

Form 27

[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1701-04755
COURT COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF N.B.
DEFENDANTS PHILIP HEEREMA, CALGARY EXHIBITION AND STAMPEDE LIMITED, and CALGARY STAMPEDE FOUNDATION



C61180

JS June 28, 2024

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*

DOCUMENT **NOTICE OF APPLICATION FOR APPROVAL OF THE SETTLEMENT AGREEMENT AND FEE APPROVAL BY THE REPRESENTATIVE PLAINTIFF, N.B.**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **JENSEN SHAWA SOLOMON DUGUID HAWKES LLP**
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NOTICE TO CALGARY EXHIBITION AND STAMPEDE LIMITED and CALGARY STAMPEDE FOUNDATION and to the CLASS MEMBERS (on the Settlement Approval Application)

AND NOTICE TO THE CLASS MEMBERS (on the Fee Approval Application)

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the Application is heard as shown below:

Date: June 28, 2024
Time: 2:00 pm

Where: Calgary Courts Centre
601 - 5 Street SW
Calgary, Alberta T2P 5P7

Before Whom: Justice Paul R. Jeffrey

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order
 - (a) Abridging the time for service and filing of the Plaintiff's materials, if necessary;
 - (b) Declaring that the Settlement Agreement reached between the Plaintiff, N.B., in his personal capacity and in his capacity as the Representative Plaintiff on behalf of the certified Class, and the Defendants, the Calgary Exhibition and Stampede Limited and Calgary Stampede Foundation (the **Stampede Defendants**), is fair, reasonable, and in the best interests of the Class Members;
 - (c) Approving the Settlement Agreement pursuant to section 35 of the *Class Proceedings Act*, SA 2003, C-16.5 ("**CPA**")
 - (d) Directing that the Settlement Agreement shall be implemented in accordance with its terms;
 - (e) Declaring that the Settlement Agreement, in its entirety, binds the Stampede Defendants, the Plaintiff, and the Class Members, including those persons or estates that may require litigation representatives, and that the requirements of Rules 2.11 and 2.19 are incorporated into the Order;
 - (f) Directing that the Distribution Plan attached at Schedule F of the Settlement Agreement is approved as fair and reasonable and that the Settlement Fund shall be distributed in accordance with the terms of the Settlement Agreement, following payment of Class Counsel fees, disbursements, honoraria and administration expenses, subject to the one following revision:
 - (i) Should the Claims Administrator determine that a Class Member falls into the most severely impacted category, as described in section 2.3(C)(1) of the Distribution Protocol, they are directed to provide a one-time advance payment of \$10,000 to that Class Member to allow the Class Member to access immediate therapy costs. The amount advanced will then be deducted from the total amount awarded to that Class Member;
 - (g) Appointing Epiq Class Actions Services Canada, Inc. as the Claims Administrator;

- (h) Directing that this Court retains an ongoing supervisory role over the implementation, administration, and enforcement of the Settlement Agreement;
- (i) Approving the Short Form and Long Form Notice to the Class Members, as attached at Exhibits “G” and “H” of the Affidavit of N.B.;
- (j) Approving the Claims Form, as attached at Exhibit “F” of the Affidavit of N.B.;
- (k) Directing that the Plaintiff and the Stampede Defendants may, on notice to the Court, but without further need for a further order of the Court, agree to reasonable extensions of time to carry out any of the provisions of this Settlement Agreement;
- (l) Directing that Class Counsel shall seek advice and direction from the Court if further assistance is required for the implementation or administration of the Claims Process or Distribution Protocol;
- (m) Directing that Class Counsel shall report to the Court at the conclusion of the administration of the Settlement Agreement, including reporting on notice, claims made, and distributions;
- (n) Declaring that, as of the Effective Date and set out at Section 7 of the Settlement Agreement, the Releasors will have released and discharged the Releasees from the Released Claims;
- (o) Declaring that, upon the Effective Date, and without further order, the Action against the Stampede Defendants is dismissed without costs;
- (p) Declaring that the Defendant Philip Heerema is not a party to the Settlement Agreement and is not a Releasee under the terms of the Settlement Agreement;
- (q) Approving, pursuant to section 39 of the *CPA*, Class Counsel Fees, disbursements and taxes in the total amount of CAD \$3,258,398.17, being:
 - (A) CAD \$2,736,832.92 for legal fees;
 - (B) CAD \$136,841.65 for applicable taxes on the legal fees;
 - (C) CAD \$184,723.60 for disbursements (inclusive of tax) incurred as of June 9, 2024; and
 - (D) CAD \$200,000 for anticipated disbursements for claims administration and notice of settlement approval to the class.
- (r) Approving an honorarium to the following individuals who provided substantial assistance in the prosecution of the Action:

- (i) Plaintiff, N.B. in the amount of \$20,000
- (ii) M.J. in the amount of \$5,000
- (iii) R.S. in the amount of \$5,000
- (iv) S.T. in the amount of \$1,000
- (v) B.N. in the amount of \$1,000
- (vi) K.S. in the amount of \$1,000
- (vii) S.S. in the amount of \$1,000
- (viii) L.C. in the amount of \$1,000
- (ix) R.W. in the amount of \$1,000
- (s) Such further and other relief as Counsel may request and this Honourable Court may deem just and appropriate having regard to the circumstances.

Grounds for making this Application:

2. The Plaintiff has reached a Settlement Agreement with the Stampede Defendants following extensive, arm's length negotiations, including two Judicial Dispute Resolutions;
3. The Settlement Agreement, which is subject to approval of this Court, provides that \$9,500,000.00 will be paid for the benefit of the Class Members, in exchange for a full and final release of the claims asserted in the Action;
4. The Settlement Agreement is fair, reasonable, and in the best interests of the Class;
5. The Notice of Settlement Agreement Approval Hearing, informing the Class Members of this pending Approval Hearing, including their rights to object to the Settlement Agreement, their rights to appear at the Approval Hearing, and the material terms of the Settlement Agreement, was disseminated in accordance with both the Plan of Notice and the Order of this Honourable Court pronounced on April 30, 2024;
6. The Parties have proposed a fair and reasonable method for effecting the distribution of the Settlement Funds to the Class Members, as set out in the proposed Distribution Plan;
7. Epiq Class Action Services Canada Ltd. has been appointed as the Claims Administrator of the Settlement Agreement and will administer the Distribution Plan;
8. Class Counsel and the Claims Administrator have prepared Short and Long Form Notices, and a Claims Form;

9. The retainer agreement in this matter complies with the requirements of sections 38 and 39 of the *CPA*; and

10. The Class Counsel Fees requested in this matter are fair and reasonable in the circumstances and represent a reduction from the amount set out in the Contingency Fee Agreement, approved by Associate Chief Justice Rooke in an Order dated January 24, 2018.

Material or evidence to be relied on:

11. The affidavit of N.B., sworn on June 18, 2024;

12. The pleadings filed in this Action, and the proceedings taken herein; and

13. Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable rules:

14. *Alberta Rules of Court*, Rules 1.2, 6.3, and 6.9.

Applicable Acts and regulations:

15. *Class Proceedings Act*, SA 2003, c C-16.5c, in particular sections 35, 38 and 39.

16. Any other rules, acts, and regulations as this Honourable Court may permit.

Any irregularity complained of or objection relied on:

17. None.

How the Application is proposed to be heard or considered:

18. It is proposed that this application be heard in Chambers pursuant to Rule 6.9.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.