

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
JUSTICE GRAY)

FRIDAY, THE 21ST
DAY OF JUNE, 2019

BETWEEN:



MICHAEL BOZSIK

Plaintiff

and

LIVINGSTON INTERNATIONAL INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
(Distribution Protocol)**

THIS MOTION, made by the Plaintiff for an Order approving the Distribution Protocol pursuant to the Settlement Agreement entered into by the parties, was heard this day at the court house, 491 Steeles Avenue East, Milton.

ON READING the materials filed, including the Distribution Protocol attached to this Order as **Schedule "A"** (the "Distribution Protocol"), and on hearing the submissions of the counsel for the parties and *Amicus Curiae*;

AND ON BEING ADVISED that the deadline for opting out of the Proceeding has expired and that 84 Persons have validly and timely exercised the right to opt-out;

AND ON BEING ADVISED that the parties consent to this Order:

1. THIS COURT ORDERS that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement and Distribution Protocol apply to and are incorporated into this Order.
2. THIS COURT ORDERS that in the event of a conflict between this Order and the Settlement Agreement or Distribution, this Order shall prevail.

Distribution Protocol

3. THIS COURT ORDERS that this Order, including the Distribution Protocol, is binding upon each member of the Class.
4. THIS COURT ORDERS that the Distribution Protocol is fair, reasonable and in the best interests of the Class.
5. THIS COURT ORDERS that the Distribution Protocol is hereby approved and shall be implemented and enforced in accordance with its terms.

Administration

6. THIS COURT ORDERS that RicePoint Administration Inc. and its affiliates (the “Administrator”) are appointed to administer the Distribution Protocol.
7. THIS COURT ORDERS the Administrator may apply the Distribution Protocol in assessing the individual entitlements of the Class Members to the Net Proceeds without further order of the Court.

8. THIS COURT ORDERS that the costs of Administration, including the reasonable fees and disbursements of the Administrator and Ankura Consulting Group LLC associated with the administration, shall be remunerated from the Settlement Fund without further approval of the Court.

Notice

9. THIS COURT ORDERS that the Administration Form attached hereto at **Schedule “B”** is approved (the “Administration Form”).

10. THIS COURT ORDERS that the settlement approval notice and Notification Letter attached hereto as **Schedule “C”** is approved (the “Settlement Approval Notice”).

11. THIS COURT ORDERS that the text message attached hereto as **Schedule “D”** is approved (the “Text Message Notice”).

12. THIS COURT ORDERS that the Class shall be notified of the approval of the Distribution Protocol and Settlement Agreement by:

- (i) a direct postage mailing of the Administration Form and Settlement Approval Notice to addresses provided by Livingston, updated against the National Change of Address Database and any updated addresses received by Class Counsel;
- (ii) the Administrator shall run an Equifax datascrub against all former employees to locate any updated addresses;

- (iii) the Text Message Notice shall be sent to all phone numbers available for former employees;
- (iv) the Administrator shall will run banner ads on LinkedIn targeted specifically to former employees of Livingston International; and
- (v) The public posting of the Notice of Settlement Approval on the websites of the Administrator and Class Counsel.

13. THIS COURT ORDERS that, notice described above in paragraphs 13(i)(iii)(iv) and (v) shall be distributed 40 days after the approval of the Distribution Protocol.

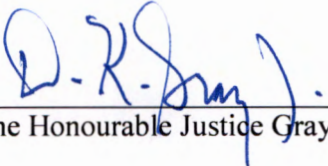
14. THIS COURT ORDERS that, for the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role.

15. THIS COURT ORDERS that, in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be declared null and void on subsequent motion made on notice.

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SUPERIOR COURT OF JUSTICE
MILTON



The Honourable Justice Gray

SCHEDULE "A"

BOZSIK V. LIVINGSTON INTERNATIONAL INC.

ADMINISTRATION AND DISTRIBUTION PROTOCOL

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A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol the following definitions will apply:
 - (a) **“Administration Form”** means the form developed for the administration process that a Former Employee must complete and submit by the Filing Deadline.
 - (b) **“Claims Administrator”** means the entity appointed by the Court to administer the Settlement Agreement and the Distribution Protocol in accordance with this Protocol as approved by the Court, and any employees of such firm.
 - (c) **“Class Counsel”** means Sotos LLP, Roy O’Connor LLP, and Goldblatt Partners LLP.
 - (d) **“Class Members”** means all current or former non-management employees of the Defendant in its offices across Canada, who are or were employed, at any time between August 15, 2007 to April 28, 2017 in administrative, clerical, technical, and supervisory job classifications or who were otherwise subject to the Defendant’s overtime policy or policies, who have not opted-out of this Proceeding.
 - (e) **“Class Period”** means August 15, 2007 and April 28, 2017.
 - (f) **“Court”** means the Ontario Superior Court of Justice.
 - (g) **“Current Employee Class Members”** means Class Members who are currently employed by Livingston International Inc., or were employed as of February 1, 2019.
 - (h) **“Estimated Overtime Hours”** means the amount of uncompensated hours that Class Members are estimated to have worked during the Class Period.
 - (i) **“Estimated Uncompensated Overtime”** means the Estimated Overtime Hours multiplied by the Hourly Rate.

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- (j) **"Filing Date"** means the date by which Former Employee Class Members are directed to electronically submit Administration Forms.
- (k) **"First Distribution"** means the distribution of the first 80% of the Net Proceeds.
- (l) **"Former Employee Class Members"** means Class Members who were employed by the Livingston International Inc. prior to February 1, 2019.
- (m) **"Hourly Rate"** means the average hourly wage that a Class Member received during the Class Period.
- (n) **"Net Proceeds"** means the portion of the Proceeds remaining after the payments contemplated by the Settlement Agreement and Orders of the Courts (which payments will include approved Class Counsel Fees and disbursements, administrative expenses and Class Proceedings Fund levy).
- (o) **"Notification Letters"** means letters provided to each Class Member describing their Relative Share of the Net Proceeds, and the hourly rate and dates or periods of employment within the Class Period used to calculate their Relative Share, as well as the process to correct any errors in the hourly rate and/or dates or periods of employment within the Class Period used to calculate their Relative Share.
- (p) **"Paid Hours"** means the hours for which Class Members were paid during the Class Period (e.g. 37.5 hours per week in many cases).
- (q) **"Pre-Limitation Work"** means work performed prior to October 1, 2012 in all provinces except Quebec and Manitoba. In Quebec it means work performed prior to October 1, 2011. In Manitoba it means work performed prior to October 1, 2008.
- (r) **"Proceeds"** means the nineteen (19) million dollars (CAD) paid by the Defendant.
- (s) **"Relative Share"** means the proportion of the Net Proceeds that individual Class Members will be entitled to.

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- (t) **“Second Distribution”** means the distribution of the remaining 20% of the Net Proceeds.
- (u) **“Settlement Agreement”** means the settlement agreement as approved by the Court.
- (v) **“Time Records”** means electronic time-stamped data that indicate times that Class Members logged-on and logged-off electronic systems.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

- 2. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Net Proceeds recovered in *Bozsik v. Livingston International Inc.* (the “Action”). This protocol is reasonably designed and intended to result in payment to the highest possible proportion of Class Members. To this end, those Class Members who are current employees of the Defendant will not be required to do anything to receive payment. Those Class Members who are former employees of the defendant (the Former Employee Class Members) will need only to verify their identity, Social Insurance Number and address, and submit an Administration Form to be entitled to payment.
- 3. This protocol is further designed and intended to calculate, as accurately as possible given the available Time Records, the amount of actual overtime worked by Class Members. For Class Members for whom Time Records exist, they will be used as the basis to calculate the Estimated Overtime Hours and Estimated Uncompensated Overtime. For Class Members for whom Time Records do not exist, provincial average overtime hours will be used.

C. THE CLAIMS ADMINISTRATOR’S 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;

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- (b) receiving information from the Defendant, including Class Members' identifying information, dates of employment, place of employment, position and average wage rate;
- (c) developing, in consultation with the defendant's experts, the algorithm(s) for calculating Class Members' Relative Share of the Net Proceeds pursuant to this protocol;
- (d) developing, implementing and operating the administration process including a bilingual administration website;
- (e) making timely calculations of Class Members' Relative Share of the Net Proceeds and notifying Class Members of their Relative Share, the Class Member's hourly rate and their dates of employment within the Class Period;
- (f) arranging payment to Class Members in a timely fashion;
- (g) reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
- (h) performing such recalculation of the distributions as may be required by Class Counsel or if ordered by the Court;
- (i) 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;
- (j) dedicating sufficient personnel to respond to Class Members inquiries in English or French, as the Class Member elects;
- (k) calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
- (l) preparing and distributing T4A forms to Class Members;
- (m) remitting amounts payable to the Class Proceedings Fund;
- (n) arranging payments of Class Counsel fees and disbursements and administration expenses, as ordered or approved by the Court;

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- (o) reporting to Class Counsel respecting Claims received and administered and administration expenses;
- (p) holding the Net Proceeds in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Net Proceeds from that account as authorized;
- (q) cash management and audit control; and
- (r) preparing and submitting reports and records as directed by Class Counsel or the Court.

D. CALCULATION OF ESTIMATED OVERTIME HOURS

6. Estimated Overtime Hours will be calculated in general as follows:

- (a) for Class Members for whom there exists Time Records for all pay periods during the Class Period, the Time Records will be used to calculate the total number of hours worked, from which the Paid Hours will be deducted;
- (b) for Class Members for whom Time Records exist for some, but not all, of the pay periods during the Class Period, the Time Records for that person will be extrapolated over the entire period of employment during the Class Period to calculate the total number of hours worked, from which the paid hours will be deducted; and
- (c) for Class Members for whom no Time Records exist during the Class Period, provincial averages will be extrapolated or used to estimate total number of hours worked during the entire period employment during the Class Period, from which the paid hours will be deducted.

7. Estimated Overtime Hours will be adjusted to discount Pre-Limitation Work by 50%.

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8. The Estimated Overtime Hours for each Class Member will be multiplied by his/her Hourly Rate to calculate the Estimated Uncompensated Overtime for each Class Member.

E. THE ADMINISTRATION PROCESS

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

(a) Step 1: Calculation of Initial Relative Share

The estimated Relative Share of the Net Proceeds that Class Members are entitled to will be calculated by calculating the Estimated Uncompensated Overtime of each Class Member as a fraction of the total Estimated Uncompensated Overtime of all Class Members.

(b) Step 2: Notification Letters

The Claims Administrator will prepare Notification Letters individualized for each Class Member describing: (i) the Class Member's respective Relative Share, (ii) the Class Member's hourly rate and their dates or periods of employment within the Class Period (iii) the payment that each Class Member is estimated to receive (assuming full take-up of the settlement), (iv) in the case of Former Employee Class Members, the process to electronically file an Administration Form verifying their identity, address and Social Insurance Number, and the Filing Deadline for the Administration Form, and (v) where applicable, the process for Class Members to follow to correct any errors in the Class Member's hourly rate and his/her dates or periods of employment within the Class Period.

Current Employee Class Members will receive Notification Letters via email to their corporate email accounts.

Former Employee Class Members will receive Notification Letters via direct mail.

(c) Step 3 – Deficiency and Error Correction

If the Claims Administrator finds that deficiencies exist in an Administration Form, the Claims Administrator shall forthwith notify the Class Member of

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the deficiencies. The Class Member will have thirty (30) days after being informed of a deficiency to correct the deficiencies to the satisfaction of the Claims Administrator.

(d) **Step 4 – Calculation of Each Class Member’s Relative Share**

The Claims Administrator will then re-calculate the Relative Share of the Net Proceeds. This Relative Share will be multiplied by the Net Proceeds and adjusted so that no Class Member will be allotted less than \$250 (total minimum allotment). A further adjustment may be made, if necessary, to provide for a maximum amount of overtime per pay period or otherwise.

(e) **Step 5 – First Distribution**

Class Members will be provided with cheques consisting of 80% of their Relative Share of the Net Proceeds, less employee and employer portions of CPP, EI and income tax withholding.

(f) **Step 6 – Second Distribution**

Within a set time after the First Distribution, the Claims Administrator will process the Second Distribution and distribute cheques to Class Members consisting of the remaining 20% of their Relative Share, less employee and employer portions of CPP, EI and income tax withholding. The Relative Shares of the Second Distribution may be adjusted to account for, among other things, any errors identified following the First Distribution.

(g) **Step 7 – Remittance**

The Claims Administrator will remit Canadian Pension Plan, Employment and income tax and provide T4A forms to Class Members.

(h) **Step 8 – Report**

The Claims Administrator will provide a report on the results of the Administration and Distribution to Class Counsel, who will report to the Court.

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F. CLASS COUNSEL

10. 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.

G. RESIDUAL DISCRETION

11. Notwithstanding the foregoing, if, during the Administration Process, Class Counsel have reasonable and material concerns that the Administration and 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 Administration and Distribution Protocol or for further directions with respect to the distribution of the Net Proceeds.
12. In arriving at a determination that an unjust result is occurring or that a modification is required or recommended, and in considering what modification may be required, Class Counsel shall seek comments or input from the Defendant and the Claims Administrator.

H. RESIDUAL DISTRIBUTION

13. If there remains any amount of the Net Proceeds after the distribution has been made to all valid claims in accordance with the provisions of this Administration and Distribution Protocol (as modified, if applicable), Class Counsel will make an application to the Court to determine how such funds shall be distributed. In preparing a proposal in respect of how to distribute any excess monies, Class Counsel will consider all relevant factors, including the utility and efficacy of a *cy prè*s distribution, if appropriate.

I. CONFIDENTIALITY

14. 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.

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SCHEDULE "B"

BOZSIK V. LIVINGSTON INTERNATIONAL INC.

Settlement Payment Form

If you are a Class Member and **no longer employed by Livingston International Inc.**, complete this form to get your share of the class action settlement.

You can email this form or complete it online

If you are a Class Member and **are currently employed by Livingston International Inc.**, you do not need to complete this form

This form must be received by the Claims Administrator by **[Filing Deadline]**

If the form is received after the deadline, you will not get any money

To complete this form online, go to **[Administration Website]**. You will be asked for your name, address, phone number, email and social insurance number

To email this form, complete the information below and send to: **[Administration E-mail]**

You do not need to prove how many overtime hours you worked. After you return this form to the Settlement Administrator you will receive a settlement cheque. If you have a question about how your settlement payment will be calculated, contact the Administrator at [insert contact]

Full Name (including any former names): _____

Mailing Address: _____

E-mail: _____

Phone Number: _____

Social Insurance Number: _____

For any questions about completing this form, please contact **[Administrator Contact]**

SCHEDULE "C"

NOTICE OF APPROVED CLASS ACTION SETTLEMENT

BOZSIK v. LIVINGSTON INTERNATIONAL INC.

TO: All current or former non-management employees of the Defendant in its offices across Canada, who are or were employed, at any time between August 15, 2007 to April 28, 2017 in administrative, clerical, technical, and supervisory job classifications or who were otherwise subject to the Defendant's overtime policy or policies, who have not opted-out of this Proceeding.

**A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST
LIVINGSTON INTERNATIONAL INC. ("LIVINGSTON")**

**CLASS MEMBERS WHO ARE NO LONGER EMPLOYED BY LIVINGSTON MUST
COMPLETE A FORM TO RECEIVE A SHARE OF THE MONEY**

**CLASS MEMBERS WHO ARE CURRENT EMPLOYEES
DO NOT HAVE TO COMPLETE A FORM**

PLEASE READ THIS CAREFULLY, IT DESCRIBES THE DEADLINES YOU MUST MEET

For more information about this class action and the settlement, please visit the following website [administrator website] If you have further questions, you can also contact the Settlement Administrator at [Insert Contact]

What is the settlement?

Livingston agreed to settle the class action for a total all-inclusive payment of \$19 million. The court has now approved the settlement, lawyers' fees and related expenses. You can read the court reasons approving the Settlement Agreement, Fees and Distribution Protocol at [insert admin website].

Livingston does not admit any liability, wrongdoing or fault in this matter, and the settlement and payment of money does not imply any such liability, wrongdoing or fault on the part of Livingston.

What should I do?

If you are a former employee and want money from the Settlement, complete the enclosed Settlement Payment Form and email it to **[Administrator Address]** or complete the form online at **[Insert Webpage]**. You must send the completed form by no later than **[Filing Deadline]**.

After you complete the form and after the Filing Deadline has passed, you will get a cheque and letter explaining how the cheque was calculated. Your individual payment will be calculated on the basis of the court approved Distribution Protocol. The Distribution Protocol will take into account factors including length of employment, wage rate and computer data used to approximate unpaid overtime worked by Class Members. The number of former employee Class members who file claim will also impact the amount of money you receive.

All of the settlement money will be subject to employment deductions, including deduction and remittance to the Canada Revenue Agency, CPP and EI.

Class Members who currently work for Livingston will not need to do anything to receive compensation. Class Members who are former employees will need to complete the enclosed Settlement Payment Form.

Where can I ask more questions?

RicePoint Administration Inc. was appointed by the court to administer this settlement. Any questions can be sent to RicePoint at **[Insert Admin Contact]**.

You can also contact the lawyers for the Class Members at **[insert class counsel contact]**.

You can read the full Distribution Protocol and Settlement Agreement at **[insert administrator website]**

Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

PLEASE DO NOT CALL LIVINGSTON, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS SETTLEMENT.

This notice was approved by the Ontario Superior Court of Justice.

Payment Notification Letter
Boszik v. Livingston International Inc.

[Date]

Dear [Insert Name],

You have been identified as a class member in the *Boszik v. Livingston International Inc.* class action. Your individual settlement payment will be calculated based on timestamped computer data, your duration of employment and your average hourly rate during the class period.

The factors used in calculation are:

- **Duration of employment:** [insert]
- **Average Hourly Rate:** [insert]

If the above factors are incorrect, you must notify the Claims Administrator within 30 days to correct the information. If you do not correct any errors, the Claims Administrator will issue a payment based on the above factors. You can contact the Claims Administrator at [insert contact].

If you are a former Employee of Livingston, you must submit a Settlement Payment Form enclosed with this letter. If a Settlement Payment Form is not received by [filing deadline] you will not receive any money.

If you are a current employee of Livingston, you do not need to complete a Settlement Payment Form.

SCHEDULE "D"

Text Message Notice

If you were employed by Livingston International Inc. at any time between August 15, 2007 and April 28, 2017 you may be eligible to share in a class action settlement. For more information, visit [hyperlink to administrator website]

MICHAEL BOZSIK
Plaintiff

-and- **LIVINGSTON INTERNATIONAL INC.**
Defendant

Court File No. 5270/14

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT MILTON

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(DISTRIBUTION PROTOCOL)

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