

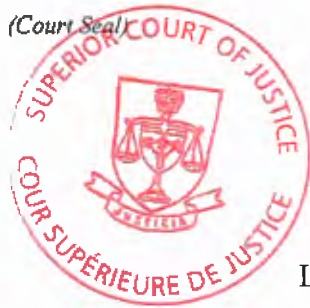
**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE PERELL

)
)
)

THURSDAY, THE 2ND
DAY OF NOVEMBER, 2017

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*, S.O. 1992, c. c.6

ORDER

THIS MOTION, made by the Plaintiff for an Order certifying this proceeding as a class proceeding for settlement purposes as against Superfish Inc. (the “**Settling Defendant**”) and approving the settlement agreement entered into with the Settling Defendant and dismissing this action as against the Settling Defendant, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the materials filed, including the settlement agreement dated October 31, 2017 attached to this Order as Schedule “A” (the “**Settlement Agreement**”), and on hearing the submissions of counsel for the Plaintiff, counsel for the Settling Defendant and counsel for the Non-Settling Defendant;

AND ON BEING ADVISED that the Plaintiff and the Settling Defendant consent to this Order:

1. THIS COURT ORDERS that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. THIS COURT ORDERS that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.
3. THIS COURT ORDERS that the Proceeding is certified as a class proceeding as against the Settling Defendant
4. THIS COURT ORDERS that the “Settlement Class” is certified as follows:

All persons in Canada who purchased directly from Lenovo (Canada) 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 (the “**Affected Models**”)

5. THIS COURT ORDERS that Daniel Bennett is appointed as the representative plaintiff for the Settlement Class.

6. THIS COURT ORDERS that the following issue is common to the Settlement Class:

Did the Settling Defendant invade, without lawful justification, the Settlement Class Members' private affairs or concerns by designing, developing, distributing and/or failing to adequately test Visual Discovery?

7. THIS COURT ORDERS that the approval of the Settlement Agreement and paragraphs 1 and 3-6 of this Order, including the certification of the Proceeding as against the Settling Defendant for settlement purposes and the definition of the Settlement Class and Common Issue, and any reasons given by the Court in connection with the approval of the Settlement Agreement (except any reasons given in connection with paragraphs 17-22) or paragraphs 1 and 3-6 of this Order, are without prejudice to the rights and defences of the Non-Settling Defendant in connection with the ongoing Proceeding.

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

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

10. THIS COURT ORDERS that the Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

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

12. THIS COURT ORDERS that, upon the Effective Date, each Other Action commenced in Ontario by any member of the Settlement Class shall be and is hereby dismissed against the Releasees, without costs and with prejudice.

13. THIS COURT ORDERS that, upon the Effective Date, subject to paragraph 15, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.

14. THIS COURT ORDERS that, upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity or other claim over relief from any Releasee, in respect of any Released Claim except for the continuation of the Proceeding against the Non-Settling Defendant.

15. THIS COURT ORDERS that the use of the terms "Releasors" and "Released Claims" in this Order does not constitute a release of claims by those members of the Settlement Class who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

16. THIS COURT ORDERS that upon the Effective Date, each member of the Settlement Class who is resident in any province or territory where the release of one tortfeasor is a release of

all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

17. THIS COURT ORDERS that, to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceeding, or otherwise, by any Non-Settling Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, or any other Person or party, are barred, prohibited and enjoined in accordance with the terms of section 8 of the Settlement Agreement (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceeding).

18. THIS COURT ORDERS that, if this Court ultimately determines that a claim for contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise is a legally recognized claim:

- (a) the Plaintiff and the Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendant and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the Plaintiff and the Settlement Class Members shall limit their claims against the Non-Settling Defendant and/or any other Person or party that is not a Releasee to include only, and shall only seek to recover from the Non-Settling Defendant and/or

any other Person or party that is not a Releasee, those claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendant and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendant and/or any other Person or party that is not a Releasee, if permitted by law; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Proceeding and shall not be binding on the Releasees in any other proceeding.

19. THIS COURT ORDERS that nothing in this Order is intended to or shall limit, restrict or affect any arguments that the Non-Settling Defendant may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in favour of members of the Settlement Class in the Proceeding or the rights of the Plaintiff and the Settlement Class Members to oppose or resist any such arguments, except as provided for in this Order.

20. THIS COURT ORDERS that the Non-Settling Defendant may, on a motion to this Court determined as if the Settling Defendant remained a party to the Proceeding, and on at least twenty (20) days' notice to Counsel for the Settling Defendant, seek Orders for the following:

- (a) documentary discovery and an affidavit of documents from the Settling Defendant in accordance with the Ontario *Rules of Civil Procedure*;
- (b) oral discovery of a representative of the Settling Defendant, the transcripts of which may be read in at trial;
- (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.

21. THIS COURT ORDERS that the Settling Defendant retains all rights to oppose such motion(s) brought under paragraph 20. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 20. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 20, the Court may make such orders as to costs and other terms as it considers appropriate.

22. THE COURT ORDERS that the Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 20 above on the Settling Defendant by service on Counsel for the Settling Defendant.

23. THIS COURT ORDERS that for purposes of administration and enforcement of the Settlement Agreement and this Order, this court will retain an ongoing supervisory role and the Settling Defendant acknowledges and attorns to the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement and this Order.

24. THIS COURT ORDERS that, except as provided herein, this Order does not affect any claims or causes of action that any members of the Settlement Class has or may have against the Non-Settling Defendant.

25. THIS COURT ORDERS that no Releasee shall have any responsibility or liability whatsoever relating to the administration of the Settlement Agreement, including administration, investment, or distribution of the Trust Account.

26. THI COURT ORDERS that the Settlement Amount shall be held in the Trust Account by Sotos LLP for the benefit of Settlement Class Members and after the Effective Date the Settlement Amount may be used to pay Class Counsel Disbursements incurred for the benefit of the Settlement Class in the continued prosecution of the litigation against the Non-Settling Defendant. This paragraph shall not be interpreted as affecting the rights of the Plaintiff or the Settlement Class to claim such Class Counsel Disbursements in the context of a future costs award in their favour against the Non-Settling Defendant, or the rights of the Non-Settling Defendant to oppose and resist any such claim.

27. THIS COURT ORDERS that in the event that some of the Settlement Amount remains in the Trust Account after payment of Class Counsel Disbursements, Class Counsel Fees and Administrative Expenses, Class Counsel shall seek direction from this Court regarding the distribution of the remaining funds.

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

29. THIS COURT ORDERS that the Proceeding is hereby dismissed as against the Settling Defendant, without costs and with prejudice.

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

NOV 02 2017

PER / PAR:



(Signature of Justice)

SCHEDULE "A"

**CANADIAN SUPERFISH CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of October 31, 2017

Between

DANIEL BENNETT

(the "**Plaintiff**")

and

SUPERFISH INC.

(the "**Settling Defendant**")

**CANADIAN SUPERFISH CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

TABLE OF CONTENTS

RECITALS	1
SECTION 1 - DEFINITIONS.....	3
SECTION 2 - SETTLEMENT APPROVAL	7
2.1 Best Efforts	7
SECTION 3 - SETTLEMENT BENEFITS.....	8
3.1 Payment of Settlement Amount	8
3.2 Taxes and Interest	8
3.3 Intervention in the U.S. Litigation	9
SECTION 4 – COOPERATION	9
4.1 Extent of Cooperation.....	9
4.2 Limits on Use of Documents	12
SECTION 5 – OPTING OUT	13
5.1 Procedure	13
SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT	14
6.1 Right of Termination.....	14
6.2 If Settlement Agreement is Terminated.....	15
6.3 Allocation of Settlement Amount Following Termination.....	17
6.4 Survival of Provisions After Termination.....	17
SECTION 7 - RELEASES AND DISMISSALS	17
7.1 Release of Releasees.....	17
7.2 Release by Releasees	17
7.3 Covenant Not To Sue.....	18
7.4 No Further Claims.....	18
7.5 Dismissal of the Proceeding.....	18
7.6 Dismissal of Other Actions.....	18
7.7 Material Term	19
SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS.....	19
8.1 Ontario Bar Order	19
8.2 Claims Against Other Entities Reserved.....	22
8.3 Material Term	22

SECTION 9 - EFFECT OF SETTLEMENT	22
9.1 No Admission of Liability	22
9.2 Agreement Not Evidence.....	22
9.3 No Further Litigation	23
SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY	23
SECTION 11 - NOTICE TO SETTLEMENT CLASSES	24
11.1 Notices Required.....	24
11.2 Form and Distribution of Notices	24
SECTION 12 - ADMINISTRATION AND IMPLEMENTATION.....	24
12.1 Mechanics of Administration.....	24
12.2 Information and Assistance.....	24
SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST	26
13.1 Distribution Protocol.....	26
13.2 No Responsibility for Administration or Fees	26
SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES.....	26
14.1 Responsibility for Fees, Disbursements and Taxes	26
14.2 Responsibility for Costs of Notices and Translation	27
14.3 Court Approval for Class Counsel Fees and Disbursements.....	27
SECTION 15 - MISCELLANEOUS	27
15.1 Motions for Directions	27
15.2 Releasees Have No Liability for Administration.....	27
15.3 Headings, etc.....	27
15.4 Computation of Time	28
15.5 Ongoing Jurisdiction.....	28
15.6 Governing Law	28
15.7 Entire Agreement	28
15.8 Amendments	29
15.9 Binding Effect.....	29
15.10 Counterparts	29
15.11 Negotiated Agreement	29
15.12 Language.....	29
15.13 Recitals.....	30

15.14	Acknowledgements.....	30
15.15	Authorized Signatures.....	30
15.16	Notice	31
15.17	Date of Execution	31

**CANADIAN SUPERFISH CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Proceeding was commenced by the Plaintiff in Ontario;
- B. WHEREAS the Proceeding alleges that the Releasees violated principles of statutory and common law by agreeing with the Non-Settling Defendant to preload and operate Visual Discovery on certain Affected Models sold to consumers in Canada in 2014 and 2015;
- C. WHEREAS the Settling Defendant and Releasees do not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Proceeding, or otherwise;
- D. WHEREAS the Plaintiff, Class Counsel and the Settling Defendant agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Releasees or evidence of the truth of any of the Plaintiff's allegations against the Releasees, which allegations are expressly denied by the Settling Defendant;
- E. WHEREAS the Settling Defendant is entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against the Releasees by the Plaintiff and the Settlement Class in the Proceeding, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- F. WHEREAS the Settling Defendant does not hereby attorn to the jurisdiction of the Court or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent expressly provided in this Settlement Agreement with respect to the Proceeding;
- G. WHEREAS Counsel for the Settling Defendant and Class Counsel have engaged in arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;
- H. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendant and the Plaintiff have entered into this Settlement Agreement, which embodies all of

the terms and conditions of the settlement between the Settling Defendant and the Plaintiff, both individually and on behalf of the class he seeks to represent, subject to approval of the Court;

I. WHEREAS the Plaintiff and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiff's claim, having regard to the burdens and expense in prosecuting the Proceeding, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiff and the class he seeks to represent;

J. WHEREAS the Parties therefore wish to and hereby finally resolve on a national basis, without admission of liability, the Proceeding as against the Releasees who are named as defendants in the Proceeding;

K. WHEREAS the Parties consent to certification, as against the Settling Defendant, of the Proceeding as a class proceeding and to the Settlement Class and a Common Issue in respect of the Proceeding solely for the purpose of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approval by the Court as provided for in this Settlement Agreement, on the express understanding that such certification shall not derogate from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason;

L. WHEREAS the Plaintiff acknowledges that the Settling Defendant:

- i. is in the process of winding-down and terminating its operations, and may have wound-down and terminated operations by the time and in the event that the litigation proceeds to any associated trial; and
- ii. that as a consequence of winding-down and its terminating operations, that the Settling Defendant may have no current officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, members or managers at the time this action proceeds to trial;

M. WHEREAS the Plaintiff asserts that he is an adequate class representative for the class he seeks to represent and will seek to be appointed representative plaintiff in the Proceeding; and

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceeding be settled and dismissed as to the Settling Defendant only, without costs as to the Plaintiff, the class he seeks to represent, or the Settling Defendant, subject to the approval of the Court, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purposes of this Settlement Agreement only, including the recitals hereto:

(1) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiff, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices, but excluding Class Counsel Fees and Class Counsel Disbursements.

(2) ***Affected Models*** means the following Lenovo laptops:

- 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, Flex 2 15
- MIIX Series: MIIX2-10
- YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11BTM, YOGA2-11HSW

(3) ***Class Counsel*** means the law firm of Sotos LLP.

(4) ***Class Counsel Disbursements*** include the disbursements, Administration Expenses, and applicable taxes incurred by Class Counsel in the prosecution of the Proceeding, as well as any adverse costs awards issued against the Plaintiff in the Proceeding.

(5) ***Class Counsel Fees*** means the fees of Class Counsel, and any applicable taxes or charges thereon, including any amounts payable as a result of the Settlement Agreement by Class Counsel or the Settlement Class Members to any other body or Person.

(6) ***Common Issue*** means: Did the Settling Defendant invade, without lawful justification, the Settlement Class Members' private affairs or concerns by designing, developing, distributing and/or failing to adequately test Visual Discovery?

(7) ***Counsel for the Settling Defendant*** means the law firm of Stikeman Elliott LLP.

(8) ***Court*** means the Ontario Superior Court of Justice.

(9) ***Date of Execution*** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(10) ***Defendants*** mean Lenovo (Canada) Inc. and Superfish Inc., and any Persons added as defendants in the Proceeding in the future. For greater certainty, Defendants includes the Settling Defendant.

(11) ***Distribution Protocol*** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as approved by the Court.

(12) ***Effective Date*** means the date when a Final Order has been received from the Court approving this Settlement Agreement.

(13) ***Excluded Person*** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing, and those Persons who validly and timely opted-out of the Proceeding in accordance with the order of the Court.

(14) ***Final Order*** means the later of a final judgment pronounced by the Court approving this Settlement Agreement in accordance with its terms, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the approval of this Settlement Agreement in accordance with its terms, upon a final disposition of all appeals.

(15) ***Non-Settling Defendant*** means any Defendant that is not a Settling Defendant or that has not entered into a settlement with the Plaintiff in the Proceeding whether or not such settlement agreement is in existence at the Date of Execution, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(16) ***Opt-Out Deadline*** means the date which is sixty (60) days after the date in the notice described in Section 11.1(1) is first published.

(17) ***Other Actions*** means actions or proceedings, excluding the Proceeding, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.

(18) ***Parties*** means the Settling Defendant, the Plaintiff, and, where necessary, the Settlement Class Members.

(19) ***Person*** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives, or assignees.

(20) ***Plaintiff*** means Daniel Bennett.

(21) ***Proceeding*** means the action of *Bennett v. Lenovo (Canada) Inc. et al.*, commenced in the Ontario Superior Court of Justice bearing Court File no. CV-15-00523714-00CP.

(22) ***Proportionate Liability*** means the proportion of any judgment that, had the Settling Defendant not settled, the Court, as appropriate, would have apportioned to the Releasees.

(23) ***Protective Order*** means the orders to be made in the Proceeding described in section 4.2(1).

(24) ***Released Claims*** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages

of any kind (including compensatory, punitive or other damages) whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that any of the Releasors ever had, now have or hereafter can, shall or may have, relating in any way to any conduct related to, arising from, or described in the Proceeding prior to the date hereof on account of, arising out of, resulting from, or related to in any respect the installation and operation of Visual Discovery on the Affected Models or relating to any conduct alleged (or which was previously or could have been alleged) in the Proceeding including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any conduct that occurred prior to the date hereof. However, the Released Claims do not include (1) claims brought (whether before or after the Effective Date) outside of Canada relating to the installation and operation of Visual Discovery on the Affected Models outside of Canada; or (2) claims brought (whether before or after the Effective Date) under laws other than those of Canada relating to the installation and operation of Visual Discovery outside of Canada.

(25) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendant and all of its present and former direct and indirect parents, owners, subsidiaries, divisions, affiliates, associates (as defined in the *Canada Business Corporations Act*, RSC 1985, c C-44), partners, insurers, and all other Persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, members, managers and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendant.

(26) **Releasors** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(27) **Settlement Agreement** means this agreement, including the recitals.

(28) **Settlement Amount** means CDN\$151,547.00.

- (29) **Settlement Class** means all persons in Canada who purchased directly from Lenovo (Canada) one or more of the Affected Models.
- (30) **Settlement Class Member** means a member of a Settlement Class.
- (31) **Settling Defendant** means Superfish Inc.
- (32) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of Sotos LLP, for the benefit of the Settlement Class Members or the Settling Defendant, as provided for in this Settlement Agreement.
- (33) **U.S. Counsel** means the law firm of Fenwick & West LLP.
- (34) **U.S. Litigation** means the consolidated class action proceeding, in which the Settling Defendant is named as a party, currently pending in the United States District Court for the District of Northern California, San Jose Division, under the caption *In re Lenovo Adware Litigation*, Case No. 5:15-md-02624-RMW, and includes all class actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all class actions pending such transfer, all class actions that may be transferred in the future and all class proceedings alleging the installation and operation of Visual Discovery, to the extent that the Settling Defendant is named as a party.
- (35) **U.S. Settlement Agreement** includes any settlement reached with the Settling Defendant in the U.S. Litigation in respect the installation and operation of Visual Discovery.

SECTION 2 - SETTLEMENT APPROVAL

2.1 Best Efforts

- (1) The Parties shall use their best efforts to implement this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceeding as against the Settling Defendant.
- (2) This Settlement Agreement shall only become final on the Effective Date.

SECTION 3- SETTLEMENT BENEFITS

3.1 Payment of Settlement Amount

- (1) Within thirty (30) days of the Date of Execution, the Settling Defendant shall pay the Settlement Amount to Sotos LLP, for deposit into the Trust Account.
- (2) Payment of the Settlement Amount shall be made by wire transfer. Prior to the Settlement Amount becoming due, Sotos LLP will provide, in writing, the following information necessary to complete the wire transfer: name of bank, address of bank, ABA number, SWIFT number, name of beneficiary, beneficiary's bank account number, beneficiary's address, and bank contact details.
- (3) The Settlement Amount and other consideration to be provided in accordance with the terms of this Settlement Agreement shall be provided in full satisfaction of the Released Claims against the Releasees.
- (4) The Settlement Amount shall be all-inclusive of all amounts, including interest and costs.
- (5) The Releasees shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (6) Sotos LLP shall maintain the Trust Account as provided for in this Settlement Agreement.
- (7) Sotos LLP shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Court obtained after notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount in the Trust Account shall accrue to the benefit of the Settlement Class and shall become and remain part of the Trust Account.
- (2) Subject to Section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall

be paid from the Trust Account. Sotos LLP shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust 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 Settlement Amount shall be paid from the Trust Account.

(3) The Settling Defendant shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned on the Settlement Amount or pay any taxes on the monies in the Trust Account, unless this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Settling Defendant who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by Sotos LLP.

3.3 Intervention in the U.S. Litigation

(1) The Settling Defendant and other Releasees shall not oppose any application that may be brought by or on behalf of the Plaintiff to intervene in the U.S. Litigation in order to gain access to discovery documents and other documents and information subject to a protective order that are relevant to the Proceeding and is not otherwise inconsistent with the terms of this Settlement Agreement, including Section 4.1(7). However it is understood and agreed that neither the Settling Defendant nor the other Releasees have any obligation to bring or otherwise participate in such an application.

SECTION 4 – COOPERATION

4.1 Extent of Cooperation

(1) Within thirty (30) days after the Effective Date, or at a time mutually agreed upon by the Parties, subject to the other provisions of this Settlement Agreement, the Settling Defendant will execute an irrevocable direction to U.S. Counsel directing them, once this Court issues the Canadian Protective Order on the terms contemplated in section 4.2(2), to:

- (a) provide electronic copies of any documents (as defined in Rule 30.01 of the *Ontario Rules of Civil Procedure*) produced by the Settling Defendant in the U.S. Litigation, including any documents produced by the Settling Defendant pursuant

to the U.S. Settlement Agreement, and any pre-existing translations of those documents; and provide to the extent relevant to the allegations in the Proceeding copies of any additional documents produced at any future date by the Settling Defendant in the U.S. Litigation, within thirty (30) days of said production in the U.S. Litigation (in the format produced therein), or, if any such documents have already produced, within thirty (30) days of the Canadian Protective Order being issued; and

- (b) provide electronic copies of transcripts of all depositions of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken in the U.S. Litigation; and to the extent relevant to the allegations in the Proceeding, provide electronic copies of any additional depositions of current or former employees, officers or directors of the Releasees, including all exhibits thereto, taken at any future date in the U.S. Litigation within thirty (30) days of said transcripts becoming available, or, if any such transcripts are already available, within thirty (30) days of the Canadian Protective Order being issued.

(2) The Settling Defendant shall not object to the Plaintiff's participation in any evidentiary proffers and/or interviews of the Settling Defendant's representatives that occur in the U.S. Litigation pursuant to the U.S. Settlement Agreement. The Settling Defendant shall, as part of the irrevocable direction referenced in section 4.1(1), direct U.S. Counsel to, where possible, provide notice to Class Counsel thirty (30) days before the interview of representatives of the Settling Defendant.

(3) Subject to the rules of evidence, any court order with respect to confidentiality and the other provisions of this Settlement Agreement, the Settling Defendant agrees to cooperate with the Plaintiff, by (a) providing assistance reasonably necessary to establish the authenticity and admissibility of documents, (b) responding to requests for assistance in understanding the facts at issue in the Proceeding, and (c) producing at trial in person or by affidavit, whichever is legally necessary and reasonably possible, representatives to testify as reasonably requested by Class Counsel.

(4) Nothing in this Settlement Agreement shall be construed to require the Settling Defendant to perform any act, including the transmittal or disclosure of any information, which would violate the law of this or any jurisdiction.

(5) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Settling Defendant or any representative or employee of the Settling Defendant to disclose or produce any documents or information prepared by or for Counsel for the Settling Defendant, or that is not within the possession, custody or control of the Settling Defendant, or to disclose or produce any documents or information in breach of any order, regulatory directive, rule or law of this or any jurisdiction, or subject to solicitor-client privilege, litigation privilege, joint defence privilege or any other privilege, doctrine, or law, or to disclose or produce any information or documents they obtained on a privileged or co-operative basis from any party to any action or proceeding who is not a Releasee. The Settling Defendant is not required to create a privilege log. However, if a relevant privilege log or other document containing identifying information regarding the withheld documents exists, the Settling Defendant shall, as part of the irrevocable direction referenced in 4.1(1), direct U.S. Counsel to provide Class Counsel with a copy of this document.

(6) If any documents protected by any privilege and/or any privacy law or other rule or law of this or any applicable jurisdiction are accidentally or inadvertently disclosed or produced, such documents shall be promptly returned to U.S. Counsel for the Settling Defendant and the documents and the information contained therein shall not be disclosed or used directly or indirectly, except with the express written permission of the Settling Defendant, and the production of such documents shall in no way be construed to have waived in any manner any privilege, doctrine, law, or protection attached to such documents.

(7) The Settling Defendant's obligation to cooperate as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligation to cooperate shall cease at the date of final judgment in the Proceeding against all Defendants.

(8) Subject to Sections 4.1(9) and 4.1(10), the provisions set forth in this Section 4.1 are the exclusive means by which the Plaintiff, Class Counsel and Settlement Class Members may

obtain discovery or information or documents from the Releasees or their current or former officers, directors or employees. The Plaintiff, Class Counsel and Settlement Class Members agree that they shall not pursue any other means of discovery against, or seek to compel the evidence of, the Releasees or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(9) The Plaintiff may exercise any rights he has to seek to obtain discovery in the Proceeding as against an officer, director and/or employee of the Settling Defendant put forward to provide testimony at trial or otherwise pursuant to Section 4.1(3), if the current or former officer, director or employee of the Settling Defendant fails to cooperate in accordance with that Section and the provisions of this Settlement Agreement.

(10) In the event that the Settling Defendant materially breaches this Section 4.1, the Plaintiff may move before the Court to enforce the terms of this Settlement Agreement.

(11) A material factor influencing the Settling Defendant's decision to execute this Settlement Agreement is its desire to limit the burden and expense of this litigation. Accordingly, Class Counsel agree to exercise good faith in seeking cooperation from the Settling Defendant, agree not to seek information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burdens or expense on the Settling Defendant.

(12) The scope of the Settling Defendant's cooperation under this Settlement Agreement shall be limited to the allegations asserted in the Proceeding as presently filed.

(13) The Settling Defendant makes no representation regarding and shall bear no liability with respect to the accuracy of any of the documents or information described in this Section 4.1, or that they have, can or will produce a complete set of any of the documents or information described in this Section 4.1, and the failure to do so shall not constitute a breach or violation of this Settlement Agreement.

4.2 Limits on Use of Documents

(1) It is understood and agreed that all documents and information made available or provided by the Settling Defendant to the Plaintiff and Class Counsel under this Settlement

Agreement shall be used only in connection with the prosecution of the claims in the Proceedings, and shall not be used directly or indirectly for any other purpose, except to the extent that the documents or information are publicly available. The Plaintiff and Class Counsel agree they will not disclose the documents and information provided by the Settling Defendant beyond what is reasonably necessary for the prosecution of the Proceeding or as otherwise required by law, except to the extent that the documents or information are publicly available. Subject to the foregoing, Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

(2) Shortly after the motion for settlement approval, the Settling Defendant may move in the Proceeding to obtain a Protective Order which will prohibit disclosure of the Settling Defendant's confidential and highly confidential information to substantially the same degree as the Stipulated Protective Order for Litigation Involving Patents, Highly Sensitive Confidential Information and/or Trade Secrets made in the U.S. Litigation on October 1, 2015 (the "**Canadian Protective Order**"). The Plaintiff and Class Counsel shall consent to any such motion.

SECTION 5 – OPTING OUT

5.1 Procedure

(1) Persons seeking to opt-out of the Proceeding must do so by sending 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 an address to be identified in the notice described in Section 11.1(1).

(2) Any potential Settlement Class Member who validly opts-out of the Proceeding shall not be able to participate in the Proceeding and no further right to opt-out of the Proceeding will be provided.

(3) An election to opt-out sent by mail or courier will only be valid if it is postmarked on or before the Opt-Out Deadline to the designated address in the notice described in Section 11.1(1). Where the postmark is not visible or legible, the election to opt-out shall be deemed to have been postmarked four (4) business days prior to the date that it is received by Class Counsel.

(4) The written election to opt-out must contain the following information in order to be valid:

- (a) the Person's full name, current 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;
- (c) a statement to the effect that the Person wishes to be excluded from the Proceedings; and
- (d) the reason(s) for opting out.

(5) Within thirty (30) days of the Opt-Out Deadline, Class Counsel shall provide to the Settling Defendant a report containing the names of each Person who has validly and timely opted out of the Proceeding, the reasons for the opt-out, and a summary of the information delivered by such Persons pursuant to this Section 5.1.

(6) With respect to any potential Settlement Class Member who validly opts-out from the Proceeding, the Settling Defendant reserves all of its legal rights and defences.

(7) The Plaintiff through Class Counsel expressly waives his right to opt-out of the Proceeding.

SECTION 6 - TERMINATION OF SETTLEMENT AGREEMENT

6.1 Right of Termination

(1) In the event that:

- (a) the Court declines to certify the Proceeding for the purposes of the Settlement Agreement;
- (b) the Court declines to dismiss or declare settled out of court the Proceeding against the Settling Defendant;

- (c) the Court declines to approve this Settlement Agreement or any material part hereof;
- (d) the Court approves this Settlement Agreement in a materially modified form;
- (e) the Court issues a settlement approval order that is materially inconsistent with the terms of the Settlement Agreement; or
- (f) any order approving this Settlement Agreement made by the Court does not become a Final Order.

the Plaintiff and the Settling Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice pursuant to Section 15.16, within thirty (30) days following an event described above.

(2) Except as provided for in Section 6.4, if the Settlement Agreement is terminated, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the terminating Parties, and shall not be used as evidence or otherwise in any litigation.

(3) Any order, ruling or determination made by any Court with respect to:

- (a) Class Counsel Fees or Class Counsel Disbursements;
- (b) the opt-out process; or
- (c) the Distribution Protocol

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason:

- (a) no motion to certify the Proceeding as a class proceeding on the basis of this Settlement Agreement, or to approve this Settlement Agreement, which has not been decided, shall proceed;
- (b) any order certifying the Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification of the Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties or Releasees may later take on any issue in the Proceeding or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendant under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendant and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendant to any other Person, shall recover and destroy such documents or information. Class Counsel shall provide Counsel to the Settling Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this Section 6.2 shall be construed to require Class Counsel to destroy any of their work product (unless that work product is a summation, synopsis, précis or equivalent of the documents or other materials provided by the Settling Defendant, or information derived from such documents or other materials). However, any documents or information provided by the Settling Defendant, or received from the Settling Defendant in connection with this Settlement Agreement, may not be disclosed to any Person in any manner or used, directly or indirectly, by Class Counsel or any other Person in any way for any reason, without the express prior written permission of the Settling Defendant. Class Counsel shall take appropriate steps and precautions to ensure and maintain

the confidentiality of such documents, information and any work product of Class Counsel derived from such documents or information.

6.3 Allocation of Settlement Amount Following Termination

(1) If the Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, Sotos LLP shall, within thirty (30) days of the written notice pursuant to Section 6.1(1), return to the Settling Defendant the amount they have paid to Sotos LLP, plus all accrued interest thereon and less any costs incurred with respect to the notices required by Section 11.1(1), and any costs of translation required by Section 15.12.

6.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.2(3), 6.1(2), 6.2, 6.3, 9.1, 9.2, 11.1(2), 12.2(2), 12.2(3), 14.1 and 15.2 and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of Sections 3.2(3), 6.1(2), 6.2, 6.3, 9.1, 9.2, 11.1(2), 12.2(2), 12.2(3), 14.1 and 15.2 within the meaning of this Settlement Agreement, but for no other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

SECTION 7 - RELEASES AND DISMISSALS

7.1 Release of Releasees

(1) Upon the Effective Date, subject to Section 7.3, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release and forever discharge the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

7.2 Release by Releasees

(1) 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.

7.3 Covenant Not To Sue

(1) Upon the Effective Date, and notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, participate in or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee, or any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasee, whether pursuant to the *Negligence Act*, R.S.O. 1990, c. N. 1 or other legislation or at common law or equity, in respect of any Released Claim, except for the continuation of the Proceeding against the Non-Settling Defendant that is not a Releasee or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against any Non-Settling Defendant that is not a Releasee. For greater certainty and without limiting the generality of the foregoing, the Releasors shall not assert or pursue a Released Claim, against any Releasee under the laws of any foreign jurisdiction.

7.5 Dismissal of the Proceeding

(1) Upon the Effective Date, the Proceeding shall be dismissed with prejudice and without costs as against the Settling Defendant.

7.6 Dismissal of Other Actions

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

(2) Upon the Effective Date, all Other Actions commenced by any Settlement Class Member shall be dismissed as against the Releasees, without costs, with prejudice and without reservation.

7.7 Material Term

(1) The releases, covenants, dismissals, and granting of consent contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases, covenants, dismissals, and granting of consent contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS

8.1 Ontario Bar Order

(1) Class Counsel shall obtain a bar order from the Ontario Court providing for the following:

- (a) to the extent such claims are recognized at law, all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, or otherwise, by any Non-Settling Defendant or any other Person or party against a Releasee, or by a Releasee against any Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a Person who has validly opted out of the Proceedings);
- (b) if the Court ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - (i) the Plaintiff and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendant and/or any other Person or party that is not a Releasee that portion of any damages (including punitive damages, if any), restitutionary award,

disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

- (ii) the Plaintiff and Settlement Class Members shall limit their claims against the Non-Settling Defendant and/or any other Person or party that is not a Releasee to include, and shall be entitled to recover from the Non-Settling Defendant and/or any other Person or party that is not a Releasee, only such claims for damages (including punitive damages, if any), restitutionary award, disgorgement of profits, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendant and/or any other Person or party that is not a Releasee to the Plaintiff and Settlement Class Members, if any, and, for greater certainty, the Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendant and/or any other Person or party that is not a Releasee, to the extent provided by law; and
 - (iii) the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceeding, whether or not the Releasees remain in the Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceeding;
- (c) after the Proceeding against the Non-Settling Defendant has been certified and all appeals or times to appeal have been exhausted, and on at least twenty (20) days' notice to Counsel for the Settling Defendant, the Non-Settling Defendant may, on a motion to the Court, seek an Order for the following, which order shall be determined as if the Settling Defendant remained a party to the Proceedings:

- (i) documentary discovery and an affidavit of documents from the Settling Defendant in accordance with that Court's rules of procedure;
 - (ii) oral discovery of a representative of the Settling Defendant, which transcripts may be read in at trial;
 - (iii) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or
 - (iv) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendant.
- (d) the Settling Defendant retains all rights to oppose any motion brought pursuant to Section 8.1(1)(c), including any such motion brought at trial seeking an order requiring the Settling Defendant to produce a representative to testify at trial. Moreover, nothing herein restricts the Settling Defendant from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the Court may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to the Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendant to the Plaintiff and Class Counsel within ten (10) days of such discovery being provided to the Non-Settling Defendant;
- (g) the Court will retain an ongoing supervisory role over the discovery process and the Settling Defendant will attorn to the jurisdiction of the Court for these purposes; and

- (h) the Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on the Settling Defendant by service on Counsel for the Settling Defendant.

8.2 Claims Against Other Entities Reserved

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

8.3 Material Term

- (1) The Parties acknowledge that the bar orders and reservations of rights contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the bar orders and reservations of rights contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

SECTION 9 - EFFECT OF SETTLEMENT

9.1 No Admission of Liability

- (1) The Plaintiff and the Releasees expressly reserve all of their rights if the Settlement Agreement is not approved, is terminated, or otherwise fails to take effect for any reason. Further, whether or not the Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations contained in the Proceeding, or any other pleading filed by the Plaintiff.

9.2 Agreement Not Evidence

- (1) The Parties agree that, whether or not it is finally approved, is terminated, or otherwise fails to take effect for any reason, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to,

offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as necessary in any insurance-related proceeding, or as otherwise required by law.

9.3 No Further Litigation

(1) 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 the Settling Defendant which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceeding against the Non-Settling Defendant or, if the Proceeding is not certified, the continuation of the claims asserted in the Proceeding on an individual basis or otherwise against the Non-Settling Defendant. Moreover, these Persons may not divulge to anyone for any purpose any information obtained in the course of the Proceeding or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court, and subject to Section 4.2 of this Settlement Agreement.

SECTION 10 - CERTIFICATION FOR SETTLEMENT ONLY

(1) The Parties agree that the Proceeding shall be certified as a class proceeding as against the Settling Defendant solely for purposes of settlement of the Proceeding and the approval of this Settlement Agreement by the Court.

(2) The Plaintiff agrees that, in the motion for certification of the Proceeding as a class proceeding for settlement purposes and for the approval of this Settlement Agreement, the only common issue that he will seek to define is the Common Issue and the only class that he will assert is the Settlement Class.

(3) The Parties agree that the certification of the Proceeding as against the Settling Defendant for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiff as against the Non-Settling Defendant, except as expressly set out in this Settlement Agreement.

SECTION 11 - NOTICE TO SETTLEMENT CLASSES

11.1 Notices Required

- (1) The proposed Settlement Class shall be given a single notice of (i) the certification of the Proceeding as a class proceeding as against the Defendants; and (ii) approval of the Settlement Agreement.
- (2) If this Settlement Agreement is not approved, is terminated, or otherwise fails to take effect, the proposed Settlement Class shall be given notice of such event.

11.2 Form and Distribution of Notices

- (1) The notices shall be in a form agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Court.
- (2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Court.

SECTION 12 - ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

- (1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Court on motions brought by Class Counsel.

12.2 Information and Assistance

- (1) The Settling Defendant shall, as part of the irrevocable direction referenced in 4.1(1), direct U.S. Counsel to provide Class Counsel with a list of the names and addresses of Persons in Canada who purchased one or more of the Affected Models directly from Lenovo (Canada), to the extent such information is reasonably available, constitutes part of the proffer discussed in greater detail in section 4.1 , and to the extent not previously provided.

- (2) Class Counsel may use the information provided under Section 12.2(1):
- (a) to facilitate the dissemination of the notices required in Section 11.1;
 - (b) to advise Persons in Canada who purchased one or more of the Affected Models directly from Lenovo (Canada) of any subsequent settlement agreement reached in the Proceeding, any related approval hearings, and any other major steps in the Proceeding;
 - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement(s) achieved or court awards issued in the Proceeding; and
 - (d) as otherwise authorized in Section 4.
- (3) All information provided by the Settling Defendant pursuant to Section 12.2(1) shall be dealt with in accordance with Section 4, except that Class Counsel may disclose all information provided by the Settling Defendant pursuant to Section 12.2(1) to any Court-appointed notice provider and/or any Court-appointed claims administrator, to the extent reasonably necessary for the purposes enumerated in Section 12.2(2). Any Court-appointed notice provider and/or any Court-appointed claims administrator shall be bound by the same confidentiality obligations set out in Section 4. If this Settlement Agreement is terminated, all information provided by the Settling Defendant pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.
- (4) The Settling Defendant will make itself reasonably available to respond to questions respecting the information provided pursuant to Section 12.2(1) from Class Counsel or any Court-appointed notice provider and/or Court-appointed claims administrator. The Settling Defendant's obligation to make itself reasonably available to respond to questions as particularized in this Section shall not be affected by the release provisions contained in Section 7 of this Settlement Agreement. Unless this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason, the Settling Defendant's obligation to cooperate

pursuant to this Section 12.2 shall cease when the Proceeding is resolved as against all Defendants and all settlement funds or court awards have been distributed.

(5) The Settling Defendant shall bear no liability with respect to the completeness or accuracy of the information provided pursuant to this Section 12.2.

SECTION 13 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

13.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, but on notice to the Settling Defendant, Class Counsel will bring a motion seeking an order from the Court approving the Distribution Protocol. The motion can be brought before the Effective Date, but the order approving the Distribution Protocol shall be conditional on the Effective Date occurring.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

13.2 No Responsibility for Administration or Fees

(1) The Settling Defendant shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

SECTION 14 – CLASS COUNSEL FEES, DISBURSEMENTS AND ADMINISTRATION EXPENSES

14.1 Responsibility for Fees, Disbursements and Taxes

(1) The Settling Defendant shall not be liable for any fees, disbursements or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Settlement Class Members, or any lien of any Person on any payment to any Settlement Class Member from the Settlement Amount.

14.2 Responsibility for Costs of Notices and Translation

(1) Class Counsel shall pay the costs of the notices required by Section 11 and any costs of translation required by Section 15.12 from the Trust Account, as they become due. The Releasees shall not have any responsibility for the costs of the notices or translation.

14.3 Court Approval for Class Counsel Fees and Disbursements

(1) Class Counsel may seek the Court's approval to pay Class Counsel Disbursements and Class Counsel Fees contemporaneous with seeking approval of this Settlement Agreement. Class Counsel Disbursements and Class Counsel Fees shall be reimbursed and paid solely out of the Trust Account after the Effective Date. Except as provided herein, Administration Expenses may only be paid out of the Trust Account after the Effective Date. No other Class Counsel Disbursements or Class Counsel Fees shall be paid from the Trust Account prior to the Effective Date.

SECTION 15- MISCELLANEOUS

15.1 Motions for Directions

(1) Class Counsel or the Settling Defendant may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

15.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and

- (b) the terms “this Settlement Agreement,” “hereof,” “hereunder,” “herein,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

15.4 Computation of Time

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

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

15.5 Ongoing Jurisdiction

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement, and the Plaintiff, Settlement Class Members and Settling Defendant attorn to the jurisdiction of the Court for such purposes.

15.6 Governing Law

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

15.7 Entire Agreement

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

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

15.8 Amendments

(1) This Settlement 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.

15.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class Members, the Settling Defendant, the Releasers, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made by the Settling Defendant shall be binding upon all of the Releasees.

15.10 Counterparts

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

15.11 Negotiated Agreement

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

15.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

Nevertheless, if required to by the Court, Class Counsel and/or a translation firm selected by Class Counsel shall prepare a French translation of the Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

15.13 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.14 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

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

15.15 Authorized Signatures

(1) 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 on behalf of the Parties identified above their respective signatures and their law firms.

15.16 Notice

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

For the Plaintiff and for Class Counsel in the Proceeding:

David Sterns, Adrienne Boudreau and Sabrina Callaway
SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, ON M5G 1Z8
Tel: 416.977.0007
Fax: 416.977.0717
Email: dsterns@sotosllp.com
aboudreau@sotosllp.com
scallaway@sotosllp.com

For the Settling Defendant:

Patrick O'Kelly
STIKEMAN ELLIOT LLP
Barristers and Solicitors
199 Bay Street
5300 Commerce Court West
Toronto ON M5L 1B9
Tel: 416.869.5500
Fax: 416.947.0866
Email: pokelly@stikeman.com

15.17 Date of Execution

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

DANIEL BENNETT, on his own behalf and on behalf of the Settlement Class, by his counsel

Name of Authorized Signatory:

Sabrina Callaway

Signature of Authorized Signatory:


Sotos LLP

SUPERFISH INC.

Name of Authorized Signatory:

Andreas Stavropoulos

Signature of Authorized Signatory:

Superfish Inc.



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

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

Adrienne Boudreau (LSUC # 57348D)
Sabrina Callaway (LSUC # 65387O)

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

Lawyers for the Plaintiff