CANADA
PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL
No.: 500-06-001164-215

**SUPERIOR COURT**
(Class Action)

**STEVEN HOLCMAN *ET AL.***

Representative Plaintiffs

v.

**LIGHTSPEED COMMERCE INC. *ET AL.***

Defendants

and

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**

Impleaded Party

**APPLICATION TO APPROVE A SETTLEMENT AGREEMENT AND FOR OTHER RELIEF**

**(Articles 590-593, 595-596 *C.C.P.*)**

**TO THE HONOURABLE MR. JUSTICE LUKASZ GRANOSIK, J.S.C., SITTING AS CASE MANAGEMENT JUDGE, THE REPRESENTATIVE PLAINTIFFS RESPECTFULLY SUBMIT THE FOLLOWING:**

**TABLE OF CONTENTS**

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## I- OVERVIEW[1]

1. This securities class action (the "**Action**") arises out of the Representative Plaintiffs' (the "**Plaintiffs**") allegations that during the period spanning from March 7, 2019 to November 3, 2021, inclusively (the "**Class Period**"), the defendants Lightspeed Commerce Inc. ("**LSPD**", "**Lightspeed**", or the "**Company**"), its CEO, CFO, directors, and auditor PricewaterhouseCoopers LLP ("**PwC**") overstated LSPD's financial performance and growth. [2]

2. The Plaintiffs allege that these misrepresentations had the effect of artificially inflating the price and value of LSPD's securities until they were publicly corrected at the end of the Class Period.

3. The Application for Authorization states that the first to reveal the misrepresentations in LSPD's disclosures was the investment management firm Spruce Point Capital Management, LLC, which focuses on short selling and value investments. Based on the list of alleged problems Spruce[3] identified in the Company's disclosures, it predicted a 60%-80% downside risk to $22.50 - $45.00 per share.

4. Approximately one month after the publication of the Spruce Report, Lightspeed disclosed its quarterly financial results, which, in the Plaintiffs' view, confirmed the accuracy of Spruce's allegations.

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[1] All facts mentioned in this *Application to Approve a Settlement Agreement and for Other Relief* (the "**Second Application**") appear in the Sworn Declaration of Mtre Elizabeth Meloche dated October 31, 2025, communicated herewith as **Exhibit R-1**.

[2] The detailed claims are laid out in the *Re-Re-Amended Motion for Authorization to Bring an Action Pursuant to Section 22.4 of the Québec* Securities Act *and Application for Authorization to Institute a Class Action* dated December 27, 2024 (the "**Application for Authorization**").

[3] Unless otherwise mentioned, capitalized terms have the meanings ascribed to them in the Application for Authorization or in the settlement agreement signed by the parties on July 16, 2025 (the "**Agreement**"), communicated herewith as **Exhibit R-2**.

5. The price of Lightspeed's securities dropped significantly after this announcement, losing for instance 37.7% (or $53.83) on the TSX between the market close before the publication of the Spruce Report and the date at which LSPD disclosed its above-mentioned quarterly results: Exhibit P-12 (LSPD's share price history).

6. According to the Plaintiffs, it is because of the Defendants' conduct described above that Lightspeed investors in Québec, and throughout the world, suffered dozens of millions of dollars of losses, for which the Action seeks compensation.

7. The Defendants challenge the allegations in the Action.

8. After extensive settlement negotiations, on July 16, 2025, the Plaintiffs and the Defendants signed the Agreement, Exhibit R-2.

9. The Agreement states that to resolve, settle, and release all claims asserted against the Defendants on behalf of the Class in the Action, they will collectively pay the sum of $11 million[4] (the "**Settlement Amount**"), without admission of fault, liability or wrongdoing on the Defendants' part.

10. In this Second Application, the Plaintiffs seek, on consent, and without objection from any Class Member, the Court's approval of:

    a. The Agreement, Exhibit R-2;

    b. The Second Notice, in a form similar to that communicated herewith as **Exhibit R-3**;

    c. The Plan of Allocation, communicated herewith as **Exhibit R-4**;

    d. The Notice Plan, communicated herewith as **Exhibit R-5**;

    e. The Claim Form, in a form similar to that communicated herewith as **Exhibit R-6**;

    f. The Claims Bar Deadline; and

    g. The Class Counsel Fees, disbursements, as well as ancillary relief.

11. The Plaintiffs further seek an order that the Class Members' claims are to be recovered collectively, in accordance with the structure of the Plan of Allocation, Exhibit R-4.

12. For the reasons stated below, Class Counsel and the Plaintiffs are of the view that the Agreement is fair, reasonable, and in the best interests of the Class. In particular:

    a. The result of this matter at trial is uncertain given a variety of factors, as more significantly explained below; and

    b. The Agreement provides a significant monetary payment to and for the benefit of the Class.

13. Class Counsel and the Plaintiffs recommend that this Honorable Court approve the Agreement.

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[4] As per the applicable rules in Québec, all amounts herein are expressed in Canadian dollars, except if otherwise indicated.

14. The legal fees and disbursements, as well as other relief requested in this Second Application, are appropriate and well-founded on the facts and the Law. Class Counsel and the Plaintiffs respectfully request that the relief sought be granted.

## II- FACTS RELEVANT TO THE APPROVAL OF THE SETTLEMENT

### A. Procedural History

Background

15. Approximately four years ago, on October 1, 2021, Steven Holcman filed an *Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act* against the Defendants.

16. This motion was amended three times, with the Court's approval. The *Re-Re-Amended Application for Authorization of a Class Action and for Authorization to Bring an Action Pursuant to Section 225.4 of the Québec Securities Act* dated December 27, 2024 and filed on March 11, 2025 by Mr. Holcman and Mr. Plummer (Application for Authorization) is supported by 80 exhibits.

17. The Plaintiffs assert a cause of action against the Defendants on three legal grounds:

    a. statutory secondary market liability under sections 225.4 and 225.8 et seq. of the QSA;

    b. primary market liability under sections 217 et seq. of the QSA; and

    c. civil law liability under article 1457 of the C.C.Q.;

    the whole, on a class-wide basis.

18. The Class is defined in the Application for Authorization, at par. o.1 f), as:

> "**Class**" and "**Class Members**" are comprised of the following, other than the Excluded Persons:
>
> **(i)** **Primary Market Sub-Class**: All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities in an Offering on or after March 7, 2019, and held some or all of those securities until after the close of trading on (1) September 28, 2021 or (2) November 3, 2021, excluding United States residents who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities in an Offering in the United States between September 11, 2020 and September 28, 2021; and
>
> **(ii)** **Secondary Market Sub-Class**: All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities on the secondary market on or after March 7, 2019, and held some or all of those securities until after the close of trading on (1) September 28, 2021 or (2) November 3, 2021, excluding investors who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities on a U.S. exchange between September 11, 2020 and September 28, 2021.

Defendants' Main Preliminary Motions at Authorization Unrelated to Expert Evidence

19. The authorization stage of these proceedings was vigorously contested by the Defendants and

led to the filing of various preliminary motions that had to be argued in court. The following highlights just some examples of the main procedural steps that took place, and the work performed, until the Agreement was entered into.

20. On January 9, 2023, the Defendants filed a motion to have the redacted notes of meetings between independent private investigators and former Lightspeed employees (Exhibit P-71) excluded from the Court record, attacking this exhibit on every front. After reviewing detailed argument plans, and hearing lengthy oral debates, on January 30, 2024, this Court dismissed the Defendants' motion, and confirmed the admissibility of Exhibit P-71: *Holcman* c. *Lightspeed Commerce inc.*, 2024 QCCS 294, par. 28-35, 38 ("**Holcman plaintiffs depositions and P-71**"), Plaintiffs' Book of Authorities ("**BoA**"), tab 1.

21. On January 30, 2024, this Court also granted the Defendants' motion to examine both Plaintiffs, within certain parameters: Holcman plaintiffs depositions and P-71, par. 10, 18, BoA, tab 1.

22. Class Counsel and the Plaintiffs met and held several calls to prepare for the depositions, which both took place on April 12, 2024.

23. On May 31, 2024, the LSPD defendants sought leave to file a minuscule portion of Mr. Holcman's deposition, which the Court authorized on July 23, 2024, after consideration of the detailed argument plans and oral representations submitted: *Holcman* c. *Lightspeed Commerce Inc.*, 2024 QCCS 2781, par. 45 ("**Holcman 2nd preliminary motions**"), BoA, tab 2 - leave to appeal denied.

24. On July 23, 2024, this Court also granted the Defendants' motion to file eight exhibits (LSPD-3 to LSPD-10), consisting in MD&As, press releases and reports, and it dismissed Defendants' motion to file affidavits: Holcman 2nd preliminary motions, par. 9, 44, BoA, tab 2.

25. The LSPD defendants sought leave to appeal from the decision regarding the affidavits, which led to a contested debate before the Court of Appeal. Ultimately, the Court of Appeal denied leave: *Lightspeed Commerce Inc*. c. *Holcman*, 2024 QCCA 1539, BoA, tab 3.

Expert Reports at Authorization

26. The Plaintiffs filed two expert reports at authorization.

27. First, on June 22, 2022, they filed a *Notice of Communication of the Expert Report of Frank C. Torchio* dated June 17, 2022, Exhibit P-65 (the "**Torchio Report**"). The conclusion of this report is that the impact of the misrepresentations alleged in the Application for Authorization (and their Public Correction) on the price and value of LSPD's securities was material. Mr. Torchio did not find any other alternative or contributory factor for the price variation on the date of each partial Public Correction.

28. The Defendants did not file any counter-expertise regarding materiality.

29. Second, on August 3, 2022, the Plaintiffs filed a *Notice of Communication of the Expert Report of Professor Ramy Elitzur, Ph.D.*, dated August 1, 2022, Exhibit P-17 (the "**Elitzur Report**"). This report discusses the accounting, auditing, and financial standards and norms applicable to the allegations of the Application for Authorization. It finds that there are indications of several violations by the LSPD defendants of the applicable accounting and financial standards governing disclosures, of revenue manipulation, earnings management, and deficiencies in the Company's internal controls, as well as of numerous violations by the Auditor of applicable

auditing standards.

30. The Defendants collectively sought leave to file three expert reports in response to the Elitzur Report. After detailed argument plans were exchanged, and a contested hearing, on July 23, 2024, the Court granted the Defendants' motions to file:

    a. The KPMG counter-expertise dated May 30, 2024 (the "**KPMG Report**") - filed by PwC;

    b. The expert report of Professor Daniel Taylor, Ph.D., dated May 31, 2024 (the "**Taylor Report**") - filed by LSPD; and

    c. The EY report dated May 31, 2024 (the "**EY Report**") - filed by LSPD.

    (cf. Holcman 2nd preliminary motions, par. 25, 44, BoA, tab 2)

31. Both the KPMG Report and the Taylor Report voice the Defendants' methodological disagreements with Dr. Elitzur's approach regarding data analytics (Benford's Law and Beneish Manipulation Index), whereas the EY Report purports to challenge some of Dr. Elitzur's discrete accounting findings.

32. According to the Plaintiffs, each and all of these reports in defence raise new arguments (never specifically addressed by the Plaintiffs) in an attempt to discredit the Elitzur Report.

33. On December 27, 2024, the Plaintiffs notified a *Rebuttal Expert Report by Ramy Elitzur, Ph.D.* dated December 23, 2024 (the "**Elitzur Reply**"). The Plaintiffs' objective in doing so was to have in hand all tools enabling them to be heard on every argument raised in their case, demonstrate a series of serious errors in the Defendants' expert reports, and inform the Court of the reasons why the Defendants' attempt to discredit the Elitzur Report was ill-founded.

34. On March 17, 2025, this Court ruled that, as an exceptional measure, it was excluding the Elitzur Reply from the Court record to avoid a debate between the experts and a mini-trial at the authorization stage: *Holcman* c. *Lightspeed Commerce inc*., 2025 QCCS 770, par. 21, 24 ("**Holcman Elitzur Reply**"), BoA, tab 4.

Preparation for the Authorization Hearing

35. In the months leading up to the authorization hearing set for three days in June 2025, the parties worked extensively to prepare their written and oral arguments.

36. After having exposed their complex case and the applicable law in a detailed 48-page argument plan, the Plaintiffs were faced with 162 pages of argument plans filed collectively by the Defendants, which the Plaintiffs were forced to review and respond to, in a 47-page reply argument plan.

37. The documentary record for the authorization hearing ultimately contained, more than 250 pages of arguments, five expert reports, and approximately one hundred exhibits, which Class Counsel were ready to present to the Court on behalf of the Plaintiffs.

**B. Settlement Agreement and Subsequent Events**

38. As they had done previously (without success until then), in the days preceding the

authorization hearing, the parties engaged in serious and extensive settlement negotiations, which ultimately led to the Agreement, Exhibit R-2.

39. The Agreement is the product of arm's-length negotiation and hard-fought litigation over the course of the past four years.

40. In the Plaintiffs' and Class Counsel's view, the Agreement constitutes a fair and reasonable compromise of the claims against the Defendants and is in the best interests of the Class Members.

41. In assessing the reasonableness of the compromise that is reflected in the Agreement, the Plaintiffs and Class Counsel have had the benefit of extensive public and non-public information, as well as the opinions of experts on the issues of materiality, liability, and damages.

42. The Agreement represents a negotiated compromise of the disputed claims advanced against the Defendants.

43. It remains contingent on the approval of this Court.

44. If approved by this Court, the Agreement will result in the settlement of the Action in its entirety, with prejudice.

45. The Agreement provides for the payment by the Defendants of the Settlement Amount in full and final settlement of all claims asserted against them in the Action.

46. The Defendants have deposited the Settlement Amount into an escrow account under the control of Class Counsel.

47. Pursuant to this Court's order dated August 22, 2025 in the instant case, the Class Members were given notice of the Agreement and were given the opportunity to object, as appears, *inter alia*, from the Administrator's report on opt-outs and objections dated October 22, 2025, communicated herewith as **Exhibit R-7**.

48. None of the Class Members have objected to the Agreement, Class Counsel Fees or other aspects of the settlement, as appears from the Administrator's report on opt-outs and objections, Exhibit R-7.

49. The Second Notice, Exhibit R-3, will be published in accordance with the Notice Plan, Exhibit R-5, which includes instructions on how Class Members can file claim forms to participate in the distribution of the Compensation Fund, and the deadline for doing so.

50. The Settlement Amount less Class Counsel Fees and Disbursements, Administration Expenses, Non-Refundable Expenses, taxes, and other expenses decided by the Court (the "**Compensation Fund**"), if approved by the Court, will be distributed to the Class in accordance with the Court-approved Plan of Allocation, Exhibit R-4.

## III- CRITERIA TO APPROVE A CLASS ACTION SETTLEMENT

51. Article 590 of the *Code of Civil Procedure, CQLR c C-25.01* ("***C.C.P.***") requires that a court approve a transaction settling a class action if the court is satisfied that the terms of the

settlement are fair, reasonable, and in the best interests of the class.[5]

52. In that regard, when determining whether a transaction should be approved, courts should bear in mind the following:

> *[20] Le tribunal doit encourager le règlement à l'amiable en donnant effet à la volonté des parties, à moins qu'il y ait atteinte à l'ordre public.*
>
> *[21] Le tribunal doit prendre garde de ne pas modifier significativement le contrat de transaction conclu par les parties. Le tribunal doit l'approuver tel quel ou refuser de l'entériner, quitte à renvoyer les parties négocier des modifications.*
>
> *[22] Le tribunal ne doit pas exiger la perfection mais décider si en fin de compte, les avantages pour les membres l'emportent sur les inconvénients.*[6]
>
> [Emphasis added, references omitted]

53. As stated by this Court in *Schneider*, the reasonability and fairness of proposed settlements are determined as follows:

> *[27] En vertu de l'article 590 Cpc, le Tribunal doit approuver l'Entente de règlement si elle est juste, raisonnable et équitable, et si elle répond aux meilleurs intérêts, non seulement du représentant, mais de l'ensemble des membres du groupe qui seront liés par l'entente.*
>
> *[28] Les critères devant guider le tribunal dans l'exercice de son pouvoir d'appréciation d'une entente intervenue entre les parties sont les suivants:*
>
> - *Les probabilités de succès du recours;*
> - *Le coût anticipé et la durée probable du litige;*
> - *L'importance et la nature de la preuve administrée;*
> - *Les modalités, les termes et les conditions de la transaction;*
> - *L'accord du représentant;*
> - *La nature et le nombre d'objections à la transaction;*
> - *Le nombre d'exclusions;*
> - *La recommandation des avocats et leur expérience;*
> - *La bonne foi des parties et l'absence de collusion; et*
> - *La recommandation d'une tierce personne neutre.*[7]

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[5] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 53.

[6] *Markus c. Reebok Canada inc.*, 2012 QCCS 3562, BoA, tab 6, par. 20-22; see also *Halfon c. Mosse International Inc.*, 2017 QCCS 4300, BoA, tab 7, par. 23; *Option Consommateurs c. Fédération des caisses Desjardins du Québec*, 2011 QCCS 4841, BoA, tab 8, par. 26-27.

[7] *Schneider (Succession de Schneider) c. Centre d'hébergement et de soins de longue durée Herron inc.*, 2021 QCCS 1808, BoA, tab 9, par. 27-28.

[References omitted]

54. These oft-cited criteria have since been confirmed by the Court of Appeal.[8]

55. They are not cumulative but must rather be appreciated and weighted as a whole, bearing in mind that the guiding principles of civil procedure favour settlements. Perfection is not required.[9]

**A. Chances of Success**

56. Class Counsel's opinion on the prospects of success of the claims advanced against the Defendants is informed by their own investigations, their review of the voluminous disclosure documents, their review of other information and documents provided to the public, and their extensive consultation with highly qualified experts in econometrics, accounting, auditing, and finance.

57. Several key factors were considered by Class Counsel and the Plaintiffs in concluding that the Agreement is fair and reasonable, including:

a. Litigation risks;

b. The Defendants' arguments;

c. Evidentiary challenges; and

d. The amount Class Members could reasonably be expected to recover.

58. Each of these considerations is discussed in the Sworn Declaration of Mtre Elizabeth Meloche, Exhibit R-1.[10]

**B. Anticipated Cost and Time to Obtain Recovery**

59. The practical value of an expedited resolution of this Action is a significant factor to consider.

60. If the Agreement is not approved, this Action will proceed and Class Members will not be paid until it is concluded, if successful.

61. Based on Class Counsel's experience, it would have taken approximately three to four years before the issues were finally adjudicated and, if successful, for the Class Members to be able to recover any monetary compensation from the Defendants.[11]

62. As stated by Justice Prévost, J.S.C. in *Pellemans*:

> *[24] Si l'affaire devait aller à procès, le jugement ne serait*

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[8] *A.B.* c. *Clercs de Saint-Viateur du Canada,* 2023 QCCA 527, BoA, tab 10, par. 33-35; *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 54.

[9] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 55.

[10] More specifically, at par. 42 to 58.

[11] In his judgment approving the settlement in a similar securities class action, Justice Donald Bisson, J.S.C., agreed with this estimation: *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 65.

> *vraisemblablement prononcé que dans environ 20 ou 24 mois, avec la possibilité d'un appel à la Cour d'appel et, peut-être, à la Cour suprême du Canada. Et ce, sans compter le temps et l'argent qui seraient investis dans les autres recours connexes.*
>
> *[25] En somme, le rejet du règlement proposé reporterait de cinq à dix ans tout espoir pour les membres d'un remboursement significatif de leurs investissements, sans garantie d'un résultat favorable.*
>
> *[26] Dans les circonstances, la transaction apparaît juste, équitable et dans le meilleur intérêt des membres du groupe. Elle sera approuvée.*[12]

**C. Importance and Nature of the Administered Evidence**

63. While investigating and then prosecuting the Action, Class Counsel and the Plaintiffs have become intimately familiar with the facts alleged in this case as well as the arguments put forward by the Defendants.

64. Class Counsel analyzed a voluminous number of public disclosures, such as annual information forms, MD&As, financial statements, earnings call transcripts, news releases, and analyst reports.

65. Class Counsel were assisted by the Plaintiffs' experts, who conducted an extensive review of numerous expert reports in defence and related documentation and provided preliminary opinions and guidance on key issues.

66. As a result of Class Counsel's exhaustive work on the matter, they were able to evaluate the risks based on an appropriate evidentiary basis, and to assist their clients in negotiating the Agreement.

67. Class Counsel are of the view that the evidence supports the relief sought in this Second Application.

**D. Terms and Conditions of the Agreement**

68. The Agreement provides for a settlement payment by the Defendants in the amount of $11,000,000, all inclusive.

69. It is Class Counsel's view that the Settlement Amount is reasonable having regard to:

    a. The nature of the claims advanced against the Defendants;

    b. The defences asserted in response to the claims made;

    c. The Plaintiffs' burden of proof under 1457 *C.C.Q*. with respect to the causal link between the alleged fault and the damages incurred by the Class; and

    d. The quantum of estimated damages.

70. The proposed Agreement is beneficial to the Class Members in that:

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[12] *Pellemans c. Lacroix,* 2011 QCCS 1345, BoA, tab 11, par. 24-26.

a. It ends the litigation against the Defendants and guarantees a favorable result;

b. The Agreement provides fair monetary compensation to Class Members; and

c. Class Members will obtain compensation within a relatively short period of time.

**E. Support of the Plaintiffs**

71. The Plaintiffs support and recommend the approval of the Agreement which they consider fair and reasonable, as appears from their Sworn Statements, communicated *en liasse* herewith as **Exhibit R-8**.

**F. Number and Nature of Objections to the Agreement**

72. The Notice of the Approval Hearing was distributed in accordance with the order of this Honourable Court dated August 22, 2025 and there have been zero objections, as appears from the Administrator's objections and opt-out report, Exhibit R-7.

**G. Number of Opt-Outs**

73. As further appears from the Administrator's report, Exhibit R-7, zero opt-out forms were submitted by individuals and entities who represented that they were Class Members.

**H. Parties' Good Faith and the Absence of any Collusion**

74. This resolution is the product of arm's length and protracted adversarial negotiation, and mutual concessions.[13]

**I. Class Counsel's Experience and Recommendation**

75. In May 2022, the initial Class Counsel sought to bolster their expertise in securities class action by joining forces with Faguy & Co., who eventually became *ad litem* counsel in this file.

76. With this addition, Class Counsel have extensive experience and expertise in securities class actions and have been or continue to be *ad litem* counsel in large high stakes securities class actions against Valeant Pharmaceuticals, Volkswagen AG, Concordia Healthcare, Amaya Gaming / The Stars Group, Bombardier, The Toronto-Dominion Bank (twice), Hexo Corp., and Lightspeed.

77. Notably, the added members of the Class Counsel team were attorneys of record in the first class action to be authorized in Québec under the heightened requirement of s. 225.4 of the QSA, which also became one of if not the largest secondary market securities settlements in Canada.

78. Class Counsel recommended that the Plaintiffs accept the proposed Agreement since it is fair, reasonable, in the best interests of the Class, encourages judicial efficiency and access to justice, and encourages the free flow of information in capital markets.

**J. Conclusion**

79. In light of the complexity of the issues in the Action and the result achieved, the Agreement is fair and reasonable and in the best interests of the Class.

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[13] *Option Consommateurs c. Infineon Technologies, a.g.,* 2013 QCCS 1191, BoA, tab 12, par. 40.

80. Class Counsel and the Plaintiffs respectfully submit that the Agreement should be approved.

## IV- PLAN OF ALLOCATION AND NOTICE PLAN

81. The Plan of Allocation, Exhibit R-4, sets out the process by which Class Members will be entitled to file claims to obtain compensation from the Compensation Fund.

82. At section 3, the Plan of Allocation, Exhibit R-4, further provides that the distribution for each Authorized Claimant[14] will be calculated as follows:

a. If Eligible Securities[15] are sold after September 28, 2021 but before November 17, 2021[16]: average purchase price for Eligible Securities - average sales price for Eligible Securities X number of Eligible Securities = Authorized Claimant's damages for this category of Eligible Securities;

b. If Eligible Securities are held until Nov 17, 2021: average purchase price for Eligible Securities - $87.40 (10 day avg) X number of Eligible Securities = Authorized Claimant's damages for this category of Eligible Securities;

c. Each Authorized Claimant's Pro Rata Distribution = (each Authorized Claimant's total damages (i.e. (a) + (b) above) X Compensation Fund) / Total damages of all Authorized Claimants on the Distribution List.

83. The Administrator will create an online claims portal to allow Class Members to file their claims and upload supporting documentation, using the online version of the English and French Claim Forms, Exhibit R-6.

84. Class Members will be informed of how to file their claims by the publication of the Second Notice, Exhibit R-3.

85. The Second Notice will be disseminated in accordance with the Notice Plan, Exhibit R-5.

86. The Second Notice, Exhibit R-3, and the Notice Plan, Exhibit R-5, are aligned with the content and methodology approved by this Court in its order of August 22, 2025, and many other securities class action settlements[17].

## V- CLASS COUNSEL FEES

### A. Applicable Criteria

87. Fair and reasonable class counsel fees should be approved by the Court.

88. Decades ago, the Honorable Justice Chaput, J.S.C., in *Guilbert*, stated that:

> [34] La mesure de ce qui est juste et raisonnable, on la retrouve au Code:

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[14] As defined in the Plan of Allocation, Exhibit R-4.
[15] As defined in the Plan of Allocation, Exhibit R-4.
[16] November 3, 2021 plus ten (10) trading days, as per section 225.28 of the QSA, is November 17, 2021.
[17] For e.g., see *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 91-92.

> *8. Fixation et paiement des honoraires*
>
> *3.08.01. L'avocat doit demander et accepter des honoraires justes et raisonnables.*
>
> *3.08.02. Les honoraires sont justes et raisonnables s'ils sont justifiés par les circonstances et proportionnés aux services professionnels rendus. L'avocat doit notamment tenir compte des facteurs suivants pour la fixation de ses honoraires:*
>
> a) *l'expérience;*
> b) *le temps consacré à l'affaire;*
> c) *la difficulté du problème soumis;*
> d) *l'importance de l'affaire;*
> e) *la responsabilité assumée;*
> *f) la prestation de services professionnels inhabituels ou exigeant une compétence ou une célérité exceptionnelles;*
> *g) le résultat obtenu;*
> *h) les honoraires judiciaires et extrajudiciaires prévus aux tarifs.*
>
> *3.08.03. L'avocat doit éviter toutes les méthodes et attitudes susceptibles de donner à sa profession un caractère de lucre et de commercialité.*[18]
>
> [References omitted]

89. These principles are still applicable today, and similar wording appears in the current *Code of Professional Conduct of Lawyers*, CQLR c B-1, r 3.1 ("***Code of Professional Conduct***"), at articles 101, 102 and 103.[19]

90. The criteria governing the setting of fees can be summarized as follows:

> *[64] Comme mentionné ci-avant, une convention d'honoraires bénéficie d'une présomption de validité. Devant une telle présomption, l'analyse de la raisonnabilité des honoraires fixés par une convention à pourcentage devrait commencer avec l'application des critères autres que le temps consacré à l'affaire par les avocats. L'expérience nous enseigne que le montant d'honoraires payable en vertu d'une convention à pourcentage va souvent, sinon presque toujours, excéder le montant d'honoraires calculé sur la base du temps consacré à l'affaire multiplié par le ou les taux horaires applicables. Par conséquent, si l'analyse est axée sur les heures travaillées, le montant d'honoraires à payer risque toujours d'apparaître comme excessif ou déraisonnable. Ainsi, débuter l'analyse en prenant en compte les facteurs du temps et du taux horaire relève d'un raisonnement circulaire ou tautologique. En mettant de côté l'entente qui prévoit que les honoraires sont calculés sur la base d'un pourcentage et non en fonction*

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[18] *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432, BoA, tab 13, par. 34 - main appeal dismissed and cross appeal allowed in part on other grounds, 2009 QCCA 231; see also *Pellemans c. Lacroix*, 2011 QCCS 1345, BoA, tab 11, par. 51.

[19] For a more recent summary of the applicable criteria, see: *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 98-100, quoting extensively *A.B.* c. *Clerks de Saint-Viateur du Canada*, 2023 QCCA 527, BoA, tab 10, par. 50-53, 58, 63, 64 (sic: should be 65). See also *MacDuff* c. *Vacances Sunwing inc.*, 2025 QCCA 1225, BoA, tab 14, par. 41-42.

> *du temps consacré au dossier, la conclusion que les honoraires sont déraisonnables est presque inévitable. Pour éviter cet écueil, le processus d'analyse devrait débuter par l'évaluation de tous les autres critères prévus dans le Code de déontologie et la prise en compte du risque assumé par les avocats. Si on en arrive à la conclusion que le montant (pas le pourcentage) d'honoraires payable est raisonnable, l'analyse peut s'arrêter dans l'exercice de la discrétion du juge. Par contre, si le montant d'honoraires semble déraisonnable, il convient dès lors de prendre en compte les heures consacrées au dossier et d'appliquer un facteur multiplicateur pour ajuster le montant des honoraires pour que celui-ci devienne raisonnable*.[20]
>
> [Emphasis added, references omitted]

91. As particularized below, Class Counsel respectfully submit that their legal fees are fair and reasonable and should be approved by this Honourable Court.

### B. Class Counsel's Mandate

92. The starting point for the reasonableness in Class Counsel's fee request is to examine the reasonableness of the *Convention of a Professional Mandate*[21] between each Plaintiff and Class Counsel (the "**Mandate**").

93. Retainer agreements benefit from a presumption of validity and should only be set aside if they are not in the interests of class members, are against the law, or contravene public order:

> *[50] La convention d'honoraires bénéficie donc en quelque sorte, d'une présomption de validité. Elle ne sera écartée que dans la mesure où il est démontré qu'elle n'est pas juste et raisonnable pour les membres dans les circonstances de l'affaire, ou pour l'un des motifs de nullité du contrat prévu au Code civil du Québec. Dans le cas contraire, elle sera appliquée intégralement:*
>
> > *[64] Lorsque le tribunal est d'avis que l'entente proposée est juste et raisonnable et qu'elle sert, à la fois, les intérêts des représentants et ceux des membres du groupe visé, il doit l'approuver. Il ne lui appartient pas de la modifier. Il ne doit pas substituer son jugement à l'accord des parties. Il peut refuser de l'approuver s'il juge qu'elle n'est pas dans le meilleur intérêt des membres du groupe ou s'il est d'avis qu'elle contrevient à la loi ou à l'ordre public.* [22]
>
> [References omitted]

94. Quasi-identical mandates to the one at hand have previously been declared reasonable and fees have been awarded payable to Faguy & Co. as a first charge against the settlement amount by this Honourable Court in the following matters:

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[20] *A.B.* c. *Clerks de Saint-Viateur du Canada*, 2023 QCCA 527, BoA, tab 10, par. 64. See also *MacDuff* c. *Vacances Sunwing inc.*, 2025 QCCA 1225, BoA, tab 14.

[21] Exhibit EM-3 *en liasse* to the Sworn Declaration of Mtre Elizabeth Meloche, Exhibit R-1.

[22] *Pellemans c. Lacroix*, 2011 QCCS 1345, BoA, tab 11, par. 50; *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 107.

a. *Landry* c. *Concordia International Corp.*[23] by Mr. Justice Gagnon;

b. *Derome* c. *The Stars Group Inc.*[24] by Madame Justice Courchesne;

c. *Catucci* c. *Valeant Pharmaceuticals International Inc.*[25] by Mr. Justice Kalichman (then of the Superior Court) on two separate occasions;

d. *Gauthier* c. *Baazov*[26] by Mr. Justice Lussier; and

e. *Majestic Asset Management* c. *Banque Toronto-Dominion*[27] by Mr. Justice Bisson.

95. Contingency fee agreements providing for a percentage of the recovery obtained, ranging from 15% to 33%, are considered fair and reasonable by the case law.[28]

96. The Court of Appeal also said the exact percentage is less relevant than the amount:

> […] *Si on en arrive à la conclusion que le montant (pas le pourcentage) d'honoraires payable est raisonnable, l'analyse peut s'arrêter dans l'exercice de la discrétion du juge.* […][29]

97. In the case at hand, the Mandate states that if the Action is successfully resolved, Class Counsel will be compensated in the amount of one third (33.33%) of the benefit recovered, plus disbursements and all applicable taxes, as a first payment against the settlement proceeds.[30]

98. Percentage fee agreements have long since been recognized by Québec Law, particularly in the context of class actions, and Class Counsel have the right to expect their agreements will be honored, as stated by the Court of Appeal:

> *[57] Les conventions d'honoraires à pourcentage sont très répandues en matière d'action collective. Ce type de conventions présente des avantages considérables, notamment en ce qu'il favorise « l'accès à la justice pour des citoyens qui autrement n'en auraient pas les moyens ». Il ne saurait être question ici de remettre en cause la validité et l'utilité de ce modèle de rémunération. Les avocats devraient être encouragés à accepter des mandats en matière d'action collective en sachant que le risque accepté sera compensé, le cas échéant. À cet égard, les avocats sont en droit de*

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[23] *Landry c. Concordia International Corp.*, 2018 QCCS 4641, BoA, tab 15.
[24] *Derome c. The Stars Group Inc.,* 2020 QCCS 2316, BoA, tab 16.
[25] *Catucci* c. *Valeant Pharmaceuticals International Inc.*, November 12, 2019 and November 16, 2020 judgments [unreported] – *en liasse*, BoA, tab 17.
[26] *Gauthier* c. *Baazov*, 2023 QCCS 4283, BoA, tab 18.
[27] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5.
[28] *Guilbert c. Sony Music BMG Canada Inc.*, 2007 QCCS 432, BoA, tab 13, par. 45 - main appeal dismissed and cross appeal allowed in part on other grounds, 2009 QCCA 231; *A.B.* c. *Clercs de Saint-Viateur du Canada,* 2023 QCCA 527, BoA, tab 10, par. 58; *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 100.
[29] *A.B.* c. *Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, BoA, tab 10, par. 64.
[30] Exhibit EM-3 *en liasse* to the Sworn Declaration of Mtre Elizabeth Meloche, Exhibit R-1, par. 3 of each Mandate.

> *s'attendre que l'entente concernant leurs honoraires soit respectée.*[31]
>
> [Empasis added, references omitted]

99. When determining whether to approve a fee request from class counsel, courts should take the class members' interests into account, but this should not be at counsel's expense. As stated by this Court:

> *[66] Pour le tribunal, veiller sur l'intérêt des membres ne consiste pas à prendre leur part au détriment indu des avocats qui travaillent pour le groupe, et encore moins à donner raison inconsidérément à tous les mouvements d'humeur. [...]*
>
> *[67] Dans certains cas, l'intérêt des membres peut consister à garder les avocats motivés à persévérer même quand les procédures sont longues, ardues et risquées, au point où leur rémunération est nulle durant des mois et des années. Le paiement d'honoraires à un stade interlocutoire fait partie du coffre à outils à cet effet.*[32]
>
> [Emphasis added]

100. In *Option Consommateurs c. Infineon Technologies a.g.,* the plaintiff, an association devoted to promoting and defending consumers' interests, discussed the importance of motivating class counsel to advance such lawsuit, which the Court accepted:

> *[137] En l'espèce, Option Consommateurs insiste que la convention d'honoraires soit honorée. Dans un affidavit du 21 août 2014, Me Sylvie De Bellefeuille, avocate chez Option Consommateurs, met le tribunal en garde des effets pervers d'une réduction des honoraires convenus. Voici l'extrait significatif de son affidavit :*
>
> > 9. It is important that contingency fee agreements are respected, and that the percentage contingency fees agreed to between class counsel and representative plaintiffs be honoured in order to ensure predictability and thereby promote access to justice, especially for consumers who almost invariably do not have sufficient resources to mount an individual lawsuit in circumstances such as exist in the Proceedings. I am concerned that, if the courts set an arbitrary dollar amount as the highest fee achievable by class counsel for public policy reasons, this might create a disincentive which could amount to conflict of interest between class counsel and class members, and jeopardize the relationship between class counsel and their representative plaintiff clients.
> >
> > 10. Since such an arbitrary fee will be reported as a precedent in jurisprudence, it will be public knowledge. In particular, defence counsel will become aware of such an arbitrary fee… In cases, such as the Proceedings, where Class Counsel seek interim fees and file contingency fee agreements as exhibits, some defendants may be

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[31] *A.B.* c. *Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, BoA, tab 10, par. 57.

[32] *Option Consommateurs c. Infineon Technologies, a.g.,* 2013 QCCS 1191, BoA, tab 12, par. 66-67.

> motivated to decrease the amount of money that they are willing to offer to settle a class action because class counsel are at or near the maximum arbitrary fee that they are likely to be awarded.
>
> 11. Percentage contingency fee agreements create valuable incentives for class counsel, as they encourage class counsel to, among other things, achieve the highest settlements possible in order to generate the largest percentage fee. If class counsel are faced with an arbitrary maximum fee, then once they achieve sufficient settlements to get them at or near that maximum arbitrary fee, class members may think that class counsel will settle cheaply with any remaining defendants to close down the case. This conflicts with the class members' interest in maximizing recovery.
>
> 12. In summary, to impose a maximum arbitrary fee may create a disincentive that could be harmful for future class actions. […] [33]
>
> [Emphasis added; reference omitted]

101. The Plaintiffs support the legal fee request by Class Counsel and have also stated that they believe that securities class actions provide access to justice to investors and that class counsel must be incentivized to bring actions such as the present one forward.[34]

102. Echoing the sentiments cited above, they have also added that altering class counsel agreements may create an unlevel playing field between plaintiffs and defendants.[35] This proposition merits careful consideration. If courts set arbitrary limits to the amount that can be awarded to class counsel, defendants may use that situation to negotiate lower settlements to the detriment of class members, frustrating the goals of class proceedings of providing adequate access to justice for class members.

103. As stated by Strathy J. (as he then was) in *Abdulrahim*:

> [9] In class action litigation, the court must also consider the goals of class proceedings, particularly in terms of access to justice. The fee of class counsel must be both fair and reasonable. It should not only reward counsel for meritorious efforts, but it should also encourage counsel to take on difficult and risky class action litigation. The risk undertaken by the lawyer, and the success achieved, are important considerations in determining the fee: Maxwell v. MLG Ventures Ltd. (1996), 1996 CanLII 8039 (ON SC), 30 O.R. (3d) 304, [1996] O.J. No. 2644 (Gen. Div.); Windisman v. Toronto College Park Ltd., above; Serwaczek v. Medical Engineering Corp., above; Parsons v. Canadian Red Cross Society (2000), 2000 CanLII 22386 (ON SC), 49 O.R. (3d) 281, [2000] O.J. No. 2374 (S.C.J.).
>
> [10] The courts have recognized that the objectives of the C.P.A. – judicial economy, access to justice and behaviour modification – are dependent, in

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[33] *Option Consommateurs* c. *Infineon Technologies, a.g.*, 2014 QCCS 4949, BoA, tab 19, at par. 137.

[34] Plaintiffs' sworn statements, Exhibit R-8 *en liasse*, at par. 19 and 23 (Mr. Steven Holcman) and par. 22 and 26 (Mr. Tarique Plummer).

[35] Plaintiffs' sworn statements, Exhibit R-8 *en liasse*, at par. 21 and 22 (Mr. Steven Holcman) and par. 24 and 25 (Mr. Tarique Plummer).

> part, upon counsel's willingness to take on class proceedings. This, in turn, depends on the incentives available to counsel to assume the risks and accept the financial burden of carrying class proceedings. A premium on fees is the reward to class counsel for accepting this risk and taking on meritorious but difficult matters: Vitapharm Canada Ltd. v. F. Hoffmann-La Roche Ltd., [2005] O.J. No. 1117 at paras. 59-61 (S.C.J.); Parsons v. Canadian Red Cross Society, above, at 287.[36]
>
> [Emphasis added]

104. Justice Strathy's comments were adopted by this Court in *Option Consommateurs c. Infineon Technologies, a.g.*[37], and are aligned with the Court of Appeal's reasoning in *MacDuff* c. *Vacances Sunwing inc.*[38] and with this Court's reasoning in *Majestic Asset Management* c. *Banque Toronto-Dominion*[39].

### C. Risk Assumed by Class Counsel

105. Although the element of risk is not specifically identified at article 102 of the *Code of Professional Conduct*, courts have held that they cannot disregard the fact that attorneys work on a case for a number of years without any guarantee of success.[40]

106. Risk must be evaluated when a mandate is accepted and not when a case is settled:

> […] *Dans tous les cas, le risque doit s'apprécier au moment où les avocats ont reçu le mandat du représentant, et non au moment de la demande d'approbation*.[41]
>
> [Reference omitted]

107. In addition to bearing all the risks of a normal class action, securities class actions have a heightened degree of risk. As stated by Mr. Justice Lussier:

> *[57] The risk assumed by Class Counsel is directly related to the level of complexity of a claim.*
>
> *[58] All of the risks of the Class Action as a whole are relevant to an assessment of risk for the purpose of determining this application for fees and disbursements.*
>
> *[59] The Plaintiff filed a claim pursuant to Title VIII, Chapter II, Division II of the Quebec Securities Act. As such, at the outset, the Plaintiff was faced with the necessity to demonstrate that his claim was brought in good faith*

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[36] *Abdulrahim v. Air France*, 2011 ONSC 512, BoA, tab 20, par. 9-10.

[37] *Option Consommateurs c. Infineon Technologies, a.g.,* 2012 QCCS 3506, BoA, tab 21, par. 10; *Option Consommateurs c. Infineon Technologies, a.g.,* 2013 QCCS 1191, BoA, tab 12, par. 59; and *Option Consommateurs c. Infineon Technologies, a.g.,* 2014 QCCS 4949, BoA, tab 19, par. 134.

[38] *MacDuff* c. *Vacances Sunwing inc.*, 2025 QCCA 1225, BoA, tab 14.

[39] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5.

[40] *MacDuff* c. *Vacances Sunwing inc.*, 2025 QCCA 1225, BoA, tab 14, par. 42, 47-48; *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 115, 119.

[41] *A.B.* c. *Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, BoA, tab 10, par. 54; *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 15, par. 115, 120.

> *and that there was a reasonable possibility that the claim would be resolved in their favor pursuant to s. 225.4 of the Quebec Securities Act.*
>
> *[60] This requirement is a heightened burden for authorization when compared to a regular class action. The Plaintiff's evidentiary and legal burdens at authorization were therefore increased and the chances of success correspondingly decreased.*
>
> *[61] Moreover, securities class actions often require the hiring of experts at the inception of a matter to satisfy their burden and bring "some credible evidence" in support of their claims.*
>
> *[62] Incurring such an expense so early in the proceedings magnifies the risk where class counsel can be required to expend significant sums even before a case is even authorized.*
>
> *[63] The procedural path giving rise to the Class Action, the substantive merits required to obtain authorization under the Quebec Securities Act and the nature of the substantive issues themselves add complexity and risk involved in securities class actions*.[42]
>
> [Emphasis added, references omitted]

108. In *Majestic Asset Management c. Banque Toronto-Dominion*, Justice Bisson quoted the above passage from Justice Lussier's judgment at length and added that:

> *[115] Les honoraires des avocats du groupe doivent non seulement récompenser les avocats du groupe pour leurs efforts méritoires, mais aussi encourager les avocats à s'attaquer à des recours collectifs difficiles et risqués. Le risque pris par l'avocat et le succès obtenu sont des facteurs importants à prendre en considération pour déterminer les honoraires.*
>
> *[116] Ce n'est que grâce à un solide système d'honoraires à pourcentage que les avocats du groupe en action collective seront récompensés de manière appropriée pour les victoires et les pertes subies dans de nombreux autres dossiers et de nombreuses années de litige, et que l'action collective continuera de demeurer viable en tant que véhicule significatif d'accès à la justice. Le système des règlements d'action collective au Québec fait en sorte que les dossiers individuels ne sont pas isolés en vase clos, mais plutôt ce système fait en sorte que certains règlements de certains dossiers se trouvent à financer les avocats pour d'autres dossiers non reliés. Le but est l'accès à la justice pour les justiciables et la sanction des conduites qui doivent cesser. La Cour d'appel le rappelle au paragraphe 65 de l'arrêt* A.B. *c.* Clercs de Saint-Viateur du Canada*, lorsqu'elle écrit ceci : « Autrement dit, une saine gestion du risque implique l'acceptation de plusieurs mandats sachant qu'un certain nombre de causes seront probablement perdues et qu'ainsi, l'avocat se retrouvera sans aucune rémunération ».*
>
> *[117] Enfin, en matière de valeurs mobilières, le risque que prennent les avocats en demande, le temps investi, la nécessité de rapports d'experts*

[42] *Gauthier* c. *Baazov*, 2023 QCCS 4283, BoA, tab 18, par. 57-63.

> *complexes et l'expertise très spécialisée requise sont des facteurs qui démontrent qu'un pourcentage dans le niveau supérieur de la fourchette permise doit être accepté par le Tribunal.*
>
> *[118] Donc, en principe, le Tribunal accepte le pourcentage de 33,3 % et il n'y a à date aucune raison de diminuer ce pourcentage. Voyons les autres critères.* […]
>
> *[123] Puisque les avocats du groupe acceptent dès le départ d'assumer la responsabilité des coûts et des grands risques liés à l'exercice de l'action collective en matière de valeurs mobilières et à son rejet éventuel, à l'exclusion du représentant, il apparaît justifié au Tribunal que l'ampleur de ces risques soit reflétée dans l'honoraire à pourcentage négocié avec leur client. Il faut s'attendre à une certaine adéquation entre l'importance des risques assumés par l'avocat, d'une part, et le pourcentage qui sera éventuellement payé par les membres, le cas échéant, d'autre part.*[43]
>
> [References omitted]

109. Additionally, defendants in securities cases are, by definition, publicly traded companies with virtually unlimited resources and often hundreds of millions of dollars of insurance, capable of hiring armies of lawyers and fighting until the bitter end.[44]

110. As stated by this Honourable Court in *Pellemans*:

> *[101] Lorsque, comme en l'instance, l'avocat accepte dès le départ d'assumer la responsabilité des coûts et des risques liés à l'exercice du recours collectif et à son rejet éventuel, à l'exclusion du représentant, il apparaît justifié que l'ampleur de ces risques soit reflétée dans l'honoraire à pourcentage négocié avec son client. Il faut s'attendre à une certaine adéquation entre l'importance des risques assumés par l'avocat, d'une part, et le pourcentage qui sera éventuellement payé par les membres, le cas échéant, d'autre part.*
>
> *[102] En l'absence d'une telle entente, il est raisonnable de présumer que dans de nombreux dossiers, un membre refuserait de se porter représentant aux fins de l'exercice du recours collectif. Ainsi, c'est l'accès même à la procédure du recours collectif, recours unique, qui se verrait compromis à une époque où de plus en plus d'intervenants de notre société se questionnent sur l'accessibilité à la justice.* [45]

111. The reality is not illusory. Despite Faguy & Co.'s success in representing plaintiffs in securities class actions, they have suffered expensive setbacks on some occasions, which they can expand on, if need be.

112. Even when cases are resounding successes, class counsel can still lose money. For example, in the ***Baazov*** matter, the defendant's liability was limited to between $500,000 and $1,250,000 in virtue of article 225.33 of the Québec *Securities Act*. Even though Faguy & Co. managed to

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[43] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 115-118, 123.

[44] *Majestic Asset Management* c. *Banque Toronto-Dominion*, 2024 QCCS 225, BoA, tab 5, par. 120.

[45] *Pellemans* c. *Lacroix*, 2011 QCCS 1345, BoA, tab 11, par. 101, 102.

resolve the file for $1.8M (a significant premium over the likely maximum recoverable amount), they only received $540,000 in fees, despite having invested over $1,000,000.

113. As stated by Mr. Justice Belobaba, then of the Ontario Superior Court, cited with approval by Mr. Justice Lussier of this Court:

> *[…] it is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue to remain viable as a meaningful vehicle for access to justice.*[46]

114. The winners must pay for the losers in class action litigation or no plaintiff's firm could continue to operate.

115. In any event, the return on Class Counsel's investment in this matter is modest at best.

**D. Class Counsel's Time and Expenses**

116. Class Counsel have financed virtually the entirety of this litigation, as appears from the Sworn Declaration of Mtre Elizabeth Meloche, Exhibit R-1.

117. At standard rates, Class Counsel have and will incur fees in excess of $2,370,000 to bring this matter to conclusion.

118. Additionally, the amount of the disbursements spent by Class Counsel totals $283,447.85.

119. The Court of Appeal recently cautioned that even analyzing the time devoted by counsel can be an illusory and arbitrary exercise to be avoided:

> *[65] De simplement compter le nombre d'heures consacrées au dossier multiplié par les taux horaires applicables et d'appliquer un facteur multiplicateur de 2, 3, 4 ou même 5 est, dans mon opinion arbitraire, du moins à un certain degré. Le risque assumé au début du dossier n'est pas habilement traduit en chiffre, à savoir le facteur multiplicateur. Les facteurs ne tiennent pas compte des taux d'intérêt qu'un avocat peut être obligé d'assumer pendant qu'il finance l'action collective. Même si la méthode mesure le coût d'opportunité, elle ne sert pas à évaluer le risque dans les autres actions collectives payables à pourcentage que l'avocat accepte. Autrement dit, une saine gestion du risque implique l'acceptation de plusieurs mandats sachant qu'un certain nombre de causes seront probablement perdues et qu'ainsi, l'avocat se retrouvera sans aucune rémunération. D'ailleurs, le temps consacré au dossier dans ce type d'affaire est souvent secondaire dans l'analyse de la raisonnabilité des honoraire. Le risque assumé et le résultat obtenu devront normalement avoir préséance sachant que le poids à accorder à chaque facteur peut varier d'un cas à l'autre, selon les circonstances.*[47]
>
> [Emphasis added, references omitted]

120. Notwithstanding the foregoing, even if a multiplier is used, the investment by Class Counsel of

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[46] *Gauthier* c. *Baazov*, 2023 QCCS 4283, BoA, tab 18, par. 55.

[47] *A.B.* c. *Clercs de Saint-Viateur du Canada,* 2023 QCCA 527, BoA, tab 10, par. 65.

more than $2,650,000 (past fees, estimated future fees, and disbursements) is a multiplier of less than 1.4, such that it is at the very conservative end of the spectrum of what could be considered reasonable.

### E. Complexity of the File and Specialization of Counsel

121. This file raises numerous complex accounting notions, such as allowances for bad debt, goodwill impairment, average revenue per user, revenue manipulation, earnings management, as well as allegations of internal control deficiencies.

122. Expert evidence is at the center of the Action and requires from a counsel a certain degree of experience in such matters.

123. As mentioned above, the current *ad litem* Class Counsel specialize in this type of securities class actions.

### F. Importance of the Matter to Class Members

124. For the vast majority of Class Members, an individual action is not feasible, and this Action would be the only efficient vehicle for them to obtain access to justice and pursue their claims.

### G. Result Obtained

125. As expressed above and detailed in Mtre Meloche's sworn declaration, Exhibit R-1, through their diligence and hard work, Class Counsel were able to obtain an $11,000,000 settlement for the Class Members, which exceeds the median percentage of recoverable damages in securities settlements in Canada between 2018 and 2024, and is an excellent result in the circumstances.

126. Thanks to their experience, knowledge of securities class action, and the way they structured and brought the Plaintiffs' case, they were able to achieve this result in Canada, whereas the parallel proceedings instituted in the United States following the publication of the Spruce Report led to zero dollars in compensation for the class members in that jurisdiction.

127. Class Counsel have worked diligently in this matter for over four years, without guarantee of remuneration, and they are entitled to be compensated for their efforts.

## VI- ORDER SOUGHT

128. Accordingly, the Plaintiffs requests that an order be granted in the form attached as **Exhibit R-9**.

129. The Second Application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present *Application to Approve a Settlement Agreement and for Other Relief*; and

**ISSUE** the order in the form attached hereto as Exhibit R-9.

**THE WHOLE WITHOUT COSTS**.

MONTRÉAL, this 6th day of November, 2025

*Faguy & Co.*

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**FAGUY & CO. BARRISTERS & SOLICITORS INC.**

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CANADA
PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL
No.: 500-06-001164-215

**SUPERIOR COURT**
(Class Action)

**STEVEN HOLCMAN *ET AL.***

Representative Plaintiffs

v.

**LIGHTSPEED COMMERCE INC. *ET AL.***

Defendants

and

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**

Impleaded Party

**LIST OF EXHIBITS OF THE REPRESENTATIVE PLAINTIFFS**
**In support of the *Application to Approve a Settlement Agreement and for Other Relief***

| Exhibit | Description |
|---|---|
| **R-1:** | Sworn Declaration of Mtre Elizabeth Meloche dated October 31, 2025; |
| **R-2:** | Settlement agreement entered into on July 16, 2025; |
| **R-3:** | Second Notice; |
| **R-4:** | Plan of Allocation; |
| **R-5:** | Notice Plan; |
| **R-6:** | Claim Form; |
| **R-7:** | Administrator's report on opt-outs and objections dated October 22, 2025; |

| | |
|---|---|
| **R-8:** | Sworn Statements of Mr. Steven Holcman and Mr. Tarique Plummer, *en liasse*; and |
| **R-9:** | Draft Order |

MONTRÉAL, November 6, 2025

*Faguy & Co.*

**FAGUY & CO. BARRISTERS & SOLICITORS INC.**

**Attorneys for the Representative Plaintiffs**

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CANADA
PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL
No.: 500-06-001164-215

**SUPERIOR COURT**
(Class Action)

**STEVEN HOLCMAN *ET AL.***

Representative Plaintiffs

v.

**LIGHTSPEED COMMERCE INC. *ET AL.***

Defendants

and

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**

Impleaded Party

## NOTICE OF PRESENTATION

**TO: STIKEMAN ELLIOTT LLP**
c/o Mtres Stéphanie Lapierre / Frédéric Paré
1155 René-Lévesque Blv. West, Suite 4100
Montréal, Québec H3B 3V2
Attorneys for the LSPD defendants

**TO: OSLER, HOSKIN & HARCOURT LLP**
c/o Mtres Éric Préfontaine / Josy-Ann Therrien
1000 de La Gauchetière Street West, Suite 1100
Montréal, Québec H3B 4W5
Attorneys for defendant PricewaterhouseCoopers LLP

**TO: FONDS D'AIDE AUX ACTIONS COLLECTIVES**
c/o Mtre Jennifer Lemarquis
Palais de justice de Montréal
1 Notre-Dame Street East, Suite 10.30
Montréal, Québec H2Y 1B6

**TAKE NOTICE** that the *Application to Approve a Settlement Agreement and for Other Relief* will be presented for hearing before the Honourable Lukasz Granosik of the Superior Court of Québec, on **November 21, 2025**, at **9:30 a.m.**, in **Room 2.07** or such other location as the Court may advise, of the Montréal Courthouse, located at 1 Notre-Dame Street East, Montreal, Québec, H2Y 1B6.

**PLEASE GOVERN YOURSELVES ACCORDINGLY.**

MONTRÉAL, November 6, 2025

*Faguy & Co.*

**FAGUY & CO. BARRISTERS & SOLICITORS INC.**

**Attorneys for the Representative Plaintiffs**

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Mtre Shawn Faguy
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Impleaded Party

**APPLICATION TO APPROVE A SETTLEMENT AGREEMENT AND FOR OTHER RELIEF**
**(Articles 590-593, 595-596 CCP)**

**ORIGINAL**

FAGUY & CO.
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