

CITATION: Bodnarchuk v. Guestlogix Inc., 2020 ONSC 4789
COURT FILE NO.: CV-16-545118-00CP
DATE: 2020/08/13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)	
)	
ALEX M. BODNARCHUK)	
	Plaintiff) <i>Sarah Petersen and Jacqueline Horvat for</i>
- and -)) <i>the Plaintiff</i>
)	
)	
GUESTLOGIX INC., BRETT PROUD)	
AND PATRICK LEUNG)) <i>Kevin O'Brien for the Defendant, Guestlogix</i>
	Defendants) <i>Inc.</i>
)) <i>Andrea Gonsalves for the Defendant, Brett</i>
)) <i>Proud</i>
)) <i>Michael Bookman for the Defendant, Patrick</i>
)) <i>Leung</i>
)	
Proceeding under the <i>Class Proceedings</i>)	HEARD: August 13, 2020
<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 The action was certified as a class proceeding for settlement purposes and leave was granted to assert the action pursuant to the *Securities Act*.³

[2] The Plaintiff advanced a single cause of action; namely: a statutory securities claim for secondary market misrepresentation pursuant to section 138.3 of Ontario *Securities Act*, and if necessary, the equivalent *Securities Acts* in other provinces. The action was certified on the basis

¹ S.O. 1992, c. 6.

² R.S.O. 1990, c. S.5.

³ *Bodnarchuk v. Guestlogix Inc.*, 2020 ONSC 3775.

of the following two common issues: (a) Did Guestlogix's Class Period disclosure documents contain a misrepresentation within the meaning of the Ontario *Securities Act*?; and (b) Did the statement released on November 12, 2015 correct the previously released impugned documents containing alleged misrepresentations within the meaning of the Ontario *Securities Act*?

[3] The Plaintiff now moves for (a) approval of the \$1.275 million settlement; (b) approval of the Distribution Plan; and (c) approval of an honourarium of \$15,000. Class Counsel moves for approval of payment of \$357,000, plus disbursements and applicable taxes. The fee was calculated as 28% of the Settlement Amount, which represents a multiplier of approximately 0.545 on previous and current Class Counsel's base time (1,108 hours) up to August 5, 2020. The disbursements are \$130,052.58.

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 Class Counsel and 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").⁴

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

[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. Mr.

⁴ R.S.C., 1985, c. C-36.

Bodnarchuk resides in the City of Regina Beach, Saskatchewan. On October 22, 2015, he purchased 2,000 Guestlogix shares and realized a loss by holding those securities until after the alleged Corrective Disclosure was released on November 12, 2015. On February 10, 2016, Mr. Bodnarchuk signed a retainer agreement with the law firm that was formerly advancing this action on behalf of the Class and agreed to act as a second proposed representative plaintiff.

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

[16] In August 2017, Mr. Bodnarchuk served a three-volume motion record in support of his motion for leave to assert an action under the *Securities Act*. Mr. Bodnarchuk's motion was supported by an expert accounting report with respect to the allegedly misleading non-disclosure of Guestlogix's financial covenants.

[17] The Defendants responded to the leave and certification motion with a three-volume joint motion record. The Defendants filed two expert reports as well as an affidavit from Mr. Leung denying that there were any misrepresentations.

[18] In late 2018, the Defendants alleged that former Class Counsel had a conflict of interest. Ms. Tacnière instructed the former counsel to remove her as a proposed representative plaintiff and to pursue her action as an individual action. Mr. Bodnarchuk as the sole representative plaintiff then retained Spark LLP as Class Counsel to continue the action. By order dated March 25, 2019, Mr. Bodnarchuk was given leave to amend the claim to remove the other proposed representative and continue this action as the proposed representative plaintiff for the Class.

[19] After extensive arm's-length negotiations and with the assistance of Clifford Lax, Q.C. as mediator, the Plaintiff and the Defendants have reached a 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*.

[20] Under the terms of the Agreement, the Defendants agree to pay or cause to be paid the all-inclusive Settlement Amount of \$1.275 million for the benefit of the Class. In exchange, the Defendants will receive a full and final release from all Class Members (except those Class Members who validly opted-out of this Action), and the Plaintiff will move to dismiss the within Action.

[21] Under the Settlement Agreement, there is no right of reversion available to the Defendants nor any opt-out threshold which, if exceeded by the number of shares that validly opt-out of this Action, would entitle the Defendants to terminate the Agreement.

[22] The Settlement Amount will be distributed, after payment of any administration costs, honorarium, legal fees, disbursements and taxes, as approved by the Court, among all Class Members who timely submit valid Claim Forms to Class Counsel (or the Court appointed third-party claims administrator, if one is appointed) on or before the Claims Bar Deadline.

[23] The Distribution Plan reflects the damages theory that the value of Class Members' shares was artificially inflated by misrepresentations made by the Defendants during the Class Period, and that the inflation was removed from the share value as a result of the publication of the alleged Corrective Disclosure on November 12, 2015. The Plan of Allocation is intended to calculate Class Members' entitlements in a manner that is congruent with the damages provision outlined in s.138.5 of the Ontario *Securities Act*. Specifically, the Plan of Allocation of the Distribution Plan provides that a Class Member's "Maximum Entitlement" will be calculated as follows:

a. For Eligible Shares disposed of on or before the 10th trading day after the public Corrective Disclosure (November 26, 2015), the number of Eligible Shares disposed of on or before November 26, 2015, multiplied by the difference between the average price paid for those Eligible Shares (including commissions, determined on a per share basis) and the price received upon disposition of those Eligible Shares (without deducting commissions, determined on a per share basis);

b. For Eligible Shares disposed of after the 10th trading day after the Corrective Disclosure (i.e. November 26, 2015), the lesser of:

i. an amount equal to the number of Eligible Shares disposed of after the 10th trading day, multiplied by the difference between the average price paid for those Eligible Shares (including any commissions paid in respect thereof, determined on a per share basis) and the average price received upon the disposition of those Eligible Shares (without deducting any commissions paid in respect of the disposition, determined on a per share basis); and

ii. an amount equal to the number of Eligible Shares disposed of after the 10th trading day, multiplied by the difference between the average price paid for those Eligible Shares (including any commissions paid in respect thereof, determined on a per share basis) and the ten-day volume-weighted average trading price for those Eligible Shares following the Corrective Disclosure on

November 12, 2015;

c. For Eligible Shares not disposed of at the time when the Claim Form is submitted, an amount equal to the number of Eligible Shares not disposed of (i.e. the number of shares that were held), multiplied by the difference between the average price paid for those Eligible Shares (including any commissions paid in respect thereof, determined on a per share basis) and the ten-day volume-weighted average trading price for those Eligible Shares following the Corrective Disclosure on November 12, 2015.

d. Once every Authorized Claimant's Maximum Entitlement is determined, the total of all the Maximum Entitlements will be summed to arrive at the "Total Damages". Class Counsel (or a third-party Administrator, should one be appointed) will then divide the Compensation Fund by the Total Damages to determine a per dollar of Total Damages distribution amount defined in the Plan of Allocation as the "Pro Rata Distribution". Class Counsel (or the third-party claims administrator, should one be appointed) will then multiply the Pro Rata Distribution by the Maximum Entitlement for each Authorized Claimant to arrive at the amount to be paid to each Authorized Claimant (the "Distribution").

e. In no event shall an Authorized Claimant receive a Distribution greater than his/her/its Maximum Entitlement.

f. The Plan of Allocation states that no entitlement shall be available for, and no Distribution given pertaining to, shares of Guestlogix disposed of prior to the release of the alleged Corrective Disclosure on November 12, 2015, which is consistent with the damages theory that is advanced.

[24] Ultimately, the amount of each Class Member's actual compensation from the Compensation Fund will depend upon: (i) the number of Eligible Shares purchased by the Class Member and the prices at which they did so; (ii) the date and price at which the Class Member sold such Eligible Shares, if at all; and (iii) the total number and value of claims for compensation filed with Class Counsel (or the third-party Administrator).

[25] Class Counsel has provided notice of this motion in accordance with the Order of this Court dated June 17, 2020. The notices specified a deadline of August 5, 2020 to remit objections to the Settlement. No objections to the Settlement were received by the objection deadline. The notices further specified an opt-out deadline of August 5, 2020. There were no opt-outs received by the opt-out deadline.

C. Settlement Approval

[26] Section 29 of the *Class Proceedings Act, 1992* requires court approval for the discontinuance, abandonment, or settlement of a class action. Section 29 states:

Discontinuance, abandonment and settlement

29.(1) A proceeding commenced under this Act and a proceeding certified as a class proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate.

Settlement without court approval not binding

(2) A settlement of a class proceeding is not binding unless approved by the court.

Effect of settlement

(3) A settlement of a class proceeding that is approved by the court binds all class members.

Notice: dismissal, discontinuance, abandonment or settlement

(4) In dismissing a proceeding for delay or in approving a discontinuance, abandonment or settlement, the court shall consider whether notice should be given under section 19 and whether any notice should include,

- (a) an account of the conduct of the proceeding;
- (b) a statement of the result of the proceeding; and
- (c) a description of any plan for distributing settlement funds.

[27] Section 29(2) of the *Class Proceedings Act, 1992*, provides that a settlement of a class proceeding is not binding unless approved by the court. To approve a settlement of a class proceeding, the court must find that, in all the circumstances, the settlement is fair, reasonable, and in the best interests of the class.⁵

[28] In determining whether a settlement is reasonable and in the best interests of the class, the following factors may be considered: (a) the likelihood of recovery or likelihood of success; (b) the amount and nature of discovery, evidence or investigation; (c) the proposed settlement terms and conditions; (d) the recommendation and experience of counsel; (e) the future expense and likely duration of the litigation; (f) the number of objectors and nature of objections; (g) the presence of good faith, arm's-length bargaining and the absence of collusion; (h) the information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations; and (i) the nature of communications by counsel and the representative plaintiff with Class Members during the litigation.⁶

[29] In determining whether to approve a settlement, the court, without making findings of fact on the merits of the litigation, examines the fairness and reasonableness of the proposed settlement and whether it is in the best interests of the class as a whole having regard to the claims and defences in the litigation and any objections raised to the settlement.⁷ An objective and rational assessment of the pros and cons of the settlement is required.⁸

[30] The case law establishes that a settlement must fall within a zone of reasonableness. Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending upon the subject matter of the litigation and the nature of the damages for

⁵ *Kidd v. Canada Life Assurance Company*, 2013 ONSC 1868; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, [2009] O.J. No. 3533 at para. 43 (S.C.J.); *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 3366 at para. 57 (S.C.J.).

⁶ *Kidd v. Canada Life Assurance Company*, 2013 ONSC 1868; *Farkas v. Sunnybrook and Women's Health Sciences Centre*, [2009] O.J. No. 3533 at para. 45 (S.C.J.); *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 3366 at para. 59 (S.C.J.); *Corless v. KPMG LLP*, [2008] O.J. No. 3092 at para. 38 (S.C.J.); *Jeffery v. Nortel Networks Corp.*, 2007 BCSC 69; *Fakhri v. Alfalfa's Canada, Inc.*, 2005 BCSC 1123.

⁷ *Baxter v. Canada (Attorney General)* (2006), 83 O.R. (3d) 481 at para. 10 (S.C.J.).

⁸ *Al-Harazi v. Quizno's Canada Restaurant Corp.* (2007), 49 C.P.C. (6th) 191 at para. 23 (Ont. S.C.J.).

which the settlement is to provide compensation.⁹ A settlement does not have to be perfect, nor is it necessary for a settlement to treat everybody equally.¹⁰

[31] Generally speaking, the exercise of determining the fairness and reasonableness of a proposed settlement involves two analytical exercises. The first exercise is to use the factors and compare and contrast the settlement with what would likely be achieved at trial. The court obviously cannot make findings about the actual merits of the Class Members' claims. Rather, the court makes an analysis of the desirability of the certainty and immediate availability of a settlement over the probabilities of failure or of a whole or partial success later at a trial. The court undertakes a risk analysis of the advantages and disadvantages of the settlement over a determination of the merits. The second exercise, which depends on the structure of the settlement, is to use the various factors to examine the fairness and reasonableness of the terms and the scheme of distribution under the proposed settlement.¹¹

[32] In the immediate case, in determining whether a settlement is reasonable and in the best interests of the class, the factors favour approving the settlement. This was a very high risk, vigorously resisted action that raised very challenging issues with respect to both liability and the assessment of damages with a limited range of recovery because of the CCAA Order. In my opinion, the settlement in the immediate case is good, fair, reasonable, and in the best interests of the Class Members. I approve the Settlement Agreement.

D. Counsel Fee

[33] The fairness and reasonableness of the fee awarded in respect of class proceedings is to be determined in light of the risk undertaken by the lawyer in conducting the litigation and the degree of success or result achieved.¹²

[34] Factors relevant in assessing the reasonableness of the fees of class counsel include: (a) the factual and legal complexities of the matters dealt with; (b) the risk undertaken, including the risk that the matter might not be certified; (c) the degree of responsibility assumed by class counsel; (d) the monetary value of the matters in issue; (e) the importance of the matter to the class; (f) the degree of skill and competence demonstrated by class counsel; (g) the results achieved; (h) the ability of the class to pay; (i) the expectations of the class as to the amount of the fees; and (j) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.¹³

[35] The court must consider all the factors and then ask, as a matter of judgment, whether the fee fixed by the agreement is reasonable and maintains the integrity of the profession.¹⁴

⁹ *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 at para. 70 (S.C.J.); *Dabbs v. Sun Life Assurance Company of Canada* (1998), 40 O.R. (3d) 429 (Gen. Div.).

¹⁰ *McCarthy v. Canadian Red Cross Society* (2007), 158 ACWS (3d) 12 at para. 17 (Ont. S.C.J.); *Fraser v. Falconbridge Ltd.*, [2002] O.J. No. 2383 at para. 13 (S.C.J.).

¹¹ *Welsh v. Ontario*, 2018 ONSC 3217.

¹² *Fischer v. I.G. Investment Management Ltd.*, [2010] O.J. No. 5649 at para. 25 (S.C.J.); *Smith v. National Money Mart*, 2010 ONSC 1334 at paras. 19-20, varied 2011 ONCA 233; *Parsons v. Canadian Red Cross Society*, [2000] O.J. No. 2374 at para. 13 (S.C.J.).

¹³ *Fischer v. I.G. Investment Management Ltd.*, [2010] O.J. No. 5649 at para. 28 (S.C.J.); *Smith v. National Money Mart*, 2010 ONSC 1334, varied 2011 ONCA 233.

¹⁴ *Commonwealth Investors Syndicate Ltd. v. Laxton*, [1994] B.C.J. No. 1690 at para. 47 (B.C.C.A.).

[36] This was a complex, hard-fought case in which Class Counsel took on significant risk and obtained a reasonable result in all the circumstances. For the class, the financial outcome was a quite modest success, but it was a success, nonetheless. In my opinion, having regard to the various factors used to determine whether to approve Class Counsel's fee request, Class Counsel's fee request in the immediate case should be approved.

E. Honorarium

[37] Where a representative plaintiff can show that he or she rendered active and necessary assistance in the preparation or presentation of the case and that such assistance resulted in monetary success for the class, the representative plaintiff may be compensated by an honorarium.¹⁵

[38] However, the court should only rarely approve this award of compensation to the representative plaintiff.¹⁶ Compensation for a representative plaintiff may only be awarded if he or she has made an exceptional contribution that has resulted in success for the class.¹⁷ Compensation to the representative plaintiff should not be routine, and an honorarium should be awarded only in exceptional cases.

[39] In determining whether the circumstances are exceptional, the court may consider among other things: (a) active involvement in the initiation of the litigation and retainer of counsel; (b) exposure to a real risk of costs; (c) significant personal hardship or inconvenience in connection with the prosecution of the litigation; (d) time spent and activities undertaken in advancing the litigation; (e) communication and interaction with other class members; and (f) participation at various stages in the litigation, including discovery, settlement negotiations and trial.¹⁸

[40] In my opinion, the honorarium request in the immediate case should be granted. But for Mr. Bodnarchuk's willingness to come forward and but for his active interest and participation, this class action would have floundered and there would have been no success at all.¹⁹

F. Conclusion

[41] For the above reasons, I approve the settlement, Class Counsel's fee, and the honorarium to Mr. Bodnarchuk. I approve the Orders attached as Schedule A and B to these Reasons for Decision.

[42] 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. 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

¹⁵ *Windisman v. Toronto College Park Ltd.*, [1996] O.J. No. 2897 at para. 28 (Gen. Div.).

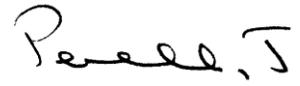
¹⁶ *Sutherland v. Boots Pharmaceutical plc*, *supra*; *Bellaire v. Daya*, [2007] O.J. No. 4819 at para. 71. (S.C.J.); *McCarthy v. Canadian Red Cross Society*, [2007] O.J. No. 2314 (S.C.J.).

¹⁷ *Toronto Community Housing Corp. v. ThyssenKrupp Elevator (Canada) Ltd.*, 2012 ONSC 6626; *Markson v. MBNA Canada Bank*, 2012 ONSC 5891 at paras. 55-71.

¹⁸ *Robinson v. Rochester Financial Ltd.*, 2012 ONSC 911 at paras. 26-44.

¹⁹ *Charette v. Trinity Capital Corp.*, 2019 ONSC 3153 (\$50,000); *Toth v. Canada*, 2019 FC 125 (\$50,000); *Brown v. Canada (Attorney General)*, 2018 ONSC 3429 (\$20,000); *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670 (\$50,000).

time of release.

A handwritten signature in black ink that reads "Perell, J." The signature is written in a cursive style with a large initial 'P' and a distinct 'J' at the end.

Perell, J.

Released: August 13, 2020

Schedule "A"

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

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
)
JUSTICE PAUL M. PERELL) DAY THE _____
)
) 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
(Settlement Approval)

THIS MOTION, made by the Plaintiff for an Order approving: (i) pursuant to section 29 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA") the settlement of this action in accordance with the terms of the settlement agreement between the Plaintiff and the

Defendants dated June 11, 2020 (the “Agreement”); (ii) the proposed Plan of Allocation of the net Settlement Amount; (iii) the form, content and method of publication of the Short-Form Notice of Settlement Approval and the Long Form Notice of Settlement Approval (collectively, the “Notices”) and the Claim Form; and (iv) the payment of an honorarium for the representative plaintiff in the amount of \$15,000 or such other amount as the Court sees fit, was heard this day (via Zoom video-conference) at the courthouse located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants;

AND ON BEING ADVISED that the deadlines for objecting to the Agreement and opting-out of this Action have passed, and on being advised that there have been no such objections or opt-outs;

AND ON BEING ADVISED that Spark LLP (“Class Counsel”) has consented to being appointed the administrator for the claims and Notice process (“Administrator”):

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 Agreement, attached as Exhibit “A” to the affidavit of Sarah Petersen sworn on August 6, 2020, is fair, reasonable and in the best interests of the Plaintiff and the Class.

3. **THIS COURT ORDERS** that the Agreement is approved pursuant to section 29 of the *CPA*.
4. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Agreement, this Order shall prevail.
5. **THIS COURT ORDERS** that all provisions of the Agreement (including the Recitals and Definitions) form part of this Order and are binding upon the Defendants, the Plaintiff, and all Class Members who did not validly opt-out, including those persons who are minors or mentally incapable, in accordance with the terms thereof.
6. **THIS COURT ORDERS** that compliance with the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, is hereby waived.
7. **THIS COURT ORDERS** that the Agreement shall be implemented in accordance with its terms.
8. **THIS COURT ORDERS** that the Plan of Allocation, attached as Exhibit "J" to the affidavit of Sarah Petersen sworn on August 6, 2020, is fair and reasonable and in the best interests of the Class.
9. **THIS COURT ORDERS** that the payment of an honorarium to the representative plaintiff, Alex M. Bodnarchuk, in the amount of \$15,000 from the Settlement Amount, is hereby approved.
10. **THIS COURT ORDERS** that the Plan of Allocation is approved and that the Settlement Amount shall be distributed in accordance with the terms of the Agreement, following payment

of Class Counsel Fees, disbursements and taxes, Administration Expenses, and the representative plaintiff's honorarium.

11. **THIS COURT ORDERS** that the form and content of the Short-Form Notice of Settlement Approval attached as Exhibit "G" to the affidavit of Sarah Petersen sworn on August 6, 2020 is hereby approved.

12. **THIS COURT ORDERS** that the form and content of the Long-Form Notice of Settlement Approval attached as Exhibit "H" to the affidavit of Sarah Petersen sworn on August 6, 2020 is hereby approved.

13. **THIS COURT ORDERS** that the form and content of the Claim Form attached as Exhibit "I" to the affidavit of Sarah Petersen sworn on August 6, 2020 is hereby approved substantially.

14. **THIS COURT ORDERS** that the plan for the dissemination of the Notices and the Claim Form (the "Plan of Notice") attached as Exhibit "F" to the affidavit of Sarah Petersen sworn on August 6, 2020 is hereby approved substantially.

15. **THIS COURT ORDERS** that the Notices and Claim Form shall be published in accordance with the Plan of Notice, and that such publication satisfies the requirements of the *CPA* and shall constitute good and sufficient service upon Class Members of notice of this Order and approval of the Agreement.

16. **THIS COURT ORDERS** that Class Counsel is appointed as the Administrator for the claims and Notice process.

17. **THIS COURT ORDERS** that the Plaintiff and the Defendants may, on notice to the Court but without the need for further order of the Court, agree to reasonable extensions of time to carry out any provisions of the Agreement.

18. **THIS COURT ORDERS** that, other than that which has been expressly provided for in the Agreement, the Defendants have no responsibility for and no liability whatsoever with respect to the administration of the Agreement.

19. **THIS COURT ORDERS** that, in the event that the Agreement is terminated in accordance with its terms, this Order shall be declared null and void.

20. **THIS COURT ORDERS** that, upon the Effective Date, the Action shall be dismissed against all Defendants with prejudice and without costs.

Schedule “B”

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

(Approval of Class Counsel’s Fees, Disbursements and Taxes)

THIS MOTION, made by Spark LLP (“Class Counsel”) for an Order: (i) approving the retainer agreement between Class Counsel and the Plaintiff dated August 30, 2018 (the “Retainer Agreement”); and (ii) approving the agreement respecting fees and disbursements

between Class Counsel and the Plaintiff and fixing the fees and disbursements payable to Class Counsel, was heard this day (via Zoom video-conference) at the courthouse located at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed and on hearing the submissions of Class Counsel and counsel for the Defendants;

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 settlement agreement between the Plaintiff and the Defendants dated June 11, 2020 (the "Agreement") apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the Retainer Agreement between Alex M. Bodnarchuk and Class Counsel dated August 30, 2018 is hereby approved.
3. **THIS COURT ORDERS** that, in accordance with section 32(2) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA"), Class Counsel fees are approved and fixed in the amount of \$357,000 plus 28% of the total amount of interest earned on the Settlement Amount to the Effective Date, which equates to 28% of the total Settlement Amount inclusive of accrued interest, plus 13% HST on the aforesaid amounts, and that legal fees shall be paid to Class Counsel from the Escrow Account forthwith on the Effective Date.
4. **THIS COURT ORDERS** that in accordance with section 32(2) of the CPA, the disbursements incurred by Class Counsel of \$130,052.58, inclusive of taxes and charges, are

approved and shall be paid to Class Counsel from the Escrow Account forthwith on the Effective Date.

5. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Agreement, this Order shall prevail.

The Honourable Justice Paul M. Perell

CITATION: Bodnarchuk v. Guestlogix Inc., 2020 ONSC 4789
COURT FILE NO.: CV-16-545118-00CP
DATE: 2020/08/13

**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: August 13, 2020