

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NORTEL NETWORKS CORP.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS

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**LEAD PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO
AMEND DISTRIBUTION PLAN TO PERMIT ADDITIONAL DISTRIBUTIONS**

Lead Plaintiffs and Class Representatives, the Ontario Teachers' Pension Plan Board and the Department of the Treasury of the State of New Jersey and its Division of Investment, respectfully submit this memorandum in support of their motion for an order that will amend the Distribution Plan previously approved by this Court (the "Order to Amend Distribution Plan").¹

If entered by the Court, the Order to Amend Distribution Plan would, among other things, (i) direct Epiq to conduct additional distributions of the Net Settlement Fund to Authorized Claimants; (ii) approve Epiq's fees and expenses incurred and estimated to be incurred in the administration of the Settlement and subsequent distributions; and (iii) approve the recommended plan for any funds remaining in the Net Settlement Fund after the final distribution.

¹ Unless indicated otherwise, all capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement (Nortel II) (the "Stipulation"), the Declaration of Stephen J. Cirami in Support of Lead Plaintiffs' Motion for Approval of Final Distribution Plan (ECF No. 113) (the "Cirami Declaration" or "Cirami Decl."), as incorporated into the Court's Order Approving Final Distribution Plan (ECF No. 121) (the "Final Distribution Order"), and the accompanying Declaration of Stephanie Amin-Giwner Regarding Distribution of the Net Settlement Fund (the "Amin-Giwner Declaration" or "Amin-Giwner Decl.>").

Under the Stipulation, Defendants have no role in or responsibility for the administration of the Settlement Fund or processing of Claims, including determinations as to the validity of Claims or the distribution of the Net Settlement Fund. *See* Stipulation ¶¶ 5(d), 14. As such, the motion is ripe for determination.

BACKGROUND

As part of a global settlement against defendant Nortel Networks Corporation (“Nortel”), Lead Plaintiffs entered into the Stipulation and Agreement of Settlement (Nortel II) with defendant Nortel for a Settlement Amount of approximately \$1.07 billion for the benefit of the Class. *See* Notice of Pendency and Certifications of Class Actions and Proposed Settlements, Motions for Attorneys’ Fees and Settlement Fairness Hearings (Nortel II Notice) (ECF No. 56-4) at 1. The Settlement Amount included 314,333,875 shares of Nortel common stock and a Cash Settlement Amount of \$370,157,418.00. *See id.* at 1, 13. By its Amended Order Approving Initial Distribution of Class Settlement Proceeds (ECF No. 87) (“Initial Distribution Order”), the Court approved the administrative determinations of the Claims Administrator, Epiq Class Action and Claims Solutions, Inc. (“Epiq”),² accepting and rejecting Claims filed in the litigation and approved the distribution of the Net Cash Settlement Fund. *See* Initial Distribution Order at 6. In the Initial Distribution of the Net Settlement Fund and pursuant to the Initial Distribution Order, Epiq distributed 86,502 payments by check and wire with an aggregate value of \$314,500,000.00. *See* Amin-Giwner Decl. ¶ 3. Nortel’s transfer agent, Computer Trust Company of Canada, also issued and mailed the Net Settlement Shares to Authorized Claimants. *See id.*

² Pursuant to the Preliminary Order for Notice and Hearing in Connection with Settlement Proceedings (ECF No. 48) (the “Preliminary Order”), the Court authorized The Garden City Group, Inc. (“GCG”), as Claims Administrator in connection with the Settlement. GCG was acquired by Epiq on June 15, 2018, and now is continuing operations as part of Epiq.

Pursuant to the Court's October 25, 2010 Order Approving Payment of Late and Adjusted Claims (ECF No. 188), on March 23, 2011, Epiq issued to all Accepted Claimants who were not included in the Initial Distribution (accepted Late Claims and Adjusted Claims) payments of their *pro rata* shares of the Initial Distribution totaling \$16,179,348.90. *See id.* ¶ 5.

In its Order Approving Final Distribution Plan (ECF No. 121) (the "Final Distribution Order"), the Court authorized Epiq to conduct a Second Distribution and, if cost effective, a Third Distribution of the Net Settlement Fund to Authorized Claimants. *See* Final Distribution Order ¶¶ 3(d) and (e). Pursuant to the Final Distribution Order, Epiq commenced the Second Distribution on January 31, 2019, and mailed 84,233 checks totaling \$21,793,959.42 to Authorized Claimants. *See* Amin-Giwner Decl. ¶ 7. After the Second Distribution (including Epiq's follow-up efforts to reach Authorized Claimants whose checks remained uncashed or were returned as undelivered by the postal service), \$5,495,778.91 remained in the Net Settlement Fund. *See id.* ¶ 8. In the Third Distribution of the Net Settlement Fund, commenced on December 23, 2020, Epiq issued 16,711 payments in the aggregate amount of \$4,520,354.15 to Authorized Claimants. *See id.* ¶ 9. Payments in the Third Distribution with a total value of over \$4,000,000.00 have been cashed. *See id.*

To date, payments in the Initial Distribution, Second Distribution, and Third Distribution for total proceeds of over \$342,000,000.00 have been cashed, which is approximately 99.8% of the Net Cash Settlement Fund. *See id.* ¶ 11.

AMENDMENT OF DISTRIBUTION PLAN

Notwithstanding Epiq's extensive follow-up with Authorized Claimants whose checks were returned as undeliverable or uncashed (which included attempting to contact such Authorized Claimants by telephone, letter, or email, offering to reissue checks where necessary, and seeking

updated addresses for Authorized Claimants whose checks were returned as undeliverable (*see id.* ¶¶ 4, 8)), there remains in the Net Settlement Fund \$438,251.24 available for distribution from checks mailed in the Third Distribution that were either uncashed or returned to Epiq for other reasons. *See id.* ¶ 11. As of July 16, 2021, there remains a total balance of \$1,524,629.57 in the Net Settlement Fund, which includes the reserve and funds available to pay Epiq's unpaid fees and expenses. *See id.*

The Court's Final Distribution Order provides that "Plaintiffs' Counsel and GCG shall seek approval from the Courts for any further distribution of the Net Settlement Fund, should it be determined to be cost effective, no later than six months after the Third Distribution." Final Distribution Order ¶ 3(e). In addition:

At such time as Plaintiffs' Counsel and GCG determine that further distribution is not cost effective, the balance of the Net Settlement Fund shall be donated, as set forth in the Notice, after payment of any unpaid costs or fees incurred in connection with administering the Net Settlement Fund, proportionately to U.S. and Canadian non-sectarian, not-for-profit, organization(s) after notice to the Courts and subject to direction, if any, by the Courts.

Id. ¶ 3(f).

In light of the remaining balance in the Net Settlement Fund, Lead Plaintiffs recommend that the Distribution Plan be modified to allow for one or more additional distributions to Authorized Claimants prior to donation of remaining funds to charity. Epiq concurs with that recommendation. *See Amin-Giwner Decl.* ¶ 15. The proposed amendment to the Distribution Plan would allow Epiq to conduct additional distributions in six-month intervals to Authorized Claimants who have cashed each of their prior distribution checks and who would receive at least \$10.00 USD in the subsequent distribution, after payment of the costs of the distribution, as well as any taxes that may be due, including the costs of preparing any tax returns. When Lead Counsel, in consultation with Epiq, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-

effective, the remaining balance will be contributed to a U.S. non-sectarian, not-for-profit organization(s) and a Canadian non-sectarian, not-for-profit organization(s). *See* Final Distribution Order ¶ 3(f) and Amin-Giwner Decl. ¶ 15. In accordance with the terms of the Final Distribution Order, Lead Counsel and Lead Plaintiffs have selected the National Consumer Law Center (“NCLC”) as the *cy pres* recipient in the United States and Pro Bono Canada (“PBC”) as the *cy pres* recipient in Canada. NCLC, a private, non-sectarian, not-for-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, provides many resources to civil legal aid and private attorneys representing low-income consumers. *See Our Story*, National Consumer Law Center, nclc.org/about-us/our-story.html (last visited May 17, 2021). NCLC’s lawyers provide policy analysis, advocacy, litigation, expert-witness services, and training for consumer advocates throughout the United States. *See id.* PBC is a non-sectarian, not-for-profit organization that “was created to encourage and support provincial pro bono organizations’ activities. PBC is dedicated to increasing awareness of pro bono activities and encouraging the expansion of pro bono legal services across the country.” *See The Case for Support*, Pro Bono Canada, https://probonocanada.org/wp-content/uploads/2019/10/pbc_cypresstoolkit_final4_web.pdf (last visited May 17, 2021). The remaining balance of the Net Settlement Fund will be allocated according to the geographic distribution of Authorized Claimants in the Third Distribution—70% of the remaining balance of the Net Settlement Fund donated to NCLC and 30% of any remaining funds in the Net Settlement Fund donated to PBC. *See* Amin-Giwner Decl. ¶ 15 n.5.

EPIQ’S FEES AND EXPENSES

Epiq has performed notification and claims administration services in this Action and has distributed the Net Settlement Fund to Authorized Claimants in the Initial Distribution, the Second Distribution, and the Third Distribution. *See id.* ¶ 12. Epiq’s extensive work performed in connection

with the distributions included processing check reissue requests, general claimant correspondence, contacting Authorized Claimants with uncashed or undeliverable checks to attempt to get them to cash their checks, and handling Disputed Rejected Claims and Payment Objections to attempt to resolve as many such disputes as possible without Lead Plaintiffs' Counsel's assistance or the Courts' intervention. *See id.* Epiq undertook this work with the understanding and expectation that it would receive payment of the firm's fees and be reimbursed for the expenses it incurred. *See id.* Pursuant to the terms of the Final Distribution Order, Epiq was paid its fees and reimbursed for expenses incurred for the work performed from the inception of the engagement through and including the Initial Distribution. *See id.* In the Final Distribution Order, an additional amount of \$316,257.98 was held in reserve for Epiq's estimated fees and expenses to conduct the Second Distribution. *See id.* and Exhibit A attached thereto. Since the Final Distribution Order through May 31, 2021, Epiq has incurred additional fees and expenses in a total amount of \$624,529.10 beyond the amount of the reserve previously established. *See id.* These fees and expenses were incurred in connection with the payment of Late and Adjusted Claims, conducting the Second Distribution and the Third Distribution, communicating with claimants, and processing check reissues. *See id.* and Exhibit B attached thereto. Epiq estimates that its fees and expenses to conduct an additional distribution of the Net Settlement Fund will be \$145,591.25. *See id.* and Exhibit C attached thereto.

Epiq's unpaid fees and expenses through May 31, 2021, and its estimate to complete an additional distribution of the Net Settlement Fund total \$770,120.35. *See id.* Lead Plaintiffs request that the Court approve payment of the \$316,257.98 held in reserve for the estimated fees and expenses incurred in the Second Distribution along with an additional \$770,120.35 from the Net Settlement Fund for the remaining balance of Epiq's unpaid and estimated fees and expenses. *See id.* ¶ 13.

CONCLUSION

The Distribution Plan as amended by the Court will be self-executing and there should be no need for Lead Plaintiffs or the Claims Administrator to request any further orders from the Court to complete the distribution of the Net Settlement Fund. Accordingly, following entry of the proposed order, the Court may direct that this case be closed.

For the foregoing reasons, we respectfully request that the Court enter the proposed Order to Amend Distribution Plan to Allow for Additional Distributions, approve payment of Epiq's fees and expenses, and designate *cy pres* recipients for funds remaining in the Net Settlement Fund after the final distribution.

Dated: July 16, 2021

Respectfully Submitted,

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