

**SETTLEMENT AGREEMENT**

WHEREAS Brett Sipos (the “Plaintiff”) was an employee and a customer of Netlink Computer Inc dba NCIX (“NCIX”);

WHEREAS the Plaintiff alleges that there was a series of breaches of privacy affecting employees and customers of NCIX during the dissolution of NCIX;

WHEREAS NCIX is bankrupt;

WHEREAS the Plaintiff commenced a proposed class proceeding on behalf of affected employees that bears Supreme Court of British Columbia Action No. S-1810486 (the “*Sipos* Action”);

WHEREAS the *Sipos* Action is brought against Able Solutions Inc. and Wing Quon Properties and Investments Ltd., and whereas various third party notices have been issued as between those defendants and Pearl West Investments Ltd., Jackie Yuen Lung Chong, and Herman Chong (collectively, for the purposes of settlement only, the “Defendants”);

WHEREAS the Defendants deny all of the claims in the *Sipos* Action and are defending the *Sipos* Action;

WHEREAS the Plaintiff delivered an unfiled notice of application for certification and supporting affidavits in the *Sipos* Action on January 20, 2020, along with a Notice to Mediate under the *Notice to Mediate (General) Regulation*;

WHEREAS there is an action filed in respect of NCIX customers by Kipling Warner regarding the same allegations in SCBC Action No. S-1810304 (the “*Warner* Action”) but no steps have been taken in that proceeding to bring on a certification application;

WHEREAS the Defendants deny all of the claims in the *Warner* Action and are defending the *Warner* Action;

WHEREAS the claims in the *Sipos* and *Warner* Actions are not insured;

WHEREAS an arm’s-length mediation was held in the *Sipos* Action with the assistance of Hein Poulus, QC as mediator;

WHEREAS despite the Defendants' belief that the allegations advanced in the *Sipos* and *Warner* Actions are unfounded and that they have good and reasonable defences both to certification and

on the merits in both actions, the Defendants have agreed to enter into this Settlement Agreement, subject to the approval of the British Columbia Supreme Court (the “Court”), to achieve a final worldwide resolution of all claims asserted or which could have been asserted against them, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

WHEREAS the Parties intend by this Settlement Agreement to resolve all past, present and future claims arising out of or relating to the *Sipos* Action and the *Warner* Action;

WHEREAS Klein Lawyers LLP and Mathew P Good Law Corporation (together, “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, and having regard to the burden and expense in litigating the *Warner* and *Sipos* Actions, including the risks and uncertainties associated with certification, trials and appeals, Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Class (as defined below);

NOW THEREFORE in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the parties to this Settlement Agreement, subject to the approval of the Court, THE PARTIES AGREE AS FOLLOWS:

**The Settlement Funds**

1. Within twenty-five (25) business days following the Court Approval Date (as defined below), the Defendants will pay into trust with Class Counsel the following all-inclusive amounts (the “Settlement Funds”) to the Class to fully and finally settle all claims on behalf of customers and employees of NCIX regarding alleged privacy breaches:
  - a. Able Solutions Inc - \$160,000;
  - b. Wing Quon Properties and Investments Ltd - \$47,500;
  - c. Pearl West Investments Ltd - \$95,000; and
  - d. Herman Chong - \$47,500.

2. Each Defendant's respective payment contribution to the Settlement Funds constitutes a several obligation only and the failure by any Defendant (the "Defaulting Defendant") to make a payment that it is responsible for as per paragraph 1 above does not entitle the Plaintiff to look to any of the other Defendants to satisfy the Defaulting Defendant's portion of the Settlement Funds.
3. No use shall be made of the Settlement Funds until the Conditions Precedent (as defined below) have been satisfied or, alternatively, waived in writing by all of the Defendants, other than any Defaulting Defendant. In the event the Conditions Precedent are not satisfied or waived within two (2) months of the Court Approval Date, Class Counsel shall return the funds to each of the Defendants' counsel in trust and without restriction unless the Defendants agree to extend the time for completion.

### **Certification**

4. The Defendants will consent, as part of the consent certification application, to the amendment of the *Sipos* Further Amended Notice of Civil Claim filed March 13, 2019 to include customer claims including all claims advanced in the *Warner* Action (the "Amendment").
5. The Defendants will consent to certification of the *Sipos* Action for settlement purposes only, and for the approval of this Settlement Agreement, of a class consisting of all former employees and customers of NCIX wherever resident (the "Class"). Prior to the certification application, Class Counsel will provide a copy of the proposed consent certification and settlement approval order (the "Order") to the Defendants' counsel for their review and approval (acting reasonably), including the definition of the Class.
6. Class Counsel will obtain a stay of the *Warner* Action as part of the Order, pursuant to section 13 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
7. Court approval of the Settlement Agreement will not depend on approval of fees, disbursements or honouraria, and the Defendants will take no position on any request by Class Counsel for fees/honouraria/disbursements, but will support the application to stay the *Warner* action.

**Release and Released Claims**

8. The Order will include a release (the “Release”) with no admission of liability with the following terms:
  - a. Each member of the Class (collectively referred to in paragraph 8 as, the “Releasers”), whether or not he or she receives compensation from the Settlement Funds or under this Settlement Agreement, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged each of the Defendants (collectively referred to in paragraph 8 as, the “Releasees”) of and from any and all actions, causes of action, suits, debts, contracts, claims, whether statutory or otherwise and demands for damages, indemnity, contribution, costs, interest, loss, or harm of any nature and kind whatsoever, known or unknown, whether at law or in equity, and howsoever arising which they may heretofore have had, may now have or may hereafter have whether commenced or not in connection with all claims raised, or which could have been raised on the facts alleged therein by reasonable amendment, in either or both of the *Warner* Action or the *Sipos* Action, including as amended by the Amendment (the “Released Claims”), and that Releasers shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Class, or on behalf of any other person or entity, any of the Released Claims without regard to the jurisdiction in which any Releaser may seek to institute, maintain or assert any of the Released Claims;
  - b. Each of the Releasers will be forever barred and enjoined from commencing, instituting and prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum or any other forum, directly, representatively or derivatively, asserting against any of the Releasees any claims relating to the Released Claims (together, “Prohibited Legal Action”);
  - c. If any of the Releasers commences any Prohibited Legal Action against any person or entity who may have a claim against any of the Releasees for contribution and indemnity, and the Releasees or any of them are added to such proceedings in any

manner whatsoever, whether justified in law or not, such Releasor will either immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to expressly plead and otherwise admit that the Releasor will not recover or seek to recover from any person, corporation or entity, any portion of the Releasor's loss, damage, or expense for which the Releasor claims or could have claimed against the Releasees, or any of them, which a court or other tribunal may attribute to the fault, tort, negligence, breach of contract and/or breach of any equitable, common law or statutory duty of the Releasees, or any of them.

- d. The Release will not take effect until the Conditions Precedent have been satisfied or waived in writing by all of the Defendants, other than any Defaulting Defendant.
- e. The Release will not take effect if the Settlement is terminated.

### **Conditions Precedent**

9. The following are conditions precedent to this Settlement Agreement:

- a. The Court grants the Amendment;
- b. The Court grants certification of the *Sipos* Action, which Order shall include a definition of the Class approved by Defendants' counsel acting reasonably and which shall include all former customers and employees of NCIX wherever resident;
- c. The Court grants an Order approving the Settlement Agreement for settlement purposes only and in a form acceptable to counsel for each of the Parties acting reasonably, which Order shall include the following terms:
  - i. The terms of the Settlement Agreement are incorporated by reference into the Order, and the parties and members of the Class ("Class Members") are ordered to comply with it;
  - ii. The opt-out period shall be 30 days from first publication of notice on Class Counsel's websites (the "Opt-Out Period");

- iii. The “Court Approval Date” shall mean the later of 31 calendar days after the Order or the disposition of any appeals from the Order;
- iv. The Release;
- d. No more than 10 members of the Class opt out of the Settlement Agreement by the end of the Opt-Out Period;
- e. The *Sipos* Action is dismissed by consent without costs to any party and said dismissal is for all purposes of the same force and effect as if judgment had been pronounced after a trial of the Action on its merits;
- f. The *Warner* Action is stayed pursuant to s. 13 of the *Class Proceedings Act* (together, the “Conditions Precedent”).

**Following Settlement Approval**

- 10. Following settlement approval, Class Counsel will provide notice of the settlement by direct email contact from Class Counsel to all persons who have contacted them, and by posting of the notice on Class Counsel’s websites and social media, the form of the notice to be in substantially the form set out in the Notice of Application for certification, subject to necessary modifications, in an Order to be agreed by the Parties or settled by the Court if the Parties cannot agree.
- 11. Class Members who wish to opt out must deliver an opt out by email to a dedicated email address provided by Class Counsel together with the reason for opting out and proof of Class membership prior to the end of the Opt-Out Period.
- 12. Within 15 business days after the end of the Opt-Out Period, Class Counsel will provide counsel for the Defendants with the emails from Class Members who have opted-out. If more than ten (10) Class Members have opted-out, any of the Defendants will have the right to terminate the Settlement Agreement, if they give notice to Class Counsel within ten (10) business days of receipt of the opt-out e-mails.
- 13. In the event that this Settlement Agreement is terminated in accordance with its terms, including by reason of any of the Conditions Precedent not being satisfied or waived:

- a. the Parties will consent to a further order of the Court setting aside the Order including the Release, which shall be without prejudice to the Plaintiff's right to seek certification of the *Sipos* Action on its merits at a future date; and
  - b. Class Counsel will return the Settlement Funds to the Defendants' counsel in trust and without restriction.
14. Upon settlement approval, after payment of fees, disbursements, honouraria, and taxes, the Settlement Funds will be held in trust in an interest-bearing trust account by Class Counsel, subject to compensation payments to Class Members for provable losses, under a protocol to be proposed by Class Counsel and approved by the Court without involvement of the Defendants, or for distribution in such other fashion as Class Counsel may propose and the Court approve.
15. Upon expiry of the claim and payment periods for Class Member compensation, any remaining balance in the Settlement Funds will be paid by Class Counsel cy-près to the the Law Foundation of British Columbia, as contemplated by the *Class Proceedings Act*, s. 36.2, or be distributed in such other fashion as Class Counsel may propose and the Court approve, without involvement of the Defendants.

### **Miscellaneous**

16. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of British Columbia.
17. This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, with the consent of the Parties, and with Court approval.
18. This Settlement Agreement may be signed by the parties in counterpart which shall have the same effect and enforceability as single executed document. Delivery of an executed counterpart of this Settlement Agreement by PDF or other electronic means shall be as effective as delivery of a manually executed counterpart.

WHEREFORE the following Parties are authorised to enter into this Settlement Agreement:



For Brett Sipos: David Klein

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For Able Solutions Inc:

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For Pearl West Investments Ltd:

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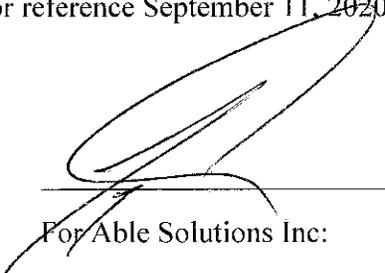
For Herman Chong:

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For Wing Quon Properties and Investments Ltd, and Jackie Chong:

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For Brett Sipos: David Klein



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For Able Solutions Inc:

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For Pearl West Investments Ltd:



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For Herman Chong: Gary R. Fraser

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For Wing Quon Properties and Investments Ltd. and Jackie Chong:

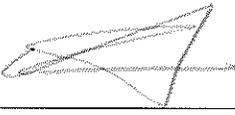
counterpart of this Settlement Agreement by PDF or other electronic means shall be as effective as delivery of a manually executed counterpart.

WHEREFORE the following Parties are authorised to enter into this Settlement Agreement:

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For Brett Sipos: David Klein

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For Able Solutions Inc:

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For Pearl West Investments Ltd:

  
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For Herman Chong:

*Sep 30 2020*

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For Wing Quon Properties and Investments Ltd, and Jackie Chong:

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For Brett Sipos: David Klein

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For Able Solutions Inc:

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For Pearl West Investments Ltd:

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For Herman Chong:



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For Able Solutions Inc:

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