

Horner v. Primary Response Inc. and Garda Canada Security Corporation

Court File No.: CV-18-00603648-00CP

Administration and Distribution Protocol

1. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund for the Class Actions. This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class.

A. Definitions

1. For the purpose of this Administration and Distribution Protocol the defined terms have the same meaning as in the Settlement Agreement, executed on July 10, 2020, unless otherwise specified.
2. In addition, the following definitions apply:
 - (a) *Administration Form* means the form provided for in section 5 below inclusive of any electronic version;
 - (b) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
 - (c) *Court* means the Ontario Superior Court of Justice;
 - (d) *Notification Letter* means the letter, email or text message provided to each Class Member describing their relative share of the Claim Fund as determined by the Claims Administrator;
 - (e) *Referee* means a lawyer with Karimjee Law;
 - (f) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to.

B. Claims Administrator Duties

2. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement and the ongoing authority and supervision of the Court.
3. The Claims Administrator's duties and responsibilities shall include the following:
 - a. providing notice(s) to the Class Members as may be required;
 - b. receiving information from the Defendants, including Class Members' contact information and dates of employment;

- c. developing, implementing and operating the administration process including an online claim submission process and website;
 - d. making timely calculations of Class Members' Relative Share of the Claim Fund and notifying Class Members;
 - e. arranging payment to Class Members in a timely fashion;
 - f. reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
 - g. maintaining the administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
 - h. responding to Class Member inquiries and communications with Class Counsel;
 - i. calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
 - j. preparing and distributing T4A forms to Class Members;
 - k. reporting to Class Counsel respecting Claims received and administered and administration expenses;
 - l. holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule 1 bank in Canada and making all payments from the Claim Fund from that account as authorized;
 - m. cash management and audit control; and
 - n. preparing and submitting reports and records as directed by Class Counsel or the Court
 - o. other steps as directed by Class Counsel or the Court, as needed.
4. All information received from the Defendant or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

C. Claims by Class Members

- i. *Requirement to Submit Timely Administrative Form*
5. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form must be completed and submitted to the Claims Administrator within ninety (90) days of Final Approval.

6. If the Claims Administrator finds that deficiencies exist in an Administration Form, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member must correct the deficiencies to the satisfaction of the Claims Administrator by the deadline set out in section 5.
7. Class Members who submit a late Administrative Form for any reason will only be eligible to receive any compensation in the event there are surplus funds remaining after the distribution, for example due to stale dated cheques, or in the event the holdback for administration or taxes exceeds what is required. Payments to Class Members who submit late Administrative Forms are in the discretion of Class Counsel and may be in amounts less than the compensation provided to Class Members who submitted a timely Administrative Form, depending on the sufficiency of funds. There is no appeal regarding the determination that an Administrative Form is late or from the amount of funds provided to Class Members who submitted a late Administrative Form.
8. An Administration Form will not be considered late solely because the Class Member is required to prove their membership in the Class pursuant to the process set out in paragraphs 9-11 below, where the Class Member submitted their Administration Form to the Claims Administrator prior to the deadline and the Administration Form was otherwise complete.

i. Confirmation of Membership in Class

9. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendants. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator will ask the individual to provide proof of membership in the Class within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendants to confirm the individual's employment history and membership in the Class. The Claims Administrator shall determine the individual's membership in the Class within ten (20) days of the date the individual provides proof of Class Membership.
10. Proof of Class membership may be provided by submission of documents such as employment agreements, tax forms, paystubs, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendants to review any documents submitted to verify their authenticity.
11. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to an independent referee for a binding determination. The individual is responsible for paying the cost of the referee's fee, not to exceed \$75. The referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the referee is final and not subject to any appeal.

ii. Distribution of Amounts by Issue

12. The Class Action raised four main issues:

- a. Pre-Shift Time
 - b. Overtime Averaging
 - c. Training
 - d. Uniforms
13. Every Class Member who completes an Administrative Form shall indicate which of the four issues he/she seeks to claim compensation. Class Members may be eligible for more than one issue.
14. Every Class Member who submits a timely Administrative Form is eligible for issues 12(a), (c), and (d).
15. Only Class Members who worked for Primary Response Inc. at any point during the period August 5, 2016 to January 15, 2018 and who submit a timely Administrative Form are eligible to claim for issue 12(b).
16. The amounts to be distributed by issue shall be directed by Class Counsel. It is estimated that those amounts will be approximately as follows:
- | | |
|-----------------------|--------------|
| a. Pre-Shift Time | \$700,000.00 |
| b. Overtime Averaging | \$600,000.00 |
| c. Training | \$170,000.00 |
| d. Uniforms | \$140,000.00 |
17. The Claims Administrator shall determine the number of Class Members who submitted a timely Administrative Form claiming for each issue. In the case of issue (b), the Claims Administrator may take steps to verify that the Class Member worked for Primary Response Inc. at any point during the period August 5, 2016 to January 15, 2018.
18. The amounts in paragraph 16 shall be distributed on a “pro rata” basis by issue to each Class Member who submitted a timely Administrative Form indicating they wished to claim compensation for that issue. For example, if 6,000 Class Members submit timely Administrative Forms and claim for issue 12(a) and the amount available for distribution for issue (a) is \$700,000, each Class Member would receive \$116.67 for issue 12(a).
19. The amounts for issues 12(a), (b), and (c) are income and the Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4A forms as necessary.
20. The amounts for issue 12(d) are reimbursements and the Claims Administrator is not required to deduct/remit employee and employer portions of CPP, EI and income tax, or prepare T4A.
21. The Claims Administrator will prepare Notification Letters individualized for each Class Member describing their relative share. A Class Member who disputes their relative share

must notify the Claims Administrator in writing within fourteen (14) days of the date of the Notification Letter. The Claims Administrator may reconsider and correct any errors identified by the Class Member within five (5) days of the receipt of the Class Member's notification of dispute (e.g. if the Class Member's relative share does not reflect that they applied and were eligible for all four issues). If the Class Member continues to dispute the Claims Administrator's decision, such dispute shall be referred to an independent referee for a binding determination. The individual is responsible for paying the cost of the referee's fee, not to exceed \$75. The referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the referee is final and not subject to any appeal.

22. Amounts may be distributed to Class Members by the Claims Administrator by cheque or e-transfer or electronic funds transfer, within the discretion of the Claims Administrator.
23. Class Members are responsible for providing the Claims Administrator with accurate and timely information to facilitate the distribution of funds. In the case of incomplete, incorrect or missing contact or banking information necessary to distribute funds to a Class Member, and in the case of stale cheques, the Claims Administrator shall make at least one attempt to reach out to the Class Member, and the Class Member shall have thirty (30) days from the date of this attempt to provide the corrected information to the Claims Administrator or to request a fresh cheque in the case of a stale cheque.
24. If the Class Member cannot be located or fails to respond to communication from the Claims Administrator, their funds may be treated as surplus funds available for distribution in accordance with Step 6 described below. The Claims Administrator will provide Class Counsel with information concerning its efforts to contact a Class Member prior to taking this step.

D. Distribution Process

25. Generally, the Claims Administration Process will be as follows

Step 1: Receipt of Administrative Forms and any confirmation of Class Member status/ eligibility

Step 2: Determination of the number of eligible Class Members by issue, confirmation of the amounts available for distribution by issue, and relative share of Class Members.

Step 3: Preparation/distribution of Notification Letters.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/EI/CRA as necessary.

Step 5: The Claims Administrator will provide a report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

E. Role of Counsel

26. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol and Distribution Protocol and the claims process
27. Notwithstanding the foregoing, if, during the administration process, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions. Class Counsel shall seek input from the Claims Administrator and Defendants before taking any such steps.