

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE NORTEL NETWORKS CORP.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS

Master File No. 05 MD 1659 (LAP)

ECF Filed

**DECLARATION OF STEPHANIE AMIN-GIWNER
REGARDING DISTRIBUTION OF THE NET SETTLEMENT FUND**

STEPHANIE AMIN-GIWNER hereby declares and states as follows:

1. I am a Director of Client Services for Epiq Class Action and Claims Solutions, Inc. (“Epiq”).¹ I am over 21 years of age and not a party to the above-captioned Nortel II U.S. Action (the “Action”).² I have personal knowledge of the matters set forth in this declaration and, if called upon as a witness, I could and would competently testify to these matters under penalty of perjury.

2. I am submitting this Declaration in support of Lead Plaintiffs’ Unopposed Motion to Amend Distribution Plan to Permit Additional Distributions.

¹ 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.

² 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”) and 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”).

**STATUS REPORT ON COMPLETED DISTRIBUTIONS
OF THE NET SETTLEMENT FUND**

3. Lead Plaintiffs entered into the Stipulation and Agreement of Settlement (Nortel II) with defendant Nortel Networks Corporation (“Nortel”) for a Settlement Amount of approximately \$1.07 billion for the benefit of the Class.³ The Settlement Amount included 314,333,875 shares of Nortel common stock and a Cash Settlement Amount of \$370,157,418.00.⁴ By its Amended Order Approving Initial Distribution of Class Settlement Proceeds (ECF No. 87) (“Initial Distribution Order”), the Court approved the administrative determinations of Epiq accepting and rejecting Claims filed in the litigation and approved the distribution of the Net Settlement Shares and 90% of the remaining 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 a total value of \$314,500,000.00. *See* Cirami Decl. ¶ 2. Through October 5, 2010, 77,230 certificates representing 28,861,424 Net Settlement Shares (post the 1-for-10 share consolidation), or 99.99% of those shares, were issued and mailed by Nortel’s transfer agent, Computer Trust Company of Canada, to Authorized Claimants. *See id.* ¶ 3.

4. To ensure that the maximum number of Initial Distribution checks were cashed, Epiq performed extensive follow-up with many of the Authorized Claimants whose checks were initially uncashed, either because those checks were returned to Epiq as undeliverable or because the Authorized Claimant simply had not cashed the check. *See id.* ¶ 4. Epiq implemented calling campaigns to urge Authorized Claimants with uncashed checks in the Initial Distribution to cash their checks. *See id.* Those Authorized Claimants were informed that, if they did not cash their

³ *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.

checks, they risked forfeiture of their funds; where an Authorized Claimant lost or damaged the check or otherwise required a new check, Epiq performed check reissues. *See id.*

5. 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.

6. In its 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).

7. Pursuant to the Final Distribution Order, Epiq commenced the Second Distribution of the Net Settlement Fund to Authorized Claimants on January 31, 2019. In connection with the Second Distribution, Epiq issued 84,233 payments with a total value of \$21,793,959.42 to Authorized Claimants.

8. Following the Second Distribution, Epiq monitored the status of distribution checks issued to Authorized Claimants. As with the follow-up efforts in the Initial Distribution described above in paragraph 4, Epiq undertook an extensive outreach campaign and made multiple attempts to locate the Authorized Claimants whose checks issued in the Second Distribution remained uncashed or were returned as undelivered by the postal service. Every Authorized Claimant with an uncashed or undeliverable check received personalized emails, letters, and/or telephone calls in attempts to get their distribution checks cashed. After the Second Distribution and Epiq's follow-up efforts, \$5,495,778.91 remained in the Net Settlement Fund.

⁴ *See id.* at 1, 13.

9. Pursuant to the Final Distribution Order, on December 23, 2020, Epiq commenced a Third Distribution of funds remaining in the Net Settlement Fund to Authorized Claimants who cashed their Second Distribution checks and would receive at least \$10.00 USD in the Third Distribution, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund and conducting the Third Distribution. In the Third Distribution of the Net Settlement Fund, Epiq issued 16,711 payments with an aggregate total value of \$4,520,354.15 to Authorized Claimants. To date, payments in the Third Distribution with a total value of over \$4,000,000.00 have been cashed.

10. Following the March 23, 2021 stale date of Third Distribution checks, Epiq conducted a complete review of all uncashed checks and conducted additional outreach to these Claimants. Epiq will continue to work with Authorized Claimants to reissue checks and wires upon request particularly as the COVID-19 pandemic has necessitated more extensive outreach and greater flexibility when dealing with Claimants, for example by wiring funds instead of reissuing a replacement check, so as to allow for the maximum amount of funds to be distributed to Authorized Claimants.

11. To date \$342,528,065.18 has been negotiated in the three distributions, which is approximately 99.8% of the amount distributed from the Net Cash Settlement Fund. As of July 16, 2021, a total of \$1,524,629.57 remains in the Net Settlement Fund, which includes the reserve and funds available to pay Epiq's unpaid fees and expenses. Of that balance, \$438,251.24 in uncashed checks and returned funds is available for the next distribution.

EPIQ'S FEES AND EXPENSES

12. 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. As described in the Cirami Declaration, Epiq's 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* Cirami Decl. ¶ 30. 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. 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. Pursuant to the terms of the Final Distribution Order, an additional amount of \$316,257.98 was held in reserve for the estimate of Epiq's fees and expenses to conduct the Second Distribution. *See* Final Distribution Order ¶ 3(g), attached hereto as Exhibit A. 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. 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, among other things. *See* Exhibit B. In addition, Epiq estimates that its fees and expenses to conduct an additional distribution of the Net Settlement Fund will be \$145,591.25. *See* Exhibit C. As set forth in the invoices attached hereto as Exhibits B and C, a total balance of \$770,120.35 remains outstanding for Epiq's unpaid fees and expenses through May 31, 2021, and its estimate to complete an additional distribution.

13. Pursuant to the terms of the Preliminary Order (*see* ¶ 19), Epiq respectfully requests the Court's approval for payments to Epiq of the \$316,257.98 held in reserve and \$770,120.35, the remaining balance of Epiq's unpaid fees and expenses and its estimated fees and expenses to conduct an additional distribution, from the Net Settlement Fund, as well as any taxes that may be due, including the costs of preparing any tax returns, prior to the additional distribution.

ADDITIONAL DISTRIBUTIONS

14. The Court's Final Distribution Order, in paragraph 3 thereof, provides for disposition of the Net Settlement Fund after the Third Distribution:

(e) ...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.

(f) 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.

15. In light of the amount currently remaining in the Net Settlement Fund, Epiq concurs with Lead Plaintiffs' recommendation that the Distribution Plan be modified to allow for one or more additional distributions to Authorized Claimants prior to donating the remaining funds to charity. The proposed amendment to the Distribution Plan would allow Epiq to conduct additional distributions to Authorized Claimants who have cashed each of their prior distribution checks and who would receive at least \$10.00 USD in a 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, in six-month intervals until such time as Lead Counsel, in consultation with Epiq, determines that further distribution of the funds remaining in the Net Settlement Fund is not cost-effective. At that time, pursuant to the Final Distribution Order, 70% of the remaining balance of the Net Settlement Fund

will be contributed to the National Consumer Law Center (“NCLC”) as the *cy pres* recipient in the United States, and 30% of the remaining balance of the Net Settlement Fund will be contributed to Pro Bono Canada (“PBC”) as the *cy pres* recipient in Canada, each a non-sectarian, not-for-profit, organization designated by Lead Counsel.⁵

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on July 16, 2021.



STEPHANIE AMIN-GIWNER

⁵ Allocation of the *cy pres* award is based upon the geographic distribution of Authorized Claimants in the Third Distribution, which is approximately 69% in the United States, 27% in Canada, and 4% in other countries.