

***MONTAQUE v. HANDA TRAVEL STUDENT TRIP LTD., et al.***

**Court File No.: CV-18-00598257-CP**

**Administration and Distribution Protocol**

**A. DEFINITIONS**

1. For the purpose of this Administration and Distribution Protocol the defined terms have the same meaning as in the Settlement Agreement, executed on November 8, 2021, unless otherwise specified.
2. In addition, the following definitions apply:
  - (a) *Administration Form* means the form provided for in section D below inclusive of any electronic version;
  - (b) *Claims Administrator* means RicePoint Administration Inc.;
  - (c) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
  - (d) *Class List* means the list of Class Members' last known contact information, dates of employment, and number of trips as available provided by the Defendants to Class Counsel on February 22, 2022 pursuant to Section 7 of the Settlement Agreement;
  - (e) *Court* means the Ontario Superior Court of Justice;
  - (f) *Dispute* means a dispute by a Class Member regarding the Records used to calculate a Class Member's entitlement as detailed on the Administration Form;
  - (g) *Distribution* means a distribution of the Relative Share to a Class Member;
  - (h) *Notification Letter* means a letter delivered by email or a text message provided to each Class Member notifying the Class Member that the Settlement has been approved, providing a unique claim ID number and advising the Class Member how they can make a claim;
  - (i) *Post-limitation period* means any time worked in the Class Period on May 22, 2016 or thereafter;
  - (j) *Pre-limitation period* means any time worked in the Class Period prior to May 22, 2016;
  - (k) *Referee* means Mika Imai at Karimjee Law;

- a) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to; and
- b) *Trip* means an S-Trip or Breakaway Tours trip worked by a Class Member as a Trip Leader during the Class Period.

## **B. GENERAL PRINCIPLES OF THE ADMINISTRATION**

- 3. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund in *Montaque v. Handa Travel Student Trip Ltd., et al.* (the “Action”). This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class Members.

## **C. CLAIMS ADMINISTRATOR DUTIES AND RESPONSIBILITIES**

- 4. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement, the directions given by Class Counsel and the ongoing authority and supervision of the Court.
- 5. The Claims Administrator’s duties and responsibilities shall include the following:
  - a) providing notice(s) to the Class Members as may be required as directed by Class Counsel;
  - b) developing, implementing and operating the administration process including a website;
  - c) making timely calculations of Class Members’ Relative Share of the Claim Fund and notifying Class Members;
  - d) arranging payment to Class Members in a timely fashion;
  - e) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
  - f) maintaining the administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
  - g) responding to Class Member inquiries and communications with Class Counsel;
  - h) calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
  - i) preparing and distributing T4 forms to Class Members in accordance with paragraph 20, below;
  - j) reporting to Class Counsel respecting Claims received and administered and administration expenses;

- k) holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Claim Fund from that account as authorized;
  - l) cash management and audit control;
  - m) preparing and submitting reports and records as directed by Class Counsel or the Court; and
  - n) other steps as directed by Class Counsel or the Court, as needed.
6. All information in the course of administration is retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

#### **D. CLAIMS BY CLASS MEMBERS**

##### ***i. Requirement to Submit Timely Administrative Form***

7. The Defendants shall respond to any questions or inquiries by the Claims Administrator or Class Counsel regarding the Class List within twenty (20) days of such request.
8. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form shall be pre-populated by the Administrator with data regarding the type and number of Trips worked during the Class Period and the date of these Trips from the Records provided by the Defendants and must be completed and submitted by email or an online portal to the Claims Administrator within one hundred and twenty (120) days of distribution of the Notification Letter. Submission of a Dispute shall satisfy the requirement to submit an Administration Form.
9. In the event of a Dispute, the Class Member shall advise the Claims Administrator of the Dispute and provide documentation or reasons in support of an alternative calculation within the one hundred and twenty (120) days following distribution of the Notification Letters. Class Counsel shall review the information provided by any Class Member and if necessary, seek input from the Defendants and Claims Administrator. Class Counsel shall then instruct the Claims Administrator on how compensation to the Class Member shall be calculated and the Administrator shall advise the Class Member of any new calculation or the reason for maintaining the original calculation within thirty (30) days of receiving the Dispute.
10. If the Class Member disagree with the resolution of the Dispute and wishes to appeal the decision reached from paragraph 8 such appeal shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days and is not required to provide reasons. The decision of the Referee is final and not subject to any further appeal ("Dispute Appeal").

11. If the Claims Administrator finds that deficiencies exist in a completed Administration Form, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member must correct the deficiencies to the satisfaction of the Claims Administrator by the deadline for submission of the Administration Form, although the Administrator may consider late corrections of deficiencies in their discretion.
12. Payments to Class Members who do not submit an Administration Form within the time prescribed by paragraph 8 are at the discretion of Class Counsel. Once a distribution of the Relative Shares has occurred, Class Members who submit a late Administration Form will only be eligible to receive a payment in the event surplus funds remaining after Distribution (e.g. due to stale-dated cheques). Such payments may be in an amount lesser than the Relative Share. Such amounts are final and not subject to any appeal. A decision that an Administration Form was not submitted within the time prescribed by paragraph 8 is final and not subject to any appeal. Class Members who submit a late Administrative Form which cannot be considered because a distribution of the Relative Shares has occurred will only be eligible to receive any compensation in the event there are surplus funds remaining after the distribution, for example due to stale dated cheques, or in the event the holdback for administration or taxes exceeds what is required. Payments to Class Members who submit late Administrative Forms are in the discretion of Class Counsel and may be in amounts less than the compensation provided to Class Members who submitted a timely Administrative Form, depending on the sufficiency of funds. There is no appeal regarding the determination that an Administrative Form is late or from the amount of funds provided to Class Members who submitted a late Administrative Form.
13. An Administration Form will not be considered late solely because the Class Member is required to prove their membership in the Class pursuant to the process set out in paragraphs 14-16 below, where the Class Member submitted their Administration Form to the Claims Administrator prior to the deadline and the Administration Form was otherwise complete.

*ii. Confirmation of Membership in Class*

14. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendants. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator shall ask the individual to provide proof of membership in the Class, as set out in paragraph 15, within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendants to confirm the individual's employment history and membership in the Class. The Claims Administrator shall determine the individual's membership in the Class within ten (10) days of the date the individual provides proof of Class Membership.
15. Proof of Class Membership may be provided by submission of documents such as Trip Leader agreements, tax forms, paystubs or other records of payment, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendants to review any documents submitted to verify their authenticity.

16. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to the Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, which shall not exceed \$75. The Referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the Referee is final and not subject to any appeal.

*iii. Calculation of Class Member Compensation*

17. Class members will be compensated based on the type of Trip they attended as Trip Leaders, the number of Trips that they attended as Trip Leaders, and whether these Trips occurred during the pre-limitation period or the post-limitation period.

18. Each Class Member's relative share will be calculated in general as follows:

(a) The proportionate value of each trip worked will be assigned an X value as follows:

(i) Each Trip worked during the pre-limitation period will be assigned an X value of 1;

(ii) Each Breakaway Tours Trip worked during the post-limitation period will be assigned an X value of 3.2478; and

(iii) Each S-Trip Trip worked during the post-limitation period will be assigned an X value of 6.683.

(b) To determine the value of "X" and therefore determine the exact share for each class member, the Claims Administrator will add up the total of all Class Members' shares as a function of "X" and divide that number into the total value of the Claim Fund.

19. For example, based on an estimated 50% take-up rate within each category, the payment for each Trip worked during the pre-limitation period would be \$100, the payment for each Breakaway Tours Trip worked during the post-limitation period would be \$324.78, and the payment for each S-Trip Trip worked during the post-limitation period would be \$668.30. When factoring in their \$150 honoraria and the deemed value of their room at board under the *Employment Standards Act, 2000*, this means that Class Members would be paid the equivalent of just over eight hours at the weighted average minimum wage during the Class Period for Trips during the post-limitation period.

20. The Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4 forms as necessary. The Defendants are not responsible to withhold any amounts. The Claims Administrator and each Class Member are responsible for any tax or other amounts payable and will indemnify the Defendants for any liability in this regard.

21. Amounts may be distributed to Class Members by the Claims Administrator by cheque.

22. Class Members are responsible for providing the Claims Administrator with accurate and timely information to facilitate the distribution of funds. In the case of incomplete, incorrect or missing contact or banking information necessary to distribute funds to a Class Member, and in the case of stale cheques, the Claims Administrator shall make at least one attempt to reach out to the Class Member, and the Class Member shall have thirty (30) days from the date of this attempt to provide the corrected information to the Claims Administrator or to request a fresh cheque in the case of a stale cheque.
23. If the Class Member cannot be located or fails to respond to communication from the Claims Administrator, their Relative Share may be treated as surplus funds available for distribution in accordance with Step 6 described below. The Claims Administrator will provide Class Counsel with information concerning its efforts to contact a Class Member prior to taking this step.

#### **E. DISTRIBUTION PROCESS**

24. Generally, the Claims Administration Process will be as follows:

Step 1: Distribution of Notification Letters.

Step 2: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 3: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/EI/CRA as necessary.

Step 5: Report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

Step 7: If any amount is remaining from the Settlement Amount and the Administrative Holdback after the distribution set out above and the payment of any taxes on account of interest earned in the Trust Account, such amount shall be paid to the ENAGG Indigenous Youth Agency or as directed by the Court.

#### **F. ROLE OF COUNSEL**

25. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol and Distribution Protocol and the claims process.

26. Notwithstanding the foregoing, if, during the administration process, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions. Class Counsel shall seek input from the Claims Administrator and Defendants before taking any such steps.

#### **G. CONFIDENTIALITY**

27. All information received from the Defendants or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.
28. The Claims Administrator shall destroy any information in connection with this matter following the distribution of the Claim Fund to the Class Members, save and except as may be required to meet the Claims Administrator's statutory or professional retention obligations.