



FORCE FILED

No. S-218896
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ANNE MARIE MACCALLUM

PLAINTIFF

AND:

AIR INDIA LIMITED, SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS
AERONAUTIQUES, AND SITA PASSENGER SERVICE SYSTEM (US) INC.

DEFENDANTS

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

NOTICE OF APPLICATION

(Approval of Notice of Certification and Notice of Settlement Approval Hearing)

Name of applicant: The Plaintiff, Anne Marie MacCallum

To: The Defendants and its Solicitors

TAKE NOTICE that an application will be made by the applicant to the Honourable Mr. Justice Walker at the courthouse at 800 Smithe Street, Vancouver, British Columbia on January 17, 2024 at 10:00 a.m.

Part 1: ORDERS SOUGHT

1. An order for consent certification and notice approval in the form attached as Schedule A.

Part 2: FACTUAL BASIS

History of Proceedings

1. On October 18, 2021, this action was brought against Air India Limited (“**Air India**”), Societe Internationale de Telecommunications Aeronautiques (“**SITA**”), and SITA Passenger Service System (US) Inc. (“**SITA PSS**”) (collectively, the “**Defendants**”) alleging that the Defendants had inadequately managed the Plaintiff and Class Members’ private information, leading to a data incident that occurred on or about February 24, 2021, that was announced on or about May 19, 2021.

Notice of Civil Claim

2. On December 16, 2021, the Honourable Justice Walker was appointed as case management judge. The procedural history outlined herein at paragraphs 4 through 12, is as outlined in the Affidavit No 1 of Simon Lin.

3. On February 1, 2022, the Plaintiff delivered her Notice of Application for certification. In support of the motion, the Plaintiff delivered an affidavit from herself, and two lengthy legal assistant affidavits including hundreds of pages of documents obtained from the Defendants’ records and various public sources.

Notice of Application (Certification)
Affidavits No 1 and No 2 of Palwinder Virk
Affidavit No 1 of Anne Marie MacCallum

4. The first judicial management conference (“**JMC**”) was held on February 8, 2022. At that time, the deadline to file a Response to Civil Claim and any materials for an application for a third-party notice was finalized. A hearing for certification was also set for August 8-12, 2022.

5. On March 4, 2022, the Defendants, SITA and SITA PSS, filed a Response to Civil Claim denying the allegations and all liability.

Response to Civil Claim of SITA and SITA PSS

6. On March 7, 2022, the Defendant, Air India, filed a Response to Civil Claim denying the allegations and all liability.

Response to Civil Claim of Air India

7. The second JMC was held on April 6, 2022. At that time, the schedule for certification was finalised.

8. On April 19, 2022, the Plaintiff served the Defendants with a Notice to Mediate.

Affidavit No 1 of Owen Cotterill

9. On May 20, 2022, the certification hearing set for August 8-12, 2022 was adjourned by consent, to be reset if the mediation was unsuccessful.

Requisition, filed May 20, 2022

10. On August 9, 2022, a mediation was held with Mary Ellen Boyd as the mediator. At this mediation, an agreement-in-principle was reached at the mediation, and subsequently reduced to a short-form agreement, followed by a long-form agreement (the "**Settlement Agreement**").

Affidavit No 1 of Simon Lin

11. A third JMC was held on November 28, 2023. At that time, the hearing date for consent certification and notice approval was set for January 17, 2024.

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

13. In the view of Class Counsel, there was considerable uncertainty about the prospects of the claim on its merits. Whichever party was unsuccessful at certification would likely have appealed the result under s. 36 of the *Class Proceedings Act*. Any trial of the case was likely many years away.

The Terms of the Settlement Agreement

14. Under the Settlement Agreement, the Defendants have agreed to pay a Settlement Amount of CAD\$1,000,000, all-inclusive, to resolve the litigation, without admission of liability. A compensation fund will be established and administered by Class Counsel to pay provable loss claims submitted by Class Members. The parties have proposed that after six months from issuing of notice to Class Members to submit their claims, any remaining balance, after compensation payments, deduction for class counsel fees, disbursements (including costs of notice), applicable taxes, and any honourarium to the representative plaintiff, be equally distributed by way of *cy-près* donation to the Law Foundation of British Columbia and The Pembina Institute (or in the alternative, another non-profit entity) as contemplated by ss. 36 and 36.1 of the *Class Proceedings Act*.

Affidavit No 1 of Simon Lin

15. The \$1,000,000 settlement funds have been held in trust by counsel for the Defendants SITA and SITA PSS since May 2023 in an interest-bearing trust account, which will accrue for the benefit of the Class (if the settlement is approved).

Affidavit No 1 of Simon Lin

16. The Settlement Agreement is subject to approval by this Court. The Settlement Agreement sets out a comprehensive procedure for that process. Under the terms of the Settlement Agreement, the Plaintiff must first seek consent certification and notice approval. If this Court grants the order sought, then notice will be published. The form of notice is attached to the Settlement Agreement as Schedule C. The Settlement Agreement establishes a process for Class Members to opt out or to object.

Affidavit No 1 of Simon Lin

17. If this Court grants the order sought, then notice will be published to the Class Members notifying them that they may: (1) make a Substantiated Loss and Lost Time claim, in accordance with the distribution protocol; or (2) opt-out of the settlement. A deadline will be fixed for those who wish to opt-out. Claims will be accepted after the

conclusion of the opt-out period. After the opt-out period, the Settlement Agreement will become final.

Affidavit No 1 of Simon Lin

Notice

18. The Defendants estimate the proposed class size to be 20,000 or less. However, it could be as high as approximately 56,000. Notice will be provided through social media advertising on Facebook and by posting on Class Counsel's website. To the extent possible, the Facebook advertisements will be limited geographically to users situated in Canada. The proposed notice is attached to the Settlement Agreement, in long and short forms. Notice will be published in English, French, and Punjabi.

Affidavit No 1 of Simon Lin
Affidavit No 1 of Matt Reverse

19. Notice will also be published in a nation-wide Punjabi-language newspaper.

Affidavit No 1 of Simon Lin

Certification Criteria and Notice

20. 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 Anne Marie MacCallum
Affidavits No 1 and 2 of Palwinder Virk
Affidavit No 1 of Simon Lin
Affidavit No 1 of Owen Cotterill

21. The named plaintiff is prepared to act as the representative plaintiff and has indicated her approval of the proposed settlement, consent certification, notice plan, and fees. She has no conflicts with the Class.

Affidavits No 1 and 2 of Anne Marie MacCallum

Part 3: LEGAL BASIS

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

Consent Certification

23. The test for certification is altered where there is 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 & Good, *Class Actions in Canada*, 2d ed. at 17.260 citing *Haney Iron Works Ltd v. Manufacturers Life Insurance Co.* [1998 CanLII 3085](#) (BC SC)

Rezmuves 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")

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

- a. Under s. 4(1)(a), the pleadings must disclose a cause of action. In the Notice of Civil Claim, the Plaintiff pleads negligence, common law torts (breach of privacy and intrusion upon seclusion), and breach of the British Columbia *Privacy Act*, RSBC 1996, c 373. These causes of action are well established in law.
- b. Under s. 4(1)(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 the Settlement Agreement.

- c. Section 4(1)(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 is a suitable common issue.
- d. To satisfy s. 4(1)(d), 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, s. 4(1)(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.

Affidavit No 1 of Anne Marie MacCallum

25. 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

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

Class Proceedings Act, s 35(5)

27. The factors in considering the form and scope of notice are set out in s. 19 of the *Class Proceedings Act*. 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)

28. As set out in *Branch & Good*, “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 & Good, at 10.40-10.50, 10.220

29. The notice proposed here is intelligible, informative, and tailored to the circumstances of this case. The plan for posting and publication of notice should ensure sufficient exposure to Class Members. Class Counsel will publish the notice through social media advertising on Facebook, on Class Counsel’s website, and in Punjabi newspapers across the country.

Affidavit No 1 of Simon Lin

30. For these reasons, the notice and its manner of distribution should be approved.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit No 1 of Anne Marie MacCallum;
2. Affidavit No 2 of Anne Marie MacCallum;
3. Affidavit No 1 of Palwinder Virk;
4. Affidavit No 2 of Palwinder Virk;

5. Affidavit No 1 of Simon Lin;
6. Affidavit No 1 of Owen Cotterill;
7. Affidavit No 1 of Matt Reverse;
8. Notice of Application (Certification);
9. Notice of Civil Claim;
10. Response to Civil Claim;
11. Pleadings and materials filed herein;
12. Any other such material as counsel may put forward and this Honourable Court accept.

The applicant estimates that the application will take 2 hours.

[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: January 8, 2024



Signature of lawyers for Plaintiff
Alexia Majidi

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: Certification and Notice Approval Order

No. S-218896
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ANNE MARIE MACCALLUM

PLAINTIFF

AND:

AIR INDIA LIMITED, SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS
AERONAUTIQUES, AND SITA PASSENGER SERVICE SYSTEM (US) INC.

DEFENDANTS

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

BEFORE } THE HONOURABLE JUSTICE WALKER } _____/_____/2024

ORDER

ON THE APPLICATION of the Plaintiff coming on for hearing before the Honourable Justice Walker at the Courthouse at 800 Smithe Street, Vancouver, B.C., on January 17, 2024, on reading the materials filed, including the settlement agreement dated January 5, 2024 (“Settlement Agreement”), and on hearing Alexia Majidi and Serena Cheong for the Plaintiff, Emma Irving for the Defendants, Societe Internationale de Telecommunications Aeronautiques and SITA Passenger Service System (US) Inc., and Paul D. McLean for the Defendant, Air India Limited, and on being advised that the Plaintiff and Defendants consent to this Order:

THIS COURT ORDERS that:

1. All capitalized terms in this Order have the same meaning as defined in the Settlement Agreement attached as **Schedule “A”** to this Order, and apply to and are

incorporated into this Order;

2. This action is certified as a class proceeding for settlement purposes only, pursuant to the *Class Proceedings Act*, RSBC 1996, c 50, as amended;

3. The class and subclass are defined as:

All individuals residing in Canada whose private information was or might have been compromised as part of the Data Breach of SITA PSS's servers in the USA that was discovered on or about February 24, 2021 (hereafter the "**Class**" or "**Class Member(s)**"), including a subclass of individuals who were passengers of Air India who received notification of the Data Breach on or about May 19, 2021 (the "**Air India Subclass**" or "**Air India Subclass Member(s)**").

4. Appointing the plaintiff Anne MacCallum as the representative plaintiff for both the Class and Air India Subclass;

5. Appointing Hammerco Lawyers LLP, Evolink Law Group, and Mathew P. Good Law Corporation as counsel for the Class;

6. Any person who is a putative member of the Class who wishes to opt-out must do so by delivering a written election to Class Counsel by pre-paid mail, courier, or email at the address specified in the long form notice of settlement approval attached as Schedule C to the Settlement Agreement by [DATE] ("**Long Form Notice**"). The written election to opt-out must either be in the form attached as Schedule D to the Settlement Agreement, or include the information specified in the Long Form Notice;

7. The short form (publication) notice and long form notices are hereby approved substantially in the forms attached as Schedule C to the Settlement Agreement;

8. The settlement approval hearing is fixed on [DATE] at [LOCATION], with remote participation via MS Teams.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of lawyer for the Plaintiff

By the Court:

Signature of lawyer for the Defendants,
Societe Internationale de
Telecommunications Aeronautiques and
SITA Passenger Service System (US)
Inc.

Registrar

Signature of lawyer for the Defendant,
Air India Limited

Schedule "A"

SETTLEMENT AGREEMENT

BETWEEN:

ANNE MARIE MACCALLUM (THE "PLAINTIFF")

AND

**AIR INDIA LIMITED, SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS
AERONAUTIQUES, AND SITA PASSENGER SERVICE SYSTEM (US) INC. (THE
"DEFENDANTS")**

(EACH, A "PARTY" AND COLLECTIVELY, THE "PARTIES")

WHEREAS:

- A. The Plaintiff has commenced a proposed class proceeding, *MacCallum v. Air India et al*, VLC-S-S-218896, against the Defendants alleging, among other things, that personal and private information of certain individuals was compromised as a result of a cyberattack perpetrated on SITA PSS in January and February of 2021 (the "Proceedings")
- B. The Defendants deny the allegations and do not admit, through the execution of this Settlement Agreement (the "Settlement Agreement"), or otherwise, any unlawful conduct, liability, wrongdoing, or fault of any kind, as alleged in the Proceedings or otherwise;
- C. The Parties, through their counsel, engaged in a mediation and subsequent negotiations resulting in terms of settlement, all of which are set out in this Settlement Agreement;
- D. The Defendants believe that the allegations advanced in the Proceedings are unfounded and that they have good and reasonable defences both to certification and on the merits, but have agreed to enter into this Settlement Agreement solely to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;
- E. The Plaintiff and their 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 Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiff and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent and seek to represent;

THEREFORE, IN CONSIDERATION OF the covenants and agreements of the Parties herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings will be dismissed without costs and with prejudice on the following terms and conditions:

DEFINITIONS

1. In addition to the in-line definitions in this Settlement Agreement, the following definitions apply to this Settlement Agreement:
 - a. Court means the Supreme Court of British Columbia;
 - b. Class means Canadian residents whose personal and private information was compromised as a result of a cyberattack perpetrated on SITA PSS in January and February of 2021 (the "PSS Incident");
 - c. Class Member includes, jointly and severally, individually and collectively, the Plaintiff and each member of the Class and their respective successors, heirs, executors, administrators, insurers and assigns;
 - d. Class Counsel means, collectively, Hammerco Lawyers LLP and Evolink Law Group;
 - e. Class Identification Information means the list of potential members of the Class and available contact information, including names, addresses, email addresses, and phone numbers to the extent they are within the PSS Incident data;
 - f. Consent Certification and Notice Approval Order means an order in the form of the draft order attached as Schedule A to this Settlement Agreement;
 - g. Defence Counsel means, collectively, Dentons Canada LLP and Dentons UK LLP as counsel for the Defendants Societe Internationale de Telecommunications Aeronautiques and SITA Passenger Service System (US) Inc. along with Mathews, Dinsdale & Clark LLP as counsel for Air India Limited;
 - h. Effective Date means the date when a Final Order has been received from the Court approving this Settlement Agreement;

- i. Final Order means the later of a final judgment entered by the Court (i) granting certification of the Proceedings as a class for settlement purposes in accordance with the Agreement, and (ii) approving the Settlement, the time to appeal such judgments having expired without any appeal being taken, if an appeal lies, or the disposition of all appeals;
- j. Opt-Out Deadline means the date that is 30 days after the first publication of Notice;
- k. Settlement Approval Materials means the materials filed by the Parties, after the date of this Agreement, in support of the Plaintiff's Settlement Approval Order and including the Notice of Application, an affidavit on behalf of the Plaintiff, and an affidavit of Class Counsel necessary to obtain the Court's approval; and
- l. Settlement Approval Order means the portion of the order in the form of the draft order attached as Schedule A to this Settlement Agreement.
- m. Settlement Funds means the \$1,000,000 CAD in paragraph 6 below that has already been paid into trust by the Defendants in or around May 2023, including any interest that accrued on those amounts.

CERTIFICATION, SETTLEMENT, AND APPROVAL

- 2. The Defendants will consent to certification of the Proceedings in respect of the Class for settlement purposes only.
- 3. As soon as practicable after the execution of this Settlement Agreement, the Plaintiff shall bring an application before the court for orders for consent certification and notice approval, and approval of this Settlement Agreement. The Defendants will consent to such orders.
- 4. The Parties will use their best efforts to recommend and obtain an order for consent certification and a Settlement Approval Order from the Court.
- 5. The terms of this Settlement Agreement will become effective upon the pronouncement of the Final Order on the Effective Date.

6. The Defendants will collectively pay \$1,000,000 CAD all-inclusive for the settlement of these Proceedings without any admission of liability.
7. The Defendants' financial obligations under the Settlement Agreement are limited to the amount of the Settlement Funds. The Defendants shall have no further liability in respect of the payment of any or all expenses related to the Settlement Agreement, the settlement that is the subject of this Settlement Agreement and the implementation of same, including but not limited to all legal fees, administration expenses, notice expenses or taxes.
8. Without limiting the generality of the foregoing, the costs of providing notice to Class Members will be paid from the Settlement Funds.
9. The approval of the Settlement Agreement will not depend on, and the Defendants will take no position on, the approval of fees, disbursements or honouraria payable to Class Counsel.
10. Upon settlement approval, after payment of fees, disbursements, costs of providing notice, honouraria, taxes, and any claims administration costs, the remaining Settlement Funds will be distributed according to the distribution protocol attached as Schedule B or otherwise approved by the Court.
11. After six (6) months from the issuing of notice to Class Members to submit their claims, any remaining balance of the Settlement Funds will be distributed cy-pres in accordance with the Class Proceedings Act, s. 36.2 with 50% to the Law Foundation of British Columbia and the remaining 50% to a non-profit entity that may reasonably be expected to benefit Class Members. The parties will jointly propose, for the Court's consideration and approval, The Pembina Foundation as the non-profit entity to receive 50% of any remaining funds. For greater certainty, the approval of the settlement will not depend on approval of The Pembina Foundation as recipient.

NOTICE

12. Subject to the Court ordering otherwise, within thirty (30) days following the issuance of the Notice of Consent Certification and Settlement Approval Order, the Notice shall be disseminated in English and French as follows:

- a. Distribution through a Facebook advertising campaign, which, to the extent possible, limits the advertisements geographically to users situated in Canada, and
 - b. Posting to Class Counsel's website(s), or a specific website designated for the settlement of the Proceedings.
13. Subject to the Court ordering otherwise, within thirty (30) days following the issuance of the Notice of Consent Certification and Settlement Approval Order, the Notice shall be disseminated in Punjabi as follows:
 - a. Distribution through the Indo-Canadian Voice and The Weekly Voice Online, Indo-Canadian online and print news publications catering to users situated in Canada.
14. Notice provided to Class Members will state the following:
 - a. That the Proceedings have been certified for settlement purposes;
 - b. That the Settlement Agreement has been approved by the Court;
 - c. A summary of the terms of the Settlement Agreement and how to make a claim under the distribution protocol;
 - d. That Class Members have the right to opt-out of the Proceedings before the Opt-Out Deadline using the proscribed form and procedure set out in paragraphs 18 and 19 below;
 - e. Directing Class Members to Class Counsel's website(s), or a specific website designated for the settlement of the Proceedings; and
 - f. Providing instructions for contacting Class Counsel, ("Notice").
15. A proposed form of Notice is provided in Schedule C, subject to such modification as the Court may direct.
16. All advertisements of the proposed Notice on Facebook or to Class Counsel's website(s), online and print news publications, or a specific website designated for the settlement of the Proceedings shall be subject to approval by the Defendants before they are published, and such approval shall not be unreasonably withheld or delayed.

17. The Parties agree that any additional notice to Class Members informing them of certification and settlement approval is not necessary and, as a result, the Parties propose to the Courts that the Notice shall be the only notice to Class Members.
18. Any amendment to the form or distribution of Notice required by the Court or the Parties is not a material change to this Settlement Agreement.

OPT-OUT

19. Persons who wish to opt-out of the Proceedings must do so by sending a written election (an "Election") to opt out by pre-paid mail, courier or email to Class Counsel at the address identified in this Settlement Agreement. An Election will only be valid if it is received by Class Counsel on or before the Opt-Out Deadline.
20. The Election to opt-out must be signed by the person who wishes to opt out and must be in the form attached at Schedule D to this Settlement Agreement or, at minimum, contain the following information in order to be valid:
 - a. The person's full name, current address and telephone number;
 - b. A statement to the effect that the person wishes to be excluded from the Proceedings; and
 - c. The reasons for opting out.
21. Opt-out forms or documents that purport to opt-out multiple Class Members, or so-called "mass" or "class" opt-outs, shall not be permitted.
22. Upon the Final Order, any Class Member who has not opted out of the Proceedings in accordance with this Settlement Agreement shall be bound by the terms of the Settlement Agreement.
23. Within a reasonable time after the Opt-Out Deadline, Class Counsel will advise Defence Counsel of the total number of potential Class Members who opted-out of this Settlement Agreement.

CLAIMS ADMINISTRATION

24. The Defendants have used their reasonable efforts to provide a list of Class Identification Information. The Plaintiff acknowledges and agrees that the Defendants have provided the Class Identification Information to Class Counsel for the purpose of claims administration.
25. Class Counsel acknowledge that they (or an appointed administrator of the Settlement Funds) have received information that is personal and private and will store the data in encrypted form and utilize other safeguards in accordance with industry best practices to safeguard the privacy rights of the potential Class Members. If in the implementation of the settlement, Class Counsel (or an appointed administrator of the Settlement Funds) must provide the data to any other properly appointed party, Class Counsel will ensure the same safeguards will be utilized to protect the data.

RELEASE

26. On the Effective Date, the Defendants are released from all claims represented in the Proceedings or in any way arising from the PSS Incident, whether presently known or unknown, with no admission of liability, and a dismissal with prejudice and without costs, in favour and for the benefit of the Defendants and all parties related to the Defendants, including affiliates, employees, insurers, agents, successors, and assigns.
27. On the Effective Date, each Class Member covenants and agrees that they will not bring, commence, prosecute or maintain, or cause or permit to be brought, commenced, prosecuted or maintained, against the Defendants, including affiliates, employees, insurers, agents, successors, and assigns, any claims, demands, actions, suits or causes of action arising from or in any way connected to the Proceedings, whether such claims are presently known or unknown.
28. After the Effective Date, the Plaintiff and each Class Member is hereby forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively, or derivatively, asserting against the Defendants any claims, demands,

actions, suits or causes of action arising from or in any way connected to the Proceedings and/or the PSS Incident.

CONFIDENTIALITY

29. The Plaintiff and Class Counsel will not advertise the settlement other than to say, on Class Counsel's website(s), or a specific website designated for the settlement of the Proceedings, that the Proceedings settled and to provide copies of the Settlement Approval Materials filed by the Parties as well as the Notice of Civil Claim filed by the Plaintiff and the Responses to Civil Claim filed by the Defendants in the Proceedings.
30. Drafts of the Settlement Approval Materials will be provided by Class Counsel to Defence Counsel prior to filing and provide Defence Counsel a reasonable opportunity to provide any comments of the draft Settlement Approval Materials prior to filing.
31. This does not prohibit Class Counsel from publicizing the settlement to potential Class Members, including posting of the Settlement Approval Materials on Class Counsel's website(s), or a specific website designated for the settlement of the Proceedings for the purpose of allowing potential Class Members to review and assess the settlement.
32. The Plaintiff and Class Counsel will not distribute or publish any of the materials filed by the Defendants prior to the date of this Settlement Agreement, nor the information they contain, nor will they authorize or approve others to do so, with the sole exception being the posting of the Notice of Civil Claim filed by the Plaintiff and the Responses to Civil Claim filed by the Defendants to Class Counsel's website(s), or a specific website designated for the settlement of the Proceedings. This does not prohibit the use of those materials in obtaining a Settlement Approval Order or Final Order.

GENERAL

33. This Settlement Agreement shall be null and void and of no force and effect unless a Settlement Approval Order is issued by the Court.
34. This Settlement Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof. Each Party acknowledges and agrees that such Party has not been influenced to any extent whatsoever in entering into this Settlement

Agreement by any representations or statements regarding any claim or right such Party may have or by any other statements made by any of the Parties or by any of their agents.

35. This Settlement Agreement shall be construed, interpreted, and enforced in accordance with the laws of the Province of British Columbia and for all purposes related to this Settlement Agreement, each Party irrevocably and unconditionally attorns and submits to the jurisdiction of the Supreme Court of British Columbia and all courts competent to hear appeals therefrom.
36. If, for any reason whatsoever, any provision of this Settlement Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the unenforceable provision may be severed from and the remaining provisions hereof shall continue to be binding upon the Parties to the fullest extent permitted by law and the unenforceable provision shall be deemed to be amended to the extent needed to render it enforceable, so as to best reflect the intentions of the Parties.
37. Except as otherwise contemplated herein, this Settlement Agreement may be amended only by written instrument executed by each of the Parties.
38. No waiver of any breach of any provision of this Settlement Agreement will be effective or binding unless made in writing and signed by the Party or Parties purporting to give the same and, unless otherwise provided in the written waiver, will be limited to the specific breach so waived.
39. This Settlement Agreement shall enure to the benefit of and be binding upon each of the Parties hereto.
40. This Settlement Agreement may be executed in one or more counterparts, by original or electronic signature, which together shall constitute the complete Settlement Agreement.
41. Where this Settlement Agreement requires a party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and Class Counsel:

Kevin McLaren

Hammerco Lawyers LLP

Suite 400, 2233 Columbia Street

Vancouver, BC, V5Y 0M6

Email: kmclaren@hammerco.ca

Simon Lin

Evolink Law Group

Suite 237, 4388 Still Creek Drive

Burnaby, BC, V5C 6C6

Email: simonlin@evolinklaw.com

For the Defendants Societe Internationale de Telecommunications Aeronautiques
and SITA Passenger Service System (US) Inc.:_Emma Irving

Dentons Canada LLP

250 Howe Street, 20th Floor

Vancouver, BC, V6C 3R8

Email: emma.irving@dentons.com

and

Craig Neilson

Dentons UK and Middle East LLP

1 Fleet Place

London, EC4M 7WS

Email: craig.neilson@dentons.com

For the Defendant Air India:

Paul McLean

Mathews, Dinsdale & Clark LLP

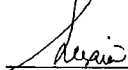
Email: pmclean@mathewdinsdale.com

42. The Parties may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement, on notice to the other Parties.

IN WITNESS WHEREOF the undersigned have hereto set their hands this 8th day of January, 2024.

THE PLAINTIFF

Per its authorized signatory:



Signature

Alexia Majidi

Print Name

Co-Counsel for the Plaintiff

Title

THE DEFENDANT AIR INDIA LIMITED

Per its authorized signatory:



Signature

Paul McLean

Print Name

Counsel for the Defendant Air India Ltd.

Title

**THE DEFENDANT SOCIETE
INTERNATIONALE DE
TELECOMMUNICATIONS
AERONAUTIQUES**

Per its authorized signatory:

Signature

Print Name

Title

**THE DEFENDANT SITA PASSENGER
SERVICE SYSTEM (US) INC.**

Per its authorized signatory:

Signature

Print Name

Title

Paul McLean

Mathews, Dinsdale & Clark LLP

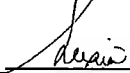
Email: pmclean@mathewdinsdale.com

42. The Parties may apply to the Court for directions in respect of the implementation and administration of this Settlement Agreement, on notice to the other Parties.

IN WITNESS WHEREOF the undersigned have hereto set their hands this 8th day of January, 2024.

THE PLAINTIFF

Per its authorized signatory:



Signature

Alexia Majidi

Print Name

Co-Counsel for the Plaintiff

Title

THE DEFENDANT AIR INDIA LIMITED

Per its authorized signatory:

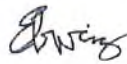
Signature

Print Name

Title

**THE DEFENDANT SOCIETE
INTERNATIONALE DE
TELECOMMUNICATIONS
AERONAUTIQUES**

Per its authorized signatory:



Signature

Emma Irving

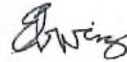
Print Name

Counsel for the Defendant, Societe Internationale
de Telecommunications Aeronautiques

Title

**THE DEFENDANT SITA PASSENGER
SERVICE SYSTEM (US) INC.**

Per its authorized signatory:



Signature

Emma Irving

Print Name

Counsel for the Defendant, SITA Passenger
Service System (US) Inc.

Title

Schedule "A"

Consent Certification and Settlement Approval Order

No. VLC-S-S-218896
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

ANNE MARIE MACCALLUM

PLAINTIFFS

and

AIR INDIA LIMITED, SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS
AERONAUTIQUES, AND SITA PASSENGER SERVICE SYSTEM (US) INC

DEFENDANTS

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

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE JUSTICE WALKER _____

ON THE APPLICATION OF THE PLAINTIFFS coming on for hearing before the Honourable Justice Walker at the Courthouse at 800 Smithe Street, Vancouver, British Columbia; and on hearing [COUNSEL]:

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, against Air India Limited, Societe Internationale de Telecommunications Aeronautiques, and SITA Passenger Service System (US) Inc.

3. THIS COURT ORDERS that the class be and is hereby defined as:

Canadian residents whose personal and private information was compromised as a result of a cyberattack perpetrated on SITA PSS in January and February of 2021.
4. THIS COURT ORDERS that ANNE MARIE MACCALLUM is hereby appointed as the Representative Plaintiff for the class.
5. THIS COURT ORDERS that the nature of this action and the relief sought is for breach of privacy.
6. THIS COURT ORDERS that the form of the notice as attached at Schedule C to the Settlement Agreement is approved, and the parties shall give notice in substantially the form therein.
7. 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 D to the Settlement Agreement, in accordance with the procedure set out in the Settlement Agreement.
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 above provisions be effective as at the date of this Order but only if the Settlement Agreement is not terminated according to its terms.
10. The settlement is hereby approved, on following terms:
 - a) THIS COURT ORDERS that the terms of settlement reached between the parties as set out in the Settlement Agreement are hereby approved and shall be implemented in accordance with the terms of the Settlement Agreement. All capitalized terms in this Order have the same meaning as defined in the Settlement Agreement.
 - b) THIS COURT ORDERS that the Settlement Agreement is incorporated by reference to and forms part of this Order and is binding on the plaintiffs and all Class Members.
 - c) THIS COURT ORDERS AND DECLARES that the Settlement Agreement is fair, reasonable and in the best interest of the Class.

- d) THIS COURT ORDERS THAT this Order, including the Settlement Agreement, is binding upon each Class Member including those persons who are minors or mentally incapable.
- e) THIS COURT ORDERS THAT this Order shall be declared null and void on subsequent application made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.
- f) THIS COURT ORDERS AND DECLARES THAT this Court retains continuing exclusive jurisdiction over the Class to administer, supervise, construe and enforce this Settlement Agreement.
- g) THIS COURT ORDERS AND DECLARES THAT the parties may bring such applications to this Court for directions as may be required.
- h) THIS COURT ORDERS THAT upon the Effective Date this Action is hereby dismissed without costs and with prejudice.

Schedule "B"

Distribution Protocol

Part 1: Settlement Structure

1. All definitions as included in paragraph 1 of the Settlement Agreement or otherwise included in the Settlement Agreement as in-line definitions apply to and are incorporated into this Distribution Protocol.
2. This Distribution Protocol is prepared as Schedule B of the Settlement Agreement.
3. After payment of honoraria, fees, disbursements and applicable taxes, the balance of the Settlement Funds will be held in an interest-bearing trust account by Hammerco Lawyers LLP or its successor.
4. Interest earned on the Settlement Funds will accrue to the benefit of the Class, up until the end of the claims process.
5. The Settlement Funds will be available to pay approved claims for compensation in connection with the PSS Incident, in accordance with the Distribution Protocol, Part 2 set out below.
6. It is understood that the Settlement Funds may be insufficient to pay all claims. No additional contributions will be made from any source other than interest earned on the existing Settlement Funds.
7. Class Members may not claim for amounts already reimbursed from any other source.
8. Class Counsel, or a claims administrator appointed by the Court, will administer the Distribution Protocol in accordance with its terms, prioritizing the goals of efficiency and compensation for eligible claims. At their sole discretion, Class Counsel (or the claims administrator) may waive technical requirements under the Distribution Protocol, if necessary, to do justice for Class Members. There will be no appeals or other reconsideration from any determinations made under the Distribution Protocol. Neither Class Counsel, nor the claims administrator will be liable for any decisions or actions taken under the Distribution Protocol.
9. Class Counsel will be entitled to charge the Settlement Funds for expenses associated with administering the Settlement Fund, and the cost of maintaining a dedicated interest-bearing trust account (the "**Expenses**"), including the costs of a claims administrator.

10. After six (6) months from the issuing the notice to Class Members to submit their claims, any remaining balance of the Settlement Funds will be distributed cy-pres in accordance with the Court's settlement approval order.

Part 2: Making a Claim

11. All claims must be received by no later than **[DATE: six months after issuing the notice to Class Members to submit their claims]**.

12. Class Members who submit a timely Claim evidencing Canadian residence status as of January or February 2021 (in accordance with paragraph 16 below) and substantiated loss actually and directly caused by the PSS Incident (a "**Substantiated Loss**") will be eligible for a reimbursement of such loss, determined solely by the absolute discretion of Class Counsel.

13. The evidence of Substantiated Loss must be objective, reliable and credible, such as credit card statements, invoices, fraud reports, or receipts of out-of-pocket expenses incurred. Only Class Members' losses and/or expenses actually and directly caused by the PSS data breach will be approved by Class Counsel or the claims administrator in their absolute discretion.

14. Class Members are entitled to submit a claim for the following loss types:

Loss Type		Description of supporting Documentation (What to Provide and Identify and Why)
Unauthorized charges on a Class Members' bank account or credit card	Unreimbursed expenses or losses that directly result from the PSS Incident	<p>Example: Bank statement with unauthorized charges paid</p> <ul style="list-style-type: none"> • Must highlight the pertinent charges and • Must provide other documents establishing why these unauthorized charges directly resulted from the PSS Incident

Unauthorized lending	Unreimbursed expenses or losses that directly result from the PSS Incident	Example: Correspondence with lender, credit reporting agency, police, or debt collector showing unauthorized lending in the name of the Class Member
Credit monitoring, credit insurance, identity theft protection	Unreimbursed services paid for by a Class Member to protect their accounts or personal information after hearing about the PSS Incident prior to the date of the Settlement	Example: Credit card statement, bank statement, or invoice from service provider with date and costs paid <ul style="list-style-type: none"> • Must highlight pertinent dates and costs paid and • Must provide other documents establishing why these damages directly resulted from the PSS Incident
Credit reports	Unreimbursed services paid for by a Class Member to protect their accounts or personal information after hearing about the PSS Incident prior to the date of the Settlement	Example: Credit card statement, bank statement, or invoice from service provider with date and costs paid <ul style="list-style-type: none"> • Must highlight pertinent dates and costs paid and • Must provide other documents establishing why these damages directly resulted from the PSS Incident
Other costs, losses and/or unreimbursed expenses not listed above	Other unreimbursed expenses or losses that directly result from the PSS Incident	Example: Sufficient supporting documentation of expenses paid <ul style="list-style-type: none"> • Must highlight all pertinent information

15. Class Members who submit an approved Substantiated Loss claim will also be entitled to receive reimbursement for two (2) hours of lost time ("**Lost Time**"), calculated at a rate of \$20.00 CAD per hour, for each category of approved Substantiated Loss, the whole in

- addition to any approved compensation for the Substantiated Loss in question. A claim for Lost Time cannot be submitted without an associated, approved Substantiated Loss.
16. Every claim must be supported by proof of Class Membership in the form of the original breach notification email or the consent certification notification email and/or proof of Canadian residency at the time of the PSS Incident satisfactory to Class Counsel or the claims administrator ("**Proof of Class Membership**"). Class Members should redact all personal information except their full name.
 17. Every claim must include the following information:
 - a. Full name
 - b. Contact information (mailing address, email, telephone)
 - c. Proof of Substantiated Loss
 - d. Confirmation that the Substantiated Loss has not previously been reimbursed from another source
 - e. Proof of Class Membership
 - f. Signed and dated.
 18. Claims will be submitted electronically via a website.
 19. Class Counsel or the claims administrator may request additional information from a Class Member making a claim. Failure to provide the requested information in a timely way may result in the denial of a claim.
 20. Class Counsel or the claims administrator will administer all claims received by the date that is six (6) months' after issuing the notice to Class Members to submit their claims. If the available Settlement Funds are insufficient to pay all approved Substantiated Claims at that time, each claim will be proportionally reduced (the "**Distribution**"). The Expenses associated with processing the claims may be charged by Class Counsel against the Settlement Funds at that time.
 21. Following the Distribution, Class Counsel will disburse any remaining funds *cy-pres* in accordance with paragraph 10. If prior to the Final Distribution all the Settlement Funds are paid out to Class Members, then there will be *cy-pres* distribution.

22. Following the Final Distribution or at such time as there are no funds left to disburse, Class Counsel will account for the use of the Settlement Funds in a reporting letter to the Case Management Judge and the Defendants setting out the claims made, amounts paid out, expenses, honouraria, fees, taxes, *cy-pres* distribution, and any other matters relevant to the Distribution Protocol process or the use of the Settlement Funds.

Schedule "C"

Proposed Form of Notice

Facebook Ad

CANADIANS: Are you affected by a class action settlement relating to a data breach affecting certain airline passengers prior to February, 2021?

A class action has been certified for settlement purposes only against Air India Limited, Societe Internationale de Telecommunications Aeronautiques, and SITA Passenger Service System (US) Inc.

This notice has been approved by the Supreme Court of British Columbia and affects your rights.

Click on [hyperlink] to see details and relevant documents

Notice Form:

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS

A class action has been certified by the BC Supreme Court in *MacCallum v. Air India et al*, SBC No. VLC-S-S-218896 against the defendants for settlement purposes only on [date].

The class action has been certified against the defendants Air India Limited, Societe Internationale de Telecommunications Aeronautiques, and SITA Passenger Service System (US) Inc. (the "Defendants") on behalf of all Canadian residents whose personal and private information was compromised as a result of a cyberattack perpetrated on SITA PSS in January and February of 2021 (the "PSS Incident").

What is the class action about?

The lawsuit alleges that the Defendants were subject to a cyberattack which resulted in a data breach whereby the personal information of certain airline passengers was exposed, in breach of those passengers' privacy. The BC Supreme Court has appointed Anne Marie MacCallum as a representative plaintiff.

Through this settlement, none of the Defendants are admitting liability. Each of the Defendants deny the allegations, which have not been proven.

How do I participate?

This class action settlement applies to all Canadian residents whose personal and private information was compromised as a result of the PSS Incident, as defined above, and such residents' successors, heirs, executors, administrators, insurers and assigns (the "Class"). If you believe you are a member of the Class, you are entitled to make a claim for compensation of any loss resulting from the PSS

Incident substantiated by supporting documentation. Please contact class counsel using the contact details provided below for more information.

If you do not want to be a part of this lawsuit, you must notify class counsel in writing at the address below by not later than **[date]**, providing your name and address and indicating that you wish to opt out.

If you wish to object to the settlement, you must do so by **[date]** in writing to class counsel.

What are the financial consequences?

Class Members who submit a legitimate claim to class counsel may be eligible for compensation of any loss resulting from the PSS Incident substantiated by supporting documentation.

Where can I find more information?

Settlement documents, opt-out forms, and court documents are available on **[website]**.

For more information, please contact class counsel: Hammerco Lawyers LLP and Evolink Law Group pss-dataincident@hammerco.ca and **604-269-8500**.

This notice has been authorized by the BC Supreme Court.

Schedule "D"

Opt-Out Election

ENGLISH

Class Action Settlement: Maccallum v Air India et al, SCBC S-218896

OPT OUT FORM

Complete this form ONLY if you do NOT wish to participate in the settlement reached between the Plaintiff and The Defendants, Air India, Societe Internationale de Telecommunications Aeronautiques, and SITA Passenger Service System (US) Inc.. You must return this form before [DATE]

Name: _____

Mailing address: _____

Telephone: _____

Email: _____

State the reason you believe you are a class member:

I confirm that I will take full personal responsibility for taking all necessary legal steps to protect any claim I may wish to pursue against the Defendants:

Full legal name: _____

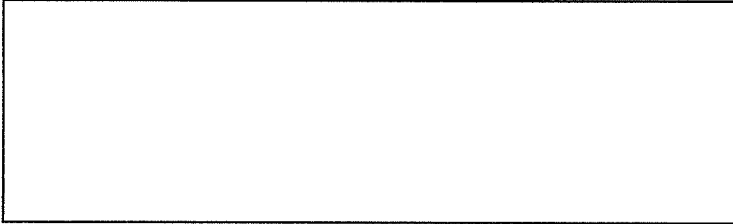
Date: _____

Return a copy of this Opt-Out Form the following address:

Hammerco Lawyers LLP Suite 400, 2233 Columbia Street Vancouver BC V5Y 0M6 pss-dataincident@hammerco.ca

FRENCH

(to be translated upon confirmation)



PUNJABI

(to be translated upon confirmation)

