

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE BELOBABA

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FRIDAY, THE 27TH  
DAY OF MARCH, 2020

B E T W E E N:

*(Court Seal)*

**DANIEL BENNETT**

Plaintiff

and

**LENOVO (CANADA) INC. and SUPERFISH INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
(Distribution Protocol Approval)**

**THIS MOTION**, made by the Plaintiff for an Order approving the Distribution Protocol was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, without counsel participating by remote conference.

**ON READING** the materials filed, including the protocol for the distribution of settlement funds attached to this Order as Schedule “A” (the “Distribution Protocol”), and on hearing the submissions of Class Counsel, the Defendants taking no position; and

**ON BEING ADVISED** that Trilogy Class Action Services (“Trilogy”) consents to being appointed as the Claims Administrator and agrees to be bound by this Order, including the terms of the Distribution Protocol:

1. **THIS COURT ORDERS** that, for the purposes of this Order, the definitions set out in the Distribution Protocol apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Distribution Protocol, this Order shall prevail.
3. **THIS COURT ORDERS** that the Distribution Protocol is approved.
4. **THIS COURT ORDERS** that Trilogy be appointed as Claims Administrator for the purposes of administering the Distribution Protocol.
5. **THIS COURT ORDERS** that the costs of the Administration, including the reasonable fees and disbursements of the Claims Administrator associated with the Administration, shall be remunerated from the Global Settlement Amount without approval of the Court.
6. **THIS COURT ORDERS** that the Distribution Protocol shall govern the administration of the Settlement Agreements.
7. **THIS COURT ORDERS** that the Global Compensation Fund be distributed by the Claims Administrator in accordance with the Distribution Protocol.
8. **THIS COURT ORDERS** that the proposed Notification Email be approved substantially in the form attached to this Order as Schedule “B”.

9. **THIS COURT ORDERS** that the method for disseminating the Notification Email be approved in the form set out at paragraph 6 of the Distribution Protocol.

10. **THIS COURT ORDERS** that all information received from Class Members, collected, used, and retained by the Claims Administrator for the purposes of administering the Distribution Protocol is protected under the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5, and the applicable provisions in any applicable provincial privacy legislation, including *Personal Information Protection Act*, SBC 2003, c63; *Personal Information Protection Act*, SA 2003, c P-6.5; and *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1. The information provided by Class Members is strictly private and confidential and will not be disclosed without the express written consent of the relevant Class Member; except in accordance with the Settlement Agreements, orders of the Court and/or the Distribution Protocol.

11. **THIS COURT ORDERS** that the approval of the Distribution Protocol is conditional on the receipt of a Final Order, as the term is defined in the Lenovo Agreement, approving the Lenovo Agreement.

12. **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***

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(Signature of Judge)

**SCHEDULE "A"**

**DISTRIBUTION PROTOCOL**

**IN THE MATTER OF THE CANADIAN LENOVO/SUPERFISH CLASS  
ACTION**

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## PART I - DEFINITIONS

1. For the purpose of this Distribution Protocol, the following definitions will apply:

- (a) “**Account**” means an interest-bearing trust account under the control of Class Counsel or the Claims Administrator, once appointed, at a Schedule 1 chartered Canadian bank.
- (b) “**Administration**” has the meaning set out in paragraph 2 of this Distribution Protocol.
- (c) “**Administration Form**” means the form developed for the administration process that a Class Member must complete and submit by the Filing Date.
- (a) “**Claims Administrator**” means the entity appointed by the Court to administer the Settlement Agreements and the Distribution Protocol in accordance with the terms of the Distribution Protocol as approved by the Court, and any employees of such firm.
- (b) “**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**”).

- (d) “**Class Action**” means the action commenced by the Plaintiff 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.
- (e) “**Class Counsel**” means counsel for the Class in the Class Action, Sotos LLP.
- (f) “**Class Member**” means a member of the Class excluding an Opt-Out Member.
- (g) “**Costs of Administration**” means all costs associated with the administration of the Settlement Agreements, including but not limited to the costs of giving notice, including notice of the Settlement Agreements and the claims process, collecting and reporting on the Opt-Outs, distributing the Global Compensation Fund and otherwise administering the Settlement Agreements.
- (h) “**Court**” means the Ontario Superior Court of Justice.
- (i) “**Customer Information**” means the contact information 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.
- (j) “**Distribution Protocol**” means this plan for distributing the Global Compensation Fund.
- (k) “**Filing Date**” means the date by which Administration Forms must be electronically submitted in order for Class Members to be considered for settlement benefits under the Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Class Members of the administration process.
- (l) “**Global Compensation Fund**” means the amount remaining to be allocated to the Class Members in accordance with this Distribution Protocol after payment from the Global Settlement Amount:

- (i) to Class Counsel, such amount as is approved by the Court in respect of Class Counsel Fees; and
- (ii) to the Claims Administrator, such amount as required to cover the Costs of Administration.
  
- (m) “**Global Settlement Amount**” means \$851,547.
- (n) “**Lenovo**” means the defendant Lenovo (Canada) Inc.
- (o) “**Lenovo Agreement**” means the settlement agreement entered into by the Plaintiff and Lenovo dated October 2, 2019, as approved by the Court.
- (p) “**Notification Email**” has the meaning set out in paragraph 6(b) of this Distribution Protocol.
- (q) “**Opt-Out**” or “**Opt-Out Member**” or “**Opt-Outs**” means a person or persons who validly and timely opted out of the Class Action.
- (r) “**Plaintiff**” means Daniel Bennett.
- (s) “**Settlement Agreements**” means the Lenovo Agreement and the Superfish Agreement, collectively.
- (t) “**Superfish**” means the defendant Superfish Inc.
- (u) “**Superfish Agreement**” means the settlement agreement entered into by the Plaintiff and Superfish dated October 31, 2017.

## **PART II - GENERAL PRINCIPLES OF THE ADMINISTRATION**

2. The Distribution Protocol is intended to govern the administration process to distribute the Global Compensation Fund recovered in the Class Action pursuant to the Settlement Agreements as effected by the Claims Administrator or Class Counsel, as the case may be (the “**Administration**”).

3. The Administration shall:
  - (a) implement and conform to the Settlement Agreements, orders of the Court and this Distribution Protocol;
  - (b) employ secure, paperless, web-based systems with electronic registration and record-keeping; and
  - (c) rely exclusively on Customer Information and Administration Forms completed by Class Members.

### **PART III - DISTRIBUTION OF THE GLOBAL COMPENSATION FUND TO THE CLASS**

4. The Global Compensation Fund will be distributed evenly among all Class Members who complete and submit an Administration Form before the Filing Date.
5. A Class Member's total recovery from the Global Compensation Fund will be capped at \$250 per Affected Model purchased.

### **PART IV - THE ADMINISTRATION PROCESS**

6. Generally, the administration process will be as follows:

- (a) **Step 1: Creation of Claims Portal**

The Claims Administrator will create an information website and online claims portal that Class Members can access in order to file an Administration Form. Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete the Administration Form.

- (b) **Step 2: Notification Emails and Targeted Social Media Campaign**

Class Counsel will prepare an email to be sent to Class Members using their last known email addresses based on the Customer Information describing: (i) the Class Member's membership in the Class; (ii) the approval of the Lenovo Agreement and



the Superfish Agreement by the Court; (iii) the distribution of the Global Compensation Fund; (iv) the process to electronically file an Administration Form verifying their identity, email address and mailing address; and (v) the Filing Deadline for the Administration Form (the “**Notification Email**”).

Class Counsel will prepare Facebook and Instagram notices based on the Notification Email to be targeted only at Class Members using their last known email addresses based on the Customer Information. For greater certainty, such notices will not be targeted at any non-Class Members.

Class Counsel will also publish details from the Notification Email to its website and Facebook page.

(c) **Step 3: Calculation of Payments to Each Class Member**

The Claims Administrator will tally the total number of Class Members who have completed the Administration Form before the Filing Deadline and allocate an equal share of the Global Compensation Fund among each of these Class Members.

(d) **Step 4: Distribution to the Class**

The Claims Administrator will distribute Class Members’ share of the Global Compensation Fund via electronic transfer or cheque, as determined by the Claims Administrator, to Class Members’ email address or mailing address as identified on the Administration Form.

(e) **Step 5: Distribution of Residual by *Cy Près***

Within six months from the commencement of the distribution to the Class, the Claims Administrator will calculate the balance remaining in the Global Compensation Fund due to uncashed electronic transfers/cheques, residual interest, or otherwise. Such monies shall be distributed by *cy près* to the Canadian Internet Policy and Public Interest Clinic (“**CIPPIC**”).

(f) **Step 6: Report**

The Claims Administrator will provide regular reports to Class Counsel and Lenovo regarding the administration. The Claims Administrator will provide any reports requested by the Court.

7. Class Counsel will use all reasonable efforts to distribute funds to Class Members. However, in the event of a low take-up rate and correspondingly high payout per Class Member, Class Counsel, in their discretion may make a *cy-près* payment to CIPPIC in an amount not exceeding \$20,000 without further order of the Court.

8. Class Counsel and the Claims Administrator will agree to extend the Filing Deadline and/or adjust the administration process if, in their opinion, doing so will further the fair and efficient administration of the Global Compensation Fund and it is in the best interests of the Class Members to do so.

**PART V - CY-PRÈS PAYMENT**

9. To be eligible to receive the monies under this Distribution Protocol, CIPPIC must:

- (a) Use the monies for the purposes outlined in its proposal submitted to Class Counsel and approved by the Court; and
- (b) Report to the Claims Administrator on an annual basis until all funds are exhausted on how the monies have been used.

10. Subject to the consent of Class Counsel, all funds distributed to CIPPIC by *cy prè*s payment shall be used up within two years of receipt.

**PART VI - CONFIDENTIALITY**

11. All information received from Lenovo or the Class Members is collected, used, and retained by the Claims Administrator and/or Class Counsel pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 for the purposes of administering their claims.

## SCHEDULE "B"

**Dear class member,**

You are receiving this email because you have been identified as a class member in a class action based on your purchase of a laptop directly from Lenovo (Canada) Inc. ("Lenovo") that was preloaded with Visual Discovery software created by Superfish Inc. ("Superfish"). Following the resolution of the class action as detailed below, you are eligible to make a claim for payment from the settlement funds. **The deadline to make a claim is [CLAIMS DEADLINE].**

### *Settlements with Lenovo and Superfish*

You likely received an earlier email from us on February 10, 2020 containing a notice detailing the nature of the class action and the settlements reached with both Lenovo and Superfish, and the proposed distribution protocol. For reference, a copy of that earlier notice is available [here](#).

The Superfish settlement agreement was previously approved on November 2, 2017. The Lenovo settlement agreement was approved on March 27, 2020.

### *Distribution of the Settlement Funds*

Pursuant to these settlements agreements, Lenovo and Superfish each agreed to pay certain amounts for the benefit of class members like yourself. With interest, but less court-approved legal fees and deductions, there will be approximately \$570,000 in the Global Compensation Fund to be distributed amongst class members.

On March 27, 2020, the Court approved a protocol for distributing the Global Compensation Fund. A copy of the distribution protocol is available at [X – website to be created by Trilogy].

Subject to further order of the Court, the Global Compensation Fund will be distributed proportionally amongst all class members who complete a simple administration form. There is no need to provide any proof of purchase. All claims will be capped at \$250.

### *Applying to Receive a Payment*

If you wish to apply for a payment pursuant to the Distribution Protocol, you need to complete an administration form to verify your identity, email address and mailing address by **[CLAIMS DEADLINE]**.

Administration forms must be submitted online at [X – website to be created by Trilogy].

### *The Claims Administrator*

The Court has appointed Trilogy Class Action Services (an independent third-party) to receive administration forms and issue payments to class members.

Questions regarding the claims process should be directed to Trilogy at [inquiry@trilogyclassactions.ca](mailto:inquiry@trilogyclassactions.ca) or 1-877-400-1211.

*Interpretation and Questions*

Please note that this notice contains a summary of some of the terms of the settlement agreements and the distribution protocol. If there is a conflict between the provisions of this notice and the settlement agreement or distribution protocol, the terms of the settlement agreement or distribution protocol, as applicable, shall prevail.

For more information, please visit [X – website to be created by Trilogy]. If you have any questions that are not answered online, please contact Trilogy at [inquiry@trilogyclassactions.ca](mailto:inquiry@trilogyclassactions.ca) or 1-877-400-1211.

We are the law firm of Sotos LLP and we represent class members in this class action. We can be reached at [info@sotosclassactions.com](mailto:info@sotosclassactions.com) or 1-888-977-9806.

You do not need to pay out-of-pocket for our services as we will be paid from the settlement funds in an amount approved by the Court.

Kind regards,

**Sotos LLP**

**DANIEL BENNETT**  
Plaintiff

-and-

**LENOVO (CANADA) INC. et al.**  
Defendants

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

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*ONTARIO*  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT TORONTO

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**ORDER**  
**(Distribution Protocol Approval)**

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