

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 27TH
)
JUSTICE BELOBABA) DAY OF MARCH, 2020

B E T W E E N:

DANIEL BENNETT

Plaintiff

– and –

LENOVO (CANADA) INC. and SUPERFISH INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**JUDGMENT
(Lenovo Settlement Approval)**

THIS MOTION for an order approving the settlement of this proceeding in accordance with a Settlement Agreement dated as of October 2, 2019 (the “Settlement Agreement”) was heard this day in the presence of counsel for the Plaintiff and the Defendant Lenovo (Canada) Inc. (“Lenovo”), this action already having been settled as between the Plaintiff and the Defendant Superfish Inc, with counsel participating by remote conference.

ON READING the Certification Order herein dated October 3, 2017 (which sets out the common issues, describes the class and the nature of the claims asserted on behalf of the class, hereinafter

the “Certification Order”) attached to this Order as Schedule “A”, the Notice of Motion and the evidence filed by the parties, including the Settlement Agreement attached to this Order as Schedule “B”, and on hearing submissions of counsel for the Plaintiff and counsel for Lenovo,

AND ON BEING ADVISED that the deadline for objecting to the Settlement Agreement has passed and there have been no written objections to the Settlement Agreement,

AND ON BEING ADVISED that the deadline for opting out of the action has passed, and no persons validly exercised the right to opt-out:

1. **THIS COURT ORDERS** that the settlement of this Class Action on the terms set forth in the Settlement Agreement is fair and reasonable and in the best interests of the Class Members and is hereby approved pursuant to sections 29(2) and (3) of the *Class Proceedings Act, 1992*.

2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Settlement Agreement except to the extent that the definition of a term in the Settlement Agreement and this Judgment conflict, the definition of the term as set out in this Judgment shall govern.

3. **THIS COURT ORDERS** that the Settlement Agreement is expressly incorporated by reference into this Judgment, is valid and binding on the parties thereto and on all Class Members, and shall be implemented in accordance with its terms.

4. **THIS COURT ORDERS AND DECLARES** that, without in any way affecting the finality of this Judgment, this Court reserves exclusive and continuing jurisdiction over this

action, the Plaintiff, all of the Class Members and Lenovo for the limited purposes of implementing the Settlement Agreement and administration of the Settlement.

5. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that this Judgment and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

6. **THIS COURT ORDERS AND DECLARES** that the requirements of Rules 7.04(1) and 7.08(1) and (2) of the *Rules of Civil Procedure* are dispensed with in respect of this action.

7. **THIS COURT ORDERS** that the legal fees and disbursements of Class Counsel shall be determined by further order of this Court.

8. **THIS COURT FURTHER DECLARES AND ADJUDGES** that each Class Member as well as his or her heirs, administrators, executors, successors or assigns and, for any Class Member which is a corporation, its parent, subsidiaries and affiliates, successors and assigns (the "Releasor") has released, discharged and foregone as against Lenovo, its parent, subsidiaries, affiliates and related companies and each of their respective current and former officers, directors, employees, servants, agents, and advisors thereof and their respective successors and assigns, from all actions, causes of action, claims and demands for damages, indemnity, costs and interest and loss or injury of every nature and kind which the Releasor now has, may have had or may hereafter have arising from or in any way related to the installation of Visual Discovery software, including all claims alleged or which could have been alleged in this Class Action, and the Releasor shall not make any claim or take any proceeding in connection with any of the claims released against any other person or corporation who might claim contribution or indemnity under the provisions

of any statute or at common law or equity from the persons or corporations herein discharged. The persons identified in Schedule “C” hereto have opted-out from the Class Action, such that these persons are not bound by this Judgment and are not entitled to any relief or given any rights under the Settlement Agreement.

9. **THIS COURT ORDERS** that, except as otherwise provided in Schedule “B”, this Class Action is dismissed without costs.

10. **THIS COURT ORDERS** that any appeal from this Order be brought within 30 days of the date of this Order pursuant to Rule 61.04 of the *Rules of Civil Procedure* notwithstanding the suspension of procedural time periods pursuant to Ontario Regulation 73-20 made under subsection 7.1(2) of the *Emergency Management and Civil Protection Act*.

Signed: *Justice Edward Belobaba*

SCHEDULE "A"

Court File No. CV-15-00523714-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE PERELL)

TUESDAY, THE 3RD
DAY OF OCTOBER, 2017



DANIEL BENNETT

Plaintiff

and

LENOVO (CANADA) INC. and SUPERFISH INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. c.6

**ORDER
(Certification)**

THIS MOTION, for certification of this action as a class proceeding as against Lenovo (Canada) Inc., was heard on September 26, 2017 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario;

ON READING the notice of motion, the affidavit of Daniel Bennett sworn May 9, 2016, the affidavit of Kathleen MacFarlane sworn February 24, 2016, and the affidavit of Peter Gaucher sworn June 9, 2017 and on hearing the submissions of the lawyers for the Plaintiff and Lenovo (Canada) Inc., no one appearing for Superfish Inc.;

1. THIS COURT ORDERS that this proceeding is hereby certified as a class proceeding as against Lenovo (Canada) Inc. under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

2. THIS COURT FURTHER ORDERS that the class consists of:

All persons in Canada who purchased directly from Lenovo (Canada) Inc. one or more of the following Lenovo laptops containing Visual Discovery software:

- G Series: G510, G40-70, G50-70, G50-45
- U Series: U430P, U530Touch
- Y Series: Y40-70, Y50-70
- Z Series: Z40-70, Z50-70
- Flex Series: Flex2 14; Flex2 15
- MIIX Series: MIIX2-10
- YOGA Series: YOGA2Pro-13, YOGA2-13; YOGA2-11BTM; YOGA2-11HSW (collectively, the “**Affected Models**”)

(collectively referred to as the “**Class Members**” or the “**Class**”).

3. THIS COURT FURTHER ORDERS that Daniel Bennett is appointed as the Representative Plaintiff on behalf of the Class.

4. THIS COURT FURTHER ORDERS that the nature of the claims asserted on behalf of the Class are:

(a) The Visual Discovery software installed on the Affected Models was:

- (i) for consumer purchasers, a breach of the implied warranties of the *Sale of Goods Act*, R.S.O. 1990, c. S.1;

- (ii) for all purchasers, an infliction of the tort of intrusion upon seclusion; and
- (iii) for purchasers in British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, a contravention of the following privacy statutes:

- (1) *Privacy Act*, R.S.B.C. 1996, c. 373

- (2) *The Privacy Act*, R.S.S. 1978, c. P-24

- (3) *The Privacy Act*, C.C.S.M. c. P125

- (4) *Privacy Act*, R.S.N.L. 1990, c. P-22

- (b) As part of the operation of the Visual Discovery software, private information was sent to a third party's computers, which was:

- (i) for consumer purchasers, a breach of the implied warranties of the *Sale of Goods Act*, R.S.O. 1990, c. S.1;

- (ii) for all purchasers, an infliction of the tort of intrusion upon seclusion; and

- (iii) for purchasers in British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, a contravention of the following privacy statutes:

- (1) *Privacy Act*, R.S.B.C. 1996, c. 373

- (2) *The Privacy Act*, R.S.S. 1978, c. P-24

(3) The Privacy Act, C.C.S.M. c. P125

(4) *Privacy Act*, R.S.N.L. 1990, c. P-22

5. THIS COURT FURTHER ORDERS that the relief sought by the Class includes damages in the amount of \$10,000,000 for breach of the implied warranties of the *Sale of Goods Act*, R.S.O. 1990, c. S.1, breach of the *Privacy Act*, R.S.B.C. 1996, c. 373, breach of *The Privacy Act*, R.S.S. 1978, c. P-24, breach of *The Privacy Act*, C.C.S.M. c. P125, and intrusion upon seclusion.

6. THIS COURT FURTHER ORDERS that the common issues for the Class are:

Sale of Goods Act

- (i) Did the defendant Lenovo (Canada) Inc. breach s. 15 of the *Sale of Goods Act* for Class Members who are consumers as defined by the *Consumer Protection Act, 2002* who purchased the Affected Models preloaded with the original version of Visual Discovery?
- (ii) Did the defendant Lenovo (Canada) Inc. breach s. 15 of the *Sale of Goods Act* for Class Members who are consumers as defined by the *Consumer Protection Act, 2002* who purchased the Affected Models preloaded with the updated version of Visual Discovery?

Intrusion Upon Seclusion

- (iii) Did Lenovo (Canada) Inc. invade, without lawful justification, the Class Members' private affairs or concerns by installing the original version of Visual Discovery on the Affected Models?
- (iv) Did Lenovo (Canada) Inc. invade, without lawful justification, the Class Members' private affairs or concerns by installing the updated version of Visual Discovery on the Affected Models?
- (v) If the answer to question (iii) is "yes", was Lenovo (Canada) Inc.'s conduct intentional or reckless?
- (vi) If the answer to question (iv) is "yes", was Lenovo (Canada) Inc.'s conduct intentional or reckless?
- (vii) If the answers to questions (iii) and (v) are "yes", would a reasonable person regard the invasion as highly offensive causing distress, humiliation or anguish?

- (viii) If the answers to questions (iv) and (vi) are “yes”, would a reasonable person regard the invasion as highly offensive causing distress, humiliation or anguish?

Breach of Provincial Privacy Acts

- (ix) For Class Members resident in British Columbia, did Lenovo (Canada) Inc. contravene the *Privacy Act*, R.S.B.C. 1996, c. 373, s. 1?
- (x) For Class Members resident in Saskatchewan, did Lenovo (Canada) Inc. contravene *The Privacy Act*, R.S.S. 1978, c. P-24, s. 2?
- (xi) For Class Members resident in Manitoba, did Lenovo (Canada) Inc. contravene *The Privacy Act*, C.C.S.M. c. P125, s. 2?
- (xii) For Class Members resident in Newfoundland and Labrador, did Lenovo (Canada) Inc. contravene the *Privacy Act*, R.S.N.L. 1990, c. P-22, s. 3?

7. THIS COURT FURTHER ORDERS that the Class will be given notice of the certification of this action and the opt-out process (the “**Notice**”).

8. THIS COURT FURTHER ORDERS that Class Members can opt-out of the class proceeding by delivering a written election to opt-out, signed by the person or the person’s designee, by pre-paid mail, courier, fax or email to Class Counsel at the address provided in the Notice.

9. THIS COURT FURTHER ORDERS that an election to opt-out will only be effective if it is actually received by Class Counsel by no later than 45 days from the date that the Notice is first disseminated;

10. THIS COURT FURTHER ORDERS that the written election to opt-out must contain the following information in order to be effective:

- (a) The person’s name, current address, email address and telephone number;

- (b) If the person seeking to opt-out is a corporation, the name of the corporation and the position of the person submitting the request to opt-out on behalf of the corporation; and
- (c) A statement to the effect that the person wishes to be excluded from the class proceeding.

11. THIS COURT FURTHER ORDERS that persons who opt-out of the action shall have no further right to participate in the action.

12. THIS COURT FURTHER ORDERS that no further right to opt-out will be provided.



The Honourable Justice Perell

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

DEC 17 2019

PER / PAR:



DANIEL BENNETT
Plaintiff

-and-

LENOVO (CANADA) INC. et al.
Defendants

Court File No. CV-15-00523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

ORDER
(Certification)

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSO # 36274J)
Sabrina Callaway (LSO # 653870)

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiff

SCHEDULE "B"

SETTLEMENT AGREEMENT

Made as of this 2nd day of October, 2019

B E T W E E N:

Daniel Bennett
("Bennett")

- and -

Lenovo (Canada) Inc.
("Lenovo")

(Bennett and Lenovo are individually a "Party" and collectively the "Parties")

WHEREAS Bennett commenced an action on May 11, 2015, bearing court file number CV-15-00523714-00CP in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario) (the "**Class Action**") against Lenovo, claiming, among other things, certain privacy violations relating to the sale of certain Lenovo laptop computers that were preloaded with Visual Discovery software to Canadian customers;

AND WHEREAS the causes of action asserted on behalf of the Class are breach of contract, breach of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sch. A, breach of the *Privacy Act*, R.S.B.C. 1996, c. 373, breach of *The Privacy Act*, C.C.S.M. c. P125, breach of *The Privacy Act*, R.S.S. 1978, c. P-24, breach of the *Privacy Act*, R.S.N.L. 1990 c. P-22, negligence and intrusion upon seclusion;

AND WHEREAS the Class Action was certified as a class proceeding as against Lenovo on October 3, 2017;

AND WHEREAS Lenovo has denied and continues to deny the claims and allegations made in the Class Action and denies any liability to the Class;

AND WHEREAS the Parties participated in a mediation on January 30, 2019, and entered into a term sheet dated January 30, 2019, which contemplated a long form settlement agreement consistent with the terms of the term sheet;

AND WHEREAS the Parties wish to finally and fully resolve all of the issues between them relating in any way to Lenovo's sale of laptop computers that were preloaded with Visual Discovery software in Canada, including all claims that were asserted or could have been asserted in the Class Action;

AND WHEREAS based on extensive analysis of the facts and the law applicable to Bennett's claims, and taking into account the ongoing burden and expense of litigating the merits of the claim, and calculating potential damages, including the uncertain state of the law and the risk associated with a trial and any possible appeals, and taking into consideration the maximum potential recovery for the Class weighed against those costs and risks, Bennett and Class Counsel have concluded that this Settlement Agreement is in the best interest of the Class;

AND WHEREAS Lenovo has similarly concluded that this Settlement Agreement is preferable to costly and protracted litigation and is the most economically efficient manner to resolve the Class Action;

AND WHEREAS the Parties have engaged in extensive, arms-length negotiations through counsel with substantial experience in complex class proceedings that have resulted in this Settlement Agreement;

AND WHEREAS the Parties therefore wish to, and hereby do, fully and finally resolve the Class Action without admission of liability or wrongdoing on the part of Lenovo;

AND WHEREAS subject to Court approval and the terms and conditions of this Settlement Agreement, Lenovo has agreed to pay the all-inclusive sum of \$700,000 Canadian Dollars (inclusive of all claims, costs, fees, disbursements, taxes, interest and all Costs of Administration (as defined herein)) in full and final settlement of the Class Action;

NOW THEREFORE in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

Definitions

1. In this Settlement Agreement:

- (a) **"Account"** means an interest-bearing trust account under the control of Class

Counsel or the Claims Administrator, once appointed, at a Schedule I chartered Canadian bank. All interest accrued will be added to the fund used to compensate Eligible Class Members;

- (b) “**Bennett**” means the plaintiff Daniel Bennett;
- (c) “**Claim**” means a properly completed Claim Form submitted by or on behalf of a Class Member and any other required supporting documentation to the Claims Administrator on or before the Claims Bar Date;
- (d) “**Claim Form**” means the document that enables a Class Member to apply for benefits pursuant to the Settlement Agreement, the content of which will be agreed upon by counsel for the Parties and approved by the Court;
- (e) “**Claimant**” means a Class Member whose Claim Form is submitted to the Claims Administrator for evaluation;
- (f) “**Claims Administrator**” means the firm proposed by Class Counsel and appointed by the Court to administer the Settlement Amount for the benefit of Class Members, and any employees of such firm;
- (g) “**Claims Bar Date**” means the date fixed by the Court at the Settlement Approval Hearing after which Claim Forms can no longer be validly submitted to the Claims Administrator;
- (h) “**Class**” means all persons in Canada who purchased directly from Lenovo one or more of the following Lenovo laptops containing Visual Discovery software:
 - G Series: G510, G40-70, G50-70, G50-45
 - U Series: U430P, U530T
 - Y Series: Y40-70, Y50-70
 - Z Series: Z40-70, Z50-70
 - Flex Series: FLEX2-14, FLEX2-15

- MIIX Series: MIIX2-10
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

(collectively, the “**Affected Models**”);

- (i) “**Class Action**” means the action commenced by Bennett on May 11, 2015, bearing court file number CV-15-00523714-00CP in the Ontario Superior Court of Justice at Toronto pursuant to the *Class Proceedings Act, 1992* (Ontario), and certified as a class proceeding;
- (j) “**Class Counsel**” means counsel for the Class in the Class Action, Sotos LLP;
- (k) “**Class Counsel Fees**” means the reasonable fees, disbursements and taxes of Class Counsel;
- (l) “**Class Member**” means a member of the Class excluding an Opt-Out Member;
- (m) “**Compensation Fund**” has the meaning set out in paragraph 4(c) of this Settlement Agreement;
- (n) “**Costs of Administration**” means all costs associated with the administration of the Settlement, including but not limited to the costs of giving Notice of Certification and Proposed Settlement, collecting and reporting on the Opt-Outs, giving notice of the Settlement and the claims process, distributing the Compensation Fund and otherwise administering the Settlement;
- (o) “**Court**” means the Ontario Superior Court of Justice;
- (p) “**Customer Information**” means the contact information provided by customers who purchased the Affected Models to Lenovo at the time such customer purchased their respective Affected Model from Lenovo;
- (q) “**Distribution Protocol**” means the plan for distributing the Compensation Fund;
- (r) “**Eligible Class Members**” means the Class Members whose Claim Forms are

approved by the Claims Administrator;

- (s) **“Final Settlement Approval”** means the latest of:
 - (i) issuance of a Judgment by the Court substantially in the form attached hereto as **Schedule “A”** together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from the Judgment of the Court; and
 - (ii) the issuance of an Order by the Court approving Class Counsel’s legal fees and disbursements as contemplated by paragraphs 4(a) hereof and paragraph 7 of **Schedule “A”** together with the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from such Order of the Court;
- (t) **“Lenovo”** means the defendant Lenovo (Canada) Inc.;
- (u) **“Notice of Certification and Proposed Settlement”** means the notice to advise the Class of certification of the Class Action, the proposed settlement of the Class Action, how to opt out of the Class Action, the Opt-Out Period, the Settlement Approval Hearing and the motion to approve the fees of Class Counsel, the content of which is to be agreed upon by counsel for the Parties and approved by the Court;
- (v) **“Notice of Settlement”** means the notice to advise Class Members of the approval of the settlement following the Settlement Approval Hearing, the content of which will be agreed upon by counsel for the Parties and approved by the Court;
- (w) **“Opt-Out”** or **“Opt-Outs”** means a person or persons who opted out of the Class Action by submitting an opt-out form within the Opt-Out Period;
- (x) **“Opt-Out Period”** means the 30-day period beginning from the date on which the Notice of Certification and Proposed Settlement is distributed to persons in the Class or such other period of time as may be set by the Court;
- (y) **“Parties”** means Bennett (on behalf of all Class Members) and Lenovo;

- (z) “**Settlement Agreement**” or “**Settlement**” means this agreement, including the recitals and schedules hereto;
- (aa) “**Settlement Approval Order**” means the Order of the Court approving the Settlement in its entirety;
- (bb) “**Settlement Approval Hearing**” means a motion for the approval of the Settlement Agreement at a date, time and place fixed by the Court; and
- (cc) “**Lenovo Settlement Amount**” has the meaning set out in paragraph 2 of this Settlement Agreement.

Payment of Lenovo Settlement Amount

2. Provided that Lenovo does not exercise its option to terminate this Settlement in accordance with paragraph 20 below and provided that the conditions set out in paragraph 26 below are satisfied, Lenovo shall pay the total sum of \$700,000 Canadian Dollars (inclusive of all claims, costs, fees, disbursements, taxes, interest and all Costs of Administration) (the “**Lenovo Settlement Amount**”) to Class Counsel, for deposit into the Account within 10 days of Final Settlement Approval.
3. Once a Claims Administrator has been appointed, Class Counsel shall transfer control of the Account to the Claims Administrator.
4. The Lenovo Settlement Amount shall be allocated as follows and paid in the following order:
 - (a) to Class Counsel, such amount as is approved by the Court in respect of Class Counsel Fees, within 30 days of Final Settlement Approval;
 - (b) to the Claims Administrator, such amount as required to cover the Costs of Administration of this Settlement; and
 - (c) to the Class Members, the amount remaining after payment of the amounts set out in paragraphs 4(a) and (b) above (the “**Compensation Fund**”) according to the formula and method set out in the Distribution Protocol.

5. Class Counsel or the Claims Administrator, as the case may be, shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Court made on notice to or on consent of the Parties.
6. Lenovo shall have no obligation to pay any amount in addition to the Lenovo Settlement Amount, for any reason.

Taxes and Interest

7. All interest earned on the Lenovo Settlement Amount in the Account shall accrue to the benefit of the Class Members and shall become and remain part of the Account.
8. All taxes payable on any interest which accrues on the Lenovo Settlement Amount in the Account or otherwise in relation to the Lenovo Settlement Amount shall be paid from the Account. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Lenovo Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Lenovo Settlement Amount shall be paid from the Account.
9. Lenovo shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned on the Lenovo Settlement Amount or pay any taxes on the monies in the Account.

Notice of Certification and Proposed Settlement

10. Bennett shall, in consultation with Lenovo, file a motion before the Court for an order approving the form and content of the Notice of Certification and Proposed Settlement (in a form to acceptable to Lenovo) and the dissemination plan thereof, and setting the date, time and place of the Settlement Approval Hearing. The failure to obtain such an order will not be a basis for Bennett to terminate this Settlement Agreement.
11. Subject to Court approval, Lenovo shall, within seven days of receiving such approval, provide Class Counsel with the Customer Information, in a format to be agreed between the Parties.

Class Counsel may share the Customer Information with the Claims Administrator once appointed by the Court.

12. Subject to Court approval, the Notice of Certification and Proposed Settlement will:
 - (a) be sent to the Class by Class Counsel or the Claims Administrator by email to the email addresses provided by Lenovo pursuant to paragraph 11 above or to any person requesting a copy;
 - (b) be posted by Class Counsel on its website; and
 - (c) be posted by Class Counsel on its social media.

13. Lenovo shall have no responsibility to pay for any costs associated with the notice program described in paragraph 12 above.

Opt-Outs

14. Persons in the Class may opt-out of the Class Action at any time during the Opt-Out Period, as approved by the Court, by delivering a written election to opt-out, signed by the person or the person's designee, by pre-paid mail, courier, fax or email to Class Counsel or to the Claims Administrator at the address provided in the Notice of Certification and Proposed Settlement, consistent with paragraphs 16 and 17 below.

15. Any person in the Class who elects to opt-out of the Class Action will not be bound by any orders or judgments entered in the Class Action, will not be entitled to relief under this Settlement Agreement or given any rights by virtue of this Settlement Agreement.

16. An election to opt-out will only be effective if it is actually received by Class Counsel or the Claims Administrator during the Opt-Out Period.

17. The written election to opt-out must contain the following information in order to be effective:
 - (a) the person's full name, current address, email address and telephone number;
 - (b) if the person seeking to opt-out is a corporation, the name of the corporation and

the position of the person submitting the request to opt-out on behalf of the corporation; and

- (c) a statement to the effect that the person wishes to be excluded from the Class Action.

18. Within 10 days after the expiration of the Opt-Out Period, Class Counsel and the Claims Administrator shall deliver copies of all opt-out notifications received to Lenovo.
19. With respect to any person in the Class who validly opts-out from the Class Action, Lenovo reserves all of its legal rights and defences. Nothing in this Settlement Agreement constitutes or shall be deemed to constitute a waiver by Lenovo of any limitation, laches or prescription defence.
20. In the event that more than 50 persons opt out of the Class during the Opt-Out Period, Lenovo shall, at its sole discretion, have the option to terminate the Settlement Agreement.
21. Bennett expressly waives his right to opt-out of the Class Action.

Notice of Settlement

22. Class Members will be provided with the Notice of Settlement (including the Distribution Protocol) as set out in the Distribution Protocol.

Distribution of Payments to Class Members

23. Class Counsel will bring a motion to the Court for approval of the Distribution Protocol at the same time as the Settlement Approval Hearing. The order approving the Distribution Protocol shall be conditional on the receipt of Final Settlement Approval.
24. All Costs of Administration shall be paid out of the Lenovo Settlement Amount pursuant to paragraph 2 above. For greater certainty, Lenovo shall not be responsible for making any additional contributions or payments in respect of the Costs of Administration.

Condition

25. The Parties agree to consent to a Judgment substantially in the form of **Schedule “A”**, which shall include (i) a full and final release in favour of Lenovo in respect of all claims by Class Members in any way related to the Visual Discovery software, including but not limited to all claims which were alleged or which could have been alleged in the Class Action and (ii) a dismissal with prejudice of the Class Action without costs.
26. Lenovo’s obligations in respect of the payments provided for in paragraph 2 above are conditional upon the Court issuing a judgment substantially in the form of the Judgment attached hereto as **Schedule “A”** or as otherwise in a form satisfactory to the Parties and upon the expiration of any applicable appeal periods and, if applicable, the dismissal of all appeals that are taken from the Judgment.
27. If Lenovo exercises its right to terminate the Settlement Agreement pursuant to paragraph 20 above or if the condition in paragraph 26 above is not satisfied, this Settlement Agreement shall terminate and all discussions, actions, undertakings and agreements by and between the Parties in respect of the negotiation, execution and attempted implementation of this Settlement Agreement shall be without prejudice to the positions of the Parties in the Class Action and/or any subsequent proceedings between the Parties.

Fees

28. Neither Bennett nor Class Counsel shall have any entitlement to recover from Lenovo any amount on account of their costs, fees and expenses, including on account of the costs, fees and expenses incurred by them in satisfying conditions in this Settlement Agreement.
29. Class Counsel will bring a motion to the Court for approval of Class Counsel Fees at the same time as the Settlement Approval Hearing. Lenovo will not take a position with respect to the approval of Class Counsel Fees.
30. Class Members who have retained, or who retain counsel, to assist them in respect of payments from this Settlement, shall be personally responsible for the legal fees and expenses of such counsel.

Public Disclosure With Respect to the Settlement

31. There shall be no press release or public media commentary of the fact or terms of this Settlement Agreement by Bennett without the prior written consent of Lenovo. Nothing herein precludes communications directed by the notice program in paragraph 12 above, communications between Class Counsel and Class Members, and communications advising the Class Members of developments, including this settlement, through updates posted to Class Counsel's webpage and social media.

No Further Litigation

32. No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person against Lenovo or its affiliates which relates in any way to Lenovo's sale of laptop computers that contained Visual Discovery software, including all claims that were asserted or could have been asserted in the Class Action.

No Admission of Liability

33. The Parties agree that, whether or not this Settlement Agreement is approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussion and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by Lenovo, or of the truth of any of the claims or allegations made in the Class Action, and that such liability is denied.

34. The Parties further agree that, whether or not this Settlement Agreement is approved or terminated, neither this Settlement Agreement, anything contained in it, any of the negotiations or proceedings connected with it, any related document, nor any action taken to carry out the Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future action or proceeding, except in a proceeding to enforce the terms of the

Settlement Agreement, or to defend against the assertion of any released claims as set out in the Judgment, or otherwise as required by law.

General Provisions

35. Class Counsel agree to take no further steps to pursue any of the matters raised in the Class Action in the Court or any other forum, save and except for steps to implement this Settlement Agreement.

36. The Parties agree that:

- (a) they will support the implementation of the terms of this Settlement Agreement in the Class Action before the Court and when communicating at any time and in any manner with all or part of the Class;
- (b) time is of the essence in implementing this Settlement Agreement. In this regard, the Parties will use their best efforts to implement and give effect to this Settlement Agreement in a timely and time effective manner;
- (c) this Settlement Agreement constitutes the entire agreement between the Parties in respect of its subject matter. There are no oral warranties or representations or other agreements between the Parties in connection with the subject matter hereof, except as expressly set forth and referred to herein. No amendment of this Settlement Agreement shall be binding unless executed in writing by the Parties to be bound thereby. No waiver of any provision of this Settlement Agreement shall be deemed or shall constitute a waiver of any other provision nor shall any such waiver constitute a continuing waiver unless otherwise expressed to provide it;
- (d) this Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of

this Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Agreement.

- (e) this Settlement Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors, assigns, heirs, administrators and/or legal representatives;
- (f) this Settlement Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Lenovo and Bennett, on behalf of himself and of all Class Members, hereby attorn to the jurisdiction of the Ontario Superior Court of Justice, which Court will have the exclusive power and jurisdiction to adjudicate upon and provide a binding decision on any dispute concerning the construction, effect or enforcement of this Settlement Agreement; and
- (g) this Settlement Agreement may be executed and delivered by facsimile or PDF signature in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

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

Date: Oct. 2/19.



DANIEL BENNETT

LENOVO (CANADA) INC.

Date: OCT 30th, 2014

Per: 

Name: STEFAN BOCKMUP

Position: ED NA CHANNEL COEM

SCHEDULE "A"

Court File No. CV-15-00523714-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THE _____ DAY OF
JUSTICE BELOBABA) _____, 20__

B E T W E E N:

DANIEL BENNETT

Plaintiff

- and -

LENOVO (CANADA) INC. and SUPERFISH INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION for an order approving the settlement of this proceeding in accordance with a Settlement Agreement dated as of October [X], 2019 (the "Settlement Agreement") was heard this day in the presence of counsel for the Plaintiff and the Defendant Lenovo (Canada) Inc. ("Lenovo"), this action already having been settled as between the Plaintiff and the Defendant Superfish Inc.

ON READING the Certification and Notice Approval Order herein dated [X, 2019] (which sets

out the common issues, describes the class and the nature of the claims asserted on behalf of the class, hereinafter the “Certification and Notice Approval Order”) attached to this Order as Schedule “A”, the Notice of Motion and the evidence filed by the parties, including the Settlement Agreement attached to this Order as Schedule “B”, and on hearing submissions of counsel for the Plaintiff and counsel for Lenovo,

1. **THIS COURT ORDERS** that the settlement of this Class Action on the terms set forth in the Settlement Agreement is fair and reasonable and in the best interests of the Class Members and is hereby approved pursuant to sections 29(2) and (3) of the *Class Proceedings Act, 1992*.

2. **THIS COURT ORDERS** that the use of capitalized terms in this Judgment shall have the same meaning as found in the Settlement Agreement except to the extent that the definition of a term in the Settlement Agreement and this Judgment conflict, the definition of the term as set out in this Judgment shall govern.

3. **THIS COURT ORDERS** that the Settlement Agreement is expressly incorporated by reference into this order, is valid and binding on the parties thereto and on all Class Members and shall be implemented in accordance with its terms.

4. **THIS COURT ORDERS AND DECLARES** that without in any way affecting the finality of this order, this Court reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members and Lenovo for the limited purposes of implementing the Settlement Agreement and administration of the Settlement.

5. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that this order and

the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.

6. **THIS COURT ORDERS AND DECLARES** that the requirements of Rules 7.04(1) and 7.08(1) and (2) of the *Rules of Civil Procedure* are dispensed with in respect of this action.

7. **THIS COURT ORDERS** that the legal fees and disbursements of Class Counsel shall be determined by further order of this Court.

8. **THIS COURT FURTHER DECLARES AND ADJUDGES** that each Class Member as well as his or her heirs, administrators, executors, successors or assigns and, for any Class Member which is a corporation, its parent, subsidiaries and affiliates, successors and assigns (the "Releasor") has released, discharged and foregone as against Lenovo, its parent, subsidiaries, affiliates and related companies and each of their respective current and former officers, directors, employees, servants, agents, and advisors thereof and their respective successors and assigns, from all actions, causes of action, claims and demands for damages, indemnity, costs and interest and loss or injury of every nature and kind which the Releasor now has, may have had or may hereafter have arising from or in any way related to the installation of Visual Discovery software, including all claims alleged or which could have been alleged in this Class Action, and the Releasor shall not make any claim or take any proceeding in connection with any of the claims released against any other person or corporation who might claim contribution or indemnity under the provisions of any statute or at common law or equity from the persons or corporations herein discharged. The persons identified in Schedule "C" hereto have opted-out from the Class Action, such that these

persons are not bound by this Judgment and are not entitled to any relief or given any rights under the Settlement Agreement.

9. **THIS COURT ORDERS** that, except as otherwise provided in Schedule "B", this Class Action is dismissed without costs.

SCHEDULE "A"

[CERTIFICATION AND NOTICE APPROVAL ORDER]

SCHEDULE "B"
[SETTLEMENT AGREEMENT]

SCHEDULE "C"
[LIST OF OPT-OUTS]

867197.7

SCHEDULE “C”

List of Opt-Outs

No persons have opted out of the class action.

DANIEL BENNETT
Plaintiff

-and-

LENOVO (CANADA) INC. et al.
Defendants

Court File No. CV-15-00523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

JUDGMENT
(Lenovo Settlement Approval)

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

Sabrina Callaway (LSO # 653870)
scallaway@sotosllp.com

Tel: 416-977-0007
Fax: 416-977-0717

Lawyers for the Plaintiff