

Aps v. Flight Centre Travel Group (Canada) Inc.

Court File No.: CV-19-00614755-00CP

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 August 21, 2020, 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) *Applicable Employment Standards Legislation* means *Employment Standards Code*, R.S.A. 2000, c. E-9 (Alberta); *Employment Standards Act*, R.S.B.C. 1996, c. 113 (British Columbia); *Employment Standards Code*, C.C.S.M. c. E110 (Manitoba); *Labour Standards Act*, R.S.N.L. 1990, c.L-2 (Newfoundland); *Labour Standards Code*, 1989, R.S.N.S. c. 246 (Nova Scotia); *Employment Standards Act, 2000*, S.O. 2000, c. 41 (Ontario); *The Saskatchewan Employment Act*, S.S. c.S-15.1 (Saskatchewan); and their respective regulations.
 - (c) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
 - (d) *Court* means the Ontario Superior Court of Justice;
 - (e) *Notification Letter* means the letter, email or text message provided to each Class Member describing their relative share of the Claim Fund as determined by the Claims Administrator;
 - (f) *Post-limitation period* means any time worked in the Class Period on February 21, 2017 or thereafter;
 - (g) *Pre-limitation period* means any time worked in the Class Period prior to February 21, 2017;
 - (h) *Referee* means Mika Imai at Karimjee Law;
 - (i) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to.

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 *Aps v. Flight Centre Travel Group (Canada) Inc.* (the “Action”). This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class and result in payment to the highest possible proportion of 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 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;
 - b. receiving information from the Defendant, including Class Members’ contact information and dates of employment;
 - c. developing, implementing and operating the administration process including an online claim submission process and website;
 - d. making timely calculations of Class Members’ Relative Share of the Claim Fund and notifying Class Members;
 - e. arranging payment to Class Members in a timely fashion;
 - f. reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - g. 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;
 - h. responding to Class Member inquiries and communications with Class Counsel;
 - i. calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
 - j. preparing and distributing T4A forms to Class Members;
 - k. reporting to Class Counsel respecting Claims received and administered and administration expenses;
 - l. 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;

- m. cash management and audit control;
 - n. preparing and submitting reports and records as directed by Class Counsel or the Court; and
 - o. other steps as directed by Class Counsel or the Court, as needed.
6. All information received from the Defendant 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.

D. CLAIMS BY CLASS MEMBERS

i. Requirement to Submit Timely Administrative Form

7. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form must be completed and submitted to the Claims Administrator within ninety (90) days of Final Approval.
8. If the Claims Administrator finds that deficiencies exist in an 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 set out in section 7.
9. Class Members who submit a late Administrative Form for any reason 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.
10. 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 11-13 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

11. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendant. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator will ask the individual to provide proof of membership in the Class within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendant 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.

12. Proof of Class Membership may be provided by submission of documents such as employment agreements, tax forms, paystubs, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendant to review any documents submitted to verify their authenticity.
13. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to the independent Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, not to 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

14. Class members will be compensated based on their weeks of service within the class period and the province(s) in which they were employed at Flight Centre. Compensation will be adjusted to discount pre-limitation period work by 75% relative to post-limitation period work.
15. Each Class Member's relative share will be calculated in general as follows:
 - (a) Proportionate value of each week worked in the Class Period is weighted by Province, having regard to the following Overtime Thresholds under the Applicable Employment Standards Legislation:
 - i. Alberta and Ontario: 44 hours
 - ii. British Columbia, Saskatchewan, Newfoundland and Manitoba: 40 hours
 - iii. Nova Scotia: 48 hours

Based on a hypothetical 50-hour work week, the ratio of overtime hours worked in these provinces is 3:5:1, which is reflected in the relative value attributable to each week worked in the Class Period.

- (b) Given the unique statutory exemption for commissioned salespeople in British Columbia, the value of each British Columbia work week will be discounted by 65%.
 - (c) Time worked pre-limitation period will be discounted by 75% relative to time worked post-limitation period to account for the two-year statutory limitation period.
16. For any class member, the value of their claims will be the total post-limitation period weeks + pre-limitation period weeks, taking into account the factors impacting on the value of a given week of service described above, and summarized in Table 1, below:

Table 1

	Nova Scotia	Alberta/Ontario	British Columbia	Manitoba /Saskatchewan /Newfoundland
Value of post-limitation period week	X	3x	0.3 (5x)= 3.25x	5x
Value of pre-limitation period week	0.25(x)	0.25(3)(x)	0.25(1.75)(x)	0.25(5)(x)

17. An example of the operation of the compensation calculation is below:

If a class member from Alberta worked 50 weeks pre-limitation period plus 50 weeks post limitation period, their share would be:

$$\begin{aligned}
 &= 50(3)(x) + 50(0.25)(3)(x) \\
 &= 150x + 37.5x \\
 &= 187.5x
 \end{aligned}$$

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.

18. Every Class Member who completes an Administrative Form shall indicate length of service within the class period, including their start date(s) and end date(s), and the province(s) in which they were employed at Flight Centre at all relevant times during the Class Period and confirm that they were employed as a Travel Consultant at such times.
19. The amounts paid pursuant to this settlement are income and the Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4A forms as necessary. The Defendant is not responsible to withhold any amounts. The Claims Administrator and each member of the Class are responsible for any tax or other amounts payable and will indemnify the Defendant for any liability in this regard.
20. The Claims Administrator will prepare Notification Letters individualized for each Class Member describing their relative share. A Class Member who disputes their relative share must notify the Claims Administrator in writing within fourteen (14) days of the date of the Notification Letter. The Claims Administrator may reconsider and correct any errors identified by the Class Member within five (5) days of the receipt of the Class Member’s notification of dispute (e.g. if the Class Member’s relative share does not reflect that they applied and were eligible for all four issues). If the Class Member continues to dispute the Claims Administrator’s decision, such dispute shall be referred to the independent Referee for a binding determination. The individual is responsible for paying the cost of the

Referee's fee, not to 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.

21. Amounts may be distributed to Class Members by the Claims Administrator by cheque or e-transfer or electronic funds transfer, within the discretion of the Claims Administrator.
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 funds 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: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 2: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 3: Preparation/distribution of Notification Letters.

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

Step 5: The Claims Administrator will provide a 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 Ontario Employment Education & Research Centre (OEERC) within 30

days of Class Counsel's receipt of final Notices of Assessment from the Canada Revenue 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 Defendant before taking any such steps.

G. CONFIDENTIALITY

27. All information received from the Defendant 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.