



No. L043175
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Pro-Sys Consultants Ltd. and Neil Godfrey

Plaintiffs

and:

**Microsoft Corporation and
Microsoft Canada Co./Microsoft Canada CIE**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
RE APPOINT EPIQ AS ADMINISTRATOR**

BEFORE THE HONOURABLE MR. JUSTICE
MYERS

)
) 30 Jan 2020
)

ON THE APPLICATION of the plaintiffs coming for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on January 30, 2020; on hearing Reidar Mogerman Q.C., Naomi Kovak, Michelle Segal and Katie Duke on behalf of the plaintiffs and Geoffrey Cowper, Q.C and Alexandra Mitretodis on behalf of the defendants;

THIS COURT ORDERS that:

1. the Microsoft National Class Action Distribution and Administration Protocol is approved in substantially the form attached as **Schedule "A"**; and
2. Epiq Class Action Services Canada Inc. is appointed as Claims Administrator of the Canadian Microsoft Class Action National Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS
BEING BY CONSENT:

Signature of lawyer for the plaintiffs

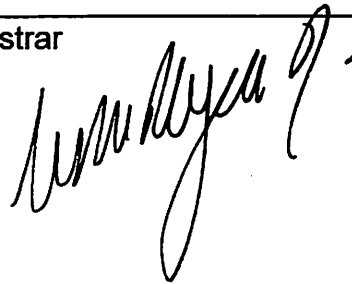
Reidar Mogerman

Signature of lawyer for the defendants

Geoffrey Cowper, Q.C.

By the Court

Registrar

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "Reidar Mogerman".

Schedule A

MICROSOFT NATIONAL CLASS ACTION

DISTRIBUTION & ADMINISTRATION PROTOCOL

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General Principles of the Administration and Distribution

1. This protocol (the "Protocol") is intended to govern the distribution of the Settlement Amount recovered in the Microsoft Class Actions and the administration and claims process developed to do so.
2. Compensation will be paid to Class Members who file a valid Claim approved in accordance with the claims process established by this Protocol.
3. Generally, the claims administration shall:
 - (a) establish a claims process including a website and electronic web-based systems and procedures for completing, filing, receiving and adjudicating Claims;
 - (b) employ secure, web-based systems with electronic registration and record keeping wherever possible;
 - (c) provide professional and timely support and assistance to Class Members applying for compensation;
 - (d) provide efficient and timely adjudication of all Claims made in accordance with industry standards;
 - (e) provide timely payment of all valid Claims;
 - (f) provide complete and timely reporting in respect of all aspects of the claims process;
 - (g) provide timely payment of all Court-approved expenses;
 - (h) Microsoft will establish purchase orders to be held by Microsoft for the Settlement Amount to be paid to the Claims Administrator periodically as requisitions for the redemptions of the Consumer Cash Payments, Volume Licensee Vouchers, Stage 1 School Vouchers, Stage 2 School Vouchers, and Cy-près Vouchers are received up to the value of the periodic requisitions; and
 - (i) be bilingual in all respects.

Definitions

4. The following definitions apply for the purposes of this Protocol:
 - (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notices and claims administration, but

excluding Class Counsel Fees. The Administration Expenses are in addition to the Settlement Amount and will be paid directly by Microsoft.

- (b) **Appeal Deadline** means, for each Claimant that submits a Claim by the Claims Deadline, thirty (30) days of the date that the decision of the Claims Administrator is sent to Microsoft and that Claimant to whom the decision pertains.
- (c) **Approved Microsoft Products** means those products listed in Schedule B, which can be purchased using Volume Licensee Vouchers, Stage 1 School Vouchers, Stage 2 School Vouchers, or Cy-près Vouchers.
- (d) **BC Class** means all persons resident in British Columbia ("BC") as of the date of notice of certification (May 25, 2016) who, between December 23, 1998 and March 11, 2010 (inclusive), indirectly, and not for the purpose of further selling or leasing, purchased a genuine license for any full or upgrade version of Microsoft Applications or Microsoft Operating Systems.
- (e) **BC Class Counsel** means Camp Fiorante Matthews Mogerman LLP.
- (f) **BC Court** means the Supreme Court of British Columbia.
- (g) **BC Proceeding** means *Pro-Sys Consultants Ltd. et al. v. Microsoft Corporation et al.* (Supreme Court of British Columbia, Vancouver Registry, No. L043175).
- (h) **Category I** means Eligible Products listed in Schedule A1 of this Protocol.
- (i) **Category II** means all Eligible Products listed in Schedule A2 of this Protocol.
- (j) **Category III** means all Eligible Products listed in Schedule A3 of this Protocol.
- (k) **Category IV** means all Eligible Products listed in Schedule A4 of this Protocol.
- (l) **Claim** means the request made by Class Members or their representatives for Consumer Cash Payments, Volume Licensee Vouchers, Stage 1 School Vouchers, or Stage 2 School Vouchers as provided for in this Protocol.
- (m) **Claimant** means a Class Member who submits a Claim Form.
- (n) **Claim Forms** means the documents agreed to by the Parties which must be submitted to the Claims Administrator by Class Members in order to claim either a Consumer Cash Payment or a Volume Licensee Voucher.
- (o) **Claims Administrator** means the entity appointed by the Court(s) to administer this Settlement Agreement, and any employees of such entity.

- (p) **Claims Deadline** is the date that is 10 months from the Claims Period Commencement Date.
- (q) **Claims Period** means the period beginning on the Claims Period Commencement Date and ending on the Claims Deadline. The Claims Period may be extended by agreement of the Parties or subsequent order by the Court(s).
- (r) **Claims Period Commencement Date** means the date that Notice of Settlement Approval and Claims Procedures is first published.
- (s) **Claims Review Deadline** is the date that is ninety (90) days after the Claims Deadline.
- (t) **Class Counsel** means BC Class Counsel, Ontario Class Counsel and Québec Class Counsel.
- (u) **Class Counsel Fees** include the fees, disbursements, and any applicable taxes of Class Counsel in the prosecution of the Microsoft Class Actions.
- (v) **Class Members** or **Class** means the BC Class, the Ontario Class and the Québec Class. Excluded from the Class are:
 - (i) Microsoft officers and directors, subsidiaries in which Microsoft has greater than a 50 percent ownership interest; and
 - (ii) any judges assigned to hear any aspect of this litigation.
- (w) **Class Period** means December 23, 1998 to March 11, 2010 (inclusive).
- (x) **Consumer Cash Payment** means the cash payments issued to the Class Members pursuant to paragraphs 15-16 of this Protocol.
- (y) **Courts** means the BC Court, the Ontario Court and the Québec Court.
- (z) **Cy-près Voucher Period** shall begin on a date no later than sixty (60) days of the end of the Stage 1 Voucher Period and Stage 2 Voucher Period (the “**Cy-près Voucher Distribution Date**”) and shall run until the Cy-près Vouchers are fully distributed and redeemed, or as agreed to by the Parties.
- (aa) **Cy-près Vouchers** means the vouchers issued during the Cy-près Voucher Period pursuant to paragraph 61 of this Protocol.
- (bb) **Defence Counsel** means Fasken Martineau DuMoulin LLP.

- (cc) **Defendants** means Microsoft Corporation, Microsoft Canada Co./Microsoft Canada Cie., and their successors, assigns and subsidiaries (also defined as “Microsoft”).
- (dd) **Eligible Products** means the Microsoft software products at issue in this litigation described in Schedules A1, A2, A3 and A4 to this Protocol.
- (ee) **Microsoft Applications** means the versions of the products listed in Schedule A2, A3 and A4 to this Protocol.
- (ff) **Microsoft Class Actions** means the BC Proceeding, the Ontario Proceeding and the Quebec Proceeding.
- (gg) **Microsoft’s End User Data** shall include any reasonably accessible data in the MS Sales Database that is useful to identifying Volume Licensees or making or verifying a Claim involving Volume Licensees.
- (hh) **Microsoft Operating Systems** means the versions of the products listed in Schedule A1 to this Protocol.
- (ii) **Notice of Settlement Approval and Claims Procedures** means the form of notice as approved by the Court(s) to inform the Class Members of: (1) the approval of the Settlement Agreement; and (2) the process by which the Class Members may apply to claim Consumer Cash Payments or Volume Licensee Vouchers.
- (jj) **Ontario Class** means all persons resident in Canada as of the date of notice of certification (May 25, 2016) who, between December 23, 1998 and March 11, 2010 (inclusive), indirectly, and not for the purpose of further selling or leasing, purchased a genuine license for any full or upgrade version of the Microsoft Applications or the Microsoft Operating Systems, except persons included in the BC Class or the Québec Class.
- (kk) **Ontario Class Counsel** means Strosberg Sasso Sutts LLP
- (ll) **Ontario Court** means the Ontario Superior Court of Justice.
- (mm) **Ontario Proceeding** means *K.L. & K. (London) Limited et al. v. Microsoft Corporation et al.* (Superior Court of Justice for Ontario, File No. 05-CV-4308, Windsor Registry).
- (nn) **Parties** means the Plaintiffs, Class Members, and Microsoft.
- (oo) **Plaintiffs** means the BC Plaintiffs, Ontario Plaintiffs and Québec Plaintiffs.
- (pp) **Québec Class** means all persons resident in Québec as of the date of notice of authorization (May 25, 2016) who, between December 23, 1998 and March 11,

2010 (inclusive), indirectly, and not for the purpose of further selling or leasing, purchased a genuine license for any full or upgrade version of the Microsoft Applications or the Microsoft Operating Systems, except any legal person established for a private interest, partnership or association which at any time between September 5, 2006 and September 5, 2007 had under its direction or control more than 50 persons bound to it by contract of employment.

- (qq) **Québec Class Counsel** means Bouchard, Pagé, Tremblay s.e.n.c.
- (rr) **Québec Court** means the Superior Court of Québec.
- (ss) **Québec Proceeding** means *Gagné c. Microsoft Corporation et al.*, (Québec Superior Court, No. 200-06-000087-075, Québec City).
- (tt) **Redemption Deadline** means three (3) years after the Claims Review Deadline.
- (uu) **School Claimants** means those public or private educational institutions in Canada which shall be eligible to receive Stage 1 School Vouchers and Stage 2 School Vouchers pursuant to the paragraphs 50-60 of this Protocol and Schedule C of this Protocol (or Schedule "E" of the Settlement Agreement).
- (vv) **Settlement Agreement** or **Settlement** means the agreement between the Parties dated as at July 11, 2018, including the Recitals and Schedules thereto.
- (ww) **Settlement Amount** means up to CDN \$517,331,500 minus court approved Class Counsel Fees for distribution through Consumer Cash Payments, Volume Licensee Vouchers, Stage 1 School Vouchers, Stage 2 School Vouchers, and Cy-près Vouchers issued and redeemed in accordance with this Protocol. The Administration Expenses are in addition to the Settlement Amount and are to be paid for directly by Microsoft.
- (xx) **Stage 1 School Vouchers** means the vouchers issued during the Stage 1 School Voucher Period pursuant to paragraph 56 of this Protocol.
- (yy) **Stage 1 School Voucher Amount** is CDN \$258,665,750 minus fifty percent (50%) of Class Counsel Fees minus fifty percent (50%) of the sum of the value of Consumer Cash Payments and Volume Licensee Vouchers issued to Class Members.
- (zz) **Stage 1 School Voucher Period** shall begin on a date no later than forty five (45) days after the determination of all appeals or the last Appeal Deadline, whichever is later. (the "**Stage 1 School Voucher Distribution Date**") and shall end six (6) years after the Stage 1 School Voucher Distribution Date.
- (aaa) **Stage 2 School Vouchers** means the vouchers issued during the Stage 2 School Voucher Period pursuant to paragraph 59 of this Protocol.

- (bbb) **Stage 2 School Voucher Amount** is one-hundred percent (100%) of the difference between the amount of issued Volume Licensee Vouchers and the amount of redeemed Volume Licensee Vouchers at the end of the Redemption Deadline, and one-hundred percent (100%) of the difference between the amount of Consumer Cash Payments issued and the amount of Consumer Cash Payments cashed or redeemed at the end of the Redemption Deadline.
- (ccc) **Stage 2 School Voucher Period** shall begin on a date no later than sixty (60) days after the close of the Redemption Deadline (the “**Stage 2 School Voucher Distribution Date**”) and shall end at the same time as the Stage 1 School Voucher Period.
- (ddd) **Volume Licensee** means a Class Member who indirectly, and not for the purpose of further selling or leasing, licensed a Microsoft Operating System and/or Microsoft Application through Microsoft’s volume licensing program and/or volume licensing service centre (including Open, Select and Enterprise Agreement programs).
- (eee) **Volume License Transferee** means a recipient of a Volume Licensee Voucher pursuant to paragraph 38(b) of this Protocol.
- (fff) **Volume Licensee Vouchers** means the vouchers issued to Volume Licensees pursuant to paragraphs 17-18 of this Protocol.

The Claims Administrator’s Duties and Responsibilities

- 5. The Claims Administrator shall administer the claims process and distribution in accordance with this Protocol and with the provisions of any orders of the Court(s) and the Settlement Agreement under the oversight of Class Counsel and Defence Counsel and the ongoing authority and supervision of the Court(s).
- 6. The Claims Administrator’s duties and responsibilities shall include the following:
 - (a) providing notice(s) to the Class Members as may be required and subject to the instructions of the third party appointed to administer the notice campaign as described in paragraphs 7-8 of this Protocol;
 - (b) receiving the Defendants’ customer information, including names, addresses and sales information;
 - (c) receiving and collecting consumer database information that is publicly available, or has been received by Class Counsel from other computer-related class actions;
 - (d) developing, implementing and operating the claims process including a claims website;

- (e) assisting Class Members and facilitating their Claims;
- (f) performing industry standard verification procedures on Claims made to ensure their validity;
- (g) making timely decisions in respect of Claims received and notifying the Class Members of the decision promptly thereafter;
- (h) submitting required materials for appeals;
- (i) reporting the results of the claims process and the intended distributions for each claims category to Class Counsel and Defence Counsel in a timely fashion;
- (j) maintaining the Claims information so as to permit Class Counsel and Defence Counsel to audit the claims administration as they may determine, or if ordered by the Court(s);
- (k) arranging issuance of vouchers and making payments to Class Members in a timely fashion;
- (l) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
- (m) remitting the amounts payable to the *Fonds d'aide aux recours collectifs*;
- (n) arranging for the payments of Administration Expenses by Microsoft;
- (o) reporting to Class Counsel and Defence Counsel respecting Claims received and administered and Administration Expenses;
- (p) providing Microsoft with periodic requisitions to pay the total value of cheques to be issued on account of approved Consumer Cash Payments, Volume Licensee Vouchers, Stage 1 School Vouchers, Stage 2 School Vouchers, and Cy-près Vouchers, along with any administration and operating costs;
- (q) providing Microsoft with quarterly reports detailing the number of Claims received, the number of Consumer Cash Payments paid, the number of Volume Licensee Vouchers redeemed, the number of Stage 1 School Vouchers, Stage 2 School Vouchers and Cy-près Vouchers redeemed, and list of Approved Microsoft Products the Vouchers were redeemed for;
- (r) cash management and audit control;
- (s) preparing and submitting reports and records as directed by Class Counsel and Defence Counsel or the Court(s); and

- (t) fulfilling any obligation to report taxable income and make tax payments (including interest and penalties) due with respect to the income earned by the Settlement Amount.

Media and Notice Program

- 7. The Parties will retain a third party media organization to administer the notices of Settlement Approval and Claims Procedure (the "Notice Programs").
- 8. The third party media organization will be primarily responsible for the administration of the Notice Programs, but the Claims Administrator may be required to facilitate the dissemination of approved notices through their website, via email and mail, or at the request of Class Members or as otherwise required by order of the Courts.

General Provisions of the Distribution

- 9. The Settlement Amount shall be distributed in accordance with the rules established by this Protocol according to a claims-made process to compensate Class Members for the Eligible Products they purchased during the Class Period, and to distribute any unredeemed Stage 1 School Vouchers or Stage 2 School Vouchers further to the Cy-près distribution of funds prescribed in paragraph 61 of this Protocol.
- 10. Class Members will be entitled to advance claims in the following claims categories:
 - (a) Consumer Cash Payments;
 - (b) Volume Licensee Vouchers; and
 - (c) Stage 1 School Vouchers and Stage 2 School Vouchers.
- 11. Class Members may advance Claims in respect of more than one claims category, provided those Claims are in compliance with the rules applicable to each claims category. The claims process will be designed to assist Class Members to easily and efficiently advance their Claims in all applicable claims categories.
- 12. Compensation payable for all valid Claims received and approved will be calculated by the Claims Administrator based on the rules for the applicable claims category.
- 13. The distribution in Quebec will be subject to the application of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R. c. R-2.1, r. 2.
- 14. If the total value of the Claims made exceeds the maximum amount available under the Settlement Amount, the Plaintiffs may apply for directions from the Court(s) to address this, including:

- (a) directions to adjust the compensation payable to Class Members under paragraphs 15,17, and 38(b) of this Protocol;
- (b) directions to pay out the Claims on a first come, first serve basis; or
- (c) such further and other directions that may be appropriate.

Consumer Cash Payments

15. Upon approval of a satisfactory Claim filed by the Claims Deadline, as set forth in paragraphs 19-25 of this Protocol, each Class Member who is not a Volume Licensee and who purchased a Category I, Category II, Category III, or Category IV software license during the Class Period may obtain a Consumer Cash Payment as follows:
- (a) \$13.00 CDN for each Category I license;
 - (b) \$8.00 CDN for each Category II license;
 - (c) \$6.50 for each Category III license; and
 - (d) \$6.50 CDN for each Category IV license.
16. For the purposes of determining the appropriate amount of the Consumer Cash Payment to be awarded, a Class Member who is not a Volume Licensee shall be considered to have a separate license for each desktop or laptop computer that is authorized for use in conjunction with the licensed software under the terms of the Class Member's license agreement. The initial license and each separately purchased upgrade license shall be counted as separate licenses.

Volume Licensee Vouchers

17. Upon approval of a satisfactory Claim filed by the Claims Deadline, as set forth in paragraphs 19-22 and 26-28, each Class Member who is a Volume Licensee who purchased a Category I, Category II, Category III, or Category IV software license during the Class Period may obtain the following:
- (a) a Volume Licensee Voucher worth CDN \$13.00 for each Category I license;
 - (b) a Volume Licensee Voucher worth CDN \$8.00 for each Category II license;
 - (c) a Volume Licensee Voucher worth CDN \$6.50 for each Category III license; and
 - (d) a Volume Licensee Voucher worth CDN \$6.50 for each Category IV license.
18. For the purposes of determining the appropriate number of vouchers to be awarded, a Class Member who is a Volume Licensee shall be considered to have a separate license for each desktop or laptop computer that is authorized for use in conjunction with the

licensed software under the terms of the Volume Licensee's license agreement. For example, if the Volume Licensee's license agreement authorizes installation of the software on up to 100 computers, the Volume Licensee is entitled to 100 vouchers, regardless of whether the software is actually installed on 100 computers, as long as the Volume Licensee has paid for 100 licenses. For Enterprise Agreement licenses, the Volume Licensee shall be considered only to have a single license for the initial software received under the agreement and not for automatic upgrades which they are eligible to receive and install under their enterprise agreement. Where Volume Licensees with Select and Open licenses have enrolled in programs to potentially upgrade their software at a later date (i.e., Maintenance, Upgrade Advantage, Software Assurance and/or License & Software Assurance), those potential upgrade rights shall not be considered to be a license separate from the initial licenses purchased under the agreement. For all other types of volume licensing agreements, the initial license and each separately purchased upgrade license shall be counted as separate licenses.

Process for Claiming Consumer Cash Payments and Claiming and Redeeming Volume Licensee Vouchers

Submitting Claims

19. Class Members may make Claims for the Consumer Cash Payments or Volume Licensee Vouchers described in paragraphs 15-18 of this Protocol by submitting a completed Claim Form online, together with a satisfactory proof of qualification as specified below, to the Claims Administrator prior to the Claims Deadline.
20. The Notice of Settlement Approval and Claims Procedures shall include a link to the Claims Administrator's website, which will include an electronic copy of the Claim Form. In addition, an electronic copy of the Claim Form will be available via a website maintained by the Claims Administrator, which will also contain information on how to make Claims.
21. All Claims Forms to be completed by Class Members will require a sworn declaration under penalty of perjury that sets forth the Claimant's name, street address, telephone number, email address, the quantity acquired of each of the four categories of Eligible Products, and requires the Class Member to confirm, to the best of their knowledge, that the products acquired are genuine non-pirated software. The Claim Form will also call for the Claimant to identify, to the best of their knowledge, the year in which each purchase was made and the identity of the seller.

Fraud Detection

22. The Claims Administrator shall be asked to recommend and implement a reasonable fraud detection procedure as agreed to by the Parties, or if there is no agreement by order of the Court(s). The fraud detection procedure will be designed to identify and

eliminate Claims that are fraudulent or otherwise improper and may, if appropriate, modify the claims process set out in this Protocol.

Proof of Qualification (Consumer Cash Payments)

23. If a Claimant submits Claims for Consumer Cash Payments of less than CDN \$250.00, that Claimant is not required to support its submission with anything more than a sworn declaration under penalty of perjury. The Claims Administrator shall approve such Claims submitted prior to the Claims Deadline without requiring further documentation unless there is reasonable cause to suspect that the Claim is fraudulent or otherwise improper.
24. If a Claimant submits Claims for Consumer Cash Payments of more than CDN \$250.00, the Claimant is required, for the portion of its Claim in excess of CDN \$250.00, to support its submission by providing, prior to the Claims Deadline, for each license: (1) a sworn declaration under penalty of perjury; and (2) one of the following:
 - (a) the product identification (“PID”) number;
 - (b) the Product Key number that is found on the computer hardware (for preinstalled Microsoft Operating Systems) or printed on the Certificate of Authenticity (“COA”) obtained with the Microsoft Operating System and/or Microsoft Application or that is located on the back of the case for the CD-ROM containing such software;
 - (c) the original COA;
 - (d) receipts reflecting the purchase of bona fide Eligible Products; or
 - (e) other credible written evidence.
25. The Claims Administrator’s website will clearly explain where the PID, Product Key or COA can be found on the Eligible Products. The Claims Administrator shall approve such Claims without requiring further documentation unless there is reasonable cause to suspect that the Claim is fraudulent or otherwise improper. The Claim Administrator’s decision will be final and binding, subject to the limited right of appeal as described in paragraphs 45-49 of this Protocol.

Proof of Qualification (Volume Licensees)

26. If a Claimant submits Claims for Volume Licensee Vouchers of less than CDN \$650.00, that Claimant is not required to support its submission with anything more than a sworn declaration under penalty of perjury. The Claims Administrator shall approve such Claims submitted prior to the Claims Deadline without requiring further documentation unless there is reasonable cause to suspect that the Claim is fraudulent or otherwise improper.

27. If a Claimant submits Claims for Volume Licensee Vouchers of more than CDN \$650.00, the Claimant is required, for the portion of its Claim in excess of CDN \$650.00, to support its submission by providing, prior to the Claims Deadline, for each license: (1) a sworn declaration under penalty of perjury; and (2) one of the following:
- (a) the Claimant's license agreement;
 - (b) license confirmations;
 - (c) interim true-up orders;
 - (d) receipts reflecting the purchase of bona fide Eligible Products;
 - (e) Enterprise Agreement enrollment forms;
 - (f) Open documentation;
 - (g) VLSC documentation;
 - (h) printed information obtained from Microsoft's End User Data; or
 - (i) other credible written evidence.

The Claims Administrator shall approve such Claims without requiring further documentation unless there is reasonable cause to suspect that the Claim is fraudulent or otherwise improper. The Claim Administrator's decision will be final and binding, subject to the limited right of appeal as described in paragraphs 45-49 of this Protocol.

28. Instead of, or in addition to attaching the types of documentation set forth in paragraph 27 of this Protocol, a Claimant may check a box prominently displayed on the first page of its Claim Form that will require Microsoft (with the active supervision of the Claims Administrator) to search Microsoft's End User Data to determine whether there is volume license information in Microsoft's End User Data that the Claimant can use to further document the Claim. Within thirty (30) days of receiving such a request for class member data, Microsoft shall provide the Claims Administrator with copies of the necessary portions of Microsoft's End User Data and the assistance necessary to facilitate access to the Claimant's volume license information. The Claims Administrator will communicate that information to the Claimant for use in making a Claim within ten (10) days of receiving copies of the necessary portions of Microsoft's End User Data. The Claimant shall have until the longer of twenty (20) days after receiving this information, or the Claims Deadline, to submit a revised Claim. If the Claimant does not submit a revised Claim in accordance with this paragraph, the Claims Administrator shall authorize otherwise valid Claims documented by the Claimant as further supplemented by the volume license records found in Microsoft's End User Data. The Parties can agree to extend the deadlines provided for in this paragraph by consent, without needing to obtain a Court order.

29. The Claims Administrator shall have access to Microsoft's End User Data for the purpose of advising on, and, if possible, populating, the Claims Forms of Volume Licensee Claimants.

Claims Review Process

30. Subject to the process set out in paragraph 40, the Claims Administrator shall review each Claim and make a determination of the amount of the Consumer Cash Payment or the number and amount of Volume Licensee Vouchers to be issued to each Claimant by the Claims Review Deadline.
31. The Claims Administrator's decision will be final and binding, subject to the limited right of appeal as described in paragraphs 45-49 of this Protocol.

Issuing of Consumer Cash Payments

32. Following the Claims Review Deadline, once the Claims Administrator confirms the validity of the Claims made by Class Members for Consumer Cash Payments, it will submit a requisition to Microsoft for the total value of the approved Claims. After approval of the requisition and within thirty (30) days of receipt of the requisition, Microsoft will pay the administrator directly out of a purchase order established and held by Microsoft for that purpose the total value of the requisition. The Claims Administrator shall hold the funds in a chequing account and will make payments from that account as authorized by mailing a cheque to each Claimant whose Claim is approved.

Issuing and Redeeming Volume Licensee Vouchers

33. Following the Claims Review Deadline, the Claims Administrator shall mail or email the Volume Licensee Vouchers for each Claimant whose Claim is approved to the address provided by the Claimant.
34. Following the Claims Review Deadline, the Claims Administrator shall notify Microsoft of total value of the approved Claims made by Class Members for Volume Licensee Vouchers. To redeem a Volume Licensee Voucher for all or part of its face value, a Volume Licensee must submit the Volume Licensee Voucher, together with satisfactory proof of purchase of the Approved Microsoft Product(s) to the Claims Administrator by the Redemption Deadline. The Claimant must have purchased the Approved Microsoft Product(s) prior to the Redemption Deadline.
35. The proof of purchase must include the original receipt or a copy of the original receipt for the purchase of the Approved Microsoft Products. The Claims Administrator will be responsible for determining whether the information submitted is sufficient. The Claim Administrator's decision will be final and binding, subject to the limited right of appeal as described in paragraphs 45-49 of this Protocol.

36. Following the Claims Review Deadline, once the Claims Administrator confirms the validity of the purchases and Volume Voucher redemptions, it will submit a requisition to Microsoft for the value of the Volume Vouchers redeemed during that period. After approval of the requisition and within thirty (30) days of receipt of the requisition, Microsoft will pay the administrator directly out of a purchase order established and held by Microsoft for that purpose the total value of the requisition. The Claims Administrator shall hold the funds in a chequing account and will make payments from that account as authorized by mailing a cheque to each Claimant or Volume License Transferee who redeems a Volume Licensee Voucher for the full or partial amount of the redemption, as applicable, to the address provided by the Claimant or Volume License Transferee.

Restrictions

37. **Aggregation:**
- (a) Volume Licensee Vouchers may be aggregated with other Volume Licensee Vouchers by any Volume Licensee or Volume License Transferee possessing a number of any such Volume Licensee Vouchers. The Volume Licensee Vouchers are not redeemable for cash apart from the claims process and may only be submitted to the Claims Administrator. The Volume Licensee Vouchers issued to Class Members shall expire after the Redemption Deadline. Volume Licensee Vouchers will be printed with security features, will be serialized and, if possible, will be printed with the name of the Volume Licensee Voucher recipient on the face of the Volume Licensee Voucher.
38. **Transferability:**
- (a) The right to make a Claim for Consumer Cash Payments is not assignable or transferable and cannot be claimed by anyone other than the Claimant.
- (b) Each Volume Licensee Voucher may be transferred not more than twice. To transfer a Volume Licensee Voucher, the Class Member must endorse the Volume Licensee Voucher to a named Volume License Transferee. Volume Licensee Vouchers are not transferable under any other circumstance.

Claims Administration

39. The Claims Administrator shall review the Claims Forms and proofs of purchase by the Claims Review Deadline to determine whether they contain the required documentation, if any, and whether the Claims are duplicative or otherwise invalid and shall reject any invalid Claims.
40. In the event that a Claims Form or proof of purchase is rejected by the Claims Administrator, the Claims Administrator shall send notice by mail or email to the

Claimant at the contact information included on the Claims Form, clearly informing the Claimant of the deficiency, with copies to Class Counsel and Defence Counsel. The notice shall clearly inform the Claimant concerning the details of any deficiency and shall provide instructions concerning what must be done to cure any deficiency. The Claimant shall have until the longer of thirty (30) days of the date the notice of deficiency from the Claims Administrator is sent to them or the Claims Deadline, whichever is longer, to address the deficiency with a new submission to the Claims Administrator. The submissions are complete upon mailing or emailing. The Claims Administrator shall make a final determination on all revised submissions submitted in accordance with this paragraph by the Claims Review Deadline or within 20 days after receiving the revised submission, whichever is later.

41. The decision concerning the validity of any particular Claim or redemption shall be made by the Claims Administrator.
42. The Claim Administrator's decision will be final and binding, subject to the limited right of appeal as set out in paragraphs 45-49 of this Protocol.
43. Microsoft shall pay all reasonable claims administration costs.
44. The Claims Administrator shall send Microsoft periodic invoices for the costs of the claims administration under this Protocol. Microsoft shall pay such costs within sixty (60) days of invoice. If Microsoft believes the amount charged on any invoice is excessive, Microsoft may submit its objections to the Court(s) for resolution and need not pay the disputed amount until the Court(s) have resolved the objections.

Appeal of the Claims Administrator's Decision

45. Appeals will be determined by a master or a special referee appointed by the Court(s). The master or special referee shall apply the rules provided herein to the appeal.
46. Except as provided in paragraph 48 of this Protocol, Class Members and Microsoft may appeal a decision of the Claims Administrator to the master or special referee. Any such appeal must be postmarked or electronically submitted on or before the Appeal Deadline. The appeal will be heard and determined by the master or special referee within 60 (sixty) days from the date the appeal is postmarked or electronically submitted. The Parties can agree to extend the deadline provided for in this paragraph by consent, without needing to obtain a Court order.
47. There shall be no right of appeal in respect of Claims filed after the Claims Deadline, except as provided in paragraph 40 of this Protocol in respect of deficient Claims.
48. Appeals shall be on the basis of written submissions supported by the documentation provided to the Claims Administrator as part of the claims process and any other material provided by the Class Members or Microsoft in support of the appeal.

Notwithstanding the foregoing, the master or special referee, in his or her sole discretion, may request oral submissions to be made via teleconference or establish additional procedures to be followed during the appeal in cases where he or she determines that is warranted.

49. The master or special referee's decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

School Voucher Distribution and Cy-près

Supplemental School Voucher Claims

50. Schools in Canada will be eligible to claim in the further School Voucher distribution as set out in paragraphs 51 to 60 in this Protocol.
51. The principles governing the eligibility of School Claimants and the distribution of Stage 1 School Vouchers and Stage 2 School Vouchers are listed in Schedule C (Schedule E to the Settlement Agreement).
52. The Stage 1 School Vouchers and Stage 2 School Vouchers may only be used by School Claimants.
53. The School Claimants are not authorized to resell, transfer or aggregate any excess Stage 1 School Vouchers or Stage 2 School Vouchers that are not used by the School Claimants.
54. Class Counsel and Defence Counsel will meet annually to discuss the implementation and operation of the school vouchers, including specifically the claims and redemption of the Stage 1 School Vouchers and Stage 2 School Vouchers by the School Claimants. In the event the Stage 1 School Vouchers and Stage 2 School Vouchers are not being redeemed at a reasonable rate, or consistent with the intentions of this Protocol, the terms of the Settlement Agreement, or of the Parties, the Parties may agree to make modifications as necessary to facilitate the realization of those intentions. Any changes to the school voucher distribution shall not materially alter the cost of the distribution to Microsoft. Any material changes to the school voucher distribution shall be approved by the Court(s).
55. Where there are circumstances that a limited number of schools need modest investments in infrastructure or training in order to make use of the Stage 1 School Vouchers and Stage 2 School Vouchers, the Parties may agree to devote portions of these school vouchers to those investments.

The Stage 1 School Voucher Distribution

56. Fifteen (15) days after the determination of all appeals or the last Appeal Deadline, whichever is later, the Claims Administrator shall determine the Stage 1 School Voucher Amount.
57. In the event that the Stage 1 School Voucher Amount is greater than zero, the Claims Administrator shall notify Microsoft of the Stage 1 School Voucher Amount.
58. In the event that the Stage 1 School Voucher Amount is greater than zero, that amount shall be distributed as follows:
 - (a) The Stage 1 School Voucher Distribution will commence no later than thirty (30) days after determination of the School Voucher amount in accordance with paragraph 56 of this Protocol.
 - (b) The Stage 1 School Vouchers distributed in the Stage 1 School Voucher Distribution may only be redeemed during the Stage 1 School Voucher Period for Approved Microsoft Products listed in Schedule B.
 - (c) Once the Claims Administrator confirms the validity of the purchases and Stage 1 School Voucher redemptions, it will on a monthly basis, as Stage 1 School Voucher redemptions are confirmed, submit a requisition to Microsoft for the value of the Stage 1 School Vouchers redeemed during that period. After approval of the requisition and within thirty (30) days of receipt of the requisition, Microsoft will pay the administrator directly out of a purchase order established and held by Microsoft for that purpose the total value of the requisition. The Claims Administrator will then make payments as authorized by mailing a cheque to each Eligible School Claimant who redeems a Stage 1 School Voucher for the full or partial amount of the redemption, as applicable, to the address provided by the Eligible School Claimant.

Stage 2 School Voucher Distribution

59. Within thirty (30) days of the Redemption Deadline, the Claims Administrator shall calculate the Stage 2 School Voucher Amount.
60. In the event that the Stage 2 School Voucher Amount is greater than zero that amount shall be distributed as follows:
 - (a) The Stage 2 School Voucher Distribution will commence no later than sixty (60) days after the Redemption Period.
 - (b) The Stage 2 School Vouchers distributed in the Stage 2 School Voucher Distribution may only be redeemed during the Stage 2 School Voucher Period for Approved Microsoft Products listed in Schedule B.

- (c) As with the Stage 1 School Vouchers, once the Claims Administrator confirms the validity of the purchases and Stage 2 School Voucher redemptions, it will on a monthly basis, as Stage 2 School Voucher redemptions are confirmed, submit a requisition to Microsoft for the value of the Stage 2 School Vouchers redeemed during that period. After approval of the requisition and within thirty (30) days of receipt of the requisition, Microsoft will pay the Administrator directly out of a purchase order established and held by Microsoft for that purpose the total value of the requisition. The Claims Administrator will then make payments as authorized by mailing a cheque to each Eligible School Claimant who redeems a Stage 2 School Voucher for the full or partial amount of the redemption, as applicable, to the address provided by the Eligible School Claimant.

Cy-près Voucher Distribution

- 61. Within thirty (30) days of the end of the Stage 1 School Voucher Period and Stage 2 School Voucher Period, if there are unredeemed Stage 1 School Vouchers or Stage 2 School Vouchers, the Claims Administrator shall determine the total amount of such vouchers, which are unredeemed ("**Cy-près Voucher Amount**"). In the event that the Cy-près Voucher Amount is greater than zero, that amount shall be distributed as follows:
 - (a) The *Fonds d'aide aux actions collectives* ("**Fonds**") will be entitled to receive the value in dollars of a percentage of the share of the Cy-près Voucher Amount that would otherwise be allocated to the Quebec Class pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, chapter F-3.2.0.1.1, r. 2. It is estimated that twenty-three percent (23%) of the class purchases in Canada are attributed to the Quebec Class. Accordingly, twenty-three percent (23%) of the Cy-près Voucher Amount will be notionally allocated to Quebec for the purposes of determining the amount payable to the Fonds in accordance with the Regulation.
 - (b) Following the payment to the Fonds, the remaining Cy-près Voucher Amount shall be distributed by means of Cy-près Vouchers to educational institutions in Canada by further agreement of the Parties, or if there is no agreement, by order of the BC Court, or other court if appropriate.
 - (c) The Cy-près Vouchers distributed in the Cy-près Voucher Distribution shall begin on a date no later than sixty (60) days of the end of the Stage 1 School Voucher Period and the Stage 2 School Voucher Period.
 - (d) The Cy-près Vouchers distributed in the Cy-près Voucher Distribution may only be redeemed during the Cy-près Voucher Period for Approved Microsoft Products listed in Schedule B to this Protocol.

- (e) As with the Stage 2 School Vouchers, once the Claims Administrator confirms the validity of the purchases and Cy-près Vouchers redemptions, it will on a monthly basis, as Cy-près Vouchers redemptions are confirmed, submit a requisition to Microsoft for the value of the Cy-près Vouchers redeemed during that period. After approval of the requisition and within thirty (30) days of receipt of the requisition, Microsoft will pay the Administrator directly out of a purchase order established and held by Microsoft for that purpose the total value of the requisition. The Claims Administrator will then make payments as authorized by mailing a cheque as authorized to each educational institution in Canada who redeems a Cy-près Voucher for the full or partial amount of the redemption, as applicable, to the address provided by the educational institution.

Class Counsel

62. Class Counsel and Defence Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Protocol and the claims process. Class Counsel and Defence Counsel may, upon agreement and in consultation with the Claims Administrator, modify provisions of this Protocol, including any time limits or deadlines, during the claims process to enhance the efficacy of the claims process if they consider it is necessary and reasonable for the fair administration of this Protocol.

Confidentiality

63. All information received from the defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering the Claims and claims process created by this Protocol.

No. L043175
Vancouver Registry

In the Supreme Court of British Columbia

Between:

Pro-Sys Consultants Ltd. and Neil Godfrey

Plaintiffs

and:

**Microsoft Corporation and
Microsoft Canada Co./Microsoft Canada CIE**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
RE APPOINT EPIQ AS ADMINISTRATOR**

CAMP FIORANTE MATTHEWS MOGERMAN

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Via Mike Bike