

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL.

No.: 500-06-001195-227

DATE: December 15, 2023.

BY THE HONOURABLE PIERRE NOLLET, J.S.C.

EVA BITTON
Plaintiff - Class Representative

v.

HOME DEPOT OF CANADA INC. ET AL
Defendants

JUDGMENT REGARDING THE APPROVAL OF A SETTLEMENT WITH HOME DEPOT OF CANADA INC.

[1] This action arises from the sale of extended warranties for home appliances and consumer electronics, on Defendant's website and/or mobile application, without informing consumers in Quebec of the existence and nature of Quebec's legal warranty as provided for in sections 37 and 38 of the *Consumer Protection Act* ("CPA"), before proposing the purchase of the additional warranty.

[2] On October 27, 2023, the parties reached a settlement agreement (the «**Settlement Agreement**»).

[3] On November 8, 2023, the Court authorized the class action against Home Depot for settlement purposes only on behalf of the following class:

<p>All consumers in Quebec who, from February 7, 2019, to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s). (the “Class”)</p>	<p>Tous les consommateurs du Québec qui, du 7 février 2019 au 30 septembre 2022, ont acheté une garantie prolongée sur des biens à partir de l'application (des applications) mobile(s) et/ou du (des) site(s) web de Home Depot. (le « Groupe »)</p>
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[4] The Class Notice and all the materials were disseminated and made available to Class Members in both French and in English.

[5] The Class Notice explained to the potential Class Members the steps that they needed to take to be excluded from the Class or to oppose the Settlement Agreement.

[6] The Court received no opting-out form from Class Members.

[7] No objection to the Settlement Agreement was received prior to or made at the hearing.

[8] The Fonds d'aide aux actions collectives (FAAC) provided the Court with helpful comments in respect of certain aspects of the Settlement Agreement.

[9] The definitions set out in the Settlement Agreement are incorporated herein unless otherwise indicated.

1. THE APPROVAL OF THE SETTLEMENT AGREEMENT

[10] Article 590 C.C.P. provides that a transaction is valid only if approved by the Court. The criteria which the case law has established for approval of a class action settlement are the following:

- i) the likelihood of success of the action;
 - ii) the importance and nature of the evidence adduced;
 - iii) the terms and conditions of the settlement;
 - iv) the recommendation of counsel and his experience;
 - v) the cost of future expenses and the probable duration of the litigation;
 - vi) the recommendation of a neutral third party, if any;
 - vii) the number and nature of objections to the settlement agreement;
- and

viii) the good faith of the parties and the absence of collusion¹.

[11] Not all factors need to be satisfied. The Court must look at the totality of these factors considering the specific circumstances involved².

[12] The total value of the Settlement is 500 000 \$ inclusive of Class Counsel's fees but excluding the notice and administration costs.

[13] In the present matter, the Court finds that:

- 13.1. Albeit Home Depot strongly denies any wrongdoing, it promptly modified its business practice practically immediately after being sued (on or around September 30, 2022) and now displays the notice concerning the legal warranty to Quebec residents purchasing extended warranties on the Home Depot website.
- 13.2. The credit offered to each Class Member, represents 50% of the cost to Class Members of the extended warranty they purchased.
- 13.3. The released claims amount to \$740,875.00, excluding punitive damages.
- 13.4. This amount is, in the best scenario, the highest that could have been achieved by judgment on the merits.
- 13.5. The direct credit reimbursements total **\$370,437.50** (excluding Class Counsel Fees and Disbursements which will be paid on top and separately from the Settlement Amount and do not impact the 50% being reimbursed to each Class Member in the form of digital gift cards (Article 1.1 (bb) of the Settlement Agreement).
- 13.6. Furthermore, the Class Members will continue to benefit of the extended warranty purchased at no additional costs.
- 13.7. The value is guaranteed in that Home Depot will issue/pay \$370,437.50 in gift cards to be sent through Class members' email addresses. In the event that emails containing Direct Credit Reimbursements bounce back and are unable to be paid to Class Members, these remaining amounts will be subject to the FAAC levy and the remaining balance will be paid to a charity to be agreed upon by the Parties and approved by the Court.

¹ 9085-4886 *Quebec inc. c. Visa Canada Corporation*, 2015 QCCS 5921, par. 24;
Richard c. Volkswagen Group Canada inc., 2012 QCCS 5534, par. 45.

² *Comité d'environnement de Ville-Émard (CEVE) c. Stodola*, 2016 QCCS 1834, par. 18.

- 13.8. The Home Depot digital gift card is easy to use and is as close to cash as possible in the circumstances, in that it can be used on Home Depot's website, Home Depot's mobile application or in Home Depot's stores for the purchase of basic living necessities and household staples.
- 13.9. The parties would have spent important resources and would have required experts on both sides, to determine whether there was a fault, and then what the aggregate amount of the damages would be.

[14] The Settlement Agreement was reached shortly after the alleged wrongdoing which is a benefit to all consumers. The benefits offered to Class Members are otherwise fair and adequate and are worthy of approval. Settlement Class Members need not to request the Credit. It will automatically be sent to them by email and without an expiry date.

[15] The Court appointed a third party to administer the notice program and received a favorable report from the Administrator showing that 2 972 notices were sent to clients by emails and 2 952 are deemed to have been received since they did not bounce back. Over 50 % of such emails were opened.

[16] There were no exclusions or objections to the Settlement. On the other hand, some Class Members have contacted Class Counsel in support of the settlement and expressed their desire to eventually use their credits

[17] Home Depot will require a third party (CashStar) to proceed to the distribution of the Direct Credit Reimbursement in connection with the Distribution Protocol and will take responsibility, on behalf of CashStar, to report on the Distribution process and any balance due.

[18] Plaintiff reached other settlements with other Defendants in this matter. Those settlements remain to be presented to the Court.

[19] Class Counsel is an experienced counsel. He has significant expertise in class actions including consumer class actions, has negotiated numerous settlements throughout his career and believes that the Settlement Agreement is fair to the Settlement Class Members.

[20] The Settlement was reached in an adversarial context but is consistent with the terms of other credit-based settlements recently approved by this Court³. It is in

³ *Picard c. Ironman Canada inc.*, 2022 QCCS 2218, par. 56; *Holcman c. Restaurant Brands International Inc.*, 2022 QCCS 3428; *Abihsira c. Stubhub inc.*, 2019 QCCS 5659, *Abihsira v. Ticketmaster Canada LP et. al.*, 500-06-001153-218, December 7, 2022.

the interests of judicial economy and proportionality that the Settlement Agreement be approved.

[21] Good faith is presumed and there is no evidence to the contrary.

2. THE APPROVAL OF CLASS COUNSEL'S FEES

[22] Class Counsel is requesting the Court's approval of its extrajudicial fees pursuant to Articles 1.1(e), (bb) and 11.1 of the Settlement, which provides for Class Counsel fees of \$126,062.50 plus taxes, and \$3,500 plus taxes in disbursements. Home Depot has agreed to pay up to that amount.

[23] Class Counsel's extrajudicial fees in the total amount of \$126,062.50 (plus GST & QST) represents **25.21%** of the total settlement value of 500,000.00. It represents an even lower percentage when the administration costs of the settlement is considered, administration costs to be supported by Home Depot.

[24] This percentage is consistent with the jurisprudence approving percentage-based mandates – especially when the settlement has a real value as in the present case.

[25] The following criteria have been developed by the jurisprudence in order to determine whether Class Counsel's fees are fair and reasonable:

- 25.1. Time and effort expended by the attorneys on the litigation;
- 25.2. The importance of the class action;
- 25.3. The degree of difficulty of the class action;
- 25.4. Class counsel's experience and expertise in a specific field;
- 25.5. The risks and responsibilities assumed by class counsel;
- 25.6. The result obtained; and
- 25.7. Fees are not contested.

2.1 The Importance of the Issue

[26] Consumer protection issues are directly related to the access to justice of several thousands of persons.

[27] Claims of this nature usually involve relatively small sums of money for which individuals are not ready to initiate a lawsuit. Class actions are often times the only

way for consumers to obtain justice and for the society obtain that large companies or institutions change their practices.

2.2 The risk assumed

[28] The risk of success or failure was borne entirely by Class Counsel.

[29] Neither the Plaintiff nor any Class Members were asked to contribute any fees for the time spent on the file, nor for any of the disbursements made on their behalf by Class Counsel.

2.3 The results obtained

[30] The result here is really the key. Plaintiff succeeded in having Home Depot's practices improved, for the benefit of all consumers. This was achieved in a relatively short time. While the Class Members will keep the benefit of the extended warranty purchased, they will receive a fully transferable and non expirable gift card representing 50 % of what they paid for such extended warranty.

[31] The Court must also highlight the simplicity of the recovery process.

2.4 The Professional Mandate & Attorneys' Fee Agreement

[32] The mandate was signed by Plaintiff and Class Counsel on July 22, 2022.

[33] It was agreed that the attorneys' fees with respect to the present class action be the higher of the following two calculations:

33.1. an amount equal to thirty percent (30%) of the total amount received, including interest, from any source whatsoever, whether by settlement or by judgment

or

33.2. an amount equal to multiplying the total number of hours worked on by the attorneys or other professionals in accordance with their hourly rates of 400 per hour. This amount will then be multiplied by a multiplier 3.5 to arrive at the total fee. (The hourly rates are reviewed from time to time).

[34] Class Counsel have not received any funding from the FAAC in the present matter.

[35] The requested amount of Class Counsel's Fees under the Settlement Agreement is lower than what was agreed to in the Professional Mandate & Attorneys' Fee Agreement signed with the Plaintiff.

[36] It also represents a reasonable percentage of the potential settlement value at the time it was negotiated.

[37] It is likely that Class Counsel's ongoing future obligations to the settlement process will involve some work beyond today's approval hearing, especially concerning the claims process and toward the request for a final administration report and obtaining a closing judgment.

[38] The Court will approve Class Counsel's fees of \$ 126,062.50 (plus taxes).

3. **FONDS D'AIDE AUX ACTIONS COLLECTIVES;**

[39] The FAAC recommends that a conclusion be added to indicate that this matter is proceeding to a collective recovery.

[40] The FAAC is asking the Court to praise act of the fact that the value of Direct Credit Reimbursements unable to be delivered by emails (bounce back) will constitute the balance pursuant to the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives* (RLRQ, c. F-3.2.0.1.1, r. 2).

[41] The FAAC agrees that any remaining balance, after the payment of the levy, be distributed to a charity to be determined at such time after the report on the Distribution Protocol. It is requesting that a conclusion be added to that effect.

FOR THESE REASONS' THE COURT:

[42] ACCUEILLE la Demande d'approbation d'un règlement d'une action collective et des Honoraires des Avocats du Groupe;	GRANTS the <i>Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees;</i>
[43] DÉCLARE que les définitions apparaissant dans l'Entente de Règlement (pièce R-1) s'appliquent au présent jugement;	DECLARES that the definitions found in the Settlement Agreement (Exhibit R-1) find application in the present Judgment;
[44] APPROUVE l'Entente de Règlement en tant que transaction au sens de l'article 590 du <i>Code de procédure civile</i> et ORDONNE aux Parties de s'y conformer;	APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> and ORDERS the Parties to abide by it;
[45] DÉCLARE l'Entente de Règlement (y compris son préambule et ses Annexes) juste, raisonnable et dans l'intérêt	DECLARES that the Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the

véritable des Membres du Groupe, constituant une transaction au sens de l'article 2631 du Code civil du Québec, qui lie toutes les parties et tous les Membres du Groupe	best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i> , binding upon all parties and upon all Class Members;
[46] ORDONNE et DÉCLARE que le présent jugement, incluant la Transaction réglant l'action collective, lie chaque Membre du Groupe;	ORDERS and DECLARES that this judgment, including the Settlement, shall be binding on every Class Member;
[47] DÉCLARE que le paiement par Home Depot of Canada inc. des montants détaillés dans l'Entente de Règlement, sera versé en règlement intégral des Réclamations Quittancées contre les Parties Quittancées au sens attribué à ces termes dans l'Entente de Règlement;	DECLARES that Home Depot of Canada Inc.'s payment of the amounts as detailed in the Settlement Agreement will be in full satisfaction of the Released Claims against the Releasees as defined in the Settlement Agreement;
[48] ORDONNE le recouvrement collectif des réclamations faites avec paiement individuel des réclamations des membres	ORDERS the collective recovery of the claims made with individual payment of the members' claims
[49] APPROUVE le paiement des honoraires et débours des avocats du groupe prévus à l'article 11.1 de l'Entente de Règlement;	APPROVES the payment of Class Counsel Fees and disbursements provided for at Article 11.1 of the Settlement Agreement;
[50] APPROUVE l'Avis de l'Ordonnance d'Approbation du Règlement, substantiellement dans la forme de la pièce R-6;	APPROVES the Notice of Settlement Approval, substantially in the form of Exhibit R-6;
[51] APPROUVE le Protocole de Distribution (annexe D) et ORDONNE aux parties de s'y conformer;	APPROVES the Distribution Protocol (Schedule D) and ORDERS the parties to abide by it;
[52] ORDONNE que l'Avis de l'Ordonnance d'Approbation du Règlement (substantiellement dans la forme de la pièce R-6) et les Remboursements par crédit direct soient diffusés par Cashstar inc. conformément	ORDERS that such Notice of Settlement Approval (substantially in the form of Exhibit R-6) and the Direct Credit Reimbursements be disseminated by Cashstar Inc. in accordance with the Distribution Protocol (Schedule D to the

<p>au Protocole de Distribution (annexe D de la demande);</p>	<p>Application);</p>
<p>[53] ORDONNE que les documents accessibles sur le Site Web de Règlement soient également accessibles sur le site Web du cabinet des Avocats du Groupe : www.lpclex.com/fr/garantiesprolongees/;</p>	<p>ORDERS that the documents available on the Settlement Website be also made available on the website of Class Counsel: www.lpclex.com/extendedwarranties/ ;</p>
<p>[54] ORDONNE que tout Remboursement par crédit direct envoyé par courriel qui est non-livrable et ne peut être payé, sera sujet au prélèvement du Fonds d'aide, conformément à l'article 22 du Protocole de Distribution, et le reliquat sera donné à un organisme de bienfaisance tel que décidé par les parties et approuvé par la Cour</p>	<p>ORDERS that any Direct Credit Reimbursement sent by email that bounces back and that cannot be paid, will be subject to the Fonds d'aide levy, pursuant to Article 22 of Distribution Protocol, and the remaining balance will be given to a charity to be agreed upon by the Parties and approved by the Court</p>
<p>[55] ORDONNE à la défenderesse Home Depot de transmettre d'ici le 11 mai 2024, un rapport détaillé de distribution au Tribunal et au Fonds d'aide aux actions collectives indiquant notamment, le nombre et la valeur des crédits transmis, le montant total payé par la défenderesse, le reliquat, s'il en subsiste et le montant qui sera prélevé pour le Fonds d'aide aux actions collectives, et ce, conformément aux articles 59 et 60 du <i>Règlement de la Cour supérieure du Québec en matière civile</i> (RLRQ, c. 25.01, r. 0.2.1)</p>	<p>ORDERS the defendant Home Depot to provide prior to May 11, 2024, a detailed distribution report to the Tribunal and to the Fonds d'aide aux actions collectives indicating, among other things, the number and value of the credits transferred, the total amount paid by the defendant, the balance, if any, and the amount to be paid out for the Class Action Fund; in accordance with sections 59 and 60 of the <i>Regulation of the Superior Court of Québec in Civil Matters</i> (CQLR, c. 25.01, r. 0.2.1)</p>
<p>[56] ORDONNE aux parties de demander un jugement de clôture lorsque l'administration du règlement sera complétée;</p>	<p>ORDERS the parties to ask for a closing judgment once the administration of the Settlement is completed;</p>

<p>[57] ORDONNE à Cashstar inc. d'utiliser les informations personnelles concernant une personne qui lui sont fournies tout au long de la procédure de réclamation dans le seul but de faciliter la procédure d'administration des réclamations conformément à l'Entente de Règlement et à aucune autre fin;</p>	<p>ORDERS that Cashstar Inc. shall use the personally identifiable information provided to it throughout the claims process for the sole purpose of facilitating the claims administration process in accordance with the Settlement Agreement and for no other purpose;</p>
<p>[58] ORDONNE ET DÉCLARE que le présent Jugement constitue un Jugement obligeant Home Depot of Canada inc. à communiquer des renseignements personnels au sens des lois sur la protection des renseignements personnels applicables, et que le présent Jugement respecte les exigences de toutes les lois sur la protection des renseignements personnels applicables;</p>	<p>ORDERS AND DECLARES that this Judgment constitutes a Judgment compelling the production of the information by Home Depot of Canada within the meaning of applicable privacy laws, and that this Judgment satisfies the requirements of all applicable privacy laws;</p>
<p>[59] DÉCLARE que le Tribunal demeurera saisi du dossier pour toute question pouvant être soulevée par les parties relativement à la mise en œuvre de l'Entente, et ce, jusqu'à ce qu'il ait rendu un jugement de clôture.</p>	<p>DECLARES that the Tribunal will remain seized of the record for any matter that may be raised by the parties in connection with the implementation of the Agreement until such time as the Tribunal has rendered a closing judgment.</p>
<p>[60] LE TOUT, sans frais de justice.</p>	<p>THE WHOLE, without legal costs.</p>

PIERRE NOLLET, J.S.C.

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Hearing date: December 6, 2023