Defendants' immediate families, and any entity in which any of the foregoing has or had any legal or de facto controlling interest during the Class Period.
28. **Final Order** means any order of the Court contemplated by this Agreement from which

any right of appeal has been exhausted, expired, or where no appeal lies.

29. **First Notice** means the Long-Form Notice of Certification and Settlement Approval Hearing and/or the Short-Form Notice of Certification and Settlement Approval Hearing.

30. **Guestlogix** means Guestlogix Inc.

31. **Individual Defendants** means collectively, Brett Proud and Patrick Leung.

32. **Long-Form Notice of Certification and Settlement Approval Hearing** and **Short-Form Notice of Certification and Settlement Approval Hearing** mean notice to the Class of:

- a. the granting of leave to proceed and certification of the Action as against the Defendants, for settlement purposes only;
- b. the procedure for submitting an Opt-Out Form; and
- c. the pendency of the Approval Motion

in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably.

33. **Long-Form Notice of Settlement Approval** and **Short-Form Notice of Settlement Approval** mean notice to the Class of the Approval Order in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably.

34. **Non-Refundable Expenses** means certain Administration Expenses stipulated in Section 4.1 of the Agreement to be paid for the Settlement Amount, regardless of whether the Settlement is approved by the Court or not.

35. **Opt-Out Deadline** means August 5, 2020.

36. **Opt-Out Form** means the document, as approved by the Court, that if properly completed and submitted by a Class Member to Class Counsel before the expiry of the Opt-Out Deadline, excludes that Class Member from the Class, the Action, and participation in the Settlement, as further explicated in Section 10.2 herein.

37. **Opt-Out Party** or **Opt-Out Parties** means any and all persons who would otherwise be Class Members and who submit a valid Opt-Out Form to Class Counsel by the Opt-Out Deadline.

38. **Opt-Out Period** means the period up to and including the Opt-Out Deadline, during which Opt-Out Forms may be submitted by persons who fall within the Class and wish to opt-out of the Action and the Settlement.

39. **OSA** means the Securities Act, R.S.O. 1990, c. S.5, as amended.
40. **Parties** mean the Plaintiff and the Defendants.
41. **Plaintiff** means Alex M. Bodnarchuk.
42. **Plan of Allocation** means the distribution plan stipulating the proposed implementation and administration of the Settlement, which shall be substantially in the form to be approved by the Court.
43. **Plan of Notice** means the plan for disseminating the First Notice and Second Notice to the Class, in a form satisfactory to the Plaintiff and the Defendants, all acting reasonably.
44. **Referee** means Reva Devins, or such other person or persons appointed by the Court to serve in that capacity.
45. **Released Claims** (or Released Claim in the singular) means any and all claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, including assigned claims, existing now or arising in the future, whether known or unknown, asserted or unasserted, regardless of the legal theory, that were made or could have been made, arising from the material facts that formed the basis of the Action. Released Claims include, without limitation, all claims for damages including, but not limited to punitive, aggravated, statutory and other multiple damages or penalties of any kind, known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute, at common law or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date hereof; and remedies of whatever kind or character, known or unknown, that are now recognized by law or equity or that may be created and recognized in the future by statute, regulation, judicial decision, or in any other manner, including but not limited to injunctive and declaratory relief; economic or business losses or disgorgement of revenues or profits and restitution; and costs, expenses, class administration expenses, and lawyers' fees (including Class Counsel Fees); and prejudgment and post-judgment interest.
46. **Releasees** mean, jointly and severally, individually and collectively, the Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, reinsurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing
47. **Releasors** mean, jointly and severally, individually and collectively, the Plaintiff, the Class Members and their respective heirs, executors, trustees, administrators, assigns, attorneys, representatives, partners, insurers, reinsurers, and their predecessors, successors, heirs, executors, trustees, administrators and assignees; but, for greater certainty, excludes Opt-Out

Parties.

48. **Second Notice** means the Long-Form Notice of Settlement Approval and/or the Short-Form Notice of Settlement Approval.

49. **Settlement** means the settlement provided for in this Agreement.

50. **Settlement Amount** means \$1,275,000 in Canadian currency, inclusive of settlement administration expenses, if any, distributions, Class Counsel's disbursements and legal fees plus taxes, and any other costs or expenses otherwise related to the Action.

51. **Shares** means common shares of Guestlogix.

52. **TSX** means the Toronto Stock Exchange.

SECTION 3: APPROVAL AND NOTICE PROCESS

Best Efforts

3.1 The Parties shall use their best efforts to effectuate this Settlement and to secure the Approval Order in a prompt and timely manner.

3.2 Until the Approval Order becomes a Final Order or the termination of this Agreement, whichever occurs first, the Parties agree to hold in abeyance all steps in the Action, other than the steps provided for in this Agreement and such other matters required to implement the terms of this Agreement.

Certification and First Notice Motion

3.3 The Plaintiff will, as soon as is reasonably practicable following the execution of this Agreement, bring the Certification and First Notice Motion. Subject to the content of the First Notice and the Certification and First Notice Order being satisfactory to the Defendants, and for the purpose of this Agreement only, the Defendants will consent to the Certification and First

Notice Order being issued by the Court for the purposes of the Settlement only.

3.4 Upon entry of the Certification and First Notice Order, Class Counsel shall cause the First Notice to be published in accordance with the Plan of Notice and the directions of the Court. Any third-party costs for publishing the First Notice shall be a Non-Refundable Expense.

Approval Motion and Notice

3.5 The Plaintiff will thereafter bring the Approval Motion before the Court in accordance with the Court's directions. The Defendants will consent to the issuance of the Approval Order, subject to the content of the Approval Order sought at the Approval Motion being satisfactory to the Defendants, and for the purposes of the Settlement only.

3.6 Upon entry of the Approval Order, Class Counsel shall cause the Second Notice to be published and disseminated in accordance with the Plan of Notice as approved by the Court. Any third-party costs for publishing the Second Notice shall be a Non-Refundable Expense.

Notice of Termination

3.7 If this Agreement is terminated after the First Notice has been published and disseminated, a notice of the termination will be given to the Class. Class Counsel will cause the notice of termination, in a form approved by the Court, to be published and disseminated as the Court directs. Any third-party costs for publishing a notice of termination shall be a Non-Refundable Expense.

Report to the Court

3.8 After publication and dissemination of each of the notices required by this Section, Class

Counsel shall file with the Court an affidavit confirming publication and dissemination.

SECTION 4: NON-REFUNDABLE EXPENSES

Payments

4.1 Expenses reasonably incurred (if any) for the following purposes shall be Non-Refundable Expenses, and shall be payable from the Settlement Amount, as and when incurred:

- a. the costs incurred in connection with establishing and operating the Escrow Account;
- b. the costs incurred in publishing and distributing the First Notice and the Second Notice, including the associated professional fees and mailing expenses as may be applicable;
- c. if the Court appoints a third-party administrator, the costs of that third party in connection with receiving objections and Opt-Out Forms and reporting to the Court to a maximum of \$5,000 for fees, plus reasonable and documented disbursements and HST;
- d. if necessary, the costs incurred in publishing notice to the Class that the Agreement has been terminated, including the associated professional fees and mailing expenses as may be applicable; and
- e. if the Court appoints a third-party administrator and thereafter the Agreement is terminated, the costs reasonable incurred by said administrator for performing the services required to prepare to implement the Settlement, including any mailing expenses, to a maximum of CAD \$5,000.00, whether or not a claim has

been filed or reviewed, as approved by the Court.

4.2 In the event that this Agreement is terminated, Class Counsel, who will also serve as claims administrator, shall account to the Court and the Parties for all payments it makes from the Escrow Account by no later than ten (10) days after the notice of termination has been delivered as directed by the Court.

Disputes Concerning Non-Refundable Expenses

4.3 Any dispute concerning the entitlement to or quantum of Non-Refundable Expenses shall be dealt with by way of a motion to the Court on notice to the Parties. The Contributing Parties shall have standing in respect of such a motion, should they deem it appropriate to intervene or otherwise make representations.

SECTION 5: SETTLEMENT BENEFIT

Payment of Settlement Amount

5.1 Within thirty (30) days after the time to appeal the Approval Order has expired, the Contributing Parties, or any of them, shall cause the Settlement Amount to be paid to Class Counsel, who will deposit in into the Escrow Account.

5.2 Neither the Defendants nor the Defendants' insurers shall have any obligation to pay any amount to the Plaintiff, the Class Members or Class Counsel other than the Settlement Amount with respect to this Agreement or the Action for any reason whatsoever, including any amount for damages, interest, legal fees (including Class Counsel Fees), disbursements, taxes of any kind, costs and expenses relating in any way to the Action, including as described in Sections 3.4 and 3.6, the Released Claims, the Settlement, and Administration Expenses, if any.

5.3 Class Counsel shall provide an accounting to the Court for all payments made from the Escrow Account by Class Counsel, who will also serve as claims administrator. In the event this Agreement is terminated, Class Counsel shall deliver an accounting to the Court no later than ten (10) days after the termination.

5.4 Any dispute concerning an entitlement to or quantum of expense incurred in the publication and dissemination of the First Notice, or subsequently, shall be dealt with by a motion to the Court on notice to the Parties.

Settlement Amount to be Held in Trust

5.5 Class Counsel shall hold the Settlement Amount in the Escrow Account and shall invest the Settlement Amount in a liquid money market account or equivalent security with a rating equivalent to, or better than that of an interest-bearing account in a Canadian Schedule 1 bank.

5.6 Class Counsel shall maintain the Settlement Amount in the Escrow Account for the benefit of the Class, as provided for in this Agreement; however, in the event it is appropriate to appoint a third-party claims administrator and one is appointed by the Court, Class Counsel shall, as directed by the Court, immediately transfer the full balance of the Settlement Amount to such claims administrator, who shall maintain the Settlement Amount in the Escrow Account for the benefit of the Class, as provided for in this Agreement.

5.7 No amount shall be paid out from the Escrow Account by Class Counsel or a Court appointed claims administrator except in accordance with this Agreement, or in accordance with an order of the Court obtained on notice to the Parties.

Taxes on Interest

5.8 Except as expressly provided in Sections 5.9 and 5.10, all taxes payable on any interest which accrues in relation to the Settlement Amount, shall be solely the Class' responsibility and shall be paid by Class Counsel (or a claims administrator, as may be appointed by the Court) from the Escrow Settlement Amount, or by the Class as Class Counsel considers appropriate, and the Defendants and their insurers and re-insurers (if any) shall have no liability for any taxes payable on the interest.

5.9 If Class Counsel returns any portion of the Settlement Amount plus accrued interest to the Contributing Parties pursuant to the provisions of the Agreement, the taxes payable on the interest portion of the returned amount shall be the responsibility of the Contributing Parties.

5.10 The Defendants shall have no responsibility to make any filings relating to the Escrow Account, to pay tax on any income earned by the Settlement Amount, or to pay any taxes on the monies in the Escrow Account, unless this Agreement is terminated, in which case any interest earned on the Settlement Amount in the Escrow Account shall be paid to the Defendants or their insurers, as may be directed, who, in such case, shall be responsible for the payment of any applicable taxes on such interest not previously paid by Class Counsel or a Court-appointed claims administrator.

SECTION 6: NO REVERSION

6.1 Unless this Agreement is terminated as provided herein or otherwise by the Court, the Contributing Parties shall not, under any circumstances, be entitled to the repayment of any portion of the Settlement Amount contributed under Section 5.1 and then only to the extent of

and in accordance with the terms provided herein.

SECTION 7: DISTRIBUTION OF THE ESCROW SETTLEMENT AMOUNT

7.1 If the Settlement becomes final as contemplated by Section 12, Class Counsel (or the Court-appointed claims administrator, if one is appointed) shall distribute the Settlement Amount out of the Escrow Account in accordance with the following priorities:

- a. to pay Class Counsel the Class Counsel Fees approved by the Court;
- b. to pay all of the costs and expenses reasonably and actually incurred in connection with the provision of notices, locating Class Members for the sole purpose of providing notice to them, soliciting Class Members to submit a Claim Form (including the notice expenses reasonably and actually incurred by the Transfer Agent in connection with the provision of notice of this Settlement to Class Members). For greater certainty, the Defendants are specifically excluded from eligibility for any payment of costs and expenses under this subsection;
- c. to pay all of the costs and expenses reasonably and actually incurred by Class Counsel and the Referee, relating to determining eligibility, the filing of Claims Forms, processing Claims Forms, resolving disputes arising from the processing of Claims Forms, and administering and distributing the Settlement Amount;
- d. To pay any taxes required by law to be paid to any governmental authority; and
- e. To pay a pro rata share of the balance of the Escrow Settlement Amount to each Authorized Claimant in proportion to his/her/its claim as recognized in accordance with the Plan of Allocation.

SECTION 8: EFFECT OF SETTLEMENT

No Admission of Liability

8.1 Whether or not this Agreement is terminated, this Agreement, anything contained in it, any and all negotiations, discussions, and communications associated with this Agreement, shall not be deemed, construed or interpreted as a concession or admission of wrongdoing or liability by the Releasees, or as a concession or admission by the Releasees of the truthfulness of any claim or allegation asserted in this Action. Neither this Agreement nor anything contained herein shall be used or construed as an admission by the Releasees of any fault, omission, liability or wrongdoing in connection with any statement, release, written document, offering document or financial report, or otherwise, and in fact the Defendants continue to vigorously dispute and contest the allegations made in this Action.

Agreement Not Evidence

8.2 The Parties agree that, whether or not it is terminated, unless otherwise agreed, this Agreement and anything contained herein, any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to implement this Agreement, shall not be referred to, offered as evidence or received as evidence or interpreted in this Action or in any other pending or future civil, criminal, quasi-criminal, administrative action, disciplinary investigation or other proceeding as any presumption, concession or admission:

- a. of the validity of any claim that has been or could have been asserted in the Action by the Plaintiff against the Defendants, or the deficiency of any defence that has been or could have been asserted in the Action;

- b. of wrongdoing, fault, neglect or liability by the Defendants; and
- c. that the consideration to be given hereunder represents the amount that could be or would have been recovered in the Action after trial.

8.3 Notwithstanding Section 8.2, this Agreement may be referred to or offered as evidence in order to obtain the orders or directions from the Court contemplated by this Agreement, in a proceeding to approve or enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

Restrictions on Class Counsel

8.4 Class Counsel, and anyone formerly, currently or hereafter employed by, associated with, or a partner with Class Counsel may not, directly or indirectly participate or be involved in, or in any way assist with respect to any claim made by any person, including but not limited to any putative class member who opts-out of the settlement, in relation to any claim they have or may in the future assert, regarding the subject matter of the Action.

8.5 Class Counsel also is prohibited from divulging to anyone for any purpose any information obtained in the course of the negotiation, preparation or execution of this Agreement, without the prior written consent of the Defendants or unless ordered to do so by a court.

SECTION 9: CERTIFICATION AND LEAVE FOR SETTLEMENT ONLY

Consent to Certification and Leave to Proceed

9.1 The Defendants will consent to the Court granting the Plaintiff leave to commence a claim under s. 138.3 of the OSA pursuant to s. 138.8 of the OSA (“leave to proceed”), solely for the purpose of effecting this Agreement.

9.2 The Defendants will consent to certification of the Action as a class proceeding, pursuant to Sections 2, 5 and 6, and 29 of the CPA, solely for the purpose of effecting this Agreement.

9.3 The Plaintiff and the Defendants agree that the only common issues that the Plaintiff will seek to define as against the Defendants are the Common Issues and the only class that the Plaintiff will assert is the Class.

Certification and Leave to Proceed Without Prejudice

9.4 The Parties agree that the granting of leave to proceed and certification of the Action as a class proceeding in accordance with Sections 9.1-9.3 hereof is for the sole purpose of effecting the Settlement. In the event that this Agreement is terminated as provided herein, the parties will bring a consent motion to seek that the Certification and First Notice Order be set aside, declared null and void, and be of no force and effect, to the extent of the order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement, and shall be without prejudice to any position that any of the Parties may later take on any issue in the Action including in subsequent leave to proceed and certification motions. In particular, the fact of the Defendants' consent to leave to proceed and certification for settlement purposes shall not be referenced in any way in the further prosecution of the Action, nor shall such consent be deemed to be an admission by the Defendants, or any of them, that the Plaintiff has met any of the requisite criteria for granting leave to proceed or certification of the Action as a class proceeding.

SECTION 10: OPTING OUT

Awareness of any Potential Opt-Outs

10.1 The Plaintiff and Class Counsel represent and warrant that:

- a. they are unaware of any Class Member who has expressed an intention to opt-out of the Class;
- b. they are unaware of any Class Member who has expressed an intention to object to this Settlement; and
- c. they will not encourage or solicit any Class Member to opt-out of the Class.

Opt-Out Procedure

10.2 Each Class Member who wishes to exclude him, her or itself from the Class must submit a properly completed Opt-Out Form along with all required supporting documents to Class Counsel on or before the Opt-Out Deadline. An Opt-Out Form shall consist of the following:

- a. a statement of intention to opt out of the Action, signed by the Class Member or a person authorized to bind the Class Member;
- b. a listing of all purchases and sales of Guestlogix common shares during the Class Period;
- c. the total number of Guestlogix common shares held at the end of the Class Period;
- d. supporting documents to evidence such transactions, in the form of trade confirmations, brokerage statements, other transaction records or suitable alternative documentation as may be agreed between the Class Member and Class Counsel; and

- e. contact information for the Class Member, including name, address, telephone number and email address.

10.3 In order to remedy any deficiency in the completion of an Opt-Out Form, Class Counsel may require and request that additional information be submitted by a Class Member who submits an Opt-Out Form.

10.4 If a Class Member fails to submit a properly completed Opt-Out Form and/or all required supporting documents to Class Counsel or fails to remedy any deficiency by the Opt-Out Deadline, the Class Member shall not have opted out of the Action, subject to any order of the Court to the contrary, and will in all other respects be subject to, and bound by, the provisions of this Agreement and the releases contained herein.

10.5 The Opt-Out Deadline will not be extended unless the Court orders otherwise.

10.6 Opt-Out Parties will be excluded from any and all rights and obligations arising from the Settlement. Class Members who do not opt-out shall be bound by the Settlement and the terms of this Agreement.

Notification of Number of Opt-Outs.

10.7 Within seven (7) days after the Opt-Out Deadline, Class Counsel shall report to the Court and the Defendants the number of Eligible Shares held by each Opt-Out Party, a summary of the information delivered by each Opt-Out Party, and the total number of Eligible Shares held by all Opt-Out Parties.

10.8 Class Counsel shall also provide to Counsel for the Defendants copies of all of the Opt-Out

Forms submitted by Opt-Out Parties at the same time as the report provided for in Section 10.7.

SECTION 11: TERMINATION OF THE AGREEMENT

General

11.1 This Agreement shall, without notice, be automatically terminated if:

- a. the Court declines to grant the Certification and First Notice Order and such order becomes a Final Order;
- b. the Court grants the Certification and First Notice Order but such order is reversed on appeal and the reversal becomes a Final Order;
- c. the Court declines to grant the Approval Order and such order becomes a Final Order; or
- d. the Court grants the Approval Order but such order is reversed on appeal and the reversal becomes a Final Order.

11.2 The Defendants shall each have the right to terminate this Agreement by delivering a written notice pursuant to Section 17.20 below within thirty (30) days after any of the following events:

- a. the Court grants the Certification and First Notice Order in a form that is not satisfactory to the Defendants, acting reasonably; or
- b. the Court grants the Approval Order in a form that is not satisfactory to the Defendants, acting reasonably.

11.3 In the event this Agreement is terminated in accordance with its terms:

- a. the Parties will be restored to their respective positions prior to the execution of this Agreement;
- b. the Parties will consent to an Order vacating or setting aside the Certification and First Notice Order to the extent of the order granting leave to proceed and certifying this Action as a class proceeding for the purposes of implementing this Agreement; and, such order shall include a declaration that:
 - i. the prior consent granting of leave to proceed and certification of this Action for settlement purposes shall not be deemed to be an admission by the Defendants that the Action met any of the criteria for granting leave to proceed or certification as a class proceeding; and
 - ii. no Party to this Action and no other person may rely upon the fact of the prior consent granting of leave to proceed and certification for any purpose whatsoever;
- c. any amounts paid for establishing and operating the Escrow Account, publishing and disseminating the Settlement Agreement, the First Notice, the Second Notice and the Termination Notice (if any), and to Class Counsel and the Referee pursuant to section 4.1 are non-recoverable from the Plaintiff and the Class Members;
- d. the Escrow Settlement Amount less any Non-Recoverable Expenses will be returned to the Defendants or their insurers, as directed, in accordance with Section 11.6(d) hereof;
- e. this Agreement will have no further force and effect and no effect on the rights of the Parties except as specifically provided for herein;

- f. this Agreement and the consent leave to proceed and certification order will not be introduced into evidence or otherwise referred to in any litigation against the Defendants.

11.4 Notwithstanding the provisions of Section 11.3(e), if this Agreement is terminated, the provisions of this Section 11 and Sections 1, 2, 3.7, 3.8, 5.3, 5.10, 6.1, 8.1, 8.2, 8.3, 8.5, 9.4, 10.1, 13.4, 13.6, and 17 shall survive termination and shall continue in full force and effect.

Allocation of Monies in the Escrow Account Following Termination

11.5 Class Counsel shall account to the Court and the Parties for the amounts maintained in and disbursed from the Escrow Account. If this Agreement is terminated, consistent with Section 4.2, this accounting shall be delivered no later than ten (10) days after such termination.

11.6 If this Agreement is terminated, the Defendants shall, within thirty (30) days after termination, apply to the appropriate Court, on notice to the Plaintiff, for an order:

- a. declaring this Agreement null and void and of no force or effect except for the provisions listed in Section 11.4;
- b. determining whether a notice of termination shall be sent out to the Class Members and, if so, the form and method of disseminating such a notice;
- c. requesting an order setting aside, nunc pro tunc, all prior orders or judgments entered by the Court in accordance with the terms of this Agreement, including any order granting leave to proceed and/or certifying the Action as a class proceeding for the purposes of implementing this Agreement; and
- d. authorizing the payment of all remaining funds in the Escrow Account, including

accrued interest, to the Defendants or their insurers as the case may be.

11.7 Subject to Section 11.8, the Parties shall consent to the orders sought in any motion made by the Defendants pursuant to Section 11.6.

Disputes Relating to Termination

11.8 If there is any dispute about the termination of this Agreement, the Court shall determine any dispute by motion made by a Party on notice to the other Parties.

No Right to Terminate

11.9 For greater certainty, no dispute or disagreement among the Plaintiff and/or members of the Class or any of them about the proposed distribution of the Settlement Amount shall give rise to a right to terminate this Agreement.

SECTION 12: DETERMINATION THAT THE SETTLEMENT IS FINAL

12.1 The Settlement shall be considered final on the Effective Date.

SECTION 13: RELEASES AND JURISDICTION OF THE COURT

Release of Releasees

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

13.2 The Releasors acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true with respect to the Action and the subject matter of this Agreement, and that it is their intention to release fully,

finally and forever all Released Claims, and in furtherance of such intention, this release and, subject to the provisions of Section 11, this Agreement, shall be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

13.3 Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

No Further Claims

13.4 As of the Effective Date and provided that the Settlement Amount has been deposited into the Escrow Account, the Releasers and Class Counsel shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Ontario or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any of the Releasees or any other person who may claim contribution or indemnity from any of the Releasees in respect of any Released Claim. For greater certainty, this provision does not prohibit the Releasers or Class Counsel from advancing any cause of action against the Releasees that does not arise from the material facts that formed the basis of the Action. This Agreement is subject to the terms of the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, of July 29, 2016 (the "**Plan of Compromise**"), and the Order made by Regional Senior Justice Morawetz, dated September 12, 2016 (the "**CCAA Order**"), which approved and sanctioned the Plan of Compromise. Pursuant to the Plan of Compromise, "Equity Claims" and "Director/Officer Claims", were to be released, effective on the date of the CCAA Order, with the exception of "Unaffected

Claims”, among which are “Insured Claims”, (all terms being defined in the Plan of Compromise).

Dismissal of the Action

13.5 As of the Effective Date, the Action shall be dismissed as against the Defendants with prejudice and without costs.

No Claims in Interim

13.6 As of the date of this Agreement, Class Counsel represent that they do not represent the Plaintiff in any other proceeding related to any matter at issue in this Action.

SECTION 14: ADMINISTRATION

Class Counsel to Act as Administrator

14.1 Subject to the Court directing otherwise, Class Counsel will serve as the claims administrator to implement the Agreement and the Plan of Allocation, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the agreement and in the Plan of Allocation.

14.2 Notwithstanding Section 14.1, if a third-party claims administrator is appointed by the Court, that claims administrator will implement the Agreement and the Plan of Allocation on the terms and conditions and with the powers, rights, duties and responsibilities set out in the agreement and in the Plan of Allocation.

14.3 If a third-party is appointed by the Court as claims administrator and the Agreement is terminated, the third-party claims administrator’s fees, disbursements and taxes will be fixed as set out in Section 4.1(e).

14.4 If a third-party is appointed by the Court as claims administrator and the Settlement becomes final as contemplated by Section 12, the Court will fix the third-party administrator's compensation and payment schedule.

Appointment of the Referee

14.5 The Court will appoint the Referee with the powers, duties and responsibilities set out in the Agreement and the Plan of Allocation.

14.6 The fees, disbursements and taxes of the Referee will be fixed by the Court and shall not exceed \$25,000

Claims Process

14.7 In order to seek payment from the Settlement Amount, a Class Member must submit a completed Claim Form to Class Counsel (or the third-party claims administrator if one is appointed by the Court), in accordance with the provisions of the Plan of Allocation, on or before the Claims Bar Deadline, and any Class Member who fails to do so shall not share in any distribution made in accordance with the Plan of Allocation unless the Court orders otherwise.

14.8 In order to remedy any deficiency in the completion of a Claim Form, Class Counsel (or the third-party claims administrator if one is appointed by the Court) may require and request that additional information be submitted by a Class Member who submits a Claim Form. Such Class Members shall have until the later of thirty (30) days from the date of the request from Class Counsel (or the court-appointed administrator) or the Claims Bar Deadline to rectify the deficiency. Any person who does not respond to such a request for information within the thirty (30) day period shall be forever barred from receiving any payments pursuant to the Settlement,

subject to any order of the Court to the contrary, but will in all other respects be subject to, and bound by, the provisions of the Agreement and the releases contained herein.

Disputes Concerning the Decisions of Class Counsel

14.9 In the event that a Class Member disputes the decision of the Class Counsel (or the third-party claims administrator if one is appointed by the Court), whether in whole or in part, the Class Member may appeal the decision to the Referee in accordance with the provisions in the Plan of Allocation. The decision of the Referee will be final, with no right of appeal.

14.10 No action shall lie against the Releasees, the Defendants, Counsel for the Defendants, Class Counsel, the third-party claims administrator (if one is appointed by the Court) or the Referee for any decision made in the administration of the Agreement and Plan of Allocation without an order from the Court authorizing such an action.

Conclusion of the Administration

14.11 Following the Claims Bar Deadline, and in accordance with the terms of the Agreement, the Plan of Allocation, and such further order of the Court, as may be necessary, or as circumstances may require, Class Counsel (or the third-party claims administrator if one is appointed by the Court) shall distribute the remainder of the Escrow Settlement Amount to Authorized Claimants.

14.12 No claims shall lie against the Releasees, the Defendants, Counsel for the Defendants, Class Counsel, the third-party claims administrator (if one is appointed by the Court) or the Referee based on distributions made substantially in accordance with the Agreement and the Plan of Allocation.

14.13 If the Escrow Settlement Account is in a positive balance in an amount greater than 15% of the net Settlement Amount (whether by reasons of tax refunds, un-cashed cheques or otherwise) after one hundred eighty (180) days from the date of distribution of the Escrow Settlement Amount to the Authorized Claimants, Class Counsel (or the third-party claims administrator if one is appointed by the Court) shall, if economically feasible, allocate and distribute such balance among Authorized Claimants in an equitable fashion up to the limit of each authorized claimant's actual loss. If there is a balance in the Escrow Settlement Account after each Authorized Claimant is paid up to his/her/its actual loss, or if an amount equal to or less than 15% of the net Settlement Amount remains undistributed, the remaining funds shall be paid cy près to a recipient mutually agreed upon by the Parties and/or approved by the Court.

14.14 Upon the conclusion of the administration, or at such other time(s) as the Court directs, Class Counsel (or the third-party claims administrator if one is appointed by the Court) shall report to the Court on the administration and shall account for all monies it has received, administered and disbursed and obtain an order from the Court discharging it as claims administrator.

SECTION 15: THE PLAN OF ALLOCATION

15.1 At the hearing of the motion for the Approval Order, the Plaintiff shall seek the Court's approval of the Plan of Allocation. The approval of the Plan of Allocation is not a condition of the Settlement and its approval may be considered separately from that of the Settlement

15.2 The procedure for, and the allowance or disallowance by the Court of the approval of the Plan of Allocation is to be considered by the Court separately from its consideration of the

fairness, reasonableness and adequacy of the Settlement provided for herein.

15.3 Any order or proceeding relating solely to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of the Action provided herein.

15.4 The Defendants shall have no obligation to consent to but shall not oppose the approval of the Plan of Allocation.

15.5 Unless directed to do so by the Court, The Defendants will not make any submissions to the Court relating to the Plan of Allocation.

SECTION 16: THE FEE AGREEMENT AND CLASS COUNSEL FEES

Motion for Approval of Class Counsel Fees and Directions for Distribution of the Remainder of the Settlement Amount

16.1 At the Approval Hearing, Class Counsel shall seek the approval of Class Counsel Fees to be paid as a first charge on the Settlement Amount. Class Counsel are not precluded from making additional applications to the Court for expenses incurred as a result of implementing the terms of the Agreement. All amounts awarded on account of Class Counsel Fees shall be paid from the Settlement Amount.

16.2 The Defendants acknowledge that they are not parties to the motion concerning the approval of Class Counsel Fees, they will have no involvement in the approval process to determine the amount of Class Counsel Fees, and they will not take any position or make any submissions to the Court concerning Class Counsel Fees, except as requested and required by the

Court. Subject to the foregoing, the Plaintiff will provide the Defendants with notice of the motion to approve Class Counsel Fees and copies of the materials filed with the Court and the Defendants and their counsel are entitled to attend any motion for approval of Class Counsel Fees.

16.3 The procedure for, and the allowance or disallowance by the Court of, any requests for Class Counsel Fees to be paid out of the Settlement Amount are not part of the Settlement provided for herein, and are to be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement provided for herein.

16.4 Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Agreement or affect or delay the finality of the Approval Order and the Settlement of this Action provided herein.

Payment of Class Counsel Fees and Distribution of the Remainder of the Settlement Amount

16.5 Forthwith after the Settlement becomes final, as contemplated in Section 12.1, Class Counsel may withdraw the Class Counsel Fees approved by the Court from the Escrow Account.

SECTION 17: MISCELLANEOUS

Motions for Directions

17.1 Any one or more of the Parties, Class Counsel, the administrator (should one be appointed), or the Referee may apply to the Court for directions in respect of any matter in relation to this Agreement and the Plan of Allocation.

17.2 All motions contemplated by this Agreement shall be on notice to the Parties.

Defendants Have No Responsibility or Liability for Administration

17.3 Except for the obligations in respect of the performance of the obligations under Section 5.1, the Defendants shall have no responsibility for and no liability whatsoever with respect to the implementation of this Agreement and the Plan of Allocation, including, without limitation, the distribution of the Settlement Amount.

Headings, etc.

17.4 In this Agreement:

- a. the division of this Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- b. the terms “the Agreement”, “this Agreement”, “herein”, “hereto” and similar expressions refer to this Agreement and not to any particular section or other portion of the Agreement;
- c. all amounts referred to are in lawful money of Canada; and
- d. “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies, by whatever name in the jurisdiction in which the person is domiciled.

17.5 In the computation of time in this Agreement, except where a contrary intention appears:

- a. where there is a reference to a number of days between two events, they 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.

Governing Law

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

17.7 The Parties agree that the Court shall retain exclusive and continuing jurisdiction over this Proceeding, the Parties and Class Members to interpret and enforce the terms, conditions and obligations under this Agreement and the Approval Order.

Severability

17.8 Any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall, upon the agreement of all of the Parties, be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

Entire Agreement

17.9 This Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein. This Agreement may not be modified or amended except in writing and on

consent of all Parties and any such modification or amendment must be approved by the Court.

Binding Effect

17.10 If the Settlement is approved by the Court and becomes final as contemplated in Section 12, this Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Class Members, the Defendants, Class Counsel, the Releasees and the Releasers, the insurer, the reinsurer, or, any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff and the Defendants shall be binding upon all Releasers and Releasees, as applicable.

Survival

17.11 The representations and warranties contained in this Agreement shall survive its execution and implementation.

Negotiated Agreement

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

Recitals

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

Acknowledgements

17.14 Each Party hereby affirms and acknowledges that:

- a. its signatory has the authority to bind the Party for which it is signing with respect to the matters set forth herein and has reviewed this Agreement;
- b. the terms of this Agreement and the effects thereof have been fully explained to it by his or its counsel; and
- c. he, she or its representative fully understands each term of this Agreement and its effect.

Counterparts

17.15 This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a signature delivered by email or facsimile shall be deemed an original signature for purposes of executing this Agreement.

Confidentiality and Communications

17.16 In any public discussion of, comment on, press release or other communication of any kind (with the media or otherwise) about this Agreement, the Plaintiff and Class Counsel agree and undertake to describe the Settlement and the terms of this Agreement as fair, reasonable and in the best interests of the Class.

17.17 Nothing in this Section shall prevent the Parties or their counsel, or any of them, from reporting to their clients, from complying with any order of the Court, or from making any disclosure or comment required by this Agreement, or from making any necessary disclosure or comment for the purposes of any applicable securities or tax legislation, or from making disclosure or comment under applicable rules or legislation pursuant to The Institute of Chartered Accountants of Ontario, the governing body for Chartered Professional Accountants or CFA Institute, the governing body for Chartered Financial Analysts, or from making any disclosure or comment to Class Members or the Court or for the purposes of any proceedings as between the Defendants.

17.18 Without limiting the generality of the foregoing, other than in materials filed in Court for purposes of effecting the Settlement, the Parties specifically agree that the Parties will not make any public statements, comment or any communication of any kind about any negotiations or information exchanged as part of the settlement process, unless required to do so by law. In addition, to the extent that there is public discussion of, comment on or communication of any kind about this Agreement, the Parties and their counsel agree and undertake to make no statement or comment that the Agreement is other than fair, reasonable and in the best interests of the Class, unless required to do so by law.

No French Translation

17.19 The Parties acknowledge that they have required and consented that the 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.

Notice

17.20 Any notice, instruction, motion for Court approval or motion for directions or Court orders sought in connection with this Agreement or any other report or document to be given by any party to any other party shall be in writing and delivered personally, by facsimile or e-mail during normal business hours, or sent by registered or certified mail, or courier postage paid:

For the Plaintiff, Alex M. Bodnarchuk:

Jacqueline Horvat

Spark LLP

67 Yonge St., 2nd Floor

Toronto, ON. M5E 1J8

(416) 639-2152

jacqueline@spark.law

For the Defendant, Guestlogix Inc:

Kevin O'Brien

Osler, Hoskin & Harcourt LLP

100 King Street West

Suite 6200, P.O. Box 50

Toronto, ON. M5X 1B8

(416) 862-4861

kobrien@osler.com

For the Defendant, Brett Proud:

Andrea Gonsalves

Stockwoods LLP

77 King Street West, Suite 4130

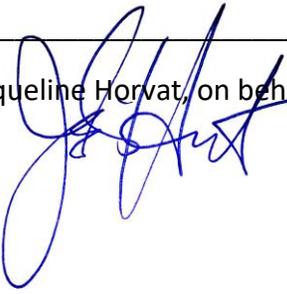
P.O. Box 140
Toronto, ON. M5K 1H1
(416) 593-3497
andreag@stockwoods.ca

For the Defendant, Patrick Leung:

Ellen Bessner
Babin Bessner Spry LLP
185 Frederick St., Suite 101
Toronto, ON. M5A 4L4
(416) 408-3999
ebessner@babinbessnerspry.com

1. Date of Execution:

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



Jacqueline Horvat, on behalf of the Plaintiff, Alex M. Bodnarchuk

Kevin O'Brien, on behalf of the Defendant, Guestlogix Inc.

Andrea Gonsalves, on behalf of the Defendant, Brett Proud

Ellen Bessner, on behalf of the Defendant, Patrick Leung

Schedule “B”

**NOTICE OF CERTIFICATION AND NOTICE OF HEARING FOR SETTLEMENT
APPROVAL OF THE GUESTLOGIX INC. SECURITIES CLASS ACTION**

Read this notice carefully as it may affect your rights.

If you are a person or entity, other than an “Excluded Person”, who acquired securities of GuestLogix Inc. (“GuestLogix”) during the period from June 8, 2015 to and including November 12, 2015, and who held some or all of those securities at the close of trading on November 12, 2015 (defined as the “Class”), then this notice is for you.

In 2016, a proposed securities class action was commenced against GuestLogix and two of its former officers in the Ontario Superior Court of Justice (the “Court”). It is alleged that during the period from June 8, 2015 to and including November 12, 2015 (the “Class Period”), the Defendants made misrepresentations and/or omissions of material fact regarding credit facilities that GuestLogix had entered into and in regard to financial covenants pertaining to those credit facilities. The parties have reached a proposed settlement of the class action, which is subject to approval by the Court (the “Agreement”). **The Defendants do not admit any wrongdoing or liability.** The Agreement is a compromise of disputed claims. This Notice provides a summary of the proposed settlement.

Under the Agreement, the Defendants will pay or cause to be paid CAD \$1,275,000 (the “Settlement Amount”) in full and final settlement of all claims against them, including Class Counsel’s fees, applicable taxes and expenses, and interest, in exchange for a full release and a dismissal of the class action. The Settlement Amount, less Class Counsel’s fees and disbursements, administration expenses and taxes will be distributed to the Class on a *pro rata* share in accordance with the Court-approved Plan of Allocation. The Agreement and Plan of Allocation may be viewed at <https://spark.law/guestlogix/>.

There will be a hearing (the “Approval Hearing”) in which Class Counsel will request the Court to approve (i) the Agreement; and (ii) their legal fees and expenses. The Approval Hearing shall take place on August 13, 2020 via video-conferencing methods such as Zoom or by conference call.

At the Approval Hearing, the Court will determine whether the Agreement is fair, reasonable, and in the best interests of the Class. At the Approval Hearing, Class Counsel will also seek Court approval of their request for fees equal to 28% of the Settlement Amount plus reimbursement of their relevant expenses. Class Counsel has been working under a contingency-fee agreement and has not been paid as the matter has proceeded, and has paid all the expenses of conducting the litigation.

Class Counsel will be requesting that the legal fees and disbursements be deducted from the Settlement Amount.

Class Members do not have to do anything to stay in the class action. If the Court approves the Agreement and any benefits, including the Settlement Amount become available for distribution to the Class, you will be notified about how to request a portion. If you stay in the action you will be legally bound by all orders and judgments of the Court and will not be able to sue the Defendants regarding the legal claims made in this case. Conversely, investors can opt-out of the proposed settlement and pursue their own action with their own lawyer at their own expense. **A copy of the long-form notice providing greater detail about the settlement, including about Class Counsel's fees that will be requested of the Court, your right to oppose the settlement, the hearing of the motion to approve the settlement, and the right to opt-out is available at <https://spark.law/guestlogix/>. Interested class members may submit their email addresses to the website to stay informed of developments.**

Any Class Member may participate in the Approval Hearing to object to the Agreement or comment on the Agreement or Class Counsel's request for fees, so long as they email any objections or comments to Class Counsel at guestlogix@spark.law no later than August 5, 2020. Class Members who do not email an objection or comment by August 5, 2020 will not be permitted to participate in the Approval Hearing.

The Ontario Superior Court of Justice has authorized distribution of this Notice.

Questions about this Notice should NOT be directed to the Court.

NOTICE OF CERTIFICATION AND NOTICE OF HEARING FOR SETTLEMENT APPROVAL OF THE GUESTLOGIX INC. SECURITIES CLASS ACTION

Read this notice carefully as it may affect your rights

If you are a person or entity, other than an “Excluded Person”, who acquired securities of GuestLogix Inc. (“GuestLogix”) during the period from June 8, 2015 to and including November 12, 2015, and who held some or all of those securities at the close of trading on November 12, 2015 (defined as the “Class”), then this notice is for you.

In 2016, a proposed securities class action was commenced against GuestLogix and two of its former officers, Brett Proud and Patrick Leung, in the Ontario Superior Court of Justice (the “Court”). It is alleged that during the period from June 8, 2015 to and including November 12, 2015 (the “Class Period”), the Defendants made or authorized the making of misrepresentations and/or omissions of material fact regarding credit facilities that GuestLogix had entered into and in regard to financial covenants pertaining to those credit facilities.

The parties have reached a proposed settlement of the class action, which is subject to approval by the Court (the “Agreement”). **The Defendants do not admit any wrongdoing or liability.** The Agreement is a compromise of disputed claims. This Notice provides a summary of the proposed settlement.

SUMMARY OF THE SETTLEMENT TERMS:

Under the Agreement, the Defendants will pay or cause to be paid CAD \$1,275,000 (the “Settlement Amount”) in full and final settlement of all claims against them, including Class Counsel’s fees, applicable taxes and expenses, and interest, in exchange for a full release and a dismissal of the class action.

The Settlement Amount, less Class Counsel’s fees and disbursements, administration expenses and taxes will be distributed to the Class on a *pro rata* share in accordance with the Court-approved Plan of Allocation. The Agreement and Plan of Allocation may be viewed at <https://spark.law/guestlogix/>.

All Class Members will be bound by the terms of the Agreement unless they opt-out of the action. Investors can opt-out of the proposed settlement and pursue their own action with their own lawyer at their own expense.

MOTION TO APPROVE SETTLEMENT AGREEMENT AND CLASS COUNSEL FEES:

There will be a hearing (the “Settlement Approval Hearing”) in which Class Counsel will request the Court to approve (i) the Agreement; and (ii) their legal fees and expenses. The Settlement Approval Hearing shall take place on August 13, 2020 via video-conferencing methods such as Zoom or by conference call.

At the Settlement Approval Hearing, the Court will determine whether the Agreement is fair, reasonable, and in the best interests of the Class. At the Settlement Approval Hearing, Class Counsel will also seek Court approval of their request for fees equal to 28% of the Settlement Amount plus reimbursement of their relevant expenses. Class Counsel has been working under a contingency-fee agreement and has not been paid as the matter has proceeded, and has paid all the expenses of conducting the litigation. Class Counsel will be requesting that the legal fees and disbursements be deducted from the Settlement Amount.

Any Class Member may participate in the Approval Hearing to object to the Agreement or comment on the Agreement or Class Counsel’s request for fees, so long as they email any objections or comments to Class Counsel at guestlogix@spark.law no later than August 5, 2020. Class Members who do not email an objection or comment by August 5, 2020 will not be permitted to participate in the Approval Hearing.

YOUR OPTIONS:

1. STAY IN THE CLASS ACTION AND DO NOTHING:

You do not have to do anything to stay in the class action. **Interested class members may submit their email addresses to the website to stay informed of developments.** If the Court approves the Agreement, it will be distributed according to the terms. You will be legally bound by all orders and judgments of the Court, and you will not be able to sue the Defendants regarding the legal claims made in this case.

2. STAY IN THE CLASS ACTION AND OBJECT TO THE AGREEMENT OR CLASS COUNSEL FEES:

If you want to object to the proposed Agreement or to the payment of Class Counsel’s fees and expenses, you should do so by setting out your objection in an email addressed to Class Counsel at the address below.

3. OPT-OUT OF THE CLASS ACTION:

All Class Members will be bound by the terms of the Agreement, unless they opt-out. The Opt-Out Form is available at <https://spark.law/guestlogix/>, or by calling or emailing Class Counsel at the address below. **Any Class Member who wishes to opt-out of the class action must deliver a completed Opt-Out Form by email to guestlogix@spark.law. The Opt-Out Form must be received on or before August 5, 2020 at 11:59 pm EST to be valid.**

PERSONAL LEGAL ADVICE:

Class Members who seek the advice or guidance of their personal lawyers do so at their own expense.

MORE INFORMATION:

You may obtain further information at <https://spark.law/guestlogix>, or contact Class Counsel by telephone or email addressed to:

GuestLogix Class Action Counsel

Spark LLP

c/o Jacqueline Horvat

Tel: 866-203-6184

Email: guestlogix@spark.law

The Ontario Superior Court of Justice has authorized distribution of this Notice.

Questions about this Notice should NOT be directed to the Court

Schedule "C"

OPT-OUT FORM

This is **NOT** a claim form. Completing this OPT-OUT FORM will **exclude you** from the lawsuit and **you must pursue your own lawsuit with your own lawyer at your own expense**, if you so choose.

To: **GuestLogix Inc. Class Action Counsel**

Spark LLP

c/o Jacqueline Horvat

Email: guestlogix@spark.law

I understand that by opting-out, I am confirming that I do not want to participate in the *GuestLogix Inc.* securities class proceeding.

I understand that any individual action must be commenced within a specified time (limitation) period or it will be legally barred.

I understand that by opting-out, I take full responsibility for taking all necessary legal steps to protect any claim that I may have.

Mandatory – Trading Information: Please specify in the space below the dates and number of GuestLogix Inc. securities that you purchased during the period from June 8, 2015 to and including November 12, 2015, that you held at the close of the trading day on November 12, 2015.

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

Date: _____

_____	_____
Print Name	Print Name of Witness

_____	_____
Signature	Signature of Witness

If opting out on behalf of a corporation, by signing you acknowledge that you are an authorized signing officer.

Name of Corporation: _____

Telephone: _____

Email: _____

Address: _____

Note: To validly opt-out, this form must be properly completed and received at the above email address no later than August 5, 2020 at 11:59pm EST

CITATION: Bodnarchuk v. Guestlogix Inc., 2020 ONSC 3775
COURT FILE NO.: CV-16-545118-00CP
DATE: 2020/06/17

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ALEX M. BODNARCHUK

Plaintiff

- and -

**GUESTLOGIX INC., BRETT PROUD AND
PATRICK LEUNG**

Defendants

REASONS FOR DECISION

PERELL J.

Released: June 17, 2020