

CANADIAN BUSINESS COLLEGE DENTAL HYGIENE PROGRAM CLASS ACTION

Court File No.: 06-CV-310529CP)

Between:

THEADOSHIA CAREFOOT (FORMERLY MONCKTON)

and

C.B.S. INTERACTIVE MULTIMEDIA INC., carrying on business as
CANADIAN BUSEINSS COLLEGE, CANADIAN BUSINESS SCHOOL INC.,
carrying on business as CANADIAN BUSINESS COLLEGE,
MAZHER JAFFERY and ROSELYN CALAPINI

SETTLEMENT AGREEMENT

WHEREAS this action (known as was Ontario Superior Court File No. 06-CV-310529CP) certified as a Class Proceeding by the Order of the Honourable Madame Justice Hoy dated January 22, 2008 and as amended on August 29, 2008 (“Certification Order”);

AND WHEREAS the Parties (as defined below) wish to resolve and settle all matters arising from the certified common issues (as set out in Schedule “B” to the Certification Order);

AND WHEREAS the Parties understand and acknowledge that this Settlement Agreement including the Schedules hereto must be approved by the Class Action Case Management Judge (as defined below) and incorporated into a final order in a form to be approved by the Court at a hearing to be conducted in Toronto on September 14, 2012;

NOW THEREFORE in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

1.1 The following terms used in this Settlement Agreement have the meanings specified below:

“Action” means Ontario Court File No.: 06-CV-310529CP

“Class” means the class certified by the aforesaid Certification Order.

“Class Action Case Management Judge” means the Judge appointed by the Regional Senior Justice of the Judicial District of Toronto to oversee this class proceeding, as of the date of this agreement that Judge being the Honourable Mr. Justice P. Perell.

“Class Counsel” means Roy Elliott O’Connor LLP.

“College” means C.B.S. Interactive Multimedia Inc., carrying on business as Canadian Business College, Canadian Business School Inc., carrying on business as Canadian Business College, Mazher Jaffery and Roslyn Calapini, including all their present and former affiliates, parents, subsidiaries, related entities, associated and related companies, officers, directors, agents, servants, employees, contractors, advisors, consultants, successors, predecessors, administrators, assigns and heirs, legal and personal representatives, attorneys and lawyers, insurers and estate trustees (as those terms may apply).

“College Counsel” means Rinku Deswal, RD Law Barristers and Solicitors.

“Court” means the Ontario Superior Court of Justice.

“Execution Date” means the date on which the last party signs this Settlement Agreement.

“Graduating Class Member” means a class member that graduated from the Program as listed in schedule “B” to this Agreement.¹

¹ For the sake of clarity, Schedule B to this agreement lists the Graduated & Withdrawn Class Members. Subject to the direction of the Class Action Case Management Judge, in the interests of personal privacy,

“Notice of Settlement Approval Hearing” means the notice made to the Class, substantially in the form attached hereto as Schedule A as approved by the Court by Direction dated July 4, 2012.

“Parties” or “Settling Persons” means the Plaintiff, Theadosia Proudfoot (formerly Monckton), and the Defendants, C.B.S. Interactive Multimedia Inc., carrying on business as Canadian Business College, Canadian Business School Inc., carrying on business as Canadian Business College, Mazher Jaffery and Roslyn Calapini.

“Person” means any legal or natural person and includes but is not limited to individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, trusts, joint ventures, associations and estates.

“Plaintiff” means the Representative Plaintiff Theodosia Carefoot (formerly Monckton)

“Program” means the Dental Hygiene Program offered by the College.

“Settlement Agreement” means the agreement set out herein.

“Settlement Approval Hearing” means the hearing at which the Plaintiff will move for the approval of this settlement before the Class Action Case Management Judge.

“Settlement Amount” means \$ 175,000.00.

“Settlement Fund” means the amount to be disbursed as set out in sections 2.4 and 2.5 below.

“Subject Claims” means all claims or other proceedings at law, in equity or under a statute including declaratory or subrogated claims, all causes of action for damages (actual, compensatory, punitive, exemplary or treble), losses, injuries, contribution, indemnity and other relief over, and all claims for interest, costs, disbursements, expenses, taxes including GST, penalties and lawyers’ fees, known or unknown, that a Settling Person ever had, now has, or hereafter can, shall or may have to the date hereof against the College in respect of the Certified Common Issues arising out of the facts as pleaded in the Statement of Claim in the Action.

“Withdrawn Class Member” means a class member that withdrew from the Program as listed in Schedule B to this Agreement.

the parties propose to not file Schedule B to this agreement in the public court record or on the website of Class Counsel.

II. SETTLEMENT FUND

- 2.1 In consideration of the terms and covenants herein including any claim for costs, the College, by its counsel, shall pay to Class Counsel the sum of one \$175,000 to be held in trust (the “Settlement Fund”) and paid out pursuant to the terms herein.
- 2.2 The Settlement Amount shall be paid by the College, by its counsel, to Class Counsel by trust cheque in the amount of \$131,250.00 within 3 business days following the approval of the Settlement Agreement with the \$43,750.00 balance to be paid by the College, by its Counsel to Class Counsel by trust cheque on or before October 5, 2012.
- 2.3 Within 10 business days of the final approval of the Settlement Agreement (including the expiry of any appeal period or conclusion of any appeal from the approval of this Agreement by the Class Action Case Management Judge), the Settlement Fund shall be distributed by Class Counsel by cheque approximately as follows:
- (i) **Withdrawn Class Members:** The sum of \$67,309.95 shall be divided among the Withdrawn Class Members based upon the amount of tuition they paid to the College as set out in Schedule B to this agreement.
 - (ii) **Withdrawn Class Members & Graduated Class Members:** The sum of \$36,190.05 shall be divided into 19 even shares of \$1,904.73 and distributed to all class members whether or not they withdrew or graduated from the Program.
 - (iii) **Class Proceedings Fund of the Law Foundation of Ontario:** Pursuant to Ontario Regulation Number 771/93 the sum of \$11,500.00 shall be paid to the Class Proceedings Fund of the Law Foundation of Ontario.
 - (iv) **Costs & Administration:** The sum of \$60,000.00 shall be paid to Class Counsel as a contribution towards its fees, disbursements and/or taxes.
- 2.4 Class Counsel shall deliver the cheques by registered mail to the last known address of the Class Members. Class Counsel will also attempt to contact each Class Member by telephone (if Class Counsel has been provided a last known telephone number for the

Class Member) to advise them of the settlement and encourage them to cash their cheque as soon as possible. If any cheque is returned indicating that the Class Member does not reside at the address used, Class Counsel shall make reasonable efforts to locate that Class Member by searching the internet for an up to date address (including searching Canada411) and/or by contacting the Class Member by telephone (if such telephone number is available). If more up to date information is located for such a Class Member, Class Counsel will send another cheque by registered mail to that address. Such efforts by Class Counsel are gratuitous and, as set out below, any failure to locate any Class Member and any Class Member's failure to negotiate (cash) his or her cheque will not give rise to any claim against Class Counsel, and any such claims are released by Class Members. Notwithstanding the aforesaid gratuitous efforts by Class Counsel, if the correspondence with a Class Member is still returned as undeliverable or the associated cheque in payment of the amount owing to that Class Member hereunder is not negotiated (cashed) within 180 days of the issuance of the cheque, Class Counsel will divide the total of all such unclaimed (unpaid) amounts equally among all Class Members for whom valid contact information is available and who have negotiated (cashed) the cheque in payment of the amounts otherwise owing to him/her.

III. NOTICE OF SETTLEMENT APPROVAL

- 3.1 Notice of this settlement in the form attached as Schedule A shall be provided to the Class by Class Counsel sending the Notice to the last known address of each Class Member by registered mail, regular mail, email (for those Class Members for whom Class Counsel has email addresses) and by posting the Notice and a copy of the Settlement Agreement at www.reolaw.ca.

IV. COURT APPROVAL

- 4.1 The Plaintiff will apply for a Settlement Approval Order in a form to be approved by the Class Action Case Management Judge for the purpose of obtaining a class settlement and release in favour of the College.

V. RELEASES AND COVENANTS NOT TO SUE

5.1 The Subject Claims shall be released without admission of liability and the Action shall be dismissed on a without costs basis.

5.2 The Class Members:

- (i) Shall be conclusively deemed to have, and by operation of the Settlement Approval Order shall have, fully and finally released, relinquished and discharged all Subject Claims against the College;
- (ii) Covenant not to assert or prosecute any of the Subject Claims against the College in any other action or proceeding in this or any other jurisdiction; and
- (iii) Shall be enjoined from asserting or prosecuting any of the Subject Claims against the College in any other action or proceeding in any jurisdiction.

VI. EXECUTION DATE

6.1 This Agreement becomes final and binding on the Parties, subject to Court approval, on the Execution Date. If and when this Agreement is approved by the Court, this Agreement will be binding on the Class Members in accordance with the terms of the Settlement Approval Order.

VII. ADMINISTRATION

7.1 Within 60 days of the of distribution of the Settlement Fund as referred to in sections 2.4 and 2.5 above (or at such other times as the Court may direct), Class Counsel shall provide the College's Counsel and the Court with a report confirming that the Settlement Funds have been paid to the Class in accordance with this Settlement Agreement.

VIII. TERMINATION

- 8.1 This Settlement Agreement will be automatically terminated in the event that the Court refuses to approve the within agreement.

IX. SETTLEMENT APPROVAL AFFIDAVITS

- 9.1 The Plaintiff and the College agree, for the purposes of the Court approval of the Settlement Agreement (including the payment to Class Counsel), to file affidavit evidence confirming and explaining their approval and consent to the settlement as set out herein.

X. DENIAL OF LIABILITY AND TERMINATION

- 10.1 The College denies all of the Subject Claims made by the Plaintiff against it in the Action, and makes no admission of any liability or wrongdoing with respect to any of the claims made by the Plaintiff.
- 10.2 This Settlement Agreement shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by the College, or of the truth of any of the claims or allegations alleged in the Actions or otherwise, and such is specifically denied by the College.
- 10.3 In the event that this Settlement Agreement does not become final or is terminated in accordance with the terms hereof, any order(s) entered in furtherance thereof shall be of no force or effect, and the terms of this Settlement Agreement shall not be offered or received in any proceeding for any purpose or otherwise used against or to prejudice the rights or interests of any of the Parties.
- 10.4 The Parties expressly reserve all of their rights if this Settlement Agreement does not become final or is terminated in accordance with the terms of this Settlement Agreement.

XI. NO REPRESENTATION OR WARRANTY

- 11.1 The Parties have made no representation or warranty regarding any fact, act or omission relevant to the subject-matter of the Actions or otherwise, prior to the Execution Date.

XII. MISCELLANEOUS PROVISIONS

- 12.1 The Parties acknowledge that it is their intent to cooperate to the extent necessary and in good faith to effectuate and implement all terms and conditions of the Settlement Agreement. To the extent required or necessary, the Parties hereby consent to the amendment of the title of proceedings to reflect the current legal name of the Plaintiff.
- 12.2 Once final, this Settlement Agreement is binding upon, and shall enure to the benefit of, the successors and assigns of the Parties hereto.
- 12.3 References in this Settlement Agreement to the masculine shall include the feminine and vice versa. References in this Settlement Agreement to the singular shall include the plural and vice versa, as the context requires. Headings in this Settlement Agreement are for convenience of reference only and shall not affect the interpretation of this Settlement Agreement.
- 12.4 This Settlement Agreement shall be governed by and construed in accordance with the laws of Canada applicable in the Province of Ontario and the laws of the Province of Ontario.
- 12.5 The Court retains jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement and any issues relating to notice. The Parties submit to the jurisdiction of the Court for the purpose of interpreting, implementing and enforcing this Settlement Agreement.

- 12.6 If any portion or portions of this Settlement Agreement is held by a court of competent jurisdiction to conflict with any federal, provincial, or local law and for that reason, or any other reason, are declared to be invalid and of no force or effect, all remaining provisions of this Agreement shall remain in full force and effect and be construed as if such invalid portion or portions had not been included herein.
- 12.7 If a dispute arises concerning application or interpretation of this Settlement Agreement, the Parties shall attempt to resolve the matter through good faith negotiations. If the parties cannot agree, the dispute is to be determined by the Court and directions can be sought from the Class Action Case Management Judge at any time about the implementation of the settlement.
- 12.8 This Settlement Agreement constitutes the entire agreement between the Parties and supersedes all previous documents, negotiations, arrangements, undertakings and understandings related to its subject matter.
- 12.9 The Settlement Agreement may not be amended or modified except by a written instrument signed by or on behalf of all Parties or their successors or by their counsel as approved by the Court.
- 12.10 Class Counsel, on behalf of the proposed Settlement Class is expressly authorized by the Plaintiff to take all appropriate actions required or permitted to be taken by them pursuant to the Settlement Agreement to effectuate its terms, and to enter into any modifications or amendments to the Settlement Agreement on behalf of the Plaintiff which they deem appropriate and as approved by the Court.
- 12.11 The Parties warrant that they have full authority to execute this Agreement. All notices hereunder shall be delivered to the Parties' respective counsel or such other addressee as any Party may designate in writing.

12.12 The Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be an original and each of which may be delivered via fax or PDF email transmission.

IN WITNESS WHEREOF the Parties hereto, have executed this Agreement as of the date written below.

Date: _____

Theadoshia Carefoot (formerly Monckton)

Date: _____

C.B.S. Interactive Multimedia Inc.

Date: _____

Canadian Business School Inc.

Date: _____

Mazher Jaffery

Date: _____

Roselyn Calapini