

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE
MR JUSTICE PERELL

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)
)

THURSDAY, THE 6TH DAY
OF FEBRUARY, 2020

B E T W E E N:



ANISH GOYAL and CHINTAN ZANKAT

Plaintiffs

- and -

NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Defendant

- and -

THE ATTORNEY GENERAL OF CANADA

Third Party

Proceeding under the Class Proceedings Act, 1992

**ORDER
(Certification & Settlement Approval)**

THIS MOTION, made by the Plaintiffs for an order that this action
be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*,

S.O. 1992, c. 6 (*Class Proceedings Act*) and an order approving the Memorandum of Settlement, was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including:

- a) the Notice of Motion regarding the Certification and Settlement Approval;
- b) the Affidavit of Stephen Birman, sworn March 31, 2016, August 31, 2016 and January 29, 2020 and the exhibits attached thereto;
- c) the Affidavit of Anish Goyal, sworn March 30, 2016 and January 28, 2020, and the exhibits attached thereto;
- d) the Affidavit of Chintan Zankat, sworn March 30, 2016 and January 28, 2020 and the exhibits attached thereto;
- e) the Affidavit of Sean Kennedy, sworn July 20, 2016 and September 9, 2016 and the exhibits attached thereto;
- f) the Memorandum of Settlement attached to this Order as **Schedule "A"**; and,
- g) the Plaintiffs' Factum.

ON HEARING the submissions of counsel for the Plaintiffs and counsel for the Defendant and on being advised that the Plaintiff, the Defendant and the Third Party consent to this Order,

Certification of the Class Proceeding

1. THIS COURT ORDERS that the within proceeding be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act* as

against the Defendant, Niagara College of Applied Arts and Technology (hereinafter "the Defendant").

2. THIS COURT ORDERS that the Primary Class and Secondary Class are defined as:

A 'Primary Class' being: all international students who graduated from the General Arts & Science ("GAS") Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 who were initially denied a 3 year post-graduation work permit ("PGWP") due to distance learning and subsequently reapplied for, and obtained, a PGWP under Operational Bulletin 631; and,

A 'Secondary Class' being: international students who graduated from the GAS Program at Niagara College between September 1, 2013 and August 31, 2016 who were initially denied a 3 year PGWP due to distance learning and who did not subsequently receive a PGWP under Operational Bulletin 631.

(the Primary Class and Secondary Class are hereinafter collectively referred to as the "Class" or "Class Members").

3. THIS COURT ORDERS that the Plaintiffs are granted leave to amend the Statement of Claim in accordance with the Amended Statement of Claim attached to this Order as **Schedule "B"**.

4. THIS COURT ORDERS that Anish Goyal and Chintan Zankat are hereby appointed as Representative Plaintiffs in the within proceeding.

5. THIS COURT ORDERS that the within proceeding be and is hereby certified on the basis of the following common issues:

- (a) did Niagara College represent to Class Members that:
 - (i) successful completion of the GAS Program would qualify Class Members for a 3 year PGWP? and/or,
 - (ii) it designed the GAS Program and courses such that graduation Class Members would qualify for a 3 year PGWP under Citizenship and Immigration Canada rules.

(together the "Work Permit Representations")
- (b) if the Work Permit Representations were made, were they untrue, inaccurate and/or misleading? Was Niagara College negligent in making the Work Permit Representations?; and,
- (c) did Niagara College breach Part III of the *Consumer Protection Act, 2002*, S.O. 2002, c.30, Sch. A?

Settlement Approval and Binding Effect

6. THIS COURT ORDERS that the Memorandum of Settlement attached to this Order as **Schedule "A"** is fair, reasonable and in the best interests of the Class and is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992*, and that the Memorandum of Settlement shall be implemented and enforced in accordance with its terms.

7. THIS COURT ORDERS that the Memorandum of Settlement is incorporated by reference into and forms part of this Order and is binding upon the parties. In the event of a conflict between this Order and the Memorandum of Settlement, this Order shall prevail.

8. THIS COURT ORDERS that there is no admission of liability on the part of the Defendant and all such liability is denied.

9. THIS COURT ORDERS that this Order, the Memorandum of Settlement and any and all determinations made on appeal by Epiq Class Actions Services Canada Inc. (the "Administrator") in relation thereto, are binding upon each Class Member, including those persons who are minors or mentally incapable, and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Action.

10. THIS COURT DECLARES that for greater certainty, and subject to paragraph 30 of this Order, each Class Member is bound by this Order, whether or not such Class Member receives compensation, or whether or not such person claims compensation pursuant to the Memorandum of Settlement or otherwise.

11. THIS COURT ORDERS that any Primary Class Member seeking compensation pursuant to the Memorandum of Settlement must submit a completed "Primary Class Compensation Request Form" and supporting documentation to Thomson, Rogers before or on April 6, 2020. The Primary Class Compensation Request Form is attached to this Order as **Schedule "C"**.

12. THIS COURT ORDERS that any Secondary Class Member seeking compensation pursuant to the Memorandum of Settlement must submit a completed "Secondary Class Compensation Request Form" and supporting documentation to Thomson, Rogers before or on April 6, 2020. The Secondary Class Compensation Request Form is attached to this Order as **Schedule "D"**.

Administration & Appeals

13. THIS COURT ORDERS that Epiq Class Action Services Canada Inc. is appointed as the Administrator in accordance with the Letter of Engagement attached to this Order as **Schedule "E"**.

14. THIS COURT ORDERS that the Administrator shall be paid an amount of up to \$20,439, inclusive of HST, to be deducted from the Defendant's cost contribution. If the amount to be paid to the Administrator exceeds this amount, Class Counsel will incur those costs to be paid from the approved fees and disbursements of Class Counsel as set out in paragraph 34.

15. THIS COURT ORDERS that Class Members' claims will be evaluated under the Memorandum of Settlement in accordance with the Settlement Administration Guideline attached as **Schedule "F"** to this Order.

16. THIS COURT ORDERS that Class Members seeking to review and/or appeal their claim, in relation to eligibility or quantum or both, must do so

in accordance with the "Appeal Process Framework" attached as **Schedule "G"** to this Order.

17. THIS COURT DECLARES that the Defendant shall not have any responsibility or liability whatsoever relating to the administration of the settlement.

Dismissal, Release and Bar of Claims

18. THIS COURT ORDERS that the within action shall be and is hereby dismissed against the Defendant, Niagara College of Applied Arts and Technology, with prejudice and without costs.

19. THIS COURT ORDERS that the within third party claim shall be and is hereby dismissed against the Third Party, The Attorney General of Canada, without costs.

20. THIS COURT ORDERS that the Plaintiffs, the Class Members, and their respective agents, successors, and assigns, and each of them (the "Releasers"), have released the Defendant, Niagara College of Applied Arts and Technology (the "Releasee"), from any and all actions, causes of action, claims, subrogated claims, demands, damages, interest, costs, expenses, and compensation of whatsoever kind and howsoever arising, whether known or unknown, and which the Releasers now have or at any time hereafter can, shall,

or may have in any way resulting from the claims that have been, could have been, or should have been made by the Plaintiffs in the within action (the "Released Claims").

21. THIS COURT ORDERS that every Releasor is hereby prohibited from instituting, continuing, maintaining or asserting, either directly or indirectly, whether in the United States or Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person, corporation or legal entity who may claim contribution or indemnity, or other claims of relief over from the Releasee in respect of any Released Claim or any matter arising out of or related in any way whatsoever to any Released Claim (a "Third Party").

22. THIS COURT ORDERS that the Releasors indemnify and save harmless the Releasee with respect to any claims, charges or demands pursuant to the *Income Tax Act (Canada)*, which may be made upon the Releasee in connection with the payment of the settlement.

23. THIS COURT DECLARES that all claims for contribution, indemnity or other claim over inclusive of claim, interest and costs, including a claim for a determination of a share of fault in respect of any Released Claim or any matter arising out of or related in any way whatsoever to any Released Claim by any

person or Party against a Releasee are barred, prohibited and enjoined unless such a claim is made by a person who has opted out of the within action.

24. THIS COURT ORDERS that if a Releasor contravenes paragraph 22 of this Order, they must indemnify and save harmless the Releasee against which a Third Party is seeking contribution, indemnity or other relief from any costs (including legal fees), expenses, losses, liabilities or damages whatsoever incurred in connection with or in any way related to defending or responding to any proceeding brought by the Third Party.

Supervision

25. THIS COURT DECLARES that for the purposes of administration and enforcement of this Order and the Memorandum of Settlement, this Court will retain an ongoing supervisory role for the purpose of implementing, administering and enforcing the Memorandum of Settlement and this Order and subject to the terms and conditions set out in the Memorandum of Settlement and this Order.

Termination

26. THIS COURT DECLARES that this Order shall be declared null and void on subsequent motion made on notice in the event that the Memorandum of Settlement is terminated in accordance with its terms.

Notice of Settlement

27. THIS COURT ORDERS that the "Notice of Settlement" attached as **Schedule "H"** to this Order is hereby approved.

28. THIS COURT ORDERS that the Notice of Settlement shall be provided to the Class in the following manner (the "Notice Plan"):

- (a) Sending the Notice of Settlement by mail to:
 - (i) all Class Members who have provided their contact information to Class Counsel; and,
 - (ii) all Class Members whose contact information was provided to Class Counsel by the Third Party pursuant to the Order of Justice Perell dated November 8, 2019; and,
- (b) publishing the Notice of Settlement on the webpage being maintained by Class Counsel at www.thomsonrogers.com

29. THIS COURT ORDERS that this Order shall be posted on the webpage being maintained by Class Counsel until July 1, 2020 and that no further notice of this settlement approval is required.

Opt Outs

30. THIS COURT ORDERS that Class Members who wish to opt out of the class proceeding may opt out of by serving written notice of their decision to opt out of the proceeding in the form of the "Opt Out Form" attached to this Order as **Schedule "I"** and by forwarding same to Class Counsel at the address set

out in the Notice of Settlement. Notice of the decision to opt out must be received by Class Counsel as set out in the Notice of Settlement by April 6, 2020.

31. THIS COURT ORDERS that Class Counsel shall notify counsel for the Defendant within seven (7) days after April 6, 2020 of the number of opt outs, if any. Counsel for the Defendant in turn shall notify Class Counsel, where there are ten (10) or more opt outs, of the Defendant's position on whether the settlement will be void, within seven (7) days of counsel for the Defendant's receipt of the information on the number of opt outs from Class Counsel. Where counsel for the Defendant advises Class Counsel that the Defendant will proceed to complete the settlement, notwithstanding that there are ten (10) or more opt-outs, the Defendant shall pay the settlement monies within twenty (20) business days of its notification to Class Counsel.

32. THIS COURT ORDERS that where there are less than ten (10) or more opt outs, the Defendant shall make the payment of the settlement amount, set out in paragraph 9 of the Memorandum of Settlement, within twenty (20) business days from the date of counsel for the Defendant's receipt of the information from Class Counsel on the number of opt outs.

Honorarium

33. THIS COURT ORDERS that an honorarium in the amount of \$10,000, each, will be paid to the Representative Plaintiffs.

Class Counsel Fees

34. THIS COURT ORDERS that the fees and disbursements of Class Counsel, in the total amount of \$950,750, inclusive of taxes, are fair and reasonable and the said fees, disbursements and administration costs shall be paid out of the settlement monies.

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ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

FEB 06 2020

PER / PAR:



SCHEDULE "A"

Court File No.: CV-15-534310-CPA1

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ANISH GOYAL and CHINTAN ZANKAT

Plaintiffs

- and -

NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Defendant

- and -

THE ATTORNEY GENERAL OF CANADA

Third Party

Proceeding under the *Class Proceedings Act, 1992*

MEMORANDUM OF SETTLEMENT

WHEREAS the Plaintiffs, Anish Goyal and Chintan Zankat, commenced this proposed class action on August 13, 2015 in the Ontario Superior Court of Justice;

AND WHEREAS the Defendant, Niagara College of Applied Arts and Technology, has denied the allegations and claims which the Plaintiffs have made in this action and continues to deny any liability in respect of such allegations and claims;

AND WHEREAS counsel for the Plaintiffs and the Defendant have each conducted their own legal and factual analysis of the claims and defences raised in this action;

AND WHEREAS following the investigations and analysis set out above, the Plaintiffs and their counsel and the Defendant and its counsel participated in a mediation with the mediator, The Honourable Colin Campbell, on September 10, 2019;

AND WHEREAS the Plaintiffs and the Defendant (collectively "the Parties") wish to resolve all differences between them;

THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree that this Memorandum of Settlement will be null and void and of no force and effect, unless the Third Party, The Attorney General of Canada, consents to an Order dismissing the Defendant's Third Party Claim against it without costs.
2. On the basis that the Third Party, The Attorney General of Canada, consents to an Order dismissing the Third Party Claim against it without costs, the Parties agree to the following terms and conditions of this Settlement as between them.
3. The Parties will jointly seek and consent to a final Order of the Court ("the Order") approving the certification of this action as a class proceeding and settlement of this action as a class proceeding on the terms set out below, and such Order will contain a provision releasing the Defendant of any claims of the class members as against it, except with respect to the enforcement of the Court's Order and the terms of this Settlement, or if there is a material breach of this Settlement. The Order will further dismiss the class action on a without costs basis, once the terms of this Settlement have been carried out upon approval by the Court.
4. The Plaintiffs and their counsel and the Defendant and its counsel will recommend approval of the terms of this Settlement, set out in this Memorandum of Settlement, to the Class Proceedings Judge in the Ontario Superior Court of Justice and will make best efforts to obtain the Court's approval of this settlement.

Class Definition

5. The Parties will consent to the certification of the following classes, which together form, and shall be defined as, the "Class":
 - (i) a 'Primary Class' being: "All international students who graduated from the GAS Program at Niagara College between September 1, 2013 and August 31, 2016 who were initially denied a 3 year post-graduation work permit ("PGWP") due to distance learning and subsequently reapplied for, and obtained, a PGWP under Operational Bulletin 631"; and
 - (ii) a 'Secondary Class' being: "All international students who graduated from the GAS Program at Niagara College between September 1, 2013 and August 31, 2016 who were initially denied a 3 year PGWP due to distance learning and who did not subsequently receive a PGWP under Operational Bulletin 631.
6. The Plaintiffs' counsel will bring a motion on consent of the Defendant to amend the Plaintiffs' Statement of Claim to define the proposed Class in accordance with paragraph 5 above.
7. The Defendant will consent to the certification of this action as a class proceeding, subject to the Court's final Order approving this settlement.
8. The Parties will make best efforts to obtain the assistance of the Third Party, The Attorney General of Canada, to co-ordinate the information needed for the identification of the members of the Class as defined in paragraph 5 above, so that a list of the names of Class members and their last known addresses can be provided to the Plaintiffs' counsel, upon approval by the Court of the Notice of the Motion for Certification and Settlement, to be sent to such Class members, as required by the *Class Proceedings Act, 1992* (the "Notice"). If required, the Parties will consent to an Order of the Court requiring the disclosure of this information by the Third Party, The Attorney General of Canada, to the

Defendant and the Plaintiffs for the sole purpose of the provision of the Notice to the members of the Class.

Settlement Payment

9. Subject to the Court's approval of this Settlement, the Defendant will pay, in a lump sum payment, the amount of \$3,000,000.00 to the Plaintiffs' counsel, in trust, within twenty (20) business days of the Court's final Order approving this Settlement, in full and final settlement of all claims, pre-judgment interest and costs, in exchange for the Release set out below.
10. The amount payable under paragraph 9 above is collectively referred to as the "Settlement Payment".
11. The allocation of the Settlement Payment among the members of the Class shall be determined solely by the Plaintiffs' counsel in a fair and reasonable manner as set out in Appendix "A" attached hereto, and subject to the Court's approval.
12. The Settlement Payment is inclusive of all legal fees and disbursements, including HST, incurred by the Plaintiffs and their counsel, including any amounts incurred in the preparation for, attendance at the Certification and Settlement Motion, and completion of the settlement (inclusive of all costs for Plaintiffs' counsel to send out notices to Class members).
13. The Defendant will have no obligation or responsibility to administer or distribute the Settlement Payment among the members of the Class. All such responsibility will be that of the Plaintiffs' counsel. All taxes payable on this Settlement Payment or any interest earned on the Settlement Payment shall be the responsibility of the Plaintiffs and the Plaintiffs' counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Payment, including any obligation to report taxable income and make tax payments. Any taxes due with respect to the income earned on the Settlement Payment shall be paid from the Settlement Payment. The Defendant will have no responsibility to make any tax filings related to the Settlement

Payment and will have no responsibility to pay any taxes on the Settlement Payment.

14. The Parties also agree that they will follow the Settlement Process set out in Appendix "B" attached hereto.

Settlement is Fair and Reasonable

15. The Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement and, based on their analysis of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense of prosecuting the action, including the risks and uncertainties associated with prosecuting the action, have concluded that the terms of this Settlement are fair and reasonable.
16. The Plaintiffs agree that this Settlement is not an admission of liability by the Defendant, and in fact such liability is denied.
17. The Parties agree that this Memorandum of Settlement constitutes the complete agreement of the Parties in this Settlement of this action.

Release

18. In the final Order approving the settlement by the Court, the Class members will release the Defendant of any and all manner of claims, civil actions, demands and causes of action related in any way to claims that have been, could have been or should have been made by the Plaintiffs in this action (Court File No. CV-15-534310-CPA1 in the Ontario Superior Court of Justice), except with respect to the enforcement of the terms of the Order and this Settlement (the "Released Claims").
19. In the final Order approving this Settlement by the Court, the Class members agree to not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or other person, any action, suit, cause of action, claim or demand

against the Defendant or any other person who may claim contribution or indemnity from the Defendant in respect of any of the matters which are the subject of this Settlement and the Released Claims in paragraph 18.

20. In the final Order approving this Settlement by the Court, the Class members agree to indemnify and save the Defendant harmless with respect to any claims, charges or demands pursuant to the *Income Tax Act* (Canada) which might be made upon the Defendant in connection with this Settlement.

Opt Outs and No Court Approval

21. At the option of the Defendant, this Settlement will be void, and of no force and effect, if 10 or greater than 10 members of the Class opt out of this Settlement.
22. This Settlement will apply to all members of the Class who do not opt out of this proceeding.
23. This Settlement is based on information provided by the Government of Canada regarding the number of members in the Class, specifically that there are 114 Primary Class Members and 55 Secondary Class Members. If the number of valid claims by members of the Class proves to be substantially greater than the numbers set out (i.e. more than 10% higher in either the Primary Class or in the Secondary Class), then this Settlement may be voided at the discretion of the Plaintiffs' counsel on notice to the Defendant and with approval of the Court.
24. The Parties agree that this Settlement is null and void unless and until it is finally approved by the Court pursuant to section 29(2) of the *Class Proceedings Act*, 1992.
25. The Parties expressly reserve all of their rights if this Settlement does not become effective. Further, the Parties agree that whether or not this Settlement is finally approved, this Settlement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement, and any action taken to carry out this Settlement, shall not be

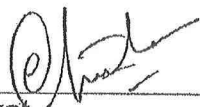
deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability of the Defendant, or of the truth of any of the claims or allegations contained in the action.


26. The Parties agree that, whether or not this Settlement is finally approved by the Court, this Settlement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement, and any action taken to carry out this Settlement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil action or proceeding, except in a proceeding to enforce this Settlement or to defend against the assertion of Released Claims, or as otherwise required by law.
27. Except as provided in this Settlement, counsel for the Plaintiffs, nor anyone currently or hereafter employed by, associated with, or a partner with counsel for the Plaintiffs, may not directly or indirectly participate in or be involved in any way or assist with respect to any claim made or action commenced by any person related to or arising from the Released Claims. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of this action or the negotiation and preparation of this Settlement, except to the extent such information is otherwise publicly available or otherwise ordered by a Court.


No Press Conference or Media Communications

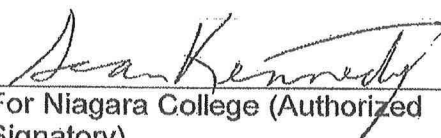
28. The parties agree that no press conferences or other communications will be made with the media with respect to the terms of this Settlement, except as required by the Court. The Plaintiffs further agree that they shall not at any time make, publish or post any statements or comments that are directly or indirectly disparaging or defamatory of the Defendant and further will honour their obligations to file supporting Affidavits in respect of this Settlement. If the Plaintiffs breach these obligations, they agree that they are required to repay to the Defendant the amount of their honorariums set out in Appendix "A" attached hereto and that such amount is not a penalty clause.

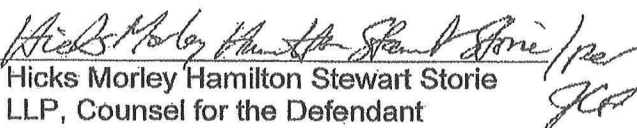
Dated at Toronto, Ontario this 10th day of September, 2019


Chintan Zankat


Anish Goyal


Thomson Rogers LLP, Counsel for the
Plaintiffs


For Niagara College (Authorized
Signatory)


Hicks Morley Hamilton Stewart Storie
LLP, Counsel for the Defendant

Appendix "A"
Allocation of Settlement Payment

Pursuant to the terms set out in paragraph 11 of the Memorandum of Settlement ("MOS"), which this Appendix "A" is attached, the Parties agree to the following terms with respect to the allocation of the Settlement Payment:

1. Re Settlement and Settlement Approval: As part of the consent certification, the Plaintiffs will move for approval of the Settlement of the Class Proceeding as follows:
 - (a) Payment by the Defendants to the Plaintiffs of a total all-inclusive amount of \$3,000,000.00 million (the "Total Settlement Amount"), broken down as set out below:
 - (i) "Total Damages" of \$2,750,000.00 comprised of:
 1. \$2,317,500.00 in Total Primary Class Damages;
 2. \$412,500.00 in Total Secondary Class Damages; and,
 3. \$20,000.00 as an honorarium (of \$10,000.00 each) to be paid to the Plaintiffs; and
 - (ii) Partial indemnity costs, inclusive of disbursements and HST, of \$250,000.00 (the "Total Defendant's Cost Contribution").
 - (b) For clarity, Class Counsel will be seeking solicitor/client fees, plus taxes and plus disbursements, to be paid out of the Total Damages, in an amount to be approved by the Court, with the Total Defendant's Cost Contribution being allocated proportionately to the Class.
2. Class Compensation Issues: The following general distribution details have been prepared by Plaintiff's counsel. Plaintiffs' counsel will evaluate all claims as set out below and will notify members of the Class of their anticipated estimated recovery. It is acknowledged and understood that the Defendant takes no position in relation to the distribution details below as set out by Plaintiffs' Counsel. Members of the Class will be eligible to claim the following damages:
 - (a) Claims by the Primary Class will be assessed by Class Counsel as follows:
 - (i) Damages: To simplify the damages quantification and In recognition of all potential damages claims/heads of damages and claims, including income loss/loss of opportunity, pain and suffering/mental distress and out of pocket expenses, damages will be paid to the Primary Class from the GAS Program in the amount of \$20,000.00/person, prior to legal fees, to be adjusted proportionately as appropriate;

- (b) Claims by the Secondary Class will be assessed at a fixed amount of \$7,500.00 per/person, prior to legal fees, with any savings from the Total Secondary Class Damages to be included in the Primary Class Damages; and
- (c) Individuals in the Primary and Secondary Class must provide confirmation, to the satisfaction of Plaintiffs' counsel and in a manner prescribed by Plaintiffs' counsel, regarding their graduation date from Niagara College, their PGWP denial and their PGWP approval, pursuant to Operational Bulletin 631, if available and as appropriate.

Appendix "B"
Settlement Process

Pursuant to the terms set out in paragraph 14 of the Memorandum of Settlement ("MOS"), which this Appendix "B" is attached, the Parties agree to the following terms with respect to the allocation of the Settlement Payment:

1. Subject to directions from the Court:
 - (a) Plaintiffs' counsel will:
 - (i) Provide all members of the Class with the court approved Notice pursuant to a court approved Notice Plan that will include dissemination of the Notice to members of the Class. The parties will seek the government's cooperation in obtaining a list of members of the Class and seek an Order from the Court for this information if required;
 - (ii) Ensure adherence to an approved notice plan;
 - (iii) Receive and review information received by members of the Class to quantify class members eligibility and entitlement under the Settlement;
 - (iv) Move to obtain Court approval of the Settlement;
 - (v) Disburse the funds;
 - (vi) Plaintiffs' counsel will, in addition to providing any additional formal notice required by the Court, write to all known class members:
 - (A) Advising of the Settlement, subject to Court approval;
 - (B) Notifying them of the date of the approval motion and the process to object to the settlement;
 - (C) Explaining the parameters of the settlement as set out herein, along with reasons for those parameters; and,
 - (D) Providing information as to how their compensation, if any, has been assessed;
 - (vii) Plaintiffs' counsel will receive, review and analyze any claims made by members of the Class prior to or immediately following the Court approval motion so as to determine their entitlement, if any, under the settlement, and so advise such potential members of the Class;

- (b) Defence Counsel will:
 - (i) Assist in obtaining the government's cooperation in obtaining a list of members of the Class and seek an Order from the Court for this information, if required;
 - (ii) Pay the Total Settlement Funds as set out in Appendix "A"; and,
 - (iii) Cooperate in relation to the Court approval of this Settlement.
- 2. Directions from Court: the Parties will seek directions from the Court regarding the settlement approval motion and any notice required in relation thereto, such notice to, subject to the Court's directions, includes a requirement for any still unidentified class members who may be seeking compensation to immediately complete and provide information to Plaintiffs' counsel (or else be forever precluded from receiving any compensation under this Settlement).
- 3. This Settlement is null and void if it is not approved by the Court without material amendment or if the Approval order is granted without amendment and fails to become a Final Order. Settlement monies will, in these circumstances, be returned to the Defendant as set out above.

SCHEDULE "B"

Court File No. CV-15-534310-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ANISH GOYAL and CHINTAN ZANKAT

Plaintiffs

- and -

NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Defendant

- and -

THE ATTORNEY GENERAL OF CANADA

Third Party

Proceeding under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or,

where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

ISSUE DATE: August 13, 2015 Issued by _____
Local Registrar

Address of court office:

10th Floor
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY
300 Woodlawn Road
Welland, Ontario
L3C 7L3

AND TO: THE ATTORNEY GENERAL OF CANADA
c/o Michael Olsen
A/Director General, Operational Management and Co-ordination
NHQ- Operational Management and Coordination
Immigration, Refugees and Citizenship Canada
365 Laurier Avenue West
Ottawa, Ontario
K1A 1L1

CLAIM

1. The Plaintiffs claim on behalf of themselves and on behalf of the Class to be certified:

- (a) damages in the amount of \$50,000,000.00, for, among other causes of action:
 - (i) unfair practices pursuant to Section 18 of the *Consumer Protection Act*, 2002, S.O. 2002, c.30, Sch.A, as amended;
 - (ii) negligent and/or fraudulent misrepresentation and/or breach of duty; and
 - (iii) negligence and/or breach of duty;
- (b) punitive, aggravated and exemplary damages in the sum of \$5,000,000.00;
- (c) pre-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) costs of this action together with applicable Harmonized Sales Tax; and,
- (e) such further and other relief as this Honourable Court deems just.

PARTIES

2. The plaintiff, Anish Goyal, is a graduate of the General Arts and Sciences 2-year Diploma Transfer Program ("GAS Program") offered by the Defendant, Niagara College of Applied Arts and Technology ("Niagara College"), primarily to international students. Anish Goyal resides in the City of Toronto, in the Province of Ontario.

3. The plaintiff, Chintan Zankat, is a graduate of the GAS Program at Niagara College and resides in the City of Toronto, in the Province of Ontario.

4. The Plaintiffs together, or either of them, seek to represent a class of persons consisting of all international students registered in the GAS Program at Niagara College in the school semesters commencing in September of 2013, January of 2014, May of 2014, September of 2014 and January of 2015 (the "Class" or "Class Members").

5. The Defendant, Niagara College, is a corporation without share capital established pursuant to Subsection 2(1) of the *Ontario Colleges of Applied Arts and Technology Act*, 2002, S.O. 2002, c. 8, Sch. F and operates as a community college in Ontario. Niagara College, like other regulated Colleges in Ontario, purported to offer prospective students a comprehensive program of post-secondary education and training to assist Class Members in finding and keeping employment upon graduation.

OVERVIEW OF THE CLAIM

6. At all material times, Niagara College promoted the GAS Program primarily to international students who had already completed a program of studies in Canada. Through its program description (the "Program Description") and other promotional materials, the Defendant, directly, and through its agents (immigration consultants paid by it to recruit foreign students), represented to Class Members that successful completion of the 4 month long GAS Program

would qualify international students for a 3-year work permit (the "3-Year Post-Graduation Work Permit") under Canadian immigration rules.

7. While international students enrolled in the GAS Program would have been eligible for a 1-year work permit immediately after completing their first year of graduate studies, these international students were promised by the Defendant that that they would qualify for a coveted 3-year Post-Graduation Work Permit by completing the GAS Program and, in reliance on that promise, Class Members gave up the opportunity to obtain a 1-year work permit, in favour of obtaining the coveted 3-year Post Graduation Work Permit, which was promised by the Defendant upon completion of the GAS Program.

8. The GAS Program, which was designed and offered by the Defendant, was comprised of both in-class and on-line courses.

9. The Defendant, at all material times, knew or ought to have known that, under Citizenship and Immigration Canada rules, international students who participate in a "distance learning program" would not be eligible for a 3-Year Post-Graduation Work Permit.

10. Students were advised by the Defendant that:

- (a) completion of the GAS Program would qualify them for a 3-Year Post-Graduation Work Permit; and
- (b) the on-line course component in the GAS Program would not impact their eligibility for 3-Year Post-Graduation Work Permits because the GAS Program was not a "distance learning program".

(together the "Work Permit Representations").

11. Upon completion of the GAS Program, the Plaintiffs and Class Members, applied to Citizenship and Immigration Canada for 3-Year Post-Graduation Work Permits. The Plaintiffs and Class Members, were denied (or reasonably anticipate being denied) their 3-Year Post-Graduation Work Permits. The Plaintiffs and Class Members have been advised that the reason for the denial is that the courses in the GAS Program were distance learning courses, making the Plaintiffs and Class Members ineligible for a 3-Year Post-Graduation Work Permit.

12. Under the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sch. A (the "*Consumer Protection Act*"), it is an unfair practice to "make a false, misleading or deceptive representation" or "to make an unconscionable representation." In specifying in its Program Description that the Plaintiffs and Class Members would qualify for the 3-Year Post-Graduation Work Permit, by enrolling in and completing the GAS Program, when it knew or ought to have known that this was not, in fact, so, the Defendant engaged in an unfair practice in breach of the *Consumer Protection Act*.

13. The Defendant failed to ensure that completion of the GAS Program, which it designed, would qualify its graduates, for the 3-Year Post-Graduation Work Permit, as promised. The Defendant was negligent in making the Work Permit Representations, which were misrepresentations.

THE CLASS

14. This action is brought by the Plaintiffs pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, on behalf of the following Class: ~~all international students registered in the GAS Program in the school semesters commencing in September of 2013, January of 2014, May of 2014, September of 2014 and January of 2015~~

- A 'Primary Class' being all international students who graduated from the GAS Program at Niagara College between September 1, 2013 and August 31, 2016 who were initially denied a 3 year Post-Graduation Work Permit ("PGWP") due to distance learning and subsequently reapplied for, and obtained, a PGWP under Operational Bulletin 631; and,
- A 'Secondary Class' being all international students who graduated from the GAS Program at Niagara College between September 1, 2013 and August 31, 2016 who were initially denied a 3 year PGWP due to distance learning and who did not subsequently receive a PGWP under Operational Bulletin 631.

(together referred to as the "Class" or "Class Members").

THE PROGRAM DESCRIPTION

15. At all materials times, Niagara College promoted its GAS Program to international students to induce international students to transfer into the GAS Program after completing one year of studies at another Canadian educational institution, based on the Defendant's assurances that, upon completion of the

GAS Program, graduates would qualify for a 3-Year Post-Graduation Work Permit.

16. The Program Description posted on the Defendant's website stated as follows:

"Niagara College recognizes that many students are interested in graduating from a two year diploma program, so they can qualify for a three-year work permit under the current immigration rules and practices. Students interested in transferring their one-year postgraduate studies to Niagara College's two year General Arts and Science (GAS) diploma can do so based on the following.

- Successful completion of a one-year Graduate or Post-graduate program at a recognized institution in Canada (transcripts required);
- Bachelors degree from their home country (transcripts required);
- must have a valid study permit and have not applied for their postgraduate work permit; and,
- proof of English proficiency (if English is your second language)."

17. The Defendant marketed the GAS Program in and outside of Canada and also through, its agents (immigration consultants, who the Defendant paid on commission), with a view to inducing international students to register for the GAS Program knowing that the 3-Year Post Graduation Work Permit was coveted and desired by international students. The tuition paid by international students like the Class Members was significantly higher than that paid by Canadian students enrolled at Niagara College.

18. The Defendant was aware that the majority of students enrolled in the GAS Program were international students who spoke English as a second language and who would be seeking a 3-Year Post-Graduation Work Permit in Canada upon their graduation.

19. The Defendant was aware that the 3-Year Post-Graduation Work Permit provided Class Members with an opportunity for prolonged employment and the development of a career in Canada, as well as the prospect of permanent residency and Canadian citizenship in the future.

THE REPRESENTATIVE PLAINTIFFS

1. Chintan Zankat

20. The Plaintiff, Chintan Zankat ("Chintan"), is a citizen of India living in Canada. Chintan obtained his Commerce Degree in India in 2010. In 2013, Chintan applied to and was accepted into the 1-year Financial Planning Program at George Brown College in Toronto, Ontario. Chintan was granted a visa to study in Canada. Chintan commenced the George Brown Program on September 3, 2013, and completed the Program at George Brown on April 17, 2014.

21. After the completion of his studies at George Brown College, Chintan enrolled in the GAS Program (comprised of 6 courses, 5 of which were on-line) commencing in May of 2014, so that he would qualify for a 3-Year Post-Graduation Work Permit upon his graduation in 4 months' time.

22. Chintan graduated from the GAS Program on September 10, 2014.

23. In or around August of 2014, upon completion of his GAS classes, Chintan obtained employment as a Customer Representative at Scotiabank. In December of 2014, Chintan was subsequently promoted to the position of Financial Advisor at Scotiabank.

24. In October of 2014, Chintan applied for the 3-Year Post-Graduation Work Permit.

25. On April 8, 2015, Chintan was denied the 3-Year Post-Graduation Work Permit by Citizenship and Immigration Canada. At that time, he was advised that the denial was on the basis that the GAS Program was a distance learning program and he was, thus, ineligible for a 3-Year Post-Graduation Work Permit. Chintan was advised that he was required to leave Canada by May 10, 2015. Chintan is appealing the decision to deny him a 3-Year Post-Graduation Work Permit and has applied for a further study permit. Chintan continues to reside legally in Canada while his appeal and application are pending.

26. Upon being denied the 3-Year Post-Graduation Work Permit, Chintan notified his employer, Scotiabank, which was unable to continue his employment because of his immigration status.

2. Anish Goyal

27. The Plaintiff, Anish Goyal ("Anish") is a citizen of India living in Canada. Anish obtained his Bachelor's Degree in Engineering in India in 2010. In 2013, Anish applied to and was accepted into a 1-year Project Management Program at Centennial College in Scarborough, Ontario. Anish was granted a

visa to study in Canada. Anish graduated from the Project Management Program at Centennial College on August 15, 2014.

28. Anish applied for and was accepted into the GAS Program on September 2, 2014, so that he would qualify for a 3-Year Post Graduation Work Permit upon his graduation in 4 months. Anish began the GAS Program in September of 2014. Anish enrolled in 6 courses (5 of which were online).

29. Anish graduated from the GAS Program on January 14, 2015.

30. In January of 2015, Anish applied for the 3-Year Post-Graduation Work Permit.

31. As of the date of the issuance of this Class Proceeding, Anish's application for a 3-Year Post-Graduation Work Permit has not been approved by Citizenship and Immigration Canada, but he expects that his application will be denied for the same reason that other Class Members have been refused; namely, that the Defendant's GAS Program is a distance learning program and its graduates are not eligible for that permit.

CAUSE OF ACTION UNDER THE CONSUMER PROTECTION ACT

32. Class Members entered into agreements for the supply of educational services with the Defendant. These agreements comprise consumer transactions within the meaning of Section 2(1) of the *Consumer Protection Act*.

33. Under the *Consumer Protection Act*, it is an unfair practice to make a "false, misleading or deceptive representation" or "to make an unconscionable representation".

34. Citizenship and Immigration Canada established criteria for granting 3-Year Post-Graduation Work Permits to international students who graduate from Canadian college programs. The Defendant knew or ought to have known that Citizenship and Immigration Canada has, at all materials times, excluded from eligibility for a 3-Year Post-Graduation Work Permit students who participate in distance learning programs.

35. Publication of the Work Permit Representations, and any and all acts or omissions of the Defendant and/or its agents, for whom the Defendant is in law responsible, which had the effect of confirming the Work Permit Representations set out in the Program Description, and elsewhere, were false, misleading and deceptive because the Defendant:

- (a) represented that graduates of the GAS Program would qualify for a 3-Year Post Graduation Work Permit when it knew or ought to have known that was not the case;
- (b) represented to the Class that the GAS Program had sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities that it did not have;
- (c) represented to the Class that Niagara College, which was to supply the educational services, had sponsorship, approval, status, affiliation or connection which the Defendant did not have;
- (d) represented to the Class that the GAS Program was of a particular standard, quality or grade, when it was not;
- (e) represented to the Class that the GAS Program was available for a reason that does not exist; and,
- (f) used exaggeration, innuendo and ambiguity as to a material fact and/or failed to state a material fact where such use or failure deceived or tended to deceive the Plaintiffs and Class Members.

The Plaintiffs and Class Members plead and rely upon sections 14(1) and 14(2) of the *Consumer Protection Act*, and specifically subsections 1, 2, 3, 6, 8, 11, 13 and 14 of section 14(2).

36. The Work Permit Representations were unconscionable representations because the Defendant knew or ought to have known:

- (a) that they would be used by its agents and employees to entice Class Members to study at Niagara College to their detriment;
- (b) that Class Members would place their trust in representations made by a post-secondary institution whose object included assisting students in finding and keeping employment in business and industry in Canada;
- (c) that they had not sought or obtained confirmation from Citizenship and Immigration Canada that, the GAS Program as designed, would qualify their graduates for 3-Year Post-Graduation Work Permits;
- (d) that the Defendant was providing immigration advice to Class Members when it was not authorised to provide such advice pursuant to the *Immigration and Refugee Act*, S.C. 2001, c.27;
- (e) that Class Members spent considerable sums of money and gave up career opportunities at home and in Canada to obtain the 3-Year Post-Graduation Work Permit that they were assured they would qualify for upon completion of the GAS Program;
- (f) that Class Members would not receive a substantial benefit from the GAS Program and would in fact be foregoing the 1-year work permit that they would have otherwise been entitled to;
- (g) that the Work Permit Representations were false, misleading and deceptive, and/or that the Defendant failed to correct the Work Permit Representations once it became aware that the Work Permit Representations were false, misleading and deceptive; and,

- (h) that the Program Description contained a statement regarding eligibility for the 3-Year Post-Graduation Work Permit that was false and misleading and that Class Members were likely to and did rely on to their detriment.

37. In or around April of 2015, Class Members began receiving notice from Citizenship and Immigration Canada that the GAS Program was a distance learning program and that Class Members were being denied a 3-Year Post-Graduation Work Permit as a result.

38. Until receiving notice from Citizenship and Immigration Canada, Class Members did not know and could not reasonably have known, that the Work Permit Representations were "false, misleading or deceptive representations" and/or were "unconscionable representations" (either or both of which constitute "unfair practices" under the *Consumer Protection Act*). Class Members, including the Plaintiffs, have notified the Defendant that they have been denied the 3-Year Post Graduation Work Permit and the Defendant has not resolved the matter in any way whatsoever. The Plaintiffs and Class Members hereby provide further notice of same by service of this Statement of Claim on the Defendant.

COMMON LAW CAUSES OF ACTION

39. The Defendant had knowledge and information about the GAS Program that Class Members did not possess, including the fact that the GAS Program had not received any approval whatsoever from Citizenship and Immigration Canada that would allow for graduates of the Program it designed to qualify for the 3-Year Post-Graduation Work Permit.

40. As a public educational institution publishing and making representations about the benefits of the GAS Program to prospective students, the Defendant was in a special relationship of trust with such prospective students. Further, Class Members who were induced into enrolling in the GAS Program relied on the knowledge and expertise of the Defendant in designing and implementing the Program, and as such, the Defendant was in a special relationship of trust with Class Members.

41. Based on this special relationship, the Defendant owed Class Members a duty of care to accurately describe the attributes of the GAS Program, to design and implement the GAS Program to deliver the promised 3-Year Post-Graduation Work Permit to Class Members upon graduation, and to inform Class Members of any inaccuracies in its representations in a timely manner. The Defendant failed to do so, and as a result, it breached its duty of care to the Class.

42. The Work Permit Representations were untrue, inaccurate and/or misleading. In addition, the Defendant failed to design a program that met Canadian immigration requirements for the 3-Year Post-Graduation Work Permit (i.e. a program that was not a distance learning program).

43. Class Members plead that the Defendant negligently breached its duty of care to Class Members, and is liable for the negligent and/or fraudulent Work Permit Representations, as a result of which Class Members have suffered damages as set out herein. In particular, and in addition to the allegations set out herein, Class Members claim against the Defendant for:

- (a) negligently, recklessly and/or fraudulently representing to Class Members that completion of the Program would qualify Class Members for 3-Year Post-Graduation Work Permits;
- (b) negligently, recklessly and/or fraudulently representing to Class Members that the GAS Program was not a distance learning program;
- (c) providing Class Members, on their own and/or through its retained agents, with a Program Description and other promotional materials for the GAS Program which were inaccurate, incomplete, false, deceptive and/or misleading;
- (d) negligently, recklessly and/or fraudulently allowing the Program Description and other promotional materials to contain information which it knew or ought to have known was inaccurate, incomplete, false, deceptive and/or misleading and in allowing these documents to be distributed to Class Members;
- (e) negligently, recklessly and/or fraudulently failing to provide Class Members with an amended and accurate Program Description and promotional materials once the Defendant became aware that its Program Description and promotional materials were incomplete, false, deceptive and/or misleading;
- (f) negligently, recklessly and/or fraudulently inducing Class Members to register for the GAS Program to their detriment through the use of untrue, inaccurate, misleading and deceptive wording in the Program Description and promotional materials;
- (g) negligently, recklessly and/or fraudulently failing to design and implement the GAS Program to ensure that its graduates would qualify for 3-Year Post-Graduation Work Permits under the rules set by Citizenship and Immigration Canada;
- (h) negligently, recklessly and/or fraudulently failing to obtain approval and/or confirmation from Citizenship and Immigration Canada that Class Members graduating from the GAS Program would qualify for 3-Year Post-Graduation Work Permits; and,
- (i) failing to warn Class Members of any risk known to it, or which ought to have been known; namely, that completion of

its GAS Program would make Class Members ineligible for a 3-Year Post-Graduation Work Permit.

44. In addition to the foregoing, and with respect to the allegation of fraudulent misrepresentation, the Plaintiffs and Class Members claim against the Defendant for providing false immigration advice to Class Members when it was illegal to do provide any immigration advice pursuant to the *Immigration and Refugee Act*, S.C. 2001, c.27, and/or for failing to adequately and immediately correct the false immigration advice.

45. The Plaintiffs and Class Members relied, in a reasonable manner, on the Defendant's misrepresentations to their detriment and have suffered damages as a result.

DAMAGES

46. Citizenship and Immigration Canada has determined that the GAS Program is a distance learning program and has denied Class Members who completed the GAS Program a 3-Year Post-Graduation Work Permit.

47. The Plaintiffs and Class Members have suffered significant damages arising from the above-described unfair practices, negligence and misrepresentations, including the following:

- (a) pain and suffering, loss of enjoyment of life, physical and emotional losses, mental anguish and disruption and upheaval associated with the denial of the 3-Year Post-Graduation Work Permit;
- (b) the cost of tuition, course and exam fees, books, travel, accommodation, living expenses, visa fees, legal fees and immigration consultant fees;
- (c) loss of past and future income;

- (d) delayed entry to the workplace;
- (e) loss of competitive advantage;
- (f) loss of past and future healthcare benefits and related costs associated with the denial of the 3-Year Post-Graduation Work Permit;
- (g) costs, including legal fees, incurred to adjust, extend or renew visas for residency, study and work in Canada or elsewhere;
- (h) costs associated with carrying the debt associated with the losses and costs set out above; and,
- (i) inability to work in Canada for 3 years to complete their education, establish their credentials in the workplace, receive training and skills that would benefit them and provide economic advantage throughout their working lifetimes.

The damages set out above are claimed on an aggregate basis if and where deemed appropriate by this Honourable Court.

48. The Plaintiffs seek an award of punitive, aggravated and/or exemplary damages based on the Defendant's promotion of the GAS Program to international students who were presented with false, inaccurate and misleading information, which the Defendant failed to correct. The Defendant was not authorised to provide immigration advice to Class Members pursuant to the *Immigration and Refugee Act*, S.C. 2001, c.27. The Defendant used this false, inaccurate and misleading information to induce students to enrol in the GAS Program to maximize its own revenues and/or profits through charging greater tuition to foreign students for a program it failed to properly design and implement to the detriment of the Class. This conduct was high-handed and callous and is deserving of an award of punitive, aggravated and/or exemplary damages.

49. The Plaintiffs rely upon the *Consumer Protection Act*, 2002, S.O., c.30, Sch. A, as amended, the *Class Proceedings Act*, 1992, S.O., c.6, as amended and the *Immigration and Refugee Act*, S.C. 2001, c.27, as amended.

The Plaintiffs propose that this action be tried at the City of Toronto, in the Province of Ontario.

DATE OF ISSUE: The 13th day of August, 2015.

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

ALAN A. FARRER
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Lawyers for the Plaintiffs

Court File No. CV-15-534310-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

AMENDED STATEMENT OF CLAIM

THOMSON, ROGERS
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Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

DARCY R. MERKUR (LSO No. 42899S)
STEPHEN BIRMAN (LSO No. 55164F)
Tel.: 416-868-3100
Fax.: 416-868-3134

Lawyers for the Plaintiffs

(901553 SB/lgj)

SCHEDULE "C"

PRIMARY CLASS COMPENSATION REQUEST FORM **Niagara College Class Action**

To apply for Primary Class compensation you must complete and submit this form along with the required supporting documentation listed to the address below by **April 6, 2020**. Prior to completing this Form, please ensure you have carefully read the Notice of Settlement.

PERSONAL INFORMATION

1. Name: _____
2. Date of birth: _____
3. Current address: _____
4. Email address: _____
5. Contact phone number: _____
6. Approximate graduation date from Niagara College: _____

REQUIRED DOCUMENTS

1. Proof of Graduation from Niagara College GAS Program - official document(s) confirming your name and date of graduation from the General Arts and Sciences Program.
2. Post-Graduation Work Permit Refusal/Denial Letter - official document(s) confirming that your application for a 3-year PGWP was denied/refused by Citizenship and Immigration Canada or Immigration, Refugees and Citizenship Canada due to distance learning.
3. Post-Graduation Work Permit Application under Operational Bulletin 631 - official document(s) confirming you received a PGWP from Citizenship and Immigration Canada or Immigration, Refugees and Citizenship Canada under Operational Bulletin 631.

Please submit your completed Primary Class Compensation Request Form and supporting documents by email to Lucy Jackson at ljackson@thomsonrogers.com

If you are unable to provide the required documents set out in 2 and 3 above, please sign and return the **Primary Class Authorization Form** below along with your completed Primary Class Compensation Request Form.

Questions for counsel from Class Members should be directed by email, fax or telephone to:

Lucy Jackson
Thomson, Rogers
390 Bay Street, Suite 3100
Toronto, Ontario, M5H 1W2
Toll free: 1-888-223-0448, Fax: 416-868-3134
ljackson@thomsonrogers.com

**Primary Class Authorization Form
(Niagara College Class Action)**

Only send and return this form along with your completed Primary Class Compensation Request Form if you are unable to provide the requested documentation from CIC or IRCC regarding your Post-Graduation Work Permit, you may authorize us to request that information on your behalf by filling in your full name and signing the authorization below:

I hereby authorize and direct the Attorney General of Canada (Immigration, Refugees, Citizenship Canada) to make available to Class Counsel, Thomson Rogers, Suite 3100, 390 Bay Street, Toronto, Ontario, M5H 1W2, confirmation and/or information that I was denied a 3-year Post-Graduation Work Permit due to distance learning and I subsequently reapplied for and obtained a 3-year Work Permit pursuant to Operational Bulletin 631.

SIGNATURE

(Please Print Full Name)

DATE

Additional Information Required:

Date of Birth: _____

Sex (please circle one): Male or Female

UCI Number: _____

Work Permit Application Number: _____

SCHEDULE "D"

SECONDARY CLASS COMPENSATION REQUEST FORM **Niagara College Class Action**

To apply for Secondary Class compensation you must complete and submit this form along with the required supporting documentation listed to the address below by **April 6, 2020**. Prior to completing this Form, please ensure you have carefully read the Notice of Settlement.

PERSONAL INFORMATION

1. Name: _____
2. Date of birth: _____
3. Current address: _____
4. Email address: _____
5. Contact phone number: _____
6. Approximate graduation date from Niagara College: _____

REQUIRED DOCUMENTS

1. Proof of Graduation from Niagara College GAS Program - official document(s) confirming your name and date of graduation from the General Arts and Sciences Program.
2. Post-Graduation Work Permit Refusal/Denial Letter - official document(s) confirming that your application for a 3-year PGWP was denied/refused by Citizenship and Immigration Canada or Immigration, Refugees and Citizenship Canada due to distance learning.

Please submit your completed Secondary Class Compensation Request Form and supporting documents by email to Lucy Jackson at ljackson@thomsonrogers.com

If you are unable to provide the required documents set out in 2 above, please sign and return the **Secondary Class Authorization Form** below along with your completed Secondary Class Compensation Request Form.

Questions for counsel from Class Members should be directed by email, fax or telephone to:

Lucy Jackson
Thomson, Rogers
390 Bay Street, Suite 3100
Toronto, Ontario, M5H 1W2
Toll free: 1-888-223-0448, Fax: 416-868-3134
ljackson@thomsonrogers.com

**Secondary Class Authorization Form
(Niagara College Class Action)**

Only send and return this form along with your completed Secondary Class Compensation Request Form if you are unable to provide the requested documentation from CIC or IRCC regarding your Post-Graduation Work Permit, you may authorize us to request that information on your behalf by filling in your full name and signing the authorization below:

I hereby authorize and direct the Attorney General of Canada (Immigration, Refugees, Citizenship Canada) to make available to Class Counsel, Thomson Rogers, Suite 3100, 390 Bay Street, Toronto, Ontario, M5H 1W2, confirmation and/or information that I was denied a 3-year Post-Graduation Work Permit due to distance learning.

SIGNATURE

(Please Print Full Name)

DATE

Additional Information Required:

Date of Birth: _____

Sex (please circle one): Male or Female

UCI Number: _____

Work Permit Application Number: _____

THOMSON ROGERS

LAWYERS

Lucy G. Jackson
416-868-3154
ljackson@thomsonrogers.com

SENT VIA EMAIL

January 20, 2020

Ms. Brenda Weiss
Director
Epiq Class Action Services Canada Inc.
610 - 180 King Street South
Waterloo, Ontario
N2J 1P8

Dear Ms. Weiss:

Goyal et al v Niagara College
Our File No. 901553

LETTER OF ENGAGEMENT

This is a formal Letter of Engagement on behalf of the Plaintiffs (in a class action in Court File No. CV-15-534310-00CP) (the "Niagara College Class Action").

The Plaintiffs have retained Epiq Class Action Services Canada Inc. ("Epiq") to assist in distributing the settlement funds to the Class Members in accordance with the Memorandum of Settlement, subject to Court approval. Epiq will also address any appeals submitted by Class Members with respect to their claim. In particular:

1. Epiq will receive the Settlement Payment in the amount of \$3,000,000 in trust and will invest it in an interest bearing account for the benefit of the Plaintiffs and the Class Members.
2. Epiq will distribute payment of the settlement funds to all Class Members in accordance with the court approved Settlement Administration Guideline and Plaintiffs' counsel's compensation calculation of each Class Member's claim.
3. Plaintiff's counsel will provide their claim evaluations to Epiq, along with the contact information for all compensable Class Members for the purpose of distributing payment of the settlement to all Class Members.
4. Epiq will address requests by Class Members for their Claim File, in accordance with the court approved Appeal Process Framework and will notify Class Members of the administrative costs of accessing their Claim File.

5. Epiq will address appeals by Class Members, in accordance with the court approved Appeal Process Framework, of Plaintiffs' counsel's compensation calculation of the Class Member's claim.
6. It is the Parties' intention that the court approved Appeal Process Framework will presume that Plaintiffs' counsel's compensation calculation of each Class Member's claim is accurate (i.e. burden is on the Class Member to prove otherwise). It is possible that the appeal process will have modest cost penalties to be off-set against compensation, where available, for unsuccessful appeals.
7. Plaintiffs' counsel will provide Epiq with the Claim File of any Class Member filing for an appeal of their claim. Epiq shall review the information contained within the Class Member's Claim File when determining if Plaintiffs' counsel's claim evaluation and compensation calculation is reasonable.
8. Epiq will not conduct any review of claims unless specifically requested by the Claimant after receipt of an Appeal Request Form. Thomson, Rogers will not be responsible for any fees associated with claim review unless the review is specifically requested in writing by the Claimant.
9. Epiq will not distribute or disburse the payment of the settlement funds to any person or other entity until all Parties have fully executed the Memorandum of Settlement and all conditions of completion have been satisfied.
10. Epiq will pay Plaintiffs' counsel any amount approved by the Court for legal fees.
11. Epiq will be paid court approved administration costs out of the court approved legal fees and disbursements, which are not to exceed the enclosed Summary Estimate of \$20,439, without prior consent from Plaintiff's counsel.
12. A copy of this letter of engagement will be attached to the Certification Order with respect to the Niagara College Class Action.

Yours very truly,



Lucy G. Jackson
LGJ/lgj
Attachment



Niagara College Class Action Appeal Administration

Project Requirements and Estimated Volumes

Total Estimated Class Size	200
English Only Toll-Free Phone with IVR	No
English Only Email Contact Centre	Yes
Informational Website	No
Claim Response Percentage	100%
Estimated Claims Received	200
Estimated Appeals Received	3
Case Duration (Months)	6
Mailing Packet Content	N/A * To be executed by Class Counsel
Mailing Packet Format	N/A * To be executed by Class Counsel

Summary Estimate

Project Management	\$	2,500
Database and Reporting	\$	4,000
English Only Email Contact Centre	\$	572
Appeal Processing and Claimant Support	\$	4,301
Distribution and Fund Management	\$	2,189
Postage and Expenses	\$	6,878
Total Estimate	\$	<u>20,439</u>



Detailed Estimate

Niagara College Class Action Appeal Administration

Activity	Unit	CAD Rate	Volume	Amount
Project Management				
Project Manager	Per Hour	\$ 170	6	\$ 1,020
Data Analyst and Reporting	Per Hour	\$ 185	8	\$ 1,480
				\$ 2,500
Database and Reporting				
Dashboard Setup	Fixed Fee	\$ 2,500	1	\$ 2,500
Dashboard Monthly Support and Storage	Per Month	\$ 250	6	\$ 1,500
				\$ 4,000



Niagara College Class Action Appeal Administration

English Only Email Contact Centre

Activation Fee for Dedicated Email Address & Inbox for Appellants	Fixed Fee	\$	250	1	\$	250
Dedicated Monthly Email Infrastructure & Retention Fee	Per Month	\$	30	6	\$	180
Outgoing Email Claimant Response	Per Hour	\$	118	15	\$	142
					\$	572

Appeal Processing and Claimant Support

Intake, Data Entry & Clerical - Assuming 3% of class appeal	Per Hour	\$	75	6	\$	450
Scanning and Image Storage - assuming 10 pages/appeal	Per Image	\$	0.20	30	\$	6
Appeal Review	Per Hour	\$	130	11	\$	1,365
Quality Assurance	Per Hour	\$	160	6	\$	960
Appeal Decision Preparation	Per Decision	\$	160	3	\$	480
Miscellaneous Correspondence Review and Response	Per Hour	\$	130	8	\$	1,040
					\$	4,301

Distribution and Fund Management

Programming Distribution Calculation	Per Hour	\$	185	2	\$	370
Cheque Run Coordination (w/1 Reissue Runs)	Per Hour	\$	125	2	\$	250
Account Management and Reconciliation	Per Hour	\$	125	2	\$	250
Print 1-image Cheque with Stub (200 class members, 11 subrogation claims)	Per Cheque	\$	6.25	211	\$	1,319
Cheque Re-issuances	Per Cheque	\$	12.50	-	Upon Request	
					\$	2,189

Total Estimated Administration Fee \$ 13,561



Niagara College Class Action Appeal Administration

Postage and Expenses

Post Office Box	Per 6 Months	\$	1	\$	900
Postage* -30 grams or less	Per Piece	\$	0.92	211	\$ 194
Box Storage	Per Box	\$	3.50	1	\$ 3.50
Thrd Party Translation Services	Per Word	\$	0.32	-	As Used
Photocopies	Per Image	\$	0.20	-	As Used
Bank Fees - Account Set Up and Monthly Fees	Per Month	\$	330	6	\$ 1,980
Settlement Fund Income Tax Filing	Per Year	\$	3,800	1	\$ 3,800
*Discounted rates as applicable					\$ 6,878

Total Estimated Costs \$ 6,878

Estimate does not include sales tax where applicable.

Total Estimate \$ 20,439

Standard Rates

Clerical and Data Entry	\$	75	
Contact Center (Dedicated)	\$	75	
Contact Center (Shared Per Minute)	\$	1.39	
Claims Analyst	\$	118	
Claims Specialist and Account Reconciliation/Check Run	\$	125	
Call Center Supervisor and Training	\$	130	
Project Coordinator	\$	150	
Technical Project Manager	\$	165	
Data Analyst and Reporting	\$	185	
Project Manager	\$	170	
Sr. Project Manager	\$	198	
Software Engineer	\$	251	
Project Director	\$	297	
Client Services Managers	\$	363	
Executive Management and Testimony	\$	495	
Photocopy or Image	\$	0.20	
Box Storage (Per Box/Per Month)	\$	4.62	Discounted
Long Distance, Per Minute	As Used	As Used	

Estimate Valid Until: 4/16/2020

SCHEDULE "F"

SETTLEMENT ADMINISTRATION GUIDELINE (Niagara College Class Action)

1) The Settlement Framework:

- a) Primary Class Members, as defined in the Court Approved Order, will be entitled to the following compensation (subject to pro rata adjustments, if necessary and as appropriate):
 - i) \$20,000 per claimant (before any Court approved legal fees) to address all potential damages claims and heads of damages.
- b) Secondary Class Members, as defined in the Court Approved Order, will be entitled to the following compensation at a fixed amount:
 - i) \$7,500 per claimant (before any Court approved legal fees) to address all potential damages claims and heads of damages.
- c) Primary and Secondary Class Members must provide documentation to confirm their eligibility under the Memorandum of Settlement to the satisfaction of Class Counsel. Such supporting documentation must include, but is not limited to:
 - i) Official confirmation of graduation date from the General Arts and Sciences Program at Niagara College of Applied Arts and Technology;
 - ii) Official confirmation of denial/refusal of 3-year Post-Graduation Work Permit because the majority of the courses completed were distance learning courses; and,
 - iii) Official confirmation of approval/granting of a 3-year Post-Graduation Work Permit under public policy Operational Bulletin 631.

2) Process for Claimants following Court Approval:

- a) Class Counsel will send the Notice of Settlement to each Class Member in accordance with the Notice Plan, as well as a Claimant Explanation Letter;
- b) The Notice of Settlement will:
 - i) Advise that the Memorandum of Settlement has been approved by the Court;
 - ii) Provide information about the settlement and process for making claims under this Settlement Administration Guideline;

- iii) Advise Class Members of their right to opt out of the Class Action on or before **April 6, 2020** by submitting a completed Opt Out Form to Class Counsel. Opt Out Form must be received by Class Counsel on April 6, 2020;
 - iv) Advise Class Members of the possibility of the Memorandum of Settlement being voided if too many Class Members elect to opt out; and,
 - v) Advise Class Members of their right to commence an Appeal to the Administrator of their entitlement or evaluation by Class Counsel in accordance with this Guideline and the Appeal Process Framework;
- c) Process for Claimants:
- i) Claimants must submit their Primary Class Compensation Request Form & supporting documentation or Secondary Class Compensation Request Form & supporting documentation to Class Counsel by **April 6, 2020**;
 - ii) Upon receipt of the completed Compensation Request Form, Class Counsel will:
 - 1. Review the completed Compensation Request Form and supporting documents;
 - 2. Evaluate whether and to what extent compensation would be payable to the Claimant under the settlement; and,
 - 3. Provide the Claimant with a Claimant Explanation Letter, which will explain the Claimant's entitlement.
- d) Following the April 6, 2020 deadline, Class Counsel will send every known Class Member a Claimant Explanation Letter by no later than April 27, 2020, which will:
- i) Advise the Class Member of Class Counsel's evaluation of their entitlement, along with a conservative estimate of their compensation, if any, under the settlement as calculated in accordance with this Guideline; and,
 - ii) Advise the Class Member of the right to request the Class Member's Claim File (their completed Compensation Request Form and all supporting documents in relation to their file) by:

1. Completing a Claim File Request Form;
 2. Submitting the Claim File Request Form to the Administrator by **June 8, 2020**; and,
 3. Paying a reasonable photocopying fee or electronic access fee to the Administrator.
- iii) Advise the Class Member that they may commence an Appeal to the Administrator by:
1. Completing an Appeal Form;
 2. Submitting the Appeal Form to the Administrator by **May 27, 2020**; and,
 3. Acknowledging that an unsuccessful appeal will result in the cost penalty of \$250 to be automatically deducted from the Claimant's entitlement or otherwise payable by the Claimant.
- iv) Explain how the Appeals would be resolved by the Administrator, and specifically that the Administrator would:
1. Review the Appeal Form;
 2. Receive and review the Class Member's entire Claim File provided by Class Counsel;
 3. Notify the Appellant of his or her right to access their Claim File electronically, or in print form, by June 8, 2020 and the administrative cost of doing so (any administrative fee charged will be refunded to any Class Member who is successful in whole or in part on any Appeal);
 4. Offer the Appellant an opportunity to participate in a telephone call with the Administrator about the basis for their Appeal on or before June 24, 2020;
 5. Offer the Appellant an opportunity to submit further written submissions in relation to their appeal on or before June 24, 2020;

6. Consider the merits of the appeal;
7. Evaluate whether the Appellant has met the burden of establishing that Class Counsel made material errors in the evaluation of their entitlement, pursuant to the terms of the Memorandum of Settlement and this Guideline;
8. Make a final determination of the Appellant's entitlement; and,
9. Report by letter to the Appellant within 7 days of receiving written submissions or completion of the telephone interview the outcome of the Appeal and any cost penalty impacts for an unsuccessful appeal.

2) The Administrator's Role

a) The Administrator shall:

- i) Receive Class Counsel's matrix outlining Class Counsel's calculation of entitlement for all Claimants under the Settlement, including contact information for all Claimants;
- ii) Receive Appeal Forms and Claim File Request Forms;
- iii) Advise Class Counsel of all Appeal Forms and Claim File Request Forms received by the Administrator;
- iv) Receive Class Members' Claim Files from Class Counsel;

v) Administer Appeals, by:

1. Reviewing the Appeal Form and any documents and information provided;
2. Allowing Appellants an opportunity to make written submissions or verbal submissions by telephone in relation to their appeal, with a general one hour time limit that may be extended in the Administrator's sole discretion;
3. Review the Appellant's Claim File and consider the merits of the appeal;

4. Evaluate whether Class Counsel has made a material error in relation to the evaluation of the claim;
 5. Report the outcome of the appeal to the Appellant and Class Counsel within 7 days of the telephone call or receipt of written submissions; and,
 6. Deduct a cost penalty from an unsuccessful Appellant's compensation (and send accounts to those not entitled to compensation).
- vi) Distribute the settlement funds to Class Members and Class Counsel as ordered by the Court.

NOTE: All of the estimates contained in this Guideline are estimates made by Class Counsel and they have not been made by Niagara College of Applied Arts and Technology or any Releasee. Neither Niagara College of Applied Arts and Technology nor any Releasee accepts any responsibility whatsoever for the accuracy of Class Counsel's estimates.

SCHEDULE "G"

APPEAL PROCESS FRAMEWORK (Niagara College Class Action)

1. Epiq Class Action Services Canada Inc. ("Epiq") has been appointed the Administrator of this Class Action.
2. Class Counsel will provide the Administrator with the matrix outlining Class Counsel's calculation of entitlement for all Claimants under the Settlement, including contact information for all Claimants.
3. Any time after April 27, 2020 and up until June 8, 2020, Claimants will have the opportunity to request their Claim File by completing and submitting a Claim File Request Form to the Administrator. A copy of the Claim File Request Form is attached hereto **Appendix "A"**.
4. Claimants may Appeal the decision of Class Counsel regarding their entitlement to compensation, if any, by completing an Appeal Form and submitting it to the Administrator by a method listed on the Appeal Form. The appeal can be in relation to either eligibility or quantum or both. A copy of the Appeal Form is attached hereto as **Appendix "B"**.
5. The Appeal Form must be received by Epiq **on or before May 27, 2020**. Any Appeal Form received after that date will not be considered for review.
6. Upon receipt of an Appeal Form and/or a Claim File Request Form, the Administrator will notify Class Counsel and Class Counsel will forthwith provide the Administrator with the Appellant's Claim File.
7. Upon receipt of the Appeal Form, the Administrator will again notify the Appellant of his or her right to access their Claim File electronically or in print form by submitting a Claim File Request Form by June 8, 2020 and the administrative

cost of doing so. Any administrative fee charged will be refunded to any Class Member who is successful in whole or in part on any Appeal.

8. The Appellant will be provided with their Claim File no later than 10 days after submitting their Claim File Request Form to the Administrator.
9. The Appellant will have until June 24, 2020 to submit further submissions (including documentation) in relation to their appeal or request an opportunity to speak with the Administrator rather than make submissions in writing.
10. Upon receipt of any submissions or upon completion of any telephone interviews by the Administrator, the Administrator will make a final and binding decision of entitlement. Such decisions will be sent to the Appellant within 7 days of the telephone interview or receipt of written submissions. All appeals from Class Counsel's initial assessment will be determined by the Administrator acting in its sole discretion in accordance with the Memorandum of Settlement and the Settlement Administration Guideline attached hereto as **Appendix "C"**.
11. The Administrator will assess whether or not Class Counsel made a material error in the evaluation of the Appellant's entitlement. Only if the appellant is able to establish a material error was made, will the Administrator determine if the Appellant's compensation, if any, is increased or decreased as a result.
12. The decision of the Administrator in relation to any appeals (both in terms of compensation and entitlement) are final and binding and cannot be challenged.
13. If a Claimant is unsuccessful in his or her appeal (that is, Epiq does not change Class Counsel's assessment of the claim), \$250 will be deducted from the Claimant's compensation. In the event that no compensation is awarded, the Claimant will be required to pay \$250 upon receipt of the appeal decision.

APPEAL FORM
(Niagara College Class Action)

Please send completed forms along with proof to:
Niagara College Claims Administrator
c/o Epiq Class Action Services Canada Inc., by either:
Fax #1-888-842-1332
Email: _____@epiqglobal.com
Courier: 610-180 King St S, Waterloo, ON, N2J 1P8
Mail: Suite 3-605, 133 Weber St N, Waterloo, ON, N2J 3G9

APPENDIX "B"

Claim File Request Form
(Niagara College Class Action)

Epiq File No.: (insert No. from letter)	
TR No. (last three digits 901553-***)	
Your Name:	

I hereby request a copy of my complete Claim File *(please circle the preferred delivery method below):*

Option 1: Paper copy mailed to:

OR

Option 2: Electronic copy emailed to: _____

**THIS CLAIM FILE REQUEST FORM MUST BE RECEIVED BY THE
ADMINISTRATOR BY JUNE 8, 2020**

To obtain this information, I agree to pay a reasonable fee for reproduction and postage (if applicable) to Epiq Class Action Services Canada Inc.

Signature of Claimant

Date

Please send completed form to:
Niagara College Claims Administrator
c/o Epiq Class Action Services Canada, by either:
Fax #1-888-
Email: _____@epiqglobal.com
Courier: 610-180 King St S, Waterloo, ON, N2J 1P8
Mail: Suite 3-505, 133 Weber St N, Waterloo, ON, N2J 3G9

APPENDIX "C"

SETTLEMENT ADMINISTRATION GUIDELINE (Niagara College Class Action)

1) The Settlement Framework:

- a) Primary Class Members, as defined in the Court Approved Order, will be entitled to the following compensation (subject to pro rata adjustments, if necessary and as appropriate):
 - i) \$20,000 per claimant (before any Court approved legal fees) to address all potential damages claims and heads of damages.
- b) Secondary Class Members, as defined in the Court Approved Order, will be entitled to the following compensation at a fixed amount:
 - i) \$7,500 per claimant (before any Court approved legal fees) to address all potential damages claims and heads of damages.
- c) Primary and Secondary Class Members must provide documentation to confirm their eligibility under the Memorandum of Settlement to the satisfaction of Class Counsel. Such supporting documentation must include, but is not limited to:
 - i) Official confirmation of graduation date from the General Arts and Sciences Program at Niagara College of Applied Arts and Technology;
 - ii) Official confirmation of denial/refusal of 3-year Post-Graduation Work Permit because the majority of the courses completed were distance learning courses; and,
 - iii) Official confirmation of approval/granting of a 3-year Post-Graduation Work Permit under public policy Operational Bulletin 631.

2) Process for Claimants following Court Approval:

- a) Class Counsel will send the Notice of Settlement to each Class Member in accordance with the Notice Plan, as well as a Claimant Explanation Letter;
- b) The Notice of Settlement will:
 - i) Advise that the Memorandum of Settlement has been approved by the Court;
 - ii) Provide information about the settlement and process for making claims under this Settlement Administration Guideline;

- iii) Advise Class Members of their right to opt out of the Class Action on or before **April 6, 2020** by submitting a completed Opt Out Form to Class Counsel. Opt Out Form must be received by Class Counsel on April 6, 2020;
 - iv) Advise Class Members of the possibility of the Memorandum of Settlement being voided if too many Class Members elect to opt out; and,
 - v) Advise Class Members of their right to commence an Appeal to the Administrator of their entitlement or evaluation by Class Counsel in accordance with this Guideline and the Appeal Process Framework;
- c) Process for Claimants:
- i) Claimants must submit their Primary Class Compensation Request Form & supporting documentation or Secondary Class Compensation Request Form & supporting documentation to Class Counsel by **April 6, 2020**;
 - ii) Upon receipt of the completed Compensation Request Form, Class Counsel will:
 - 1. Review the completed Compensation Request Form and supporting documents;
 - 2. Evaluate whether and to what extent compensation would be payable to the Claimant under the settlement; and,
 - 3. Provide the Claimant with a Claimant Explanation Letter, which will explain the Claimant's entitlement.
- d) Following the April 6, 2020 deadline, Class Counsel will send every known Class Member a Claimant Explanation Letter by no later than April 27, 2020, which will:
- i) Advise the Class Member of Class Counsel's evaluation of their entitlement, along with a conservative estimate of their compensation, if any, under the settlement as calculated in accordance with this Guideline; and,
 - ii) Advise the Class Member of the right to request the Class Member's Claim File (their completed Compensation Request Form and all supporting documents in relation to their file) by:

1. Completing a Claim File Request Form;
 2. Submitting the Claim File Request Form to the Administrator by **June 8, 2020**; and,
 3. Paying a reasonable photocopying fee or electronic access fee to the Administrator.
- iii) Advise the Class Member that they may commence an Appeal to the Administrator by:
1. Completing an Appeal Form;
 2. Submitting the Appeal Form to the Administrator by **May 27, 2020**; and,
 3. Acknowledging that an unsuccessful appeal will result in the cost penalty of \$250 to be automatically deducted from the Claimant's entitlement or otherwise payable by the Claimant.
- iv) Explain how the Appeals would be resolved by the Administrator, and specifically that the Administrator would:
1. Review the Appeal Form;
 2. Receive and review the Class Member's entire Claim File provided by Class Counsel;
 3. Notify the Appellant of his or her right to access their Claim File electronically, or in print form, by June 8, 2020 and the administrative cost of doing so (any administrative fee charged will be refunded to any Class Member who is successful in whole or in part on any Appeal);
 4. Offer the Appellant an opportunity to participate in a telephone call with the Administrator about the basis for their Appeal on or before June 24, 2020;
 5. Offer the Appellant an opportunity to submit further written submissions in relation to their appeal on or before June 24, 2020;

6. Consider the merits of the appeal;
7. Evaluate whether the Appellant has met the burden of establishing that Class Counsel made material errors in the evaluation of their entitlement, pursuant to the terms of the Memorandum of Settlement and this Guideline;
8. Make a final determination of the Appellant's entitlement; and,
9. Report by letter to the Appellant within 7 days of receiving written submissions or completion of the telephone interview the outcome of the Appeal and any cost penalty impacts for an unsuccessful appeal.

2) The Administrator's Role

a) The Administrator shall:

- i) Receive Class Counsel's matrix outlining Class Counsel's calculation of entitlement for all Claimants under the Settlement, including contact information for all Claimants;
- ii) Receive Appeal Forms and Claim File Request Forms;
- iii) Advise Class Counsel of all Appeal Forms and Claim File Request Forms received by the Administrator;
- iv) Receive Class Members' Claim Files from Class Counsel;
- v) Administer Appeals, by:

1. Reviewing the Appeal Form and any documents and information provided;
2. Allowing Appellants an opportunity to make written submissions or verbal submissions by telephone in relation to their appeal, with a general one hour time limit that may be extended in the Administrator's sole discretion;
3. Review the Appellant's Claim File and consider the merits of the appeal;

4. Evaluate whether Class Counsel has made a material error in relation to the evaluation of the claim;
 5. Report the outcome of the appeal to the Appellant and Class Counsel within 7 days of the telephone call or receipt of written submissions; and,
 6. Deduct a cost penalty from an unsuccessful Appellant's compensation (and send accounts to those not entitled to compensation).
- vi) Distribute the settlement funds to Class Members and Class Counsel as ordered by the Court.

NOTE: All of the estimates contained in this Guideline are estimates made by Class Counsel and they have not been made by Niagara College of Applied Arts and Technology or any Releasee. Neither Niagara College of Applied Arts and Technology nor any Releasee accepts any responsibility whatsoever for the accuracy of Class Counsel's estimates.

SCHEDULE "H"

NOTICE OF SETTLEMENT NIAGARA COLLEGE CLASS ACTION

This Court Approved Notice is directed to all Class Members as described below. This Notice may affect your rights. Please Read Carefully.

THE CLASS ACTION

You are receiving this Notice because you have been identified as an international student who graduated from the General Arts and Sciences ("GAS") Program at Niagara College of Applied Arts and Technology (the "Defendant") between September 1, 2013 and August 31, 2016 and you were initially denied a 3 year Post-Graduation Work Permit ("PGWP") due to distance learning (the "Class" or "Class Members").

The Ontario Superior Court of Justice has ordered that persons who have been identified as Class Members be sent this Notice for the purpose of providing information about this class proceeding and your legal rights.

Please refer to the Notice of Certification & Settlement Approval previously sent to you and attached hereto as **Appendix "A"**.

THE CERTIFICATION ORDER

The Ontario Superior Court has certified the action titled *Anish Goyal and Chintan Zankat v Niagara College of Applied Arts and Technology*, Court file no. CV-15-534310-00CP, as a class proceeding and appointed Anish Goyal and Chintan Zankat as the representative plaintiffs of the Class defined as follows:

- A 'Primary Class' being: "All international students who graduated from the GAS Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 and who were initially denied a 3 year Post-Graduation Work Permit ("PGWP") due to distance learning and subsequently reapplied for, and obtained, a PGWP under Operational Bulletin 631; and,
- A 'Secondary Class' being: "All international students who graduated from the GAS Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 and who were initially denied a 3 year Post-Graduation Work Permit ("PGWP") due to distance learning and who did not subsequently receive a PGWP under Operational Bulletin 631.

If you are a Class Member, you will **automatically be included in this class proceeding** and are not required to take any further steps at this time **unless you do not want to participate** in the class proceeding (see "Opting Out" below).

NATURE OF THE SETTLEMENT

The Ontario Superior Court has now approved the Memorandum of Settlement reached by the parties. If you are a Class Member, as defined above, you are eligible to apply for compensation under the settlement.

All Primary Class Members seeking compensation must submit a completed Primary Class Compensation Request Form and the supporting documentation requested to Thomson, Rogers on or before **April 6, 2020**. The Primary Class Compensation Request Form can be obtained online at: <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

All Secondary Class Members seeking compensation must submit a completed Secondary Class Compensation Request Form and the supporting documentation requested to Thomson, Rogers on or before **April 6, 2020**. The Secondary Class Compensation Request Form can be obtained online at: <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

If you do not submit your Primary or Secondary Class Compensation Request Form by April 6, 2020, you will *not* receive any compensation.

There is no guarantee that submitting a claim will result in compensation to you. In order to be eligible, you must provide the supporting documentation requested and listed on the Compensation Request Form. You will receive a Claimant Explanation Letter from Class Counsel between April 6, 2020 and April 27, 2020 setting out your entitlement, if any. If you disagree with Class Counsel's assessment of your entitlement, you will have the opportunity to appeal (see "Appeal Process" below).

APPEAL PROCESS

If you are a Class Member and you disagree with Class Counsel's assessment of your entitlement, in relation to quantum or eligibility or both, you may request a binding review of Class Counsel's assessment by the Administrator.

Epiq Class Action Services Canada Inc. ("Epiq") has been appointed as the Administrator.

If you wish to file for a review of your claim, you must submit an "Appeal Form" to Epiq **on or before May 27, 2020**. The Appeal Form can be accessed at <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

If you wish to request your Claim File, you must submit a "Claim File Request Form" to Epiq **on or before June 8, 2020**. The Claim File Request Form can be accessed at <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

To succeed on an appeal, you must establish that Class Counsel made material errors in the evaluation of your entitlement, pursuant to the terms of the Memorandum of Settlement, the Settlement Administration Guideline and the Appeal Process Framework which will be available only at <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>. If you are able to establish a material error was made, Epiq will then review Class Counsel's analysis of your claim and determine whether your compensation, if any, is increased or decreased as a result.

If your appeal is unsuccessful (that is, Epiq does not change your compensation amount), \$250 will be deducted from your compensation. In the event that no compensation is awarded, you will be required to pay \$250 upon receipt of the Appeal decision.

OPTING OUT OF THE CLASS ACTION

Class Members who wish to participate in the Class Action are automatically included in the Class Action.

Any Class Member who wishes to opt out of the Class Action must do so **on or before April 6, 2020** by sending a signed "Opt Out Form" to Class Counsel at the address below. The Opt Out Form can be found at: <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>. It should be noted that if too many Class Members opt out, then the Defendant has the right to terminate the settlement. In those circumstances, you will be notified by Class Counsel.

No Class Members will be permitted to opt out of the Class Action after April 6, 2020.

No person may opt out on behalf of a minor or mentally incapable person without permission of the court after notice to The Children's Lawyer or to the Public Guardian and Trustee, as appropriate.

LEGAL FEES AND DISBURSEMENTS

The Court has approved legal fees in the amount of \$950,750, inclusive of all disbursements and applicable taxes. Class Counsel has entered into an agreement with the Representative Plaintiffs with respect to legal fees and disbursements. Counsel was retained on a contingent basis. Class Counsel was responsible for funding all disbursements incurred in pursuing this litigation. Pursuant to the settlement, the Defendants have agreed to pay a total of roughly \$250,000 towards Class Counsel's legal fees, disbursements, administrative costs and applicable taxes.

Class Members will **not** be personally liable to pay counsel any legal fees or disbursements.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should NOT be directed to the Court because their administrative structures are not designed to address this type of inquiry. The Notice Order and other information may be obtained online at: <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

Questions for counsel from Class Members should be directed by email, fax or telephone to:

Lucy Jackson
Thomson, Rogers
390 Bay Street, Suite 3100
Toronto, Ontario, M5H 1W2
Toll free: 1-888-223-0448, Fax: 416-868-3134
ljackson@thomsonrogers.com

INTERPRETATION

This notice is a summary of terms of the Certification & Settlement Approval Order. If there is any conflict between the provisions of this notice and the terms of the Certification & Settlement Approval Order, the Certification & Settlement Approval Order shall prevail. The Certification & Settlement Approval Order may be viewed at the website: <https://www.thomsonrogers.com/practice-areas/class-action/niagara-college/>.

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

APPENDIX "A"

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL MOTION REGARDING THE NIAGARA COLLEGE CLASS ACTION

This Court Approved Notice is directed to all potential Class Members as described below. This Notice may affect your rights. Please read it carefully.

THE CLASS ACTION

You are receiving this Notice because you have been identified as an international student who graduated from the GAS Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 and were denied a 3 year post-graduation work permit due to distance learning (the "Class" or "Class Members").

The Ontario Superior Court of Justice has ordered that all Class Members be sent this Notice for the purpose of providing information about this class proceeding and your legal rights.

THE CONSENT CERTIFICATION & SETTLEMENT MOTION

Thomson, Rogers ("Class Counsel") and counsel for the Defendants have reached a settlement agreement in relation to this class proceeding, subject to Court approval. Details of the next steps and the settlement agreement are set out below. The Consent Certification and Settlement Motion is scheduled to be heard on **February 6, 2020 at 10:00 a.m.** at Osgoode Hall, 130 Queen Street West, Toronto, Ontario (Courtroom 5 or 6).

The Defendants have consented to a motion, subject to Court approval, certifying the action titled *Goyal and Zankat v Niagara College of Applied Arts and Technology*, Court file No. CV-15-534310-CP, as a class proceeding and appointing Anish Goyal and Chintan Zankat as the representative plaintiffs.

The certification of this class proceeding proposes two classes defined as follows:

- A 'Primary Class' being: "All international students who graduated from the GAS Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 who were initially denied a 3 year post-graduation work permit ("PGWP") due to distance learning and subsequently reapplied for, and obtained, a PGWP under Operational Bulletin 631"; and,
- A 'Secondary Class' being: "All international students who graduated from the GAS Program at Niagara College of Applied Arts and Technology between September 1, 2013 and August 31, 2016 who were initially denied a 3 year

PGWP due to distance learning and who did not subsequently receive a PGWP under Operational Bulletin 631.

(the Primary Class and Secondary Class are hereinafter collectively referred to as the "Class" or "Class Members").

If the Court certifies the within action as a class proceeding at the motion to be held on February 6, 2020, the Court will proceed to consider the settlement agreement that was reached on consent by the parties. Details of the nature of the settlement are outlined below.

NATURE OF THE SETTLEMENT

A settlement has now been reached by the parties following negotiations, subject to approval by the Court. If you are a Class Member, as defined above, you are eligible to apply for compensation under the settlement.

The settlement will be considered by the Court at a motion on February 6, 2020 (the "Approval Motion"). The proposed settlement will provide compensation to Class Members with valid claims.

The settlement agreement proposes the following compensation for Class Members:

- Primary Class Members will be entitled to receive an estimated amount of \$20,000 (before any Court approved legal fees); and,
- Secondary Class Members will be entitled to receive an estimated amount of \$7,500 (before any Court approved legal fees).

In order to be considered for compensation under the settlement agreement, once approved, Class Members will have to provide confirmation, to the satisfaction of Class Counsel, of the following:

1. Date of graduation from Niagara College;
2. PGWP denial letter setting out the reason for denial; and,
3. Confirmation that a PGWP was obtained under Operational Bulletin 631, if applicable.

If you are a Class Member, you will automatically be included in this class proceeding and are not required to take any further steps at this time. A further "Notice of Settlement" will be sent to you once the settlement is approved and only thereafter must you provide the required information to apply for compensation within a deadline that will be set by the Court.

Those wishing to maintain their right to sue the Defendants and thus NOT participate in this class action must OPT OUT (see "Opting Out" below).

OPTION TO OBJECT TO THIS SETTLEMENT

Class Members have the right to object to the proposed settlement agreement at the Approval Motion. Please also note that if the proposed settlement agreement is approved by the Court at the Approval Motion, Class Members who do not want to participate in the Class Action can still opt out (see "Opting Out" below).

If you wish to make submissions for or against the proposed settlement at the Approval Motion, please send a request in writing with a summary of your submissions to Thomson, Rogers at the address listed at the end of this Notice, by no later than January 16, 2020. Persons making submissions by the deadline will be provided with further information on how they may participate in the Approval Motion. Of course, any interested Class Member may attend the Approval Motion if they wish.

Subject to Court approval, Class Counsel will be seeking the approval of total fees of approximately \$1,000,000, inclusive of all disbursements and applicable taxes. Class Counsel was retained on a contingent basis. Class Counsel was responsible for funding all disbursements incurred in pursuing this litigation. Pursuant to the settlement, the Defendant has agreed to pay a total of roughly \$250,000 towards Class Counsel's legal fees, disbursements and applicable taxes.

Following the Approval Motion, Class Members will be provided with a "Notice of Settlement" explaining how to submit the documents required to apply for compensation under the settlement and the deadline to do so.

OPTING OUT OF THE CLASS ACTION

Class Members who wish to participate in the class action are automatically included in the class action. Any Class Member who wishes to opt out of the class action may do so on or before a date approved by the Court (likely to be March 19, 2020). Notice of the deadline to opt out will be set out in the Notice of Settlement. It should be noted that if too many people opt out of the settlement the settlement may be nullified.

No Class Members will be permitted to opt out of the class action after the opt out deadline.

No person may opt out on behalf of a minor or a mentally incapable person without permission of the court after notice to The Children's Lawyer of the Public Guardian and Trustee, as appropriate.

ADDITIONAL INFORMATION

Any questions about the matters in this notice should NOT be directed to the Court because their administrative structures are not designed to address this type of inquiry. The Notice Order and other information may be obtained online at: www.thomsonrogers.com under the headings "Class Actions" and "Niagara College".

Questions for counsel from Class Members should be directed by email, fax or telephone to:

Lucy Jackson
Thomson, Rogers
390 Bay Street, Suite 3100
Toronto, Ontario, M5H 1W2
Toll free: 1-888-223-0448, Fax: 416-868-3134
ljackson@thomsonrogers.com

SCHEDULE "I"

OPT OUT FORM
Niagara College Class Action

TO: THOMSON, ROGERS

I, _____ (insert full name), have received Notice of Settlement of the Niagara College class action.

I believe that I am a *Class Member*.

I was registered in the GAS Program at Niagara College and I graduated on _____. I was registered as an International Student. I am a resident of _____.

I do NOT wish to participate in the Niagara College class action and I hereby Opt Out of the Niagara College class action.

I understand that by opting out of this class action I will not be eligible for any benefit that may be available to the Class upon resolution of this matter.

Signed: _____ Date: _____

Insert Mailing Address:

Please send this completed form to:
Thomson, Rogers to the attn. of Lucy Jackson, by either:
Email: ljackson@thomsonrogers.com
Courier or mail: 3100-390 Bay St., Toronto, ON, M5H 1W2

Court File No. CV-15-534310-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

DARCY R. MERKUR (LSO No. 42899S)
STEPHEN BIRMAN (LSO No. 55164F)
Tel. No. 416-868-3100
Fax No. 416-868-3134

Lawyers for the Plaintiffs
(901553 SB/lgj)