

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action Division)
SUPERIOR COURT

No.: 500-06-000907-184

KARINE LEVY

Plaintiff

vs.

NISSAN CANADA INC.

Defendant

APPLICATION FOR APPROVAL OF NOTICES TO CLASS MEMBERS AND TO
APPOINT A CLAIMS ADMINISTRATOR
(Articles 101, 580 and 590 C.C.P.)

TO THE HONOURABLE JUSTICE PIERRE NOLLET OF THE SUPERIOR COURT OF
QUÉBEC, DISTRICT OF MONTRÉAL, DESIGNATED TO PRESIDE OVER THE
PRESENT CLASS ACTION, THE PLAINTIFF RESPECTFULLY SUBMITS THE
FOLLOWING:

I. NATURE OF THE APPLICATION

1. On September 19, 2019, this Honorable Court authorized in part the Data Incident class action herein, as amended by judgment of the Court of Appeal on April 28, 2021 (the "**Québec Action**"), as appears from the Court record.
2. On October 29 2019, the Ontario Superior Court of Justice certified a parallel class action against the Defendants, Nissan Canada Financial Services Inc. and Nissan North America Inc. (collectively, "**Nissan**"), in the matter of *Grossman and Arntfield v. Nissan Canada Inc., Nissan Canada Financial Services Inc./Services Financiers Nissan Canada Inc. and Nissan North America, Inc.*, in the Court file No. CV-18-00590402-00CP (the "**Ontario Action**").

3. On July 27, 2021, Plaintiff filed her Originating Class Action Application, as appears from the Court record.
4. In October 2021, the authorization notices were disseminated as ordered by this Honorable Court.
5. On or around January 4, 2024, the parties to the Québec Action and the Ontario Action executed a national settlement to definitively settle both actions, as appears more fully from a copy of the Settlement Agreement, including its schedules, (the “**Settlement Agreement**”) filed herewith as **Exhibit R-1**, and French translation which will be filed with the Court at a later date.¹
6. Except to the extent that they are modified by this Application, capitalized terms used herein have the meanings assigned to them in the Settlement Agreement (Exhibit R-1).
7. Pursuant to Article 2.2 of the Settlement Agreement, the purpose of this Application is to ask this Honourable Court to:
 - a) approve the notices to Class Members to inform them *inter alia* that a settlement approval hearing will be held in the present file;
 - b) approve the form and content of the Pre-Approval Notice;
 - c) approve the manner by which the Pre-Approval Notice will be disseminated and published, in accordance with Article 6.3 of the Settlement Agreement;

¹ Following the execution of the Settlement Agreement, additional revisions were made by the Parties to the Claim Form (Schedule “B”) and to both the short form and long form of the Pre-Approval Notice (Schedules “D1” and “D-2”). The Settlement Agreement filed as Exhibit R-1 contains these revised and updated versions of the Claim Form and the Pre-Approval Notice.

- d) appoint the Claims Administrator;
- e) order that the Defendant is authorized to provide the Claims Administrator with the names and email addresses (if available) of the Québec Class Members for the purpose of executing the notice plan set forth at Article 6.3 of the Settlement Agreement and facilitating the distribution process in accordance with the Settlement Agreement
- f) issue any necessary orders to protect the confidentiality of the information provided by the Defendant and ensure that the production of such information satisfies the requirements of all applicable privacy laws;
- g) set down the date, time and location for the Approval Hearing of the Settlement Agreement, as well as the associated deadlines; and
- h) approve the procedure and deadline for commenting on or raising an objection to this Settlement set forth at Article 3.1 of the Settlement Agreement.

II. **BACKGROUND**

8. On February 12, 2018, Plaintiff filed her *Application for Authorization to Institute a Class Action* against Defendant, before the Superior Court of Québec, District of Montréal, as appears from the Court record.

9. The Class Action was instituted following the Data Incident that occurred on or about December 11, 2017, when Nissan received an anonymous email from an unknown individual claiming to have information about Nissan customers, and demanding a ransom be paid to return the data.
10. Following arm's length negotiations, including mediation, the Parties agreed to fully settle the Québec Action and the Ontario Action, as appears from the Settlement Agreement.
11. Québec Counsel is working cooperatively with counsel in the Ontario Action such that the Settlement Agreement resolves claims included in both the Ontario Action and the Québec Action. Class Counsel will seek separate, but consistent, orders approving the Settlement Agreement from this Court and the Ontario Superior Court of Justice.

A. OBJECTIONS AND COMMENTS

12. Article 3.1 of the Settlement Agreement provides that Class Members who wish to comment or object to the Settlement Agreement are required to inform Class Counsel in writing of the grounds for their objection or their comments at least twenty (20) days before the Approval Hearing, by communicating a document containing the information detailed at Article 3.1.1 of the Settlement Agreement.

B. PRE-APPROVAL NOTICE

13. The Parties have agreed on the form and content of the Pre-Approval Notice as well as the method for its dissemination and publication, as set out in Articles 6.1 and 6.3 of the Settlement Agreement. Said Pre-Approval Notice will advise Class Members of the basic terms of the Settlement Agreement and their right to participate in the Approval Hearing. The Pre-Approval Notice is included as Schedule "D-1" (short form) and Schedule "D-2" (long form) of the Settlement Agreement, in their English

versions. French versions of the Pre-Approval Notice will be filed with the Court at a later date.

14. The Parties have agreed to the publication and the dissemination of the Pre-Approval Notice (Article 6.3 of the Settlement Agreement) as follows (the “**Notice Plan**”):

“6.3.1 Directly by email in the proposed short form (in both English and French) (including hyperlinks to the Settlement Website and the proposed long form notice) to: (i) those Settlement Class Members for whom Nissan has an email address on file, at their last known email address; and (ii) any Person who registered on the Settlement Website or on Class Counsels’ websites to receive notice. In the case of any soft bounce-backs (in respect of temporarily unavailable email accounts), the Claims Administrator will resend the email one (1) additional time attempting to address the issue-causing the bounce-back. For avoidance of doubt, the Parties agree that the notice plan will not include the dissemination of notices by regular mail as the anticipated cost of such mailings would be approximately \$250,000 and any benefit of disseminating notices in this manner would be far outweighed by this additional cost.

6.3.2 Publication of online notices in the proposed short form by way of digital or social media ads, which will be posted in order to attain 500,000 impressions each over a period of thirty (30) days for both the Pre-Approval Notices and the Approval Notices.

6.3.3 Publication by the Claims Administrator of a national bilingual press release issued on Canada Newswire which will mirror the contents of the Pre-Approval Notice and, if the Settlement Agreement is approved, a second national bilingual press release on

Canada Newswire which will mirror the contents of the Approval Notice.

6.3.4 In the proposed long form posted on the Settlement Website and on Class Counsels' websites.”

15. The Parties designed the Notice Plan to make it likely that the information will reach intended recipients and provide them with a reasonable opportunity to exercise their rights. The Notice Plan includes both direct notices (including email to Québec Class Members) as well as indirect notice (posting on Settlement Website, advertising on social media and issuing a press release).

C. THE CLAIMS ADMINISTRATOR

16. The Parties seek the appointment of RicePoint Administration Inc. (“**RicePoint**”) to serve as Claims Administrator to perform the duties and responsibilities set out in the Settlement Agreement, as contemplated by Article 1.9 of the Settlement Agreement.
17. The Claims Administrator shall, *inter alia*, disseminate the Pre-Approval Notice as provided in the Settlement Agreement and the Notice Plan (and pursuant to any Order of this Court), and, more generally, be subject to all of the other terms and conditions set out in the Settlement Agreement.
18. Pursuant to Article 4.10 of the Settlement Agreement, all Administration Expenses payable to the Claims Administrator for the costs of administering the settlement, including the notice costs, are payable by Nissan.
19. The Parties' attorneys are aware of the resources and abilities of RicePoint generally.
20. RicePoint has served as notice and/or claims administrator in the context of many other class actions in Québec and elsewhere in Canada. In addition, RicePoint was named by this Honorable Court in order to disseminate the authorization notices in the present matter, as well as by the Ontario Superior Court of Justice for the

certification notices in the Ontario File, making RicePoint already well aware of the demographics of the Québec Class Members and particularities.

21. The Parties recommend to the Court that RicePoint be appointed as Settlement Administrator.
22. RicePoint has consented to this appointment.

**POUR CES MOTIFS, PLAISE AU
TRIBUNAL :**

**FOR THESE REASONS, MAY IT
PLEASE THE COURT TO:**

[1] ACCUEILLIR la Demande pour l'approbation des avis aux membres et pour nommer l'administrateur des réclamations; **GRANT** the *Application for Approval of Notices to Class Members and to Appoint a Claims Administrator*;

[2] DÉCLARER qu'aux fins du présent jugement, les définitions énoncées dans l'Entente de règlement s'appliquent et sont intégrées au présent jugement; **DECLARE** that for the purposes of the present judgment, the definitions in the Settlement Agreement apply and are integrated in the present judgment;

[3] DÉCLARER que le présent jugement soit déclaré nul est sans effet si l'Entente de règlement est résiliée conformément à ses dispositions ou n'est pas approuvée par le Tribunal; **ORDER** that the present judgment be declared null and without effect if the Settlement Agreement is terminated pursuant to its provisions or if it is not approved by the Court;

[4] APPROUVER la forme et le contenu de l'Avis de pré-approbation essentiellement sous la forme abrégée et détaillée se trouvant aux annexes D-1 et D-2 de l'Entente de règlement, dans leurs versions anglaises et françaises; **APPROVE** the form and content of the Pre-Approval Notice, substantially in the short and long forms as set forth in Schedules D-1 and D-2 of the Settlement Agreement, in their English and French versions;

[5] APPROUVER le Plan de notification prévu à l'article 6.3 de l'Entente de règlement, lequel détaille le mode de diffusion des Avis aux membres;

APPROVE Notice Plan provided for in Article 6.3 of the Settlement Agreement, which details the method of dissemination of the Pre-Approval Notices;

[6] DÉSIGNER RicePoint Administration, Inc. à titre d'Administrateur des réclamations afin de s'acquitter des tâches qui lui incombent en vertu de l'Entente de règlement;

APPOINT RicePoint Administration, Inc. as the Claims Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;

[7] ORDONNER que les Avis de préapprobation (annexes D-1 et D-2 de l'Entente de règlement) soient diffusés conformément au Plan de notification (article 6.3 de l'Entente de règlement);

ORDER that the Pre-Approval Notices (Schedules D-1 and D-2 of the Settlement Agreement) be disseminated in accordance with the Notice Plan (Article 6.3 of the Settlement Agreement);

[8] ORDONNER que la défenderesse est autorisée à fournir à l'Administrateur des réclamations les noms et les adresses électroniques (si disponibles) des Membres du Groupe du Québec pour exécuter le Plan de notification et faciliter le processus de distribution conformément à l'Entente de règlement;

ORDER the Defendant is authorized to provide the Claims Administrator with the names and email addresses (if available) of the Québec Class Members for the purpose of executing the Notice Plan and facilitating the distribution process in accordance with the Settlement Agreement;

[9] ORDONNER que le jugement à intervenir constitue un jugement contraignant la production des informations par la défenderesse au sens des lois applicables en matière de vie privée, et que ce jugement satisfait aux exigences de toutes les lois applicables en matière de la protection de la vie privée;

ORDER that the judgment to intervene constitutes a judgment compelling the production of information by the Defendant within the meaning of applicable privacy laws, and that this judgment satisfies the requirements of all applicable privacy laws;

[10] ORDONNER à l'Administrateur des réclamations et aux Parties de préserver la confidentialité des informations qui leur sont fournies en vertu du jugement à intervenir et ne pas les partager avec toute autre personne, sauf si cela est strictement nécessaire pour exécuter le Plan de notification et/ou faciliter le processus de distribution conformément à l'Entente de règlement;

ORDER that the Claims Administrator and the Parties shall maintain the confidentiality over and shall not share any of the information provided pursuant to the judgment to intervene with any other person, unless doing so is strictly necessary for executing the Notice Plan and/or facilitating the distribution process in accordance with the Settlement Agreement;

[11] ORDONNER que l'Administrateur des réclamations et les Parties utilisent les informations qui leur sont fournies en vertu du jugement à intervenir dans le seul but d'exécuter le Plan de notification et de faciliter le processus de distribution conformément à l'Entente de règlement, et à aucune autre fin;

ORDER that the Claims Administrator and the Parties shall use the information provided to it pursuant to judgment to intervene for the sole purpose of executing the Notice Plan and facilitating the distribution process in accordance with the Settlement Agreement, and for no other purpose;

[12] DÉCLARER que les Membres du Groupe du Québec désirant s'objecter à l'approbation par le Tribunal de l'Entente de règlement devront procéder de la manière prévue à l'article 3.1 de l'Entente de règlement, tel que décrit dans les Avis de pré-approbation (annexes D-1 et D-2 de l'Entente de règlement), au plus tard 20 jours avant la date de l'audition pour l'approbation de l'entente de règlement;

DECLARE that Québec Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in Article 3.1 of the Settlement Agreement, as more fully described in the Pre-Approval Notices (Schedules D-1 and D-2 of the Settlement Agreement), on or before 20 days prior to Approval Hearing;

[13] DÉCLARER que les Membres du Groupe du Québec qui n'auront pas requis leur exclusion du Groupe seront liés par tout jugement à être rendu quant à la présente action collective conformément à la loi;

DECLARE that all Québec Class Members that have not requested their exclusion be bound by any judgment to be rendered on the class action in the manner provided for by the law;

[14] FIXER la présentation de la *Demande pour approbation de l'entente de règlement et des honoraires des avocats du groupe* au **[DATE]**, à **[HEURE]**, en salle ● du Palais de Justice

SCHEDULE the presentation of the *Application for Approval of the Settlement Agreement and of Class Counsel Fees* on **[DATE]**, at **[TIME]**, in room ● of the Montréal Courthouse or via

de Montréal ou via un lien TEAMS qui sera affiché d'ici là sur le Site Web créé aux fins du règlement [site web];

TEAM link that will be posted before that date on the Settlement Website [website];

[15] ORDONNER que la date et l'heure pour la tenue de l'audience d'approbation du règlement soient indiquées dans les Avis de pré-approbation (annexes D-1 et D-2 de l'Entente de règlement), bien qu'elles puissent être reportées par le Tribunal sans autre avis aux Membres du Groupe du Québec autre que l'avis qui sera affiché sur le registre des actions collectives du Québec;

ORDER that the date and time of the settlement approval hearing shall be set forth in the Pre-Approval Notices (Schedules D-1 and D-2 of the Settlement Agreement), but may be subject to adjournment by the Court without further publication of notice to the Québec Class Members, other than such notice which will be posted on Quebec Registry of Class Action;

[16] ORDONNER que les Avocats du Groupe doivent déposer leur demande d'approbation d'un règlement d'une action collective et pour faire approuver les Honoraires des Avocats du Groupe au plus tard 7 jours avant la date de l'Audition d'approbation;

ORDER that Class Counsel must file its application for approval of a class action settlement and for approval of Class Counsel Fees on or before 7 days prior to Approval Hearing;

[17] LE TOUT sans frais de justice.

THE WHOLE without legal costs.

MONTREAL, JANUARY 25, 2024

Lex Group Inc.

LEX GROUP INC.

PER: DAVID ASSOR

ATTORNEYS FOR PLAINTIFF AND CLASS MEMBERS

4101 SHERBROOKE STREET WEST

WESTMOUNT (QUEBEC), H3Z 1A7

TEL.: 514.451.5500, EXT. 101

FAX: 514.940.1605

SOLEMN DECLARATION

I, the undersigned, **David Assor**, attorney, practicing law at the offices of Lex Group Inc., situated at 4101 Sherbrooke Street West, in the City of Westmount and District of Montréal, do hereby solemnly declare:

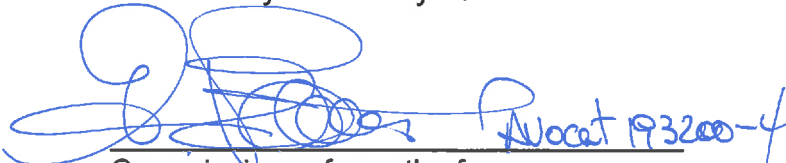
1. THAT I am one of the attorneys for the Plaintiff and the Class Members in the present case;
2. THAT all the facts alleged in the present Application for APPLICATION FOR APPROVAL OF NOTICES TO CLASS MEMBERS AND TO APPOINT A CLAIMS ADMINISTRATOR are true and accurate to my knowledge;

And I have signed:



DAVID ASSOR

Solemnly affirmed before me
at Westmount (Québec),
this 25th day of January 2024



Avocat 193200-4

Commissioner for oaths for
the Province of Québec

NOTICE OF PRESENTATION

TO :

Me Margaret Weltrowska
Me Erica Shadeed
Dentons Canada LLP
1 Place Ville-Marie
Bureau 3900
Montréal QC H3B4M7
margaret.weltrowska@dentons.com
erica.shadeed@dentons.com

Attorneys for Defendant

TAKE NOTICE that the *APPLICATION FOR APPROVAL OF NOTICES TO CLASS MEMBERS AND TO APPOINT A CLAIMS ADMINISTRATOR* will be presented before the Honourable Pierre Nollet, J.S.C. at the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec, on a date and time (and in a Court room number) as this Honourable Court shall ultimately set down, or as soon thereafter as counsel can be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, JANUARY 25, 2024

Lex Group Inc.

LEX GROUP INC.
PER: DAVID ASSOR
ATTORNEYS FOR PLAINTIFF AND CLASS
MEMBERS

N^o.: 500-06-000907-184

**SUPERIOR COURT
(CLASS ACTION)**

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

KARINE LEVY

Plaintiff

-VS-

NISSAN CANADA INC.

Defendant

**APPLICATION FOR APPROVAL OF NOTICES
TO CLASS MEMBERS AND TO APPOINT A
CLAIMS ADMINISTRATOR**

ORIGINAL

Me David Assor



Lex Group Inc.
4101 Sherbrooke St. West
Westmount, (Québec)
H3Z 1A7

T: 514.451.5500

F: 514.940.1605

@: davidassor@lexgroup.ca

BL 5606