

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) WEDNESDAY, THE 7<sup>th</sup>  
 )  
JUSTICE SMITH ) DAY OF OCTOBER, 2020  
 )

B E T W E E N :

JEFFREY BANNISTER  
Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE  
Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER  
- Certification for Settlement Purposes and Notice Approval –**

THIS MOTION, made by the Plaintiff for, *inter alia*, an Order certifying the within Action as a class proceeding for settlement purposes and approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing and Opt-Out (the “**Notice**”), was heard this day at 161 Elgin Street, Ottawa, Ontario, K2P 2K1, by telephone.

**ON READING** the materials filed, including the Settlement Agreement between the Parties dated September 29, 2020 (the “**Settlement Agreement**”), attached to this Order as **Schedule “A”**, and on hearing the submissions of counsel for the Plaintiff (“**Class Counsel**”) and counsel for the Defendant;

**AND ON BEING ADVISED** that the Plaintiff and Defendant consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the Notice, substantially in the the form attached hereto as **Schedule “B”**, is hereby approved.

3. **THIS COURT ORDERS** that the plan of dissemination of the Notice set out in Section 5.1 of the Settlement Agreement (the “**Plan of Dissemination**”) is hereby approved and that the Notice shall be disseminated in accordance with the Plan of Dissemination.

4. **THIS COURT ORDERS** that the Action is certified as a class proceeding for settlement purposes only.

5. **THIS COURT ORDERS** that the Class is certified as follows:

Any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach

6. **THIS COURT ORDERS** that the Plaintiff, Jeffrey Bannister, is appointed as the representative plaintiff for the Class.

7. **THIS COURT ORDERS** that the following issue is common to the Class and is hereby certified:

Did the Defendant owe the Plaintiff and Class Members a duty of care in respect of the Data Breach?

8. **THIS COURT ORDERS** that Class Members can opt-out of the Action by emailing a request to op-out to Class Counsel, on or before the sixtieth (60<sup>th</sup>) day after the Notice is disseminated (the “**Opt-Out Deadline**”). The opt-out email must be sent by the Class Member or their designee and must include the following information:

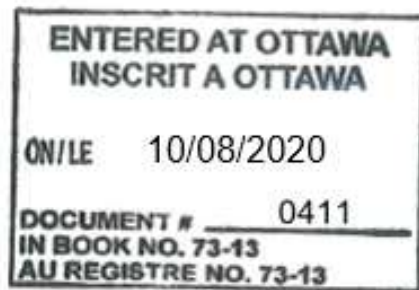
(a) The Class Member’s full name, current address and telephone number; and

(b) A Statement to the effect that the Class Member wishes to be excluded from the Action.

9. **THIS COURT ORDERS** that any Class Member who validly opts-out of the Action shall have no further right to participate in the Action or to share in the distribution of any funds received as a result of a judgment or settlement in this Action.

10. **THIS COURT ORDERS** that no further right to opt-out of the Action will be provided.

11. **THIS COURT ORDERS** that, within ten (10) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendant a report containing the names of each individual who has validly opted out of the Action and a summary of the information delivered by such individuals pursuant to paragraph 8, above.



  
\_\_\_\_\_  
The Honourable Justice Smith

# SCHEDULE

"A"

*Bannister v Canadian Imperial Bank of Commerce*

Ontario Superior Court of Justice File No CV-18-00076746-00CP

Proceeding under the *Class Proceedings Act, 1992*

**SETTLEMENT AGREEMENT**

Made as of September 29, 2020

Between

**JEFFREY BANNISTER**

(the “Plaintiff”)

and

**CANADIAN IMPERIAL BANK OF COMMERCE**

(the “Defendant”)

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## RECITALS

- A. WHEREAS**, on May 28, 2018, the Defendant disclosed the Data Breach, which the Action alleges impacted the Personal Information of the Class Members;
- B. AND WHEREAS** the Action was commenced by the Plaintiff in Ontario on behalf of Class Members alleging intrusion upon seclusion, breach of the Provincial Privacy Legislation, negligence, breach of contract, and breaches of Part III of the *Consumer Protection Act* and the Equivalent Consumer Protection Statutes;
- C. AND WHEREAS** a parallel proposed class proceeding, the Steinman Action, was commenced in Toronto by Jeff Steinman, represented by the same Class Counsel, in relation to the same Data Breach, claiming the same relief as in the Action, in consequence of which the Steinman Action was stayed on August 23, 2018, in favour of the Action;
- D. AND WHEREAS** it is understood that the plaintiff and the proposed class in the Steinman Action are Class Members in the Action, and any of their claims are therefore covered by this Settlement;
- E. AND WHEREAS** the Defendant: (a) did, and will continue in the normal course to, reimburse Class Members for all unauthorized transactions carried out as a direct result of the Data Breach; (b) voluntarily offered Class Members complimentary credit monitoring and identity theft insurance; and (c) voluntarily provided households of Class Members with a Visa prepaid gift card (\$100 value);
- F. AND WHEREAS** the Defendant has disputed its liability and it does not admit, through the execution of this Settlement Agreement or otherwise, any allegation of unlawful conduct alleged in the Action, and otherwise denies all liability and asserts that it has complete defences in respect of the merits of the Action;
- G. AND WHEREAS** the Parties through their counsel have engaged in arm's-length settlement discussions and negotiations with a view to resolving the Action;
- H. AND WHEREAS**, as a result of those settlement discussions and negotiations, the Parties have reached this Settlement, and they have entered into this Settlement Agreement, which



embodies all of the terms and conditions of the Settlement between the Defendant and the Plaintiff, both individually and on behalf of the Settlement Class, subject to the approval of the Court;

**I. AND WHEREAS** the Defendant is entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted by the Plaintiff and the Settlement Class in the Action, and to avoid further expense of burdensome and protracted litigation;

**J. AND WHEREAS** 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 claims, having regard to the burdens and expense in prosecuting the Action, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Class;

**K. AND WHEREAS** the Parties have intended and acknowledge that the Settlement provides a simplified and convenient procedure for the Class in addressing the Data Breach;

**L. AND WHEREAS** the Parties therefore wish to and hereby finally resolve the Action against the Defendant, without admission of liability and in particular agree that the compensation to the Class for time wasted and inconvenience is not an acknowledgement of any legal right to compensation in these circumstances;

**M. AND WHEREAS** the Parties acknowledge that the Settlement is contingent on approval by the Court as provided for in this Settlement Agreement, and entered into with the express understanding that this Settlement shall not derogate from the respective rights of the Parties relating to the Action in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

**N. AND WHEREAS** the Plaintiff and the 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 Defendant, or evidence of the truth of any of the Plaintiff's allegations, which allegations are expressly denied by the Defendant;

**NOW THEREFORE**, in consideration of the covenants, agreements and releases set forth in this Settlement Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Action shall be settled and dismissed with prejudice, all without costs as to the Plaintiff, the Settlement Class or the Defendant, subject to the approval of the Court, on the following terms and conditions:

### **SECTION 1 – DEFINITIONS**

For the purposes of this Settlement Agreement, including the Recitals hereto:

- (1) **“Action”** means the Ottawa action styled *Jeffrey Bannister v Canadian Imperial Bank of Commerce*, commenced in the Court bearing Court File No. CV-18-00076746-00CP;
- (2) **“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 administration of this Settlement, and any other costs associated with notice and/or claims administration and notice of settlement approval hearing and, where the settlement is approved, notice of settlement approval which exceed the Non-Refundable Administration Expenses Fund, but excluding Class Counsel Fees and Class Counsel Disbursements;
- (3) **“CIBC”** means the Defendant, Canadian Imperial Bank of Commerce and, as the context may require, its divisions and subsidiaries including Simplii Financial;
- (4) **“CJA”** means the *Courts of Justice Act*, RSO 1990, c C-43, as amended;
- (5) **“Class”** and **“Class Members”** mean any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach;
- (6) **“Class Counsel”** means Siskinds LLP, Sotos LLP and JSS Barristers;
- (7) **“Class Counsel Fees”** means the fees of Class Counsel, and any applicable taxes or charges thereon;
- (8) **“Class Counsel Disbursements”** means the disbursements and applicable taxes incurred by Class Counsel in the prosecution of the Action;

(9) **“Certification and Notice Approval Motion”** means the motion for an Order of the Court:

- (a) certifying the Action for the purposes of the Settlement;
- (b) approving the form, content and manner of distribution of the settlement approval hearing and opt-out notice;
- (c) setting out the opt-out procedure;
- (d) fixing the Opt-Out Deadline; and
- (e) such other relief as the Parties may request;

(10) **“Consumer Protection Act”** means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A, as amended;

(11) **“Court”** means the Ontario Superior Court of Justice;

(12) **“CPA”** means the *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(13) **“Data Breach”** means the unauthorized access by third-party cybercriminals to the Class Members’ Personal Information through the Defendant’s computer systems and networks, which was publicly disclosed by the Defendant on May 28, 2018;

(14) **“Defendant”** means CIBC;

(15) **“Effective Date”** means the date when the Court’s Order approving this Settlement Agreement becomes a Final Order;

(16) **“Equivalent Consumer Protection Statutes”** means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Fair Trading Act*, RSA 2000, c F-2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c B120, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, each as amended;

(17) **“Execution Date”** means the date on which the last of the Parties signs this Settlement Agreement;

(18) **“Fee and Disbursement Approval Date”** means the date when the court’s Order approving the Class Counsel Fees and Class Counsel Disbursements becomes a Final Order;

(19) **“Final Order”** means the later of: (a) the date of a final judgment entered by the Court, the time to appeal such judgment having expired without any appeal being taken, if an appeal lies, and (b) the disposition of all appeals taken;

(20) **“Net Settlement Percentage”** means the percentage calculated as follows: (a) dividing the Net Settlement Proceeds by the Settlement Amount, and (b) multiplying the result by 100, as shown below;

$\text{Net Settlement Percentage} = (\text{Net Settlement Proceeds} \div \text{Settlement Amount}) \times 100$
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(21) **“Net Settlement Proceeds”** means the Settlement Amount less Class Counsel Fees, Class Counsel Disbursements and Administration Expenses (excluding the Non-Refundable Administration Expenses Fund);

(22) **“Notice”** means the form of notice, attached as Appendix A, or approved by the Court, which inform(s) the Class Members of:

- (a) the principal elements of the Settlement;
- (b) the Court’s certification of the Action for the purposes of the Settlement;
- (c) the date and location of the Settlement Approval Motion;
- (d) the Opt-Out Procedure;
- (e) the Opt-Out Deadline;
- (f) Class Counsel Fees and Class Counsel Disbursements to be requested by Class Counsel; and

(g) the process to object to the Settlement should any Class Member wish to do so;

(23) **“Non-Refundable 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 administration of this Settlement, and any other costs associated with notice and/or claims administration and notice of settlement approval hearing and, where the settlement is approved, notice of settlement approval which do not exceed the Non-Refundable Administration Expenses Fund, but excluding Class Counsel Fees and Class Counsel Disbursements;

(24) **“Non-Refundable Administration Expenses Fund”** means the sum of CAD\$100,000 which is payable by the Defendant to fund Non-Refundable Administration Expenses, which amount is separate from and in addition to the Settlement Amount;

(25) **“Opt-Out Deadline”** means the date to be fixed by Order of the Court by which persons who would otherwise be Class Members must opt out of the Action in accordance with the Opt-Out Procedure in order to exclude themselves from the Class;

(26) **“Opt-Out Procedure”** means the procedure to be fixed by Order of the Court to opt-out of the Action should any Class Member wish to do so;

(27) **“Parties”** means the Plaintiff and the Defendant, each being a party to this Settlement Agreement;

(28) **“Personal Information”** means personal information about a Class Member;

(29) **“Plaintiff”** means the plaintiff, Jeffrey Bannister;

(30) **“Provincial Privacy Legislation”** means the *Privacy Act*, RSBC 1996, c 373, *The Privacy Act*, CCSM c P125, the *Privacy Act*, RSNL 1990, c P-22, *The Privacy Act*, RSS 1978, c P-24, the *Civil Code of Québec*, CQLR c CCQ-1991, the *Charter of Human Rights and Freedoms*, CQLR c C-12, and the *Act Respecting the Protection of Personal Information in the Private Sector*, RSQ, c P-39.1, each as amended;

(31) **“Released Claims”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual representative 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, penalties, and lawyers' fees (including Class Counsel Fees and Class Counsel Disbursements), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof relating to any conduct alleged (or which could have been alleged) in the Action including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with, related to, or arising from, any conduct described in the Action on account of, arising out of, resulting from, the Data Breach; for clarity the Released Claims include any privacy complaints related to the Data Breach made or which could have been made to any regulator and any claim for damages or compensation arising from a regulator's findings, decision, or report (whether such damages could be sought from the regulator or in a court on the basis of the regulator's findings, decision or report);

(32) **"Releasees"** means, jointly and severally, individually and collectively, the Defendant and its respective present and former, direct and indirect, parents, subsidiaries, divisions (including, but not limited to, Simplii Financial), affiliates, partners, principals, 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, stockholders, shareholders, agents, lawyers, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing;

(33) **"Releasers"** means, jointly and severally, individually and collectively, the Plaintiff and the Settlement Class and their respective successors, heirs, executors, administrators, trustees and assigns;

(34) **"Settlement"** means the settlement provided for in this Settlement Agreement;

(35) **"Settlement Agreement"** means this agreement, including the Recitals hereto;

(36) **“Settlement Amount”** means the all-inclusive sum of CAD\$1,769,425.00 to be paid in full and final settlement of the claims against the Defendant, inclusive of Class Counsel Fees, Class Counsel Disbursements, and Administration Expenses, but excluding the Non-Refundable Administration Expenses Fund;

(37) **“Settlement Approval Motion”** means the motion for an Order of the Court:

- (a) approving the Settlement;
- (b) approving the manner of distribution of the Net Settlement Proceeds;
- (c) dismissing the Action with prejudice and without costs; and
- (d) such other relief as the Parties may request;

(38) **“Settlement Class”** means the Class Members except any person who validly opts out of this Action;

(39) **“Simplii Financial”** means Simplii Financial, the direct banking division of CIBC trading as Simplii Financial;

(40) **“Steinman Action”** means the Toronto action styled *Jeff Steinman v Canadian Imperial Bank of Commerce*, commenced in the Court bearing Court File No. CV-18-00599875-00CP, and stayed by Order of Justice Perell, dated August 23, 2018; and

## SECTION 2 – PAYMENTS

### 2.1 The Settlement Amount

(1) Subject to and following the Final Order approving the Settlement, the Settlement Amount shall be distributed in accordance with section 7 of this Settlement Agreement.

(2) The Settlement Amount shall be all-inclusive of Class Counsel Fees, Class Counsel Disbursements, costs and interests of and relating to the Action and the Administration Expenses other than the Non-Refundable Administration Expenses Fund.

## **2.2 The Non-Refundable Administration Expenses Fund**

- (1) By no later than 30 calendar days from the Effective Date, the Defendant shall pay the Non-Refundable Administration Expenses Fund to Siskinds LLP.
- (2) The Defendant shall pay the Non-Refundable Administration Expenses Fund to Siskinds LLP by wire transfer. Siskinds LLP shall provide, in writing, the necessary wire transfer information to counsel for the Defendant on or before the Effective Date.
- (3) Class Counsel shall use the Non-Refundable Administration Expenses Fund to fund the Non-Refundable Administration Expenses in relation to this Settlement Agreement.
- (4) The Non-Refundable Administration Expenses shall be non-refundable.

## **2.3 No Further Payments**

- (1) The Settlement Amount and the Non-Refundable Administration Expenses Fund shall be paid by the Defendant in full satisfaction of the Released Claims against the Releasees.
- (2) The Plaintiff, the Class Members and Class Counsel, including their heirs, executors, predecessors, successors, assigns and agents, have no obligation to pay anything to the Defendant or any of the Releasees in relation to this Settlement Agreement or the Action.

## **SECTION 3– CERTIFICATION AND NOTICE APPROVAL MOTION**

### **3.1 Common Issue and Materials**

- (1) As soon as reasonably practicable after the Execution Date, Class Counsel will bring the Certification and Notice Approval Motion.
- (2) The sole common issue to be certified on the Certification and Notice Approval Motion shall be as follows:

“Did the Defendant owe the Plaintiff and Class Members a duty of care in respect of the Data Breach?”



### **3.2 Where Consent Required**

- (1) The Defendant shall consent to the Certification and Notice Approval Motion solely for the purposes of implementing the Settlement and the Defendant's consent should not be taken as an admission of liability or damages.
- (2) If this Settlement is not approved by the Court or it is terminated in accordance with its terms, the Parties shall consent to an Order of the Court vacating and setting aside any relief granted by the Court by way of the Certification and Notice Approval Motion.

### **3.3 Costs**

- (1) Each Party shall bear its own costs of the Certification and Notice Approval Motion.

## **SECTION 4 – OPT-OUT PROCEDURE AND DEADLINE**

### **4.1 Court Approval of Opt-Out Process and Deadlines**

- (1) Class Counsel shall seek the Court's approval of the following opt-out process as part of the Certification and Notice Approval Motion:
  - (a) Class Members seeking to opt out of the Action must do so within sixty (60) days from the date of distribution of the Notice, by sending a complete and validly executed written election to opt out, in the form attached as Appendix B, by email to Class Counsel at an email address to be identified in the Notice, on or before the Opt-Out Deadline. The written election to opt out must be electronically signed by the Class Member or the Class Member's designee and must include the following information:
    - (i) the Class Member's full name, current address and telephone number; and
    - (ii) a statement to the effect that the Class Member wishes to be excluded from the Action.
  - (b) Class Members who opt out of the Action shall not be members of the Settlement Class, and shall have no further right to participate in the Action or to share in the distribution of funds received as a result of the Settlement; and

- (c) Within ten (10) days of the Opt-Out Deadline, Siskinds LLP shall provide a report to the Defendant containing the names of each person who has validly and timely opted out of the Action.

#### **4.2 Reservations of Legal Rights**

- (1) The Defendant reserves all of its legal rights and defences with respect to any Class Member who validly opts out from the Action.

### **SECTION 5 – NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT**

#### **5.1 Mode of Dissemination**

- (1) The Notice shall be disseminated as follows;
  - (a) Direct notice shall be provided by the Defendant by the means through which it conventionally communicates with each Class Member, whether by direct email, postal mail or electronic message delivered through its electronic banking platform;
  - (b) In the event that a Class Member is no longer a client of the Defendant, the Defendant shall send the Notice to such a Class Member at the last known email address in the Defendant's records;
  - (c) Class Counsel may cause to be issued a press release containing the content of the Notice; and
  - (d) Class Counsel may post the Notice to their firms' accounts on Twitter, Facebook and such other similar channels, in addition to their firm websites.
- (2) Class Counsel shall provide a copy of the Notice to any person who has contacted them in respect of the Action.

### **SECTION 6– SETTLEMENT APPROVAL**

#### **6.1 The Settlement Approval Motion**

- (1) As soon as reasonably practicable after the Opt-Out Deadline, Class Counsel shall bring the Settlement Approval Motion.

## **6.2 Where Consent Required**

(1) The Defendant shall consent to the Settlement Approval Motion concerning the Court's approval of the Settlement and the distribution of the Net Settlement Proceeds except, for clarity, any aspect of the Settlement Approval Motion that concerns Class Counsel Fees, Class Counsel Disbursements and Administration Expenses, on which the Defendant shall take no position.

## **6.3 Form of Order Approving Settlement Agreement**

(1) The Order approving this Settlement Agreement shall be in the form attached as Appendix D or in such form or manner as agreed to by the Parties and approved by the Court.

## **6.4 Date Upon Which Settlement Is Final**

(1) This Settlement shall become final on the Effective Date.

## **6.5 Dismissal of Claims**

(1) Contemporaneously with the Settlement Approval Motion, Class Counsel shall bring a motion for an Order dismissing the following matters with prejudice and without costs on behalf of the respective plaintiffs:

- (a) the Action; and
- (b) the Steinman Action.

## **6.6 Pre-Motion Confidentiality**

(1) Until the Certification and Notice Approval Motion is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurers, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms, or as otherwise required by law.

## **6.7 Costs**

(1) Each Party shall bear its own costs of the Settlement Approval Motion and any other motion, if necessary, contemplated in this section.

**SECTION 7– DISTRIBUTION OF NET SETTLEMENT  
PROCEEDS**

**7.1 Class Counsel’s Fees and Disbursements**

(1) Class Counsel shall bring a motion for approval of the Class Counsel Fees and the Class Counsel Disbursements contemporaneously with or immediately following the Settlement Approval Motion. Within 30 days of the later of the Effective Date or the Fee and Disbursement Approval Date , the Defendant shall transfer the Class Counsel Fees and the Class Counsel Disbursements to Siskinds LLP, in trust by wire transfer.

(2) Siskinds LLP shall provide, in writing, the necessary wire transfer information to counsel for the Defendant on or before the Effective Date.

**7.2 Claims and Claimants**

(1) Members of the Settlement Class shall be eligible for the relief provided in this Settlement Agreement.

(2) Each member of the Settlement Class shall be a “**Claimant**” for the purposes of receiving compensation from the Net Settlement Proceeds.

**7.3 Calculation of compensation**

(1) The Net Settlement Proceeds shall be divided and distributed amongst the members of the Settlement Class as follows: within 60 days of the Effective Date or the Fee and Disbursement Approval Date (whichever is later), the Defendant shall calculate the compensation owing to each Settlement Class member by applying the Net Settlement Percentage to the compensation amounts set out in Table 1, below (the “**Compensation Calculation**”);

Table 1

<b>Category</b>	<b>Affected Persons</b>	<b>Payment for Time Wasted and Inconvenience</b>
Group 1: Claimants whose impacted personal information includes Social Insurance Number	3,027	\$192.80 – to compensate 8 hours at \$18/hr and a \$48.80 inconvenience amount

<b>Category</b>	<b>Affected Persons</b>	<b>Payment for Time Wasted and Inconvenience</b>
Group 2: Claimants whose impacted personal information does not include Social Insurance Number	7,074	\$120.50 – to compensate 5 hours at \$18/hr and a \$30.50 inconvenience amount
Group 3: Claimants who were had an unauthorized transaction in their banking account as a result of the Data Breach (for which they have already received reimbursement from the Defendant). Group 3 members are also members of either Group 1 or Group 2	1,797	\$185.50 inconvenience amount (in addition to Group 1 or Group 2 compensation)

(2) The payments in Table 1 are intended to reflect time wasted and inconvenience in responding to the Data Breach and its consequences.

**Distribution of the Net Settlement Proceeds**

(3) The Net Settlement Proceeds shall be distributed amongst the Claimants according to the following process:

- (a) After performing the Compensation Calculation, the Defendant shall provide Class Counsel with a table substantially in the form of Table 1 showing the compensation amounts resulting from the Compensation Calculation;
- (b) Within 15 days of receipt of same, Class Counsel shall approve the result of the Compensation Calculation or raise an objection;
- (c) Counsel for the Defendant and Class Counsel shall reasonably cooperate to resolve any objection within 15 days;

(4) After receiving Class Counsel’s approval under subsection 7.3(3)(b), or any objection is resolved under subsection 7.3(3)(c), the Defendant shall distribute the Net Settlement Proceeds to the Claimants as soon as reasonably practicable, according to the following process and timing: Where the Claimant is a current client of the Defendant, the Defendant shall deposit directly into the Claimant’s account the Claimant’s compensation approved by Class Counsel in subsection 7.3(3) within thirty calendar days following the approval;

- (a) Where the Claimant is not a current client of the Defendant, the Defendant shall send a personalized email in the form that CIBC usually uses to e-mail its customers to the last known email address with instructions for the Claimant to confirm their address. The e-mail shall include contact information of class counsel to allow claimants to confirm the legitimacy of the e-mail.
  - (b) Within six months of the Effective Date or the Fee and Disbursement Approval Date (whichever is later), the Defendant shall take action as follows. Where a response is received from a former-client Claimant under section 7.3(4)(a), the Defendant shall issue and mail a cheque to the Claimant at the provided address. Where no response is received from a former-client Claimant under section 7.3(4)(a), the Defendant shall not issue or send a cheque for such a Claimant. Three months after all cheques are sent, the Defendant shall report to Class Counsel the total number of: (a) Claimants from whom no response was received under section 7.3(4)(a); and (b) cheques returned as undeliverable or return to sender or similar designation, as well as the particulars of the contact information used or on file, to facilitate Class Counsel making additional efforts to locate the Claimants.
- (5) If Class Counsel receives or has received updated contact information for any person claiming to be a Claimant, Class Counsel shall be authorized to and shall provide such information to the Defendant for the purpose of delivery of the Claimant's compensation.
- (6) The Defendant shall use any information received pursuant to subsection (5) above solely for the purpose of implementing the Settlement Agreement.
- (7) Settlement cheques that are not deliverable to the Claimants or which are not cashed by a Claimant within 6 months of issuance will become stale-dated, ineligible for redemption, and shall not be reissued.

#### **7.4 *Cy-Près* Distribution**

- (1) Six months after the final distribution is made to the Settlement Class under section 7.3, the Defendant shall notify Class Counsel of any amount remaining in the Net Settlement Proceeds (the "**Cy-Pres Amount**").

(2) Any funds remaining after distribution of the Net Settlement Proceeds, whether as a result of failure to locate any Claimants, or as a result of cheques having become stale-dated, the Cy-Pres Amount shall be distributed to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (“CIPPIC”) or such other organization as the Courts may order.

(3) To be eligible to receive the monies under this Settlement Agreement, CIPPIC must:

- (a) Use the monies for the purposes outlined in its proposal submitted to Class Counsel and approved by the Court

## **SECTION 8 – STEPS TO EFFECTUATE SETTLEMENT AGREEMENT**

### **8.1 Reasonable Efforts**

(1) The Parties shall take all reasonable steps to effectuate this Settlement Agreement and to secure its approval and the prompt, complete and final dismissal with prejudice of the Action on a without costs basis as against the Defendant, including cooperating with the Plaintiff’s efforts to obtain the approval and Orders required from the Court and the implementation of this Settlement Agreement.

(2) Each Party shall bear its own costs in relation to any steps contemplated in or taken in accordance with this section.

### **8.2 Action in Abeyance**

(1) Until the Parties have obtained the Final Order approving the Settlement or this Settlement Agreement is terminated in accordance with its terms, whichever occurs first, the Parties agree to hold in abeyance all other steps in the Action other than the Certification and Notice Approval Motion and the Settlement Approval Motion contemplated by this Settlement Agreement and such other matters required to implement the terms of this Settlement Agreement, unless otherwise agreed in writing by the Parties.

## **SECTION 9 – RELEASES AND DISMISSALS**

### **9.1 Release of the Releasees**

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Settlement Agreement, the Releasers forever and

absolutely release, relinquish 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.

(2) The Plaintiff and the Settlement Class acknowledge that they may hereafter discover facts in addition to, or different from, those facts which they know or believe to be true regarding the subject matter of the Settlement Agreement, and it is their intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

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

## **9.2 No Further Claims**

(1) Upon the Effective Date, the Releasors and Class Counsel shall not now or hereafter institute, continue, maintain, intervene in or assert, either directly or indirectly, whether in Ontario or elsewhere, on his or her own behalf or on behalf of any class or any other person, any proceeding, cause of action, claim or demand against the Releasees, or any other person who may claim contribution or indemnity, or other claims over, relief from the Releasees, whether pursuant to statute or at common law or equity in respect of any Released Claim. 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.

(2) As of the date of this Settlement Agreement, Class Counsel do not and will not represent plaintiffs in any other proceeding related to any matter raised or which could have been raised in the Action or the Steinman Action as against the Defendant.

(3) 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 their Action against the Releasees.



(4) Except as provided in section 9.1(1), this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

### **9.3 Material Term**

(1) Without in any way limiting the ability of the Parties to assert that other terms in this Settlement Agreement are material terms, the releases and reservation of rights contemplated in this section shall be considered a “**Material Term**” of the Settlement Agreement and the failure of the Court to approve the releases and/or reservation of rights contemplated herein shall give rise to a right of termination pursuant to Section 11.1 of the Settlement Agreement.

## **SECTION 10- EFFECT OF SETTLEMENT**

### **10.1 No Admission of Liability or Concessions**

(1) The Plaintiff and the Defendant expressly reserve all of their rights if the Settlement is not approved, is terminated or otherwise fails to take effect for any reason.

(2) This Settlement Agreement, whether or not it is implemented, anything contained in it, any and all negotiations, discussions, documents, and communications associated with this Settlement Agreement, and any action taken to implement this Settlement Agreement, shall not be deemed, construed, or interpreted to be:

- (a) an admission or concession by the Defendant of any fact, fault, omission, wrongdoing or liability, or the truth of any of the claims or allegations made or which could have been made against it in the Action, or the application of the applicable laws to any of the claims made in the Action; or
- (b) an admission or concession by the Plaintiff, Class Counsel or the Class of any weakness in the claims of the Plaintiff and the Class, or that the consideration to be given hereunder represents the amount that could or would have been recovered from the Defendant after the trial of the Action.

### **10.2 Agreement Not Evidence or Presumption**

(1) This Settlement Agreement, whether or not it is implemented, and anything contained herein, and any and all negotiations, discussions, documents, communications, and proceedings

associated with this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, quasi-criminal, criminal or administrative action or disciplinary investigation or proceeding in any jurisdiction as evidence, a presumption, concession, or admission of anything save as set out in section 10.1(2):

(2) Notwithstanding section 10.2(1), this Settlement Agreement may be referred to or offered as evidence in order to obtain the Orders or directions from the Court contemplated by this Settlement Agreement, in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, as may be necessary, or as otherwise required by law.

## **SECTION 11 – TERMINATION**

### **11.1 Right of Termination**

(1) In the event that:

- (a) the Court declines to approve this Settlement Agreement or any material part hereof;
- (b) the Court issues an Order approving this Settlement Agreement that is materially inconsistent with the terms of the Settlement Agreement; or
- (c) the Order approving this Settlement Agreement is reversed on appeal and the reversal becomes a Final Order;

the Plaintiff and Defendant shall each have the right to terminate this Settlement Agreement by delivering a written notice within thirty (30) days following an event described above, subject to the Parties using best efforts and good faith to attempt to resolve any issues in furtherance of resolution of the Action on such modified terms as may be required to obtain Court approval.

(2) In addition, if the Settlement Amount and the Non-Refundable Administration Expenses Fund are not paid in accordance with Sections 2.1(1) and 2.2(1), the Plaintiff shall have the right to terminate this Settlement Agreement by delivering a written notice.

(3) Any Order, ruling or determination made or rejected by the Court with respect to Class Counsel Fees, Class Counsel Disbursements, or Administration Expenses shall not be deemed to

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

(4) Except as provided for in subsection 11.4(2), if the Plaintiff or the Defendant exercises the right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, and shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation or in any other way for any reason.

### **11.2 Steps Required on Termination**

(1) If this Settlement Agreement is terminated after the Court has heard or decided one or more of the motions contemplated herein, either the Defendant or the Plaintiff shall, as soon as reasonably practicable after termination, on notice to the other Party, bring a motion to the Court for an Order:

- (a) declaring this Settlement Agreement null and void and of no force or effect except for the provisions of those sections listed in subsection 11.4(2); and
- (b) setting aside and declaring null and void and of no force or effect, *nunc pro tunc*, all prior Orders or judgments entered by the Court in accordance with the terms of this Settlement Agreement.

(2) Subject to subsection 11.4(2), the Parties shall consent to the Order(s) sought in any motion made under subsection 11.2.

### **11.3 Notice of Termination**

(1) If this Settlement Agreement is terminated, a notice of the termination will be given to the Class in the form and content to be agreed upon by the Parties or ordered by the Court.

(2) The notice of termination, if necessary, shall be disseminated in a manner agreed upon by the Parties or ordered by the Court.

### **11.4 Effect of Termination**

(1) In the event this Settlement Agreement is terminated in accordance with its terms:

- (a) the Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) this Settlement Agreement will have no further force or effect and no effect on the rights of the Parties except as specifically provided for herein;
- (c) all statutes of limitation applicable to the claims asserted in the Action shall be deemed to have been tolled during the period beginning with the execution of this Settlement Agreement and ending with the day on which the Orders contemplated by subsection 11.2 are entered; and
- (d) this Settlement Agreement will not be introduced into evidence or otherwise referred to in any litigation against the Defendant.

(2) Notwithstanding the provisions of subsection 11.2, if this Settlement Agreement is terminated, the provisions of Sections 2.2, 6.6, 11.1(2), 11.1(3), 11.1(4), 11.2, 11.3, 11.4, 11.5, 11.6, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 12.10, 12.12, 12.15, 12.17, and the definitions applicable thereto (but only for the limited purpose of the interpretation of those sections), shall survive termination and shall continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

### **11.5 Disputes Relating to Termination**

(1) If there is a dispute about the termination of this Settlement Agreement, the Parties agree that the Court shall determine the dispute on a motion made by a Party on notice to the other Party.

### **11.6 Handling of Confidential Information in the event of Termination**

(1) In the event of termination, it is understood and agreed that all documents and information exchanged by the parties in order to reach the Settlement are and remain subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available.

(2) In the event of termination, within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Defendant or

containing or reflecting information derived from such documents for the purposes of reaching and implementing this Settlement. Class Counsel shall provide counsel for the Defendant with a written certification by Class Counsel of such destruction. Nothing contained in this section shall be construed as requiring Class Counsel to destroy any of their work product. However, any documents or information provided by the 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 Defendant. Class Counsel shall take reasonable steps and precautions to ensure and maintain the confidentiality of such documents, information and any work product of Class Counsel that discloses such documents and information.

## **SECTION 12 – MISCELLANEOUS**

### **12.1 Motions for Directions**

- (1) Any of the Parties may apply to the Court 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.

### **12.2 Headings, etc.**

- (1) In this Settlement Agreement:
  - (a) the division 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;
  - (b) the terms “this Settlement Agreement,” “the Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement; and
  - (c) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships or limited liability companies.

### **12.3 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.

### **12.4 Ongoing Jurisdiction**

(1) The Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement.

### **12.5 Governing Law**

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

### **12.6 Severability**

(1) Subject to section 12.6(2), any provision hereof that is held to be inoperative, unenforceable or invalid in any jurisdiction shall be severable from the remaining provisions which shall continue to be valid and enforceable to the fullest extent permitted by law.

(2) The following terms are not severable:

- (a) Material Terms; and
- (b) Any term giving rise to a right of termination as set out in section 11.1;

### **12.7 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.

### **12.8 Amendments**

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment after settlement approval must be approved by the Court.

### **12.9 Binding Effect**

(1) If the Settlement is approved by the Court and becomes final, this Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiff, the Settlement Class members, the Defendant, the Releasees and the Releasers or any of them, and all of their respective heirs, executors, predecessors, successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasers and each and every covenant and agreement made herein by the Defendant shall be binding upon all of the Releasees.

### **12.10 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 electronic signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **12.11 Survival**

(1) The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

### **12.12 Negotiated Agreement**

(1) This Settlement Agreement and the underlying Settlement have been the subject of arm's-length negotiations and discussions among the undersigned and counsel. Each of the Parties 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.

### **12.13 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 an Administration Expense. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

### **12.14 Recitals**

(1) The recitals to this Settlement Agreement are true, constitute material and integral parts hereof and are fully incorporated into, and form part of, this Settlement Agreement.

### **12.15 Acknowledgements**

- (1) Each Party hereby affirms and acknowledges that:
- (a) they or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has reviewed this Settlement Agreement;
  - (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to them or the Party's representative by their counsel;
  - (c) they 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.



**12.16 Authorized Signatures**

(1) Each of the undersigned represents that they are 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.

**12.17 Notice**

(1) Any notice, instruction, motion for court approval or motion for directions or court Orders sought in connection with this Settlement Agreement or any other report or document to be given by any Party to any other Party shall be in writing and delivered by email, facsimile or letter by overnight delivery to:

**For the Plaintiff, the Class and Class Counsel in the Proceeding:**

**Siskinds LLP**  
**Barristers and Solicitors**  
680 Waterloo Street  
London, ON N6A 3V8

Michael G. Robb  
Tel: (519) 660-7872  
Fax: (519) 660-7873  
Email: [michael.robbs@siskinds.com](mailto:michael.robbs@siskinds.com)

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

David Sterns  
Tel: (416) 977-0007  
Fax: (416) 977-0717

Email: [dsterns@sotosllp.com](mailto:dsterns@sotosllp.com)

JSS Barristers  
800, 304 - 8 Avenue SW  
Calgary, Alberta T2P 1C2

Carsten Jensen Q.C., FCI Arb  
Tel: (403) 571-1526  
Fax: (403) 571-1528

Email: [jensenc@jssbarristers.ca](mailto:jensenc@jssbarristers.ca)

**Counsel for the Plaintiff**

**For the Defendant:**

**Torys LLP**  
79 Wellington St. West  
33<sup>rd</sup> floor  
Toronto, ON M5K 1N2

Linda Plumpton  
Tel: (416) 865-8193  
Fax: (416) 865-7380  
Email: [lplumpton@torys.com](mailto:lplumpton@torys.com)

Counsel for the Defendant

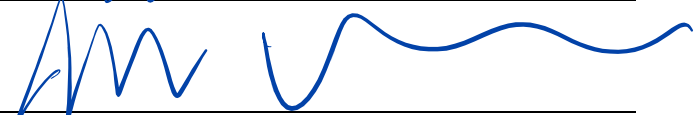
**IN WITNESS OF WHICH** the Settling Parties have executed this Settlement Agreement.

**Jeffrey Bannister on his own behalf and on behalf of the Class, by his counsel**

Name of Authorized Signatory:

Jean-Marc Leclerc

Signature of Authorized Signatory:


  
Class Counsel

**Canadian Imperial Bank of Commerce, by its counsel**

Name of Authorized Signatory:

Linda Plumpton

Signature of Authorized Signatory:

  
Torys LLP  
Counsel for Canadian Imperial Bank of  
Commerce

**Appendix A – Notice of Settlement and Opt-Out Form**

**(Long Form Notice - to be posted on Class Counsels' Web sites and e-mailed by CIBC)**

**SIMPLII FINANCIAL CLASS ACTION**

**NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT**

**This notice is to any person who is a current or former client of Simplii Financial and who received notice from Simplii Financial that their personal information was accessed or accessible as a result of a data breach affecting Simplii Financial on or about May 27, 2018.**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

**CLASS ACTION HAS BEEN SETTLED**

In 2018, a class action was commenced against Canadian Imperial Bank of Commerce in respect of a data breach occurring on May 27, 2018 that affected certain clients of Simplii Financial, a division of CIBC.

This notice applies to all clients of Simplii Financial as at May 27, 2018 who were notified by Simplii Financial that their personal information was accessed or accessible as a result of the May 27, 2018 data breach.

The parties to the Class Action have reached a proposed settlement subject to obtaining the approval of the Superior Court of Ontario (the "**Court**") (the "**Settlement Agreement**"). The Settlement Agreement provides that the Defendant will pay \$1,769,425.00, in full and final settlement of all claims of the Class Members (the "**Settlement Amount**"). The Defendant has also agreed to maintain its existing commitments to compensate all Class Members for any money fraudulently withdrawn from their Simplii banking accounts as a direct result of the data breach. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses, but excludes non-refundable administration expenses. The Defendant will pay an additional CAD\$100,000.00 to fund non-refundable administration expenses (the "**Non-Refundable Administration Expenses Fund**"), which include the fees, expenses and costs relating to the approval and implementation of the settlement and notice program, and do not include Class Counsel fees and disbursements. In return for the Settlement Amount, the Defendant will receive a release and a dismissal of the Class Action.

The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has disputed, and continues to dispute, the allegations advanced in the Class Action.

**CERTIFICATION OF THE CLASS ACTION**

As part of the terms of the Settlement Agreement, the Action has been certified by the Court as a Class Action.

The definition for Class Members is as follows:

Any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach (“**Class**” or “**Class Members**”).

If you received a notice from Simplii Financial, you are a member of the class. If you are not sure whether or not you are a member of the Class, you should speak to Class Counsel whose addresses are provided below.

### **CLASS MEMBERS’ ENTITLEMENTS**

The Defendant has identified 10,101 of its clients whose personal information was affected by the data breach.

The \$1,769,425.00 to be paid by the Defendant will, net of legal fees, be distributed to the Class Members.

The Defendant has identified two groups of clients. One group had social insurance number information accessed or accessible (3,027 affected persons, known as “Group 1”), while the other did not (7,074 affected persons, known as “Group 2”). If the settlement is approved, Class Members will be paid the following approximate amounts on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan:

Group 1: \$192.80

Group 2: \$120.50

In addition, there are 1,797 Class Members in Group 1 and Group 2 who had an unauthorized transaction in their Simplii Financial account. These Class Members will be paid an additional approximate amount of \$185.50 on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan.

If the settlement is approved, Class Members who are existing clients of Simplii Financial will have the amounts deposited directly to their Simplii Financial accounts. Class members who are former clients will be required to confirm their contact information and will be paid by cheque. Unclaimed amounts will be donated to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic at the University of Ottawa.

### **IF YOU DO NOT WISH TO PARTICIPATE IN THIS CLASS ACTION**

Class Members who wish to participate in the Class Action do not need to do anything at this time. They are automatically included in the Class Action.

Any Class Member who does not wish to participate in the Class Action can choose to opt out and will not be entitled to participate further in the Action, or to share in the distribution of funds

received as a result of the Settlement. Those who opt out will not be bound by the releases exchanged by the Parties.

Any Class Member who wishes to opt out of the Class Action must do so by sending a written opt out form, signed by the Class Member, stating that he/she opts out of the Class Action. The written opt out form appears as Appendix 'A' to this Notice. It can also be obtained from Class Counsel.

A completed opt out form must be sent by pre-paid mail, courier, or email to Class Counsel, and must be received by no later than **[60 days after publication of Notice]**. Where a postmark is not visible or legible, the request to opt out will be deemed to have been postmarked four (4) business days prior to the date on which it is received by Class Counsel.

No Class Member will be permitted to opt out of the Class Action after **[opt-out date]**. If you opt out of the Class Action, you will take full responsibility for initiating your own lawsuit against the Defendant and for taking all legal steps necessary to protect your claim, if you wish to proceed with a claim.

#### **A SETTLEMENT APPROVAL MOTION WILL BE HELD IN OTTAWA, ONTARIO**

Before the Settlement Agreement can be implemented, the Settlement Agreement must be approved by the Court.

Class Members who do not opt out may choose (but are not required) to attend the Settlement Approval Motion, which will be held on \_\_\_\_\_, 2020 at **[time tbd]** at the court house at 161 Elgin Street, Ottawa, Ontario. In the event that the current COVID-19 pandemic necessitates the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

Class Members who do not oppose the proposed Settlement do not need to appear at any hearing or take any other action at this time to indicate their desire to support the proposed Settlement.

#### **CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

In addition to seeking the Court's approval of the Settlement Agreement, Class Counsel (as identified below) will seek the approval of their legal fees, in an amount equal to 25% of the Settlement Amount, plus disbursements and applicable taxes ("**Class Counsel Fees**"). Class Counsel will also seek approval of a plan for distributing the Settlement Amounts to Class Members (the "**Distribution Plan**"). Class Counsel will not seek legal fees or disbursements from the Non-Refundable Administration Expenses Fund.

#### **PROPOSED DISTRIBUTION OF THE NET SETTLEMENT AMOUNT**

Class Members who have not opted out of the Class Action will be compensated as described above, as further detailed in the Distribution Plan.

If the Settlement is approved, all Class Members except those who have formally opted out of the Action will be bound by the terms of the Settlement Agreement. This means that they will not be able to bring or maintain any other claim or legal proceeding against Canadian Imperial Bank of Commerce in relation to the claims advanced in the Class Action.

**If the settlement is approved, Class Members will:**

- (a) If they remain a client of Simplii Financial, receive compensation by direct deposit into their account by Simplii Financial; or**
- (b) If they are no longer a client of Simplii Financial, receive an email from Simplii Financial asking them to confirm their mailing address, following which they will receive a cheque from Simplii Financial via mail.**

A copy of the Settlement Agreement may be found at:

[www.siskinds.com](http://www.siskinds.com)

[www.sotosllp.com](http://www.sotosllp.com)

[www.jssbarristers.ca](http://www.jssbarristers.ca)

**CLASS MEMBERS MAY OBJECT TO THE SETTLEMENT**

***As a Class Member, if you are unhappy with the terms of the Settlement Agreement, you have a right to object if you decide to not opt out.***

If you wish to comment on, or make objection to, the approval of the Settlement Agreement or Class Counsel Fees, you must provide notice in writing of your intention to do so. All such notice must be submitted to Class Counsel (at the addresses listed below) no later than \_\_\_\_\_, 2020. Class Counsel will forward all such submissions to the Court and to Counsel for the Defendant. You may attend at the Settlement Approval Hearing whether or not you deliver an objection. In the event that the current COVID-19 pandemic necessitates that the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

A written objection should include the following information:

- (a) The objector's name, address, telephone number, fax number (where applicable) and email address;
- (b) A brief statement outlining the nature of, and reason for, the objection; and
- (c) A statement as to whether the objector intends to appear at the settlement approval hearing in person or by legal counsel and, if by legal counsel, the name, address, telephone number, fax number and email address of such legal counsel.

**INTERPRETATION**



If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**QUESTIONS ABOUT THE PROPOSED SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL**

**SOTOS LLP**

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TORONTO, ON M5G 1Z8

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FAX: 403-571-1528

**Appendix 'A'**

**OPT OUT FORM**

**TO: Class Counsel**

I, \_\_\_\_\_ (insert full name), have received notice of the Simplii Financial Class Action.

I believe that I am a Class Member.

I was a client of Simplii Financial on May 27, 2018, and I was notified by Simplii Financial that my Personal Information was accessed or accessible as a result of the Data Breach that occurred on or around that date.

I do NOT wish to participate in the Simplii Financial Class Action.

I understand that by opting out of this Class Action, I will not be eligible for any benefit that may be available to the Class upon resolution of this matter.

I understand that, if I wish to pursue any remedy with respect to Canadian Imperial Bank of Commerce, I must do so on my own.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
(signature)

Insert Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

## **Appendix B – Order Approving Certification and Notice**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE	)	MONDAY, THE 5 <sup>th</sup>
	)	
JUSTICE SMITH	)	DAY OF OCTOBER, 2020
	)	

B E T W E E N :

JEFFREY BANNISTER

Plaintiff

- and -

CANADIAN IMPERIAL BANK OF COMMERCE

Defendant

*Proceeding under the Class Proceedings Act, 1992*

**ORDER**

**- Certification for Settlement Purposes and Notice Approval -**

THIS MOTION, made by the Plaintiff for, *inter alia*, an Order certifying the within Action as a class proceeding for settlement purposes and approving the form, content and method of dissemination of the Notice of Settlement Approval Hearing and Opt-Out (the “**Notice**”), was heard this day at 161 Elgin Street, Ottawa, Ontario, K2P 2K1, by video conference.

**ON READING** the materials filed, including the Settlement Agreement between the Parties dated September 29, 2020 (the “**Settlement Agreement**”), attached to this Order as **Schedule “A”**, and on hearing the submissions of counsel for the Plaintiff (“**Class Counsel**”) and counsel for the Defendant;

**AND ON BEING ADVISED** that the Plaintiff and Defendant consent to this Order;

1. **THIS COURT ORDERS** that, for the purposes of this Order, except to the extent that they are modified in this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the hearing of the Plaintiff's motion to approve the Settlement shall take place on

3. **THIS COURT ORDERS** that the Notice, substantially in the the form attached hereto as **Schedule "B"**, is hereby approved.

4. **THIS COURT ORDERS** that the plan of dissemination of the Notice set out in Section 5.1 of the Settlement Agreement (the "**Plan of Dissemination**") is hereby approved and that the Notice shall be disseminated in accordance with the Plan of Dissemination.

5. **THIS COURT ORDERS** that the Action is certified as a class proceeding for settlement purposes only.

6. **THIS COURT ORDERS** that the Class is certified as follows:

Any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach

7. **THIS COURT ORDERS** that the Plaintiff, Jeffrey Bannister, is appointed as the representative plaintiff for the Class.

8. **THIS COURT ORDERS** that the following issue is common to the Class and is hereby certified:

Did the Defendant owe the Plaintiff and Class Members a duty of care in respect of the Data Breach?

9. **THIS COURT ORDERS** that Class Members can opt-out of the Action by emailing a request to op-out to Class Counsel, on or before the sixtieth (60<sup>th</sup>) day after the

Notice is disseminated (the “**Opt-Out Deadline**”). The opt-out email must be sent by the Class Member or their designee and must include the following information:

- (a) The Class Member’s full name, current address and telephone number; and
- (b) A Statement to the effect that the Class Member wishes to be excluded from the Action.

10. **THIS COURT ORDERS** that any Class Member who validly opts-out of the Action shall have no further right to participate in the Action or to share in the distribution of any funds received as a result of a judgment or settlement in this Action.

11. **THIS COURT ORDERS** that no further right to opt-out of the Action will be provided.

12. **THIS COURT ORDERS** that, within ten (10) days of the Opt-Out Deadline, Class Counsel shall provide to the Defendant a report containing the names of each individual who has validly opted out of the Action and a summary of the information delivered by such individuals pursuant to paragraph 9, above.

---

The Honourable Justice Smith

SCHEDULE

"B"

**(Long Form Notice - to be posted on Class Counsels' Web sites and e-mailed by CIBC)**

**SIMPLII FINANCIAL CLASS ACTION**

**NOTICE OF SETTLEMENT APPROVAL HEARING AND OPT-OUT**

**This notice is to any person who is a current or former client of Simplii Financial and who received notice from Simplii Financial that their personal information was accessed or accessible as a result of a data breach affecting Simplii Financial on or about May 27, 2018.**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

**CLASS ACTION HAS BEEN SETTLED**

In 2018, a class action was commenced against Canadian Imperial Bank of Commerce in respect of a data breach occurring on May 27, 2018 that affected certain clients of Simplii Financial, a division of CIBC.

This notice applies to all clients of Simplii Financial as at May 27, 2018 who were notified by Simplii Financial that their personal information was accessed or accessible as a result of the May 27, 2018 data breach.

The parties to the Class Action have reached a proposed settlement subject to obtaining the approval of the Superior Court of Ontario (the "**Court**") (the "**Settlement Agreement**"). The Settlement Agreement provides that the Defendant will pay \$1,769,425.00, in full and final settlement of all claims of the Class Members (the "**Settlement Amount**"). The Defendant has also agreed to maintain its existing commitments to compensate all Class Members for any money fraudulently withdrawn from their Simplii banking accounts as a direct result of the data breach. The Settlement Amount includes all legal fees, disbursements, taxes and administration expenses, but excludes non-refundable administration expenses. The Defendant will pay an additional CAD\$100,000.00 to fund non-refundable administration expenses (the "**Non-Refundable Administration Expenses Fund**"), which include the fees, expenses and costs relating to the approval and implementation of the settlement and notice program, and do not include Class Counsel fees and disbursements. In return for the Settlement Amount, the Defendant will receive a release and a dismissal of the Class Action.

The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of the Defendant, which has disputed, and continues to dispute, the allegations advanced in the Class Action.

**CERTIFICATION OF THE CLASS ACTION**

As part of the terms of the Settlement Agreement, the Action has been certified by the Court as a Class Action.

The definition for Class Members is as follows:



Any person who is a current or former client of Simplii Financial who was notified by Simplii Financial that their Personal Information was accessed or accessible as part of the Data Breach (“**Class**” or “**Class Members**”).

If you received a notice from Simplii Financial, you are a member of the class. If you are not sure whether or not you are a member of the Class, you should speak to Class Counsel whose addresses are provided below.

### **CLASS MEMBERS’ ENTITLEMENTS**

The Defendant has identified 10,101 of its clients whose personal information was affected by the data breach.

The \$1,769,425.00 to be paid by the Defendant will, net of legal fees, be distributed to the Class Members.

The Defendant has identified two groups of clients. One group had social insurance number information accessed or accessible (3,027 affected persons, known as “Group 1”), while the other did not (7,074 affected persons, known as “Group 2”). If the settlement is approved, Class Members will be paid the following approximate amounts on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan:

Group 1: \$192.80

Group 2: \$120.50

In addition, there are 1,797 Class Members in Group 1 and Group 2 who had an unauthorized transaction in their Simplii Financial account. These Class Members will be paid an additional approximate amount of \$185.50 on a proportionate share basis from which Class Counsel fees, disbursements and administration expenses will be deducted, calculated in accordance with the Distribution Plan.

If the settlement is approved, Class Members who are existing clients of Simplii Financial will have the amounts deposited directly to their Simplii Financial accounts. Class members who are former clients will be required to confirm their contact information and will be paid by cheque. Unclaimed amounts will be donated to the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic at the University of Ottawa.

### **IF YOU DO NOT WISH TO PARTICIPATE IN THIS CLASS ACTION**

Class Members who wish to participate in the Class Action do not need to do anything at this time. They are automatically included in the Class Action.

Any Class Member who does not wish to participate in the Class Action can choose to opt out and will not be entitled to participate further in the Action, or to share in the distribution of funds

received as a result of the Settlement. Those who opt out will not be bound by the releases exchanged by the Parties.

Any Class Member who wishes to opt out of the Class Action must do so by sending a written opt out form, signed by the Class Member, stating that he/she opts out of the Class Action. The written opt out form appears as Appendix 'A' to this Notice. It can also be obtained from Class Counsel.

A completed opt out form must be sent by pre-paid mail, courier, or email to Class Counsel, and must be received by no later than **[60 days after publication of Notice]**. Where a postmark is not visible or legible, the request to opt out will be deemed to have been postmarked four (4) business days prior to the date on which it is received by Class Counsel.

No Class Member will be permitted to opt out of the Class Action after **[opt-out date]**. If you opt out of the Class Action, you will take full responsibility for initiating your own lawsuit against the Defendant and for taking all legal steps necessary to protect your claim, if you wish to proceed with a claim.

#### **A SETTLEMENT APPROVAL MOTION WILL BE HELD IN OTTAWA, ONTARIO**

Before the Settlement Agreement can be implemented, the Settlement Agreement must be approved by the Court.

Class Members who do not opt out may choose (but are not required) to attend the Settlement Approval Motion, which will be held on \_\_\_\_\_, 2020 at **[time tbd]** at the court house at 161 Elgin Street, Ottawa, Ontario. In the event that the current COVID-19 pandemic necessitates the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

Class Members who do not oppose the proposed Settlement do not need to appear at any hearing or take any other action at this time to indicate their desire to support the proposed Settlement.

#### **CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

In addition to seeking the Court's approval of the Settlement Agreement, Class Counsel (as identified below) will seek the approval of their legal fees, in an amount equal to 25% of the Settlement Amount, plus disbursements and applicable taxes ("**Class Counsel Fees**"). Class Counsel will also seek approval of a plan for distributing the Settlement Amounts to Class Members (the "**Distribution Plan**"). Class Counsel will not seek legal fees or disbursements from the Non-Refundable Administration Expenses Fund.

#### **PROPOSED DISTRIBUTION OF THE NET SETTLEMENT AMOUNT**

Class Members who have not opted out of the Class Action will be compensated as described above, as further detailed in the Distribution Plan.

If the Settlement is approved, all Class Members except those who have formally opted out of the Action will be bound by the terms of the Settlement Agreement. This means that they will not be able to bring or maintain any other claim or legal proceeding against Canadian Imperial Bank of Commerce in relation to the claims advanced in the Class Action.

**If the settlement is approved, Class Members will:**

- (a) If they remain a client of Simplii Financial, receive compensation by direct deposit into their account by Simplii Financial; or**
- (b) If they are no longer a client of Simplii Financial, receive an email from Simplii Financial asking them to confirm their mailing address, following which they will receive a cheque from Simplii Financial via mail.**

A copy of the Settlement Agreement may be found at:

[www.siskinds.com](http://www.siskinds.com)

[www.sotosllp.com](http://www.sotosllp.com)

[www.jssbarristers.ca](http://www.jssbarristers.ca)

**CLASS MEMBERS MAY OBJECT TO THE SETTLEMENT**

***As a Class Member, if you are unhappy with the terms of the Settlement Agreement, you have a right to object if you decide to not opt out.***

If you wish to comment on, or make objection to, the approval of the Settlement Agreement or Class Counsel Fees, you must provide notice in writing of your intention to do so. All such notice must be submitted to Class Counsel (at the addresses listed below) no later than \_\_\_\_\_, 2020. Class Counsel will forward all such submissions to the Court and to Counsel for the Defendant. You may attend at the Settlement Approval Hearing whether or not you deliver an objection. In the event that the current COVID-19 pandemic necessitates that the Motion be heard remotely, the means by which Class Members may attend at the Settlement Approval Motion will be posted on the web sites of Class Counsel.

A written objection should include the following information:

- (a) The objector's name, address, telephone number, fax number (where applicable) and email address;
- (b) A brief statement outlining the nature of, and reason for, the objection; and
- (c) A statement as to whether the objector intends to appear at the settlement approval hearing in person or by legal counsel and, if by legal counsel, the name, address, telephone number, fax number and email address of such legal counsel.

**INTERPRETATION**

If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

**QUESTIONS ABOUT THE PROPOSED SETTLEMENT SHOULD BE DIRECTED TO CLASS COUNSEL**

**SOTOS LLP**

180 DUNDAS STREET WEST  
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TORONTO, ON M5G 1Z8

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FAX: 403-571-1528

**Appendix 'A'**

**OPT OUT FORM**

**TO: Class Counsel**

I, \_\_\_\_\_ (insert full name), have received notice of the Simplii Financial Class Action.

I believe that I am a Class Member.

I was a client of Simplii Financial on May 27, 2018, and I was notified by Simplii Financial that my Personal Information was accessed or accessible as a result of the Data Breach that occurred on or around that date.

I do NOT wish to participate in the Simplii Financial Class Action.

I understand that by opting out of this Class Action, I will not be eligible for any benefit that may be available to the Class upon resolution of this matter.

I understand that, if I wish to pursue any remedy with respect to Canadian Imperial Bank of Commerce, I must do so on my own.

Dated the \_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
(signature)

Insert Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

JEFFREY BANNISTER  
Plaintiff

CANADIAN  
IMPERIAL BANK OF  
COMMERCE  
Defendant

Court File No.: CV-18-00076746-00CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

**- Certification for Settlement Purposes and Notice Approval -**

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