



No. S-1711066
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

KIPLING WARNER

PLAINTIFF

and

GOOGLE LLC

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF APPLICATION

Names of applicants: Plaintiff

To: The Defendant and its Solicitors

TAKE NOTICE that an application will be made by the applicants to the Honourable Mr Justice Voith at the courthouse at 800 Smithe Street, Vancouver BC on November 19, 2019 at 9:00 am for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An order for consent certification and notice approval in the form attached as Schedule A.
2. An order substituting Elizabeth Judie Chartrand as the plaintiff in this action in place of Kipling Warner;
3. An order to amend the style of cause in the form attached as Schedule B.
4. An order to amend the Notice of Civil Claim in the form attached as Schedule C.
5. An order striking the Notice of Intention to Act in Person filed by Kipling Warner on October 3, 2019.

Part 2: FACTUAL BASIS

History of Proceedings

6. On November 28, 2017, this action was commenced against Google LLC (“Google”) alleging that it had been collecting location data from users of the Android mobile operating system (“Android OS”) in breach of the *Privacy Act*, RSBC 1996, c 373. Specifically, the Plaintiff alleged that between January and December 2017, Google breached class members’ privacy in Canada by receiving the identification number or code of the cell towers (“Cell ID”) through which smartphones using the Android OS were connecting to the network.

Notice of Civil Claim

7. Parallel actions were filed in Quebec and Ontario. The actions were and are being managed cooperatively.

Emond et al. v. Google LLC, CV-18-590521-00CP (Toronto)
Lima v. Google LLC, No 500-06-000941-183 (Montréal)

8. Google denied the allegations. On January 30, 2018, it filed a Response to Civil Claim denying any wrongdoing.

Response to Civil Claim (Google)

9. Pleadings closed on January 30, 2018. On May 16, 2018, the Honourable Mr. Justice Voith was appointed as case management judge.

Reply (Plaintiff)
Notice of Assignment

10. On March 1, 2018, the Plaintiff delivered the Notice of Application for Certification, within the 90 days prescribed by the *Class Proceedings Act*, s 2(3)(a). In support of the motion, the Plaintiff delivered expert reports from three subject matter experts: Dr. Sasha Fedorova (on operating systems); Dr. Daniel Lee (on wireless telecommunications and location tracking); and Dr. Jeffery Boase (on the sociological aspects of privacy and smartphone use). A schedule was set for certification, with a hearing ordered for December 2018.

Notice of Application (Plaintiff)
Affidavits No 1 of A Fedorova, J Boase, D Lee, K Warner (Plaintiff)

11. Between March and December, the parties exchanged application materials, 11 affidavits (including six expert affidavits) and hundreds of pages of arguments. In addition to the certification application, the Plaintiff delivered an application to strike Google's affidavits, and Google sought and obtained a sealing order over sensitive information in the court file.

Application Response (Google)
Affidavits No 1 of T Hansen, E Jacobs, B Santaguida, G Berry (Google)
Affidavit No 2 of Dr. D Lee (Plaintiff)
Affidavit No 3 of E Tanjuatco (Plaintiff)
Notice of Application (strike affidavits) filed August 13, 2018 (Plaintiff)
Application Response (strike affidavits) filed August 22, 2018 (Google)
Notice of Application (sealing order) filed November 17, 2018 (Google)

12. On the eve of the certification hearing, after the matter had been fully briefed and the parties were ready to proceed with the contested application, a mediation was held. The Honourable Mary-ellen Boyd was the mediator. A settlement was reached at the mediation and subsequently reduced to a written agreement (the "**Settlement Agreement**").

Affidavit No 1 of A Klein, Ex. A

13. The parties now apply for consent certification and notice approval, in accordance with the terms of the Settlement Agreement.

The Terms of Settlement

14. Under the Settlement Agreement, Google has agreed to pay a Settlement Amount of CAD \$1,000,000 to resolve the litigation, without admission of liability. The parties have proposed that the settlement amount, after deduction for class counsel fees, disbursements (including costs of notice) and applicable taxes, and any payments to representative plaintiffs and the *Fonds d'aide aux actions collectives*, be distributed by way of Cy Pres Donation to the Law Foundation of British Columbia, the Law Foundation of Ontario, and the Fondation du Barreau du Québec, in equal shares (to the extent possible). The recipients of the Cy Pres Donation will use the money to fund grants for projects in their sole discretion, with a preference given to projects at the intersection of technology and privacy.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement), Recital X, sections 1(46), 3, 12,
Schedule A

15. The Settlement Agreement is subject to approval in each of BC, Ontario and Québec, and sets out a comprehensive procedure for that process. Under the terms of the Settlement Agreement, ss 8.3 and 8.4, the Plaintiff must seek consent certification and notice approval in this Court and parallel orders in Ontario and Quebec. That process is already underway.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement)
Affidavit No 1 of M Good

16. If all courts also grant the orders requested, notice will be published within 30 days of the latest order (section 5). The form of notice is attached to the Settlement Agreement as Schedule B.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement)

17. Any persons wishing to opt out of the settlement must do so within 45 days of the publication of notice (section 7). Any person who has not opted out but wishes to object to the settlement approval must do so at least 15 days prior to the approval hearing at which they are seeking to appear (section 6).

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement)

18. Approximately 60 days following the publication of notice, a second hearing will be held in this Court seeking final approval of the settlement (subsection 8.7). The same approvals will also be sought in Ontario and Québec (subsections 8.8 and 8.9). If those courts grant the orders, then approximately 30 days after the later of them, the Settlement Agreement will become final (subsections 8.12, 1(14)). Forty-five days after that, and upon delivery of certain administrative information by the recipients, Google will remit the Cy Pres Donation to the Law Foundations (subsection 3.3).

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement)

19. Class Counsel will seek approval of class counsel fees, disbursements and taxes, and any payments to the representative plaintiff(s) as part of the second set of approval hearings (sections 9 and 10). Approval of the Settlement Agreement is not dependent on approval of Class Counsel fees (subsection 9.3).

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement)

Notice

20. On the basis of the evidence exchanged during the certification hearing process, the parties agree that it is not possible for the parties to identify individuals who may be Class Members (although class members are easily able to identify themselves). Given the specific facts at issue in the proceedings, attempts by the parties to locate or identify individual Class Members so as to quantify their claims and distribute proportionate shares of the Settlement Amount to each Class Member is impractical. Accordingly, no claims administrator or notice firm will be appointed.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement), Recital R, subsections 3.2, 4.1

21. Notice in the traditional form will be published in newspapers across the country and posted online. The proposed notice is attached to the Settlement Agreement at Schedule B.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement), section 5

Certification Criteria and Notice

22. On the basis of the evidence put forward in relation to certification, and on the basis of the proposed settlement, the criteria for certification under the *Class Proceedings Act* are met.

Affidavit No 1 of A Klein
Affidavits No 1 of A Fedorova, J Boase, D Lee, K Warner (Plaintiff)
Affidavits No 2 of E Tanjuatco, D Lee (Plaintiff)
Affidavits No 1 of T Hansen, E Jacobs, B Santaguida, G Berry (Google)
Affidavit No 3 of E Tanjuatco (Plaintiff)

23. Ms. Chartrand is prepared to act as the representative plaintiff and has indicated her approval of the proposed settlement, consent certification and notice plan. She has no conflicts with the class.

Affidavit No 1 of E Chartrand

24. The parties have proposed newspaper publication of notice, along with posting on class counsel's website, as the means of public notification of the settlement approval hearing. This is the usual practice in these kinds of cases.

Affidavit No 1 of A Klein, Ex. A (Settlement Agreement), section 5.2

The Substitution of Kipling Warner as Plaintiff

25. Mr. Warner was the original named plaintiff in this action. He worked with counsel to move the case to certification and participated in the mediation and settlement process. He agreed to the terms of settlement reached at the mediation.

Affidavit No 1 of M Good

26. During the process of preparing a formal, written settlement agreement, Mr. Warner became fixated on the matter of the choice of recipient for the cy-pres funds. It was Mr. Warner's view that the funds should all go to the Free Software Foundation, Inc. ("FSF"). The FSF is an American non-profit organisation, with no presence in Canada. The FSF is affiliated with Dr Richard Stallman, Mr. Warner's mentor. Mr. Warner intended that the cy-pres funds would flow through the FSF to fund a project regarding cellular software and hardware. The funds would go to the United States as the FSF is not registered in Canada and does not operate here.

Affidavit No 1 of M Good

27. Class counsel kept Mr. Warner apprised of the ongoing discussions with the defendant regarding the draft settlement document. Mr. Warner was advised that the defendant was unlikely to accept the FSF as a recipient for the cy-pres funds. Mr. Warner remained insistent. The FSF was proposed to the counterparty as a recipient but was not accepted. Class counsel advised Mr. Warner that the usual and appropriate beneficiaries were the provincial Law Foundations, and the Fondation du Barreau in Quebec. Mr. Warner disliked these organisations because he believes them to be acting only in lawyers' self interest.

Affidavit No 1 of M Good

28. By May 2019, the settlement agreement was ready to be finalised but for Mr. Warner's unwillingness to agree to the Law Foundations as the recipients for the cy-pres funds. Google was prepared to agree to those recipients and the other plaintiffs in Ontario and Quebec had already agreed.

Affidavit No 1 of M Good

29. To resolve this impasse, a meeting was set between Mr. Warner and class counsel. On June 3, 2019, the meeting was held. Despite lengthy discussions, Mr. Warner continued to take the position that "not everyone respects" the Law Foundations and that "too much [was] going to

lawyers”. He insisted that the FSF was the only possible recipient. Class counsel explained that it was not the best interests of the class to hold up or walk away from a settlement because one representative of four wants the monies to go to his choice of cy-pres recipient. At the end of the meeting, class counsel advised Mr. Warner that they would need to find a way forward, which could include finding a new representative plaintiff if he could not sign on to the settlement terms.

Affidavit No 1 of M Good

30. On June 10, 2019, Mr. Warner wrote to class counsel by email, writing that “[t]he best option is to find another lead plaintiff”. Class counsel confirmed the instructions by telephone that day that Mr. Warner was to be substituted in place of a new plaintiff. Mr. Warner was told that class counsel would take the necessary steps to effect the substitution and that would conclude his involvement with this case.

Affidavit No 1 of M Good

31. Accordingly, in reliance on Mr. Warner’s instructions, Ms. Chartrand retained class counsel and agreed to be substituted as plaintiff. Also in reliance on Mr. Warner’s say-so, the settlement agreement was finalised and signed by Google and the other plaintiffs.

Affidavit No 1 of M Good

32. The parties filed a requisition for a consent order for the substitution. It was rejected by the Registry because it was “missing signature of substituted party”. That is not a requirement under the Rules. However, Ms. Chartrand has put forward an affidavit in which she states her willingness to be substituted as plaintiff. She should be substituted as plaintiff.

Affidavit No 1 of M Good
Affidavit No 1 of E Chartrand

33. The settlement approval process got underway. A hearing was set for October 4, 2019 for consent certification and notice approval. On September 30th, however, Mr. Warner suddenly contacted Mr. Klein and, for the first time, took the position that he did not consent to his substitution as plaintiff and stated that he intended to raise the matter in some way before the Court on October 4th.

Affidavit No 1 of M Good

34. On October 3rd, Mr. Warner purports to have filed a Notice of Intention to Act in Person. He appears to object to the settlement in some way, but his actions are nonsensical and inconsistent with the instructions he previously gave. The October 4th hearing did not take place because the Court was unavailable.

Affidavit No 1 of M Good

35. Mr Warner is no longer suitable as a representative plaintiff. Ms. Chartrand has agreed to act as representative plaintiff and should be substituted in place of him.

Part 3: LEGAL BASIS

36. The applicant pleads and relies on the *Class Proceedings Act*, RSBC 1996, c 50.

Consent Certification

37. The test for certification is altered where there is also a proposed settlement to be considered. In that circumstance, it is proper to apply a modified approach to the certification inquiry in light of the proposed settlement, and the class need only establish that there is a "*prima facie* case" for certification.

Branch, *Class Actions in Canada*, 2d ed. at 17.260 citing *Haney Iron Works Ltd v. Manufacturers Life Insurance Co.* 1998 CanLII 3085 (BC SC)

Rezmues v. Hohots, 2019 ONSC 4871 ("Where certification is sought for the purposes of settlement, all the criteria for certification must still be met. However, compliance with the certification criteria is not as strictly required because of the different circumstances associated with settlements")

38. This case more than meets the *prima facie* standard for a class proceeding. All of the requirements set out in section 4 of the *Class Proceedings Act* are met. The action should be certified as a class proceeding on consent. In particular:

- a. Under section 4(a), the pleadings must disclose a cause of action. In the Amended Notice of Civil Claim, the Plaintiff pleads breaches of the *Privacy Act*, RSBC 1996, c 373, and the common law (including the law of unjust enrichment). These causes of action are well established in law.
- b. Under section 4(b), there is an identifiable class of two or more persons. The proposed class definition in this case has objective criteria and is sufficiently clear; any particular

person's claim to membership in the class is determinable by stated, objective criteria and they can determine whether or not they are members. The Plaintiff is a class member as that term is defined in this Notice of Application.

- c. Section 4(c) requires that the claims of class members raise a common issue. This issue does not have to be determinative of liability and does not have to predominate over issues affecting only individual class members. The answers do not have to be the same for each class member. The proposed common issue here – “whether between January 1, 2017 and December 31, 2017 Class Members’ Cell ID was transmitted to Google and, as a result, Google breached any right protected under common law or under any federal or provincial legislation is certified for the purposes of this Settlement only as a common issue” is a suitable common issue.
- d. To satisfy section 4(d) of, a class proceeding must be the preferable procedure for the fair and efficient resolution of the common issues. This criterion is necessarily relaxed in a proposed settlement and consent certification.

Bona Foods Ltd v. Ajinomoto U.S.A. Inc., 2004 CanLII 17525 (ON SC)

- e. Finally, section 4(e) requires that there be a representative plaintiff who 1) would fairly and adequately represent the interests of the class, 2) has produced a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members of the proceeding, and 3) does not have, on the common issues, an interest that is in conflict with the interests of other class members. The proposed representative plaintiff meets these stated criteria.

39. Consent certification of this action as a class proceeding for settlement meets the three goals of class proceedings as described by the Supreme Court of Canada in the seminal trilogy of *Rumley v. British Columbia*, 2001 SCC 69, *Hollick v. Toronto (City)*, 2001 SCC 68, and *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, and affirmed in *AIC Limited v. Fischer*, 2013 SCC 69, namely 1) access to justice, 2) judicial economy, and 3) behaviour modification.

Notice Approval

40. Under the *Class Proceedings Act*, s 35(5), in approving a settlement, the court must consider whether notice should be given, and its form and content.

Class Proceedings Act, s 35(5)

41. The factors in considering the form and scope of notice are set out in the *Class Proceedings Act*, s 19. Relevant factors include the cost of giving notice; the size of the individual claims of the class members; and the number of class members. The notice may be given by posting, advertising or publishing.

Class Proceedings Act, s 19(3) and (4)

42. As set out in Branch, “notice need not be perfect in either its reach or its contents. Whether a proposed notice is appropriate in a particular case depends on the circumstances. ... The Act[] leave[s] the type of notice to the discretion of the court”. The notice must be understandable to the lay person.

Branch, at 10.40-10.50, 10.220

43. The notice proposed here is intelligible, informative and tailored to the circumstances of this case. The plan for posting and publication of notice is national and should ensure sufficient exposure to class members.

Affidavit No 1 of A Klein, Ex A (Settlement Agreement), s 5.2
Affidavit No 1 of E Chartrand

44. For all these reasons, the claim should be certified on consent and the notice of settlement hearing approved.

Substitution

45. In respect of the substitution, the Plaintiff relies on Rule 6-2(7)(b)(i) and (ii), the Court’s inherent jurisdiction and the *Class Proceedings Act*, sections 12, 35 and 4(1)(e). Disputes about instructions in a class proceeding are properly a matter for the supervising judge to address: *Richard v. HMTQ*, 2007 BCSC 1107 at para. 42.

46. Ms. Chartrand ought to be substituted in place of Mr. Warner to permit settlement approval to move forward.

47. Mr. Warner disagreed with the advice of class counsel and the wishes of the other representative plaintiffs about the choice of beneficiaries for the cy-pres award. He wanted to privilege an organisation closer to his own views. As a result of that impasse, Mr. Warner gave express instructions in writing and confirmed by phone to be substituted in place of a new plaintiff, who would endorse the settlement. In reliance on those instructions, a new plaintiff (Ms. Chartrand) retained counsel, and Google entered into the final version of the Settlement Agreement with the four plaintiffs, with the Law Foundations as the cy-pres beneficiaries.

Affidavit No 1 of M Good

48. Substitution was requested by way of consent order but was bounced by the Registry for, respectfully, no good reason. It ought to have been completed months ago, after the instruction was given.

Affidavit No 1 of M Good

49. Mr. Warner now appears to have changed his mind about substitution and seems to want to derail or modify the settlement in some way to suit his personal agenda. What exactly he wants remains unclear.

Affidavit No 1 of M Good

50. Mr. Warner gave clear instructions to counsel to be substituted. The other plaintiffs and the defendants have taken important steps in reliance on his substitution. Mr. Warner should not now be permitted to prejudice the other plaintiffs (Ms. Chartrand in BC, Messrs. Emond and MacQueen in Ontario, and Mr. Lima in Quebec), class members, the defendant, or the Court by his actions. Settlement approval is already underway in Ontario and Quebec – Mr. Warner should not be allowed to hold courts and class members across the country hostage because he wants a platform to express his idiosyncratic views.

Affidavit No 1 of M Good

51. A class action is more than the action of a single individual. As the Court of Appeal has held, a class action “even before the certification application, more than just ‘any old action’: it is an action with ambition”. Here, the parties are at certification and the Court must exercise its supervisory jurisdiction over the proceedings to protect the interests of class members from the

actions of a rogue plaintiff. In any event, an individual cannot act *pro se* in a proposed class proceeding.

MacKinnon v. Instalogs Financial Solution Centres (Kelowna) Ltd., 2004 BCCA 472 at para. 33

Gitxsan House of YAL v. British Columbia (Minister of Forests) (2005), 141 A.C.W.S. (3d) 188 (B.C.S.C.); *Gravlin v. Canadian Imperial Bank of Commerce* 2005 BCSC 839 and 2005 BCSC 1006; *Sandhu v. Household Realty Corp.*, 2011 BCSC 897

52. The Court has the power and the obligation to appoint a representative plaintiff who will properly represent the interests of class members. In *Sandhu v. HSBC Finance Mortgages Inc.*, 2016 BCCA 301, the Court of Appeal confirmed that a named plaintiff should not be appointed as representative or allowed to direct proceedings when they are not suitable representatives.

53. With respect to the choice of cy-pres recipients, in *Sorenson v. easyhome Ltd.*, 2013 ONSC 4017, Justice Perell held that “[h]owever well meaning, the prospect of a *cy prè*s distribution should not be used by Class Counsel, defence counsel, the defendant, or a judge as an opportunity to benefit charities with which they may be associated or which they may favour”. To this list should be added named plaintiffs, who should not be able to hold up a settlement until it goes to their pet project or an organisation with which they are affiliated, when the Law Foundation is the statutorily deemed recipient of cy-pres funds under the *Class Proceedings Act*.

54. In order to permit the settlement approval process to move forward, and to meet the objectives of the *Class Proceedings Act*, the Court should substitute Ms. Chartrand in place of Mr. Warner, *nunc pro tunc*, and strike the Notice of Intention to Act in Person filed by Mr. Warner as a nullity.

Part 4: MATERIAL TO BE RELIED ON

55. Affidavit No. 1 of Elizabeth Chartrand;

56. Affidavit No. 1 of Aden Klein;

57. Affidavit No 1 of Mathew Good;

58. Notice of Civil Claim;

59. Response to Civil Claim (Google)
60. Reply (Plaintiff);
61. Notice of Application for certification (Plaintiff);
62. Affidavits No 1 of A Fedorova, J Boase, D Lee, K Warner (Plaintiff);
63. Affidavits No 2 of E Tanjuatco and D Lee (Plaintiff);
64. Application Response to certification application (Google);
65. Pleadings and materials filed herein;
66. Any other such material as counsel may put forward and this Honourable Court accept.

The applicants estimate that the application will take one (1) hour.

[x] This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: November 4, 2019



Signature of lawyer for plaintiff

Mathew P. Good
Co-Counsel for the
Plaintiff
Good Barrister

David A. Klein
Douglas Lennox
Co-Counsel for the
Plaintiff
Klein Lawyers LLP

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of this notice of application

☐ with the following variations and additional terms:

.....
.....
.....

Date:[dd/mmm/yyyy].....

.....
Signature of ☐ Judge ☐ Master

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
 - ☐ discovery: production of additional documents
 - ☐ other matters concerning document discovery
 - ☐ extend oral discovery
 - ☐ other matter concerning oral discovery
 - ☐ amend pleadings
 - ☐ add/change parties
 - ☐ summary judgment
 - ☐ summary trial
 - ☐ service
 - ☐ mediation
 - ☐ adjournments
 - ☐ proceedings at trial
 - ☐ case plan orders: amend
 - ☐ case plan orders: other
 - ☐ experts
-

SCHEDULE A

TERMS OF ORDER SOUGHT

ON THE APPLICATION OF THE PLAINTIFF coming on for hearing before the Honourable Mr. Justice Voith at the Courthouse at 800 Smithe Street, Vancouver, British Columbia; and on hearing David A. Klein and Mathew P. Good, for the plaintiff; and Tracey M. Cohen, Q.C. and Andrew Borrell for the defendant;

ON READING all materials filed and on hearing the submissions of counsel for the parties,

AND ON BEING ADVISED that all parties consent to the Order:

1. **THIS COURT ORDERS** that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement attached as Schedule “A” to this Order.
2. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding for settlement purposes pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, as amended.
3. **THIS COURT ORDERS** that the class be and is hereby defined as:

all Canadian residents who used a smartphone running the Android operating system in Canada between January 1, 2017 and December 31, 2017, except persons included in the Ontario Class, the Quebec Class and any person who opts out of any of the Proceedings or are otherwise excluded under the definition of “Class Members or Class”.
4. **THIS COURT ORDERS** that Elizabeth Judie Chartrand be and is hereby appointed as the Representative Plaintiff for the class.
5. **THIS COURT ORDERS** that the question of whether between January 1, 2017 and December 31, 2017 Class Members’ Cell ID was transmitted to Google and, as a result, Google breached any right protected under common law or under any federal or provincial legislation is certified for the purposes of this Settlement only as a common issue.

6. **THIS COURT ORDERS THAT** any member of the class who wishes to opt out of the class must do so in writing in the form attached as Schedule B, in accordance with the procedure set out in the Settlement Agreement.
7. **THIS COURT ORDERS** that the form of the Notice of the Settlement Approval Hearing as attached at Schedule B to the Settlement Agreement is approved.
8. **THIS COURT ORDERS** that the method of disseminating notice as provided for in the Settlement Agreement is approved.
9. **THIS COURT ORDERS** that the settlement approval hearing shall occur on a date 61 days after Notice is published in accordance with the Settlement Agreement.
10. **THIS COURT ORDERS** that the above provisions be effective as at the date of this Order but only if the Settlement Agreement is not terminated according to its terms.
11. **THIS COURT ORDERS** that there be no costs of this motion.

SCHEDULE B

No. S-1711066
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

ELIZABETH JUDIE CHARTRAND

PLAINTIFF

and

GOOGLE LLC

DEFENDANT

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50