

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action Division)

File No.: 500-06-000813-168

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**JACLYN RABIN**

Plaintiff

v.

**HP CANADA CO.**

and

**HEWLETT PACKARD (CANADA) CO.**

Defendants

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**SETTLEMENT AGREEMENT, TRANSACTION AND RELEASE**

**PREAMBLE:**

**A. WHEREAS**, on September 26, 2016, Plaintiff Jaclyn Rabin filed an Application for Authorization to Institute a Class Action (the “**Application for Authorization**”).

**B. WHEREAS**, after many months of extensive arm-length negotiations and meetings, including a day long Judicial Settlement Conference presided by the Honorable Former Chief Justice François Rolland, on November 7, 2018, the Parties informed the Court that they had reached an agreement in principle to settle the Litigation.

**C. WHEREAS**, Plaintiff, while maintaining that her claims and action are well-founded on her own behalf and on behalf of the Class, is entering into this Agreement on a without admission basis as she recognizes and acknowledges the significant expense and time it would take to prosecute this action through trial and any subsequent appeals, and the risk that this action could ultimately be unsuccessful in light of HP Canada Co. and Hewlett Packard (Canada) Co.’s defence (collectively “**HP**”).

**D. WHEREAS**, HP has asserted and would assert numerous defences to the claims alleged by Plaintiff and expressly denies each of the claims and allegations asserted against them, and any and all liability arising out of the conduct alleged in the Application for Authorization.

**E. WHEREAS**, HP acknowledges that further litigation of this action could be expensive, and HP has also taken into account the uncertainty and risks inherent in any litigation.

**F. WHEREAS**, Plaintiff and HP have therefore each independently determined that it is desirable and beneficial for this class action to be fully and finally resolved in the manner and upon the terms and conditions set forth in this Agreement, subject to Court approval.

**G. WHEREAS**, by entering into this Agreement, HP does not admit any wrongdoing and this Agreement is not and shall not constitute an admission of liability by HP.

**H. WHEREAS**, Plaintiff and HP agree and confirm that the present Agreement is fair, reasonable and in the best interest of the Class Members, subject to Court approval.

**NOW, THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:**

**1. PREAMBLE**

**1.1** The preamble and Exhibits form part of this Agreement, as though recited at length.

**2. DEFINITIONS**

As used in this Agreement, the terms set forth in this section in boldface type will have the following meanings:

**2.1 “Administrative Expenses”** means the cost of the Notice program and Distribution Protocol relating to this Settlement and the reasonable costs relating to the processing and administering of claims and disbursements of the Claims Administrator, and other necessary and reasonable administrative expenses relating to this Settlement.

**2.2 “Agreement” or “Settlement Agreement” or “Settlement”** means this Settlement Agreement, Transaction and Release.

**2.3 “Approval Judgment” or “Settlement Approval Order”** means the judgment from the Superior Court of Quebec approving the Settlement Agreement including the Distribution Protocol set forth at Exhibit A.

**2.4 “Authorized Claimant”** means any Class Member whose claim for recovery, as set forth in his or her timely filed Claim Form, has been allowed pursuant to the terms of the Agreement.

**2.5 “Claims Administrator”** means Epiq Class Action Services Inc. / Services d’actions collectives Epiq Canada, or such other claims administrator as the Court shall approve and designate, the entity responsible for implementing and managing the Notice program and claims process described in the Distribution Protocol set forth at Exhibit A.

**2.6 “Claimant”** means a Class Member who submits a Claim Form to the Claims Administrator.

**2.7 “Claims Administrator’s Final Accounting Report”** means the report produced by the Claims Administrator as soon as practicable after all payments to Authorized Claimants have been made, which will specifically detail all monies that have been paid by HP through the Claims Administrator. This will be provided to the Court in order to obtain a closing judgment by the Court.

**2.8 “Claims Administrator’s Interim Account Report”** means the report produced by the Claims Administrator when the Claims Period has expired which details, among other things: (1) a list of all Claimants who have been accepted or rejected; (2) a full accounting of all funds that will be required to pay the Authorized Claimants.

**2.9 “Claims Deadline”** means the date set forth in the Notice by which Class Members must submit the Claim Form, which shall be no less than sixty (60) days after entry of the Approval Judgment or such other time as may be set by the Court.

**2.10 “Claims Form(s)”** means a document, substantially in the form of Exhibit C hereto, that a Class Member must complete and submit, along with the required documentation if applicable, by the Claims Deadline to the Claims Administrator in order to claim Compensation under the Settlement Agreement.

**2.11 “Claims Period”** means the period during which Class Members must submit a Claim Form in order to potentially receive a benefit further to the Settlement

Agreement. The Claims Period begins on the first day of publication of the Notice and ends on the Claims Deadline;

**2.12 “Class”** means all persons in Canada who owned a Class Printer during the period between March 1, 2015 and December 31, 2017 inclusively. Excluded from the Class are HP, its officers, directors and affiliates at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns, and any entity in which HP had or has a controlling interest. Also excluded from the Class are those Persons who timely and validly request exclusion/opt-out, as set forth below.

**2.13 “Class Counsel”** means the law firm of Lex Group Inc.

**2.14 “Class Counsel Fees”** means the amount of \$300,000 CAD plus GST and PST (calculated at the time of payment).

**2.15 “Class Member(s)” or “Settlement Class Member(s)”** means a Person who falls within the definition of the Class as set forth above and does not exercise her or his right to opt-out of the Class before the Opt-Out Deadline.

**2.16 “Class Notice” or “Notice” or “Notices”** means the Court approved notice pursuant to Article 591 of the *Code of Civil Procedure* in its detailed version (“**Long Form Notice**”) (substantially in the form of Exhibit B1 hereto) and summary version (“**Short Form Notice**”) (substantially in the form of Exhibit B2 hereto); that will be directed to Class Members. Among other things, the Class Notice indicates that : (1) The Class Action has been authorized for settlement purposes only, subject to the Court’s eventual decision on this issue; (2) A settlement has been reached and will be submitted to the Court for approval; (3) The Class Members can opt-out of the Class, object to or comment on the proposed Settlement, or submit a Claim Form, and the procedures involved in all of these options; (4) The information and documents that Claimants must provide in support of their individual claim, if they wish to submit a Claim Form; (5) The date for the Settlement approval hearing, presently scheduled on April 17, 2019; (6) The contact information of the Claims Administrator as well as Class

Counsel. The Notices shall use plain language. No other notice will be circulated following the Approval Judgment, subject to the Court's decision on this issue.

**2.17 "Class Representative" or "Plaintiff"** means the Representative Plaintiff Ms. Jaclyn Rabin.

**2.18 "Class Printer(s)"** means any of the following HP printer models sold or owned in Canada:

- HP OfficeJet Pro 6230
- HP OfficeJet 6812, 6815, 6820
- HP OfficeJet Pro 6830, 6835, 8610, 8615, 8616, 8620, 8625, 8630
- HP OfficeJet Pro X551dw, X451dn, X451dw, X576dw, X476dn, X476dw

**2.19 "Class Period"** means the period between March 1, 2015 and December 31, 2017 inclusively.

**2.20 "Compensation"** means the amount paid or to be paid to an Authorized Claimant following a valid individual claim by the Claimant, which amount depends in part on whether the claim is documented or undocumented and on the total number of approved claims received.

**2.21 "Court"** means The Honourable François Duprat, Judge for the Superior Court of Québec, or such other Judge to whom the Class Action may hereafter be assigned.

**2.22 "Defendant(s)", "HP", and the "Company"** means HP Canada Co. and Hewlett Packard (Canada) Co., and their present and former parents, subsidiaries, divisions, affiliates, and each of their respective present and former employees, agents, officers, directors, controlling shareholders, attorneys, predecessors, and successors.

**2.23 "Defence Counsel"** means the law firm of Borden Ladner Gervais LLP.

**2.24 "Distribution Protocol"** means the "Notice Dissemination Plan, Claims Process and Distribution Protocol", substantially in the form of Exhibit A, for distributing the notices and settlement payments to Class Members who submit a valid claim.

**2.25 “Dynamic Security”** means an HP-developed technology which caused or causes Class Printers to run authentication checks that change over time on installed ink cartridges to determine whether the ink cartridges contain a non-HP security chip, and that may prevent or may have prevented Class Printers from operating with any such non-HP ink cartridges.

**2.26 “Effective Date”** means thirty (30) days after the Approval Judgment has been rendered if no appeals have been taken therefrom, or if any appeals have been taken, the date upon which such appeals are finally resolved in such manner as to permit the completion of the Settlement in accordance with the terms and conditions of the Agreement.

**2.27 “Litigation”** means the action captioned *Rabin v. HP Canada Co. and Hewlett Packard (Canada) Co.*, Superior Court of Quebec File no: 500-06-000813-168.

**2.28 “Notice Approval Order”** means the Court Order/Judgment to be rendered with respect to the elements detailed in Section 3.2 below.

**2.29 “Objection Deadline”** means the date set forth in the Notice by which a Class Member must object to or submit comments on the Settlement, which shall be at least fifteen (15) days prior to the Settlement approval hearing currently scheduled for April 17<sup>th</sup>, 2019.

**2.30 “Opt-Out Deadline”** means the date that is at least forty-five (45) days after the date that the Notices are first published, or any other date to be ordered by the Court and to be confirmed in the Notice Approval Order.

**2.31 “Parties” or “Settling Parties”** means the Plaintiff and HP collectively.

**2.32 “Person”** means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, joint venture, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and including any of their heirs, successors, representatives, or assigns.

**2.33 “Related Parties”** means, as applicable, each of a person or entity’s respective present and former parents, subsidiaries, divisions, affiliates, and each of their and a person or entity’s respective present and former employees, members, partners, principals, agents, officers, directors, controlling shareholders, attorneys, agents, related or affiliated entities, predecessors, successors, spouses, estates, heirs, executors, trusts, trustees, administrators, agents, representatives, and assigns, in their capacity as such, and any entity in which a person or entity has a controlling interest.

**2.34 “Released Claims”** means, with respect to claims released by the Plaintiff and Class Members, any and all claims, rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or provincial law, that relate to Dynamic Security and/or any representations regarding the ability to use third-party ink cartridges with the Class Printers, and that were or could have been alleged in the Litigation. “Released Claims” means, with respect to claims released by HP, any and all claims, rights, causes of action, liabilities, actions, suits, damages, or demands of any kind whatsoever, known or unknown, matured or unmatured, at law or in equity, existing under federal or provincial law, that arise out of or relate in any way to the institution, prosecution or settlement of the Litigation and that could have been brought by HP against the Plaintiff or the Class Members, or Class Counsel in the Litigation. Notwithstanding the foregoing, “Released Claims” does not include claims relating to the enforcement of the Settlement.

**2.35 “Settlement CAP”** means the maximum amount that may be paid by HP to all Authorized Claimants, which is set at seven hundred thousand dollars (\$700,000 CAD) as more fully detailed herein (this Settlement CAP does not include the amount to be paid to the Class Representative as detailed hereinbelow, the Class Counsel Fees, and the Administrative Expenses which will also be paid by HP).

**2.36 “Settlement Website”** means the [www.hpprinterfirmwarelawsuitcanada.ca](http://www.hpprinterfirmwarelawsuitcanada.ca) website managed by the Claims Administrator.

**2.37 “Tax” or “Taxes”** mean any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties,

additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority.

### **3. APPROVAL OF THE SETTLEMENT**

**3.1** The Parties shall use their best efforts to effectuate the Settlement set forth in this Agreement as promptly as reasonably practicable after the date of execution of the Agreement, and shall cooperate to promptly seek to obtain the approval of this Agreement by the Court.

#### **(a) Notice Approval Order**

**3.2** On January 16, 2019, the Parties shall bring a joint verbal application before the Court for an order/judgment:

- (i) approving the Distribution Protocol attached hereto as Exhibit A;
- (ii) approving the form and content of the Long Form Notice, substantially in the form attached hereto as Exhibit B1 and approving the form and content of the Short Form Notice, substantially in the form attached hereto as Exhibit B2, or such other form as shall reasonably be agreed to between Class Counsel and Defence Counsel;
- (iii) approving the form and content of the Claim Form, substantially in the form attached hereto as Exhibit C, or such form as shall reasonably be agreed to between Class Counsel and Defence Counsel;
- (iv) approving the form and content of the Opt-Out Form, substantially in the form attached hereto as Exhibit D, or such form as shall reasonably be agreed to between Class Counsel and Defence Counsel;

- (v) appointing and designating the Claims Administrator and ordering it to proceed to the execution and implementation of the Distribution Protocol;
- (vi) ordering HP to pay for all Administrative Expenses and all costs and disbursements related to the Distribution Protocol, the Notices and the Claims Administrator, as set forth in this Settlement Agreement
- (vii) setting the procedure for a Class Member to opt-out (exclude oneself) of the Class and setting the Opt-Out Deadline;
- (viii) setting the procedure for a Class Member to object to or comment on the Settlement and setting the Objection Deadline;
- (ix) setting the date and time of the settlement approval hearing; and
- (iv) authorizing the class action for settlement purposes only and appointing the Plaintiff as Class Representative.

**(b) Settlement Approval Order**

**3.3** After the Notices are distributed as set forth in the Distribution Protocol and pursuant to the Notice Approval Order, the Plaintiff shall bring one (1) joint application asking the Court to approve the Settlement and said application will be presented on April 17, 2019 (or an alternate date, as set by the Court).

**4. NOTICE, OPT-OUTS, AND OBJECTIONS**

**4.1 Notice to the Class.** The Claims Administrator will provide Notice to Class Members, substantially in the form of Exhibits B1 and B2 and as provided in the Distribution Protocol. The Parties agree that there is no need for a second publication of the Notice following the approval of the Settlement Agreement.

**4.2 Payment of Expenses Relating to Notice.** The Parties will agree upon a plan for necessary and reasonable Administrative Expenses associated with the preparation and/or dissemination of the Notice including, but not limited to, the Claims Administrator's fees and disbursements. These Administrative Expenses shall exclusively be paid by HP, but HP retains the right to dispute any expenses that are inconsistent with the Parties' Administrative Expenses plan or the Court's orders. These payments shall be made separate and apart from the payments to Class Members and will in no circumstance be paid by the Class Members, the Plaintiff or the Class Counsel (even if the present Settlement Agreement is annulled or terminated for any reason whatsoever or if the Settlement is not ultimately approved by the Court, except if Plaintiff or Class Counsel violate 10.2 of the present Settlement Agreement).

### **4.3 Opt-Outs by Class Members and Objections / Comments**

**4.3.1 Procedure for Opt-Outs (exclusion).** The Parties will request that the Court order a procedure for Class Members wishing to be excluded from the Class (and therefore the Settlement as well) ("opt-out") in accordance with the provisions in the draft Notice attached as Exhibits B1 and B2 and the Opt-Out Form attached hereto as Exhibit D. Each Class Member who does not submit a valid and timely Opt-Out Form to the Claims Administrator shall remain included in the Class and shall be bound by all proceedings, orders and Judgments in the Class Action. A Class Member who does not discontinue an originating demand having the same subject matter as the Class Action before the Opt-Out Deadline has expired is deemed to have opted out. Furthermore, each Class Member who does not submit a valid and timely Opt-Out Form to the Claims Administrator shall be bound by the Settlement and release provided in this Agreement, if approved by the Court. Class Members who want to opt-out must do so by the Opt-Out Deadline, by submitting a written Opt-Out Form to the Claims Administrator by mail at Nelson P.O. Box 20187 – 322 Rideau Street, Ottawa, Ontario, K1N 5Y5 or online at [www.hpprinterfirmwarelawsuitcanada.ca](http://www.hpprinterfirmwarelawsuitcanada.ca), by clicking on the "opt-out" tab and providing the requested information. Class Members who reside in the Province of Quebec who wish to opt-out must ALSO send a further copy of their signed and filled out Opt-Out Form to the Clerk of the Superior Court of Quebec by the Opt-Out Deadline and in the manner prescribed in the Quebec Code of Civil Procedure.

**4.3.2** The Claims Administrator shall promptly forward copies of any Opt-Out Forms received to Class Counsel and Defence Counsel and deliver all documents related to such opt-outs to counsels for the Parties upon receipt. The Claims Administrator shall deliver to the counsels for the parties a detailed list of all opt-outs received, with copies of same, at least twenty (20) days before the settlement approval hearing.

**4.3.3 Procedure for Objecting / Commenting.** Unless otherwise authorized by the Court, any Class Member who has not opted out (as detailed above) and who intends to object to or comment on the fairness of this Agreement must do so in writing. The written objection must be sent to the Claims Administrator by no later than the Objection Deadline. The written objection or comment must include (a) a heading which refers to the Rabin v. HP Canada Co. and Hewlett Packard (Canada) Co. Class Action and Court number (500-06-000813-168); (b) the objector's full name, telephone number(s), email address(es) if any and residential address; (c) if represented by counsel, the full name, telephone number, email address and address of all counsel, (d) a statement of the objection and the grounds supporting the objection, together with any evidence supporting it, (e) whether the objector intends to appear at the settlement approval hearing on his or her behalf or through counsel, (f) the model number of the Class Printer owned, and (g) the objector's dated and handwritten signature (an electronic signature or lawyer's signature are not sufficient). Any Class Member who files and serves a written objection, as described above, may appear at the hearing on the application to approve the Settlement, either in person or through counsel hired at the said Class Member's sole expense, to object to (or comment on) any aspect of the fairness, reasonableness, or adequacy of this Agreement. Unless otherwise authorized by the Court, any Class Member who fails to comply with the above provisions shall waive and forfeit any and all rights he or she may have to appear separately and/or to object or comment, and shall be bound by all the terms of this Agreement and by all proceedings, orders and Judgments in the Class Action.

## **5. CONSIDERATION**

**5.1 Non-Monetary Aspect of the Settlement.** HP has already released firmware that disables Dynamic Security for the Class Printers. HP will not at any time take any action to employ Dynamic Security on the Class Printers, including by releasing or otherwise making available firmware that enables Dynamic Security. Additionally, HP

will implement and maintain internal customer service procedures to respond to Class Member inquiries regarding whether Dynamic Security has been disabled on their Class Printer and provide assistance as appropriate.

**5.2 Monetary Benefits to Class Members.** Class Members shall be eligible to receive monetary benefits in accordance with the Distribution Protocol pursuant to the Settlement. Notwithstanding anything to the contrary, total payments to Authorized Claimants, excluding the pre-approved amount payable to Jaclyn Rabin, will not exceed the amount of the Settlement CAP of \$700,000 CAD. The claims process described in the Distribution Protocol being purely individual, the Claims Administrator will deduct the portion due to the *Fonds d'aide aux actions collectives* (Quebec Class Action Assistance Fund) (hereinafter the "FAAC") on all individual claims made by Authorized Claimants residing in the Province of Quebec, according to section 1(3) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*. Only Quebec Authorized Claimants are subject to the FAAC deduction.

**5.3 The Class Representative's amount.** Jaclyn Rabin's claim (which includes any compensation or indemnity for her disbursements and/or legal costs and/or professional fees) is hereby considered by the Parties to have been approved in the amount of \$5,000 CAD. The approved claim of Jaclyn Rabin is excluded from the Settlement CAP and the Plaintiff will not be required to submit any Claim Forms or otherwise fulfill any other formalities. Jaclyn Rabin's approved claim of \$5,000 CAD will be reduced by the portion of said claim which must lawfully be paid to the FAAC. The Claims Administrator will pay said amount to Jaclyn Rabin within ten (10) days after the Effective Date, by way of a cheque made payable to Jaclyn Rabin, which cheque will be forwarded to Class Counsel.

**5.4 Payment of Expenses Relating to Benefit Distribution.** The Parties will agree upon a plan for necessary and reasonable Administrative Expenses associated with administration of the Distribution Protocol including, but not limited to, the Claims Administrator's fees and disbursements. These Administrative Expenses shall exclusively be paid by HP, but HP retains the right to dispute any expenses that are inconsistent with the Parties' Administrative Expenses plan. These payments shall be made separate and apart from the payments to Class Members and will in no

circumstance be paid by the Class Members, the Plaintiff or Class Counsel (even if the present Settlement Agreement is annulled or terminated for any reason whatsoever or if the Settlement is not ultimately approved by the Court, except if Plaintiff or Class Counsel violate 10.2 of the present Settlement Agreement).

## **6. RELEASE OF CLAIMS**

**6.1 Release of Class Members' Claims.** Upon the Effective Date, the Settling Parties and all Class Members will be deemed to have completely and mutually released and forever discharged each other, and each of them, from and for any and all liabilities, claims, counterclaims, causes of action, rights, actions, suits, debts, damages, costs, attorneys' fees (except as otherwise provided herein), losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future, stemming from the facts alleged or asserted against any of the Settling Parties in the present file or that could have been alleged or asserted against any of the Settling Parties arising out of the same facts as any of the claims alleged or asserted in the present file, including but not limited to the facts, transactions, occurrences, events, acts, omissions, or failures to act that were alleged in the present file or in any pleading and the disclosures and/or notices that HP made or failed to make to the Plaintiff or the other Class Members.

**6.2 Release of Claims of the Plaintiff, other Class Members, and Class Counsel.** Upon the Effective Date, HP and Defence Counsel will be deemed to have completely released and forever discharged the Plaintiff, the Class Members, and Class Counsel from and for any and all liabilities, claims, counterclaims, causes of action, rights, actions, suits, debts, damages, costs, attorneys' fees, losses, expenses, obligations, or demands, of any kind whatsoever, whether known or unknown, existing or potential, or suspected or unsuspected, whether raised by claim, counterclaim, setoff, or otherwise, including any known or unknown claims, which they have or may claim now or in the future to have, relating to the institution, prosecution, or settlement of the present file.

**6.3 Future Suits.** Upon the Effective Date, the Plaintiff and other Class Members who have not opted out shall renounce any right to prosecute any claim they have released in the preceding paragraphs in any proceeding against any of the Settling Parties or based on any actions taken by any of the Settling Parties that are authorized or required by this Agreement and shall not seek Compensation from any party that could claim contribution from the Released Parties. It is agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to this section, instituted by a Class Member who has not opted out.

## **7. CLASS COUNSEL'S FEES AND EXPENSES**

**7.1 Class Counsel's Fees.** As an integral part of this Agreement, HP agrees to pay the agreed-upon attorneys' fees and expenses to Class Counsel separate and apart from payments to the Class Members (i.e. excluded from the Settlement CAP). HP agrees to pay directly to Class Counsel the amount of \$300,000 CAD plus GST and PST (calculated at the date of the payment) as Class Counsel Fees and the Parties hereby confirm that the same are fair, reasonable and appropriate in the present circumstances. The approved Class Counsel Fees will be paid by HP to Class Counsel within ten (10) days after the Effective Date by way of cheque, bank draft, or wire transfer made payable to Lex Group Inc.

**7.2 Disapproval.** Should the Court refuse to approve Class Counsel Fees, such refusal shall not operate to terminate or cancel the Settlement Agreement, or affect or delay the finality of the Judgment approving the Settlement Agreement, nor the Effective Date.

**7.3 Class Members represented by other Counsel.** Class Members who have retained, or are in the process of making a claim to retain, lawyers to assist them in making their individual claim to this Settlement shall be responsible for the legal fees and expenses of such lawyers.

**7.4 Fonds d'aide aux actions collectives.** Class Counsel agrees to reimburse, from the approved Class Counsel Fees, any amount owed to the Fonds d'aide aux actions collectives (FAAC) relating to this file, although Class Counsel hereby

confirm that the FAAC has not funded the present matter in any way and that no such amount is therefore owing to the FAAC.

**7.5 No Additional Amounts Due.** HP shall not be liable for any additional attorneys' fees and expenses of Class Counsel or the Class Representative in the Class Action.

## **8. CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF SETTLEMENT**

**8.1** This Agreement shall be conditioned on the occurrence of all of the following events:

- (a) the Court authorizes the Class Action for settlement purposes only;
- (b) the Court issues the Notice Approval Order; and
- (c) the Court approves the Settlement.

**8.2** HP may terminate this Agreement if, after the Opt-Out Deadline, the Claims Administrator determines that the number of timely and valid opt-outs exceeds 5,000 Class Members (the "**Opt-out Threshold**"). Requests for exclusion from Persons or entities who would not otherwise meet the Class definition do not count toward the Opt-Out Threshold. If HP elects to terminate this Agreement pursuant to this paragraph, it will give notice to Class Counsel within fourteen (14) days after the Claims Administrator determines and reports to the Parties the number of timely and valid opt-outs.

**8.3** In the event that the Agreement or the settlement set forth in the Agreement is not approved by the Court or otherwise fails to become effective in accordance with its terms, the Settling Parties shall be restored to their respective positions in the Litigation as of the date immediately prior to the earliest signing date of this Agreement.

**8.4** If the Effective Date does not occur, or if the Agreement is terminated pursuant to its terms, HP shall not pay the Class Counsel Fees but shall remain

obligated to reimburse the Claims Administrator for all Administrative Expenses incurred by the Claims Administrator, and the Claims Administrator shall have no obligation to repay any Administration Expenses for which it has been paid by HP.

## **9. PUBLIC STATEMENTS**

**9.1** Subject to what is provided for in the Distribution Protocol, in issuing public statements including responding to any inquiries from the public media concerning the Class Action and/or the Settlement, the Plaintiff, Class Counsel, HP, and Defence Counsel will limit their statements to promoting the virtues of the settlement or other statements that comport with the Notices and the Agreement. The Plaintiff and Class Counsel shall not engage in any conduct or make any statement, directly or indirectly, that the settlement of claims contemplated by this Agreement constitutes an admission of liability or an admission of the validity or accuracy of any of the allegations in the Class Action against HP. However, nothing shall limit the ability of HP or its successors to make such public disclosures as the applicable laws require or to provide information about the settlement to government officials or its insurers/reinsurers.

**9.2** The Settling Parties and their respective counsel will not make any public statement that is inconsistent with the Parties' objective of securing Court approval of the Settlement.

## **10. MISCELLANEOUS PROVISIONS**

**10.1** The Settling Parties: (a) acknowledge that it is their intent to consummate this Agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Agreement and to exercise their best efforts to accomplish the foregoing terms and conditions of the Agreement.

**10.2** The Settling Parties and their respective counsel agree that they will act in good faith and will not engage in any conduct that could frustrate the purposes of this Agreement.

**10.3** The determination of the terms and conditions contained herein and the drafting of the provisions of this Agreement have been by mutual understanding after

negotiation, with consideration by, and participation of, the Settling Parties and their counsel. This Agreement shall not be construed against any Settling Party on the basis that it was the drafter or participated in the drafting. The Settling Parties agree that the drafting of this Agreement has been a mutual undertaking.

**10.4** The Settling Parties intend this Agreement to effect a final and complete resolution of all disputes and claims between Plaintiff and each Class Member, on the one hand, and Defendants, on the other hand, with respect to the Litigation. The Settlement resolves claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim or defense. The Settling Parties agree that during the course of the Litigation, the Parties and their respective counsel at all times complied with the requirements of the Law. The Settling Parties agree that the Settlement CAP and the other terms of the settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

**10.5** Neither this Agreement nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Agreement or the Settlement (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, the truth of any of the allegations in the Litigation of any wrongdoing, fault, or liability of Defendants or its Related Parties, or that Plaintiff or any Class Members have suffered any damages, harm, or loss; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission on the part of Defendants or its Related Parties in any civil, criminal, or administrative proceeding in any Court, administrative agency, or other tribunal.

**10.6** Defendants may file this Agreement and/or the Approval Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any theory of claim or issue preclusion or similar defense or counterclaim.

**10.7** All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement.

**10.8** All of the Exhibits to the Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

**10.9** The Agreement may be amended or modified only by a written instrument signed by the Class Counsel and Defence Counsel on behalf of the Settling Parties or their respective successors-in-interest.

**10.10** This Agreement, and its Exhibits, contains the entire agreement between the Parties and supersedes all prior understandings, agreements, or writings regarding the subject matter of this Agreement. Should there be any inconsistencies between the Settlement Agreement and any of the Exhibits, the Settlement Agreement overrides the text of any Exhibits.

**10.11** Class Counsel, on behalf of the Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Class Members they represent pursuant to the Agreement to effectuate its terms.

**10.12** The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument and shall have the same force and effect as if all signatories had signed the same instrument. A complete set of executed counterparts shall be filed with the Court. Signatures sent by facsimile or sent in PDF form via e-mail shall be deemed originals.

**10.13** The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

**10.14** The Court shall retain exclusive and continuing jurisdiction over the Settling Parties and with respect to the implementation and enforcement of the terms of the Agreement, and all Settling Parties submit to the exclusive jurisdiction of the Superior Court of Quebec, Judicial District of Montreal, for purposes of implementing and enforcing the settlement embodied in the Agreement and all matters related to this Settlement.

**10.15** Pending approval of the Court of the Agreement and its Exhibits, all proceedings in the Litigation shall be stayed and all Class Members shall be barred and enjoined from prosecuting any of the Released Claims against Defendants.

**10.16** This Agreement does not constitute, is not intended to constitute, and will not under any circumstances be deemed to constitute, an admission of wrongdoing or liability by any Party, such wrongdoing and liability being expressly denied and no final adjudication having been made. The Parties have entered into the Agreement solely as a compromise of all claims for the purpose of concluding the disputes between them, and the Agreement may not be used by any third party against any Party. The entering into and carrying out of the Agreement, and any negotiations or proceedings related to it, shall not be construed as, or deemed evidence of, an admission or concession by any of the Parties or a waiver of any applicable statute of limitations (except as provided by law), and shall not be offered or received into evidence in any action or proceeding against any Party in any Court, administrative agency or other tribunal for any purpose whatsoever.

**10.17** Each Person executing this Agreement represents and warrants that he or she is fully authorized to enter into this Agreement and to carry out the obligations provided for herein. Each counsel executing this Agreement on behalf of Plaintiff or HP covenants, warrants and represents that he or she is and has been fully authorized to do so by the Plaintiff or HP. Plaintiff and HP hereto further represents and warrants that they intend to be bound fully by the terms of this Agreement.

**10.18** This Agreement is intended to and shall be governed by and interpreted in accordance with the laws of the Province of Québec, Canada.

**10.19** The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Québec*, and the Parties are hereby renouncing to any errors of fact, law, and/or calculation.

**10.20** Subject to Court approval, this Agreement shall become effective upon its execution by all of the Parties.

**10.21** No Tax opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by HP, Defence Counsel, Class Counsel, or Plaintiff; nor is any Party or their counsel providing any representation or guarantee respecting the Tax consequences of the Agreement as to any Class Member. Each Class Member is responsible for his/her Tax reporting and other obligations respecting the Agreement, if any.

**10.22** The Parties acknowledge and agree that the present Settlement Agreement was drafted in the English language at the wish of the Parties thereto. In case of inconsistency between this Agreement drafted in English and any French translation thereof, the Agreement in English shall prevail. *Les parties reconnaissent et acceptent que la présente convention a été rédigée en langue anglaise à la demande expresse de toutes les parties y afférentes. En cas de divergence entre la présente convention rédigée en langue anglaise et toute traduction de cette convention en langue française, cette convention rédigée en langue anglaise prévaudra.*

**IN WITNESS WHEREOF**, the Parties hereto through their attorneys have signed on the dates and at the places detailed below.

**ON BEHALF OF PLAINTIFF JACLYN  
RABIN**

**Montreal, Quebec, Canada  
January 14, 2019**

*(s) David Assor*

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David Assor  
LEX GROUP INC.  
4101 Sherbrooke Street West  
Westmount, Québec H3Z 1A7

Class Counsel

**ON BEHALF OF DEFENDANTS HP  
CANADA CO. AND HEWLETT  
PACKARD (CANADA) CO.**

**Montreal, Quebec, Canada  
January 14, 2019**

*(s) Anne Merminod*

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Stéphane Pitre  
Anne Merminod  
BORDEN LADNER GERVAIS LLP  
1000 de la Gauchetière Street West  
Suite 900  
Montréal, Québec H3B 5H4

Counsel for Defendants

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action Division)

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File No.: 500-06-000813-168

**JACLYN RABIN**

Plaintiff

v.

**HP CANADA CO.**

and

**HEWLETT PACKARD (CANADA) CO.**

Defendants

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**LIST OF EXHIBITS**

<b>EXHIBIT A:</b>	Distribution Protocol
<b>EXHIBIT B1:</b>	Long Form Notice
<b>EXHIBIT B2:</b>	Short Form Notice
<b>EXHIBIT C:</b>	Claim Form
<b>EXHIBIT D:</b>	Opt-Out Form

**EXHIBIT A**

Distribution Protocol

**EXHIBIT B1**

Long Form Notice

**EXHIBIT B2**

Short Form Notice

**EXHIBIT C**

Claim Form

**EXHIBIT D**

Opt-Out Form