

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL.

No.: 500-06-001195-227

DATE: February 23, 2024.

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

EVA BITTON

Plaintiff - Class Representative

v.

**AMAZON.COM.CA ULC
(PREVIOUSLY AMAZON.COM.CA, INC.)
AMAZON FULFILLMENT SERVICES INC.
AMAZON.COM, INC.**

AND

AMAZON.COM, LLC

Et al.

Defendants

JUDGMENT REGARDING THE APPROVAL OF A SETTLEMENT WITH AMAZON

[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 August 10, 2023, the Court authorized the class action against Amazon on behalf of the following class:

All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Amazon mobile application(s) and/or website(s) between February 7, 2019, and April 17, 2023. (the “ Class ”)	Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) internet d'Amazon entre le 7 février 2019 et le 17 avril 2023 (le « Groupe »)
--	--

[3] Following the authorization judgment – and prior to the publication of notices to class members regarding authorization – the Representative Plaintiff and Amazon engaged in arm’s-length settlement discussions which led to a settlement.

[4] On December 5, 2023, the parties reached a settlement agreement (the «**Settlement** »).

[5] Article 590 C.C.P. stipulates that a transaction settling a class action is valid only if approved by the Court. The legislature thus confers discretion to the Court and a consistent jurisprudence has developed that requires the Court to consider whether the transaction is fair and reasonable, and in the best interest of class members.¹

[6] By judgment issued on January 5, 2024, the Court approved and ordered the publication of the notice of authorization and of the settlement approval hearing to Class Members, designated a claims administrator, and modified the class description **to extend the class period to July 3, 2023** (i.e. the date of the completion of the business practice change to the Amazon websites and mobile application).

[7] According to Amazon’s records, there are approximately 176,151 Amazon Class Members.²

[8] The Class Notice and all the materials were disseminated and made available to Class Members in the best possible ways through three different emails, in both French and in English, the las email having the Amazon logo on it. The Claims Administrator report was filed after the hearing³.

¹ *Martin-Bale c. Lowe's Companies Canada*, 2022 QCCS 1951, paras. 12-14; *Schneider (Succession de Schneider) c. Centre d'hébergement et de soins de longue durée Herron inc.*, 2021 QCCS 1808, para. 28.

² R-2.

³ R-3.

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

[10] Seventeen (17) Class Members requested to opt-out ⁴.

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

[12] The Fonds d'aide aux actions collectives (FAAC) provided the Court with comments and suggested conclusions which were agreed upon by the parties.

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

1. THE APPROVAL OF THE SETTLEMENT

[14] The Court must examine the transaction from the perspective of the three main objectives of class actions (see *Western Canadian Shopping Centres*⁵), namely judicial economy, access to justice and deterrence.⁶

[15] The criteria developed by the jurisprudence for approval of a class action settlement are as follows:

- 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; and
- viii) the good faith of the parties and the absence of collusion⁷.

[16] Not all factors need to be satisfied. The Court must look at the totality of these factors considering the specific circumstances involved⁸.

[17] The total value of the Settlement is \$ 2,750 000 inclusive of Class Counsel's fees, Claims Administrator Expenses and dissemination costs.

⁴ R-4.

⁵ *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, paras. 27-29.

⁶ *Abihisira c. Stubhub inc.*, 2019 QCCS 5659, para. 21.

⁷ *9085-4886 Quebec inc. c. Visa Canada Corporation*, 2015 QCCS 5921, par. 24.
Richard c. Volkswagen Group Canada inc., 2012 QCCS 5534, par. 45.

⁸ *Comité d'environnement de Ville-Émard (CEVE) c. Stodola*, 2016 QCCS 1834, par. 18.

[18] In the present matter, the Court finds that the proposed Settlement is fair and in the best interest of the Class members because:

- 18.1. Albeit Amazon strongly denies any wrongdoing, it completed the modification of its business practice on or around July 3, 2023 and now displays the notice concerning the legal warranty to Quebec residents purchasing extended warranties on the Amazon website. In the Court's view, this is likely one of the most important benefits of the Settlement.
- 18.2. The credit offered to each Class Member, could represent up to 100% of the cost to Class Members of the extended warranty they purchased.
- 18.3. The Class Members will continue to benefit from any extended warranty they might have purchased, notwithstanding the refund.
- 18.4. Class members who called upon the extended warranty will also be eligible for the credit.
- 18.5. Class Counsel Fees and Disbursements as well as Claims Administrator fees are not to be deducted from the Class Member refund nor is there a fee to be paid to the Fonds d'aide aux actions collectives given the collective recovery.
- 18.6. Until the claims take-up rate reaches approximately \$1,532,714.40 (i.e. the amount before the refunds are reduced *pro rata*) – each Class Member would receive a 100% refund of the price paid for their extended warranties (excluding sales taxes);
- 18.7. The steps to be taken to obtain the refund are easy and simple.
- 18.8. The parties would have spent important resources to debate the extent of the prejudice and damages of Class Members.
- 18.9. A protracted debate would give rise to substantial costs and delays, including the possibility of appeals, bring significant challenges, expenses and risks associated with such litigation.
- 18.10. A settlement avoids the hiring of experts and the testimonies of Class Members.
- 18.11. The highest-priced warranty purchased amounts to \$ 1,545.00 CAD. This amount is significant and unless the take-up rate exceeds approximately \$1,532,714.40, the Class Member would receive all of it. It goes to show the benefit of the Settlement.

[19] Class Members who submit a claim by March 12, 2024, will obtain a cash refund in the form of an Interac e-transfer of up to 100% of the price paid for all of their extended warranties purchased on the Amazon.com or Amazon.ca websites or mobile application between February 7, 2019, and July 3, 2023, excluding any sales taxes (paragraphs 8, 24, and 38 of the Settlement).

[20] The Court appointed a third party to administer the notice program and received a favorable report from the Administrator showing that 167 754 notices were sent to customers by emails and 166 287 are deemed to have been received since they did not bounce back. 41 540 of such emails were opened.

[21] A second and third round of emails were sent. 73 850 emails were opened in the second round and 51 465 in the third round.

[22] According to the Claims Administrator's report of February 19, 2024, **23,067** claims had been submitted by the Class Members, totalling **\$973,652.24 CAD** for extended warranties purchased on the Amazon.ca website or mobile application plus **\$ 423.48 USD** in total claims for extended warranties purchased on the Amazon.com website or mobile application.⁹

[23] Class Members still have until March 12, 2024 to submit their claims.

[24] There were no objections to the Settlement. On the other hand, some Class Members have contacted Class Counsel in support of the settlement.

[25] The Court already approved Concilia Services Inc. as Claim Administrator.

[26] Plaintiff reached other settlements with other Defendants in this matter. One of those settlements remain to be presented to the Court.

[27] Both parties' counsels are experienced counsels. They have significant expertise in class actions including consumer class actions, have negotiated numerous settlements throughout their career. They believe that the Settlement Agreement is fair to the Amazon Class Members.

[28] The Settlement was reached in an adversarial context. It is in the interests of judicial economy and proportionality that the Settlement be approved.

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

[30] When everything is considered, this settlement achieves the goals set by the Supreme Court for class actions in *Western Canadian Shopping Centres*¹⁰.

⁹ R- 3.

¹⁰ See above note 5.

2. THE APPROVAL OF CLASS COUNSEL'S FEES

[31] Class Counsel is requesting the Court's approval of its extrajudicial fees pursuant to Article 11 and 34 to 37 of the Settlement, which provides for Class Counsel fees of \$ 825,000. plus taxes. Amazon has agreed to pay up to that amount.

[32] A fee-based agreement is presumed to be valid and can only be set aside if its application is not fair and reasonable to the members in the circumstances of the transaction under consideration¹¹.

[33] Class Counsel's extrajudicial fees in the total amount of \$ 825,000. (plus GST & QST) represents **30%** of the total settlement value of \$ 2,750 000.

[34] This percentage is consistent with the jurisprudence approving percentage-based mandates – especially when the settlement has a real dollar value as in the present case¹².

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

- 35.1. Time and effort expended by the attorneys on the litigation;
- 35.2. The importance of the class action;
- 35.3. The degree of difficulty of the class action;
- 35.4. Class counsel's experience and expertise in a specific field;
- 35.5. The risks and responsibilities assumed by class counsel;
- 35.6. The result obtained; and
- 35.7. Fees are not contested.

2.1 Time and effort

[36] The time devoted to this matter is relatively minor given the settlement at an early stage. To the extent the fees are deemed reasonable (and 30% is typically within an acceptable bracket), the Court should not start by analysing the docketed time¹³.

¹¹ *Option Consommateurs c. Banque Amex du Canada*, 2018 QCCA 305.

¹² *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, par. 58 and 76.

¹³ *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, par. 64.

[37] The Court must also highlight the efforts deployed in reaching out to putative class members.

2.2 The Importance of the Issue

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

[39] 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.

2.3 The risk assumed

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

[41] 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.

2.4 The results obtained

[42] The result here is really the key. Plaintiff succeeded in having Amazon'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 refund of up to 100% (depending on the take-up rate) of whatever they paid while keeping the benefit of the extended warranty.

[43] As of the date of the hearing, the claim rate was over 50%.

2.5 The Professional Mandate & Attorneys' Fee Agreement

[44] The mandate was signed by Plaintiff and Class Counsel on July 22, 2022¹⁴.

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

- 45.1. 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
- 45.2. an amount equal to multiplying the total number of hours worked on

¹⁴ R-5.

by the attorneys or other professionals in accordance with their hourly rates of 400 per hour plus all the applicable taxes. This amount will then be multiplied by a multiplier of 3.5 to arrive at the total fee. (The hourly rates are reviewed annually).

[46] Class Counsels have not received any funding from the FAAC in the present matter.

[47] The requested amount of Class Counsels' Fees under the Settlement corresponds to what was agreed to in the Professional Mandate & Attorneys' Fee Agreement signed with the Plaintiff.

[48] It also represents a reasonable percentage of the potential value of the claims from Class Members at the time it was negotiated.

[49] 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.

[50] The Court will approve Class Counsel's fees of \$ 825,000.00 (plus taxes).

3. FONDS D'AIDE AUX ACTIONS COLLECTIVES:

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

[52] 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).

[53] 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:

<p>[54] ACCUEILLE la Demande d'approbation d'un règlement d'une action collective avec Amazon et des Honoraires des Avocats du Groupe;</p>	<p>GRANTS the <i>Application to Approve a Class Action Settlement with Amazon and for Approval of Class Counsel Fees;</i></p>
---	--

[55] DÉCLARE que les définitions apparaissant dans l'Entente (pièce R-1) s'appliquent au présent jugement;	DECLARES that the definitions found in the Settlement (Exhibit R-1) find application in the present Judgment;
[56] APPROUVE l'Entente en tant que transaction au sens de l'article 590 du Code de procédure civile et ORDONNE aux Parties de s'y conformer;	APPROVES the Settlement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> and ORDERS the Parties to abide by it;
[57] DÉCLARE l'Entente (y compris son préambule et ses Annexes) juste, raisonnable et dans l'intérêt véritable des Membres du Groupe Amazon, 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 Amazon	DECLARES that the Settlement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Amazon 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 Amazon Class Members;
[58] ORDONNE et DÉCLARE que le présent jugement, incluant l'Entente réglant l'action collective, lie chaque Membre du Groupe Amazon;	ORDERS and DECLARES that this judgment, including the Settlement, shall be binding on every Amazon Class Member;
[59] DÉCLARE que le paiement par les défenderesses des montants détaillés dans l'Entente, sera versé en règlement intégral des Réclamations Quittancées contre les Parties Quittancées au sens attribué à ces termes dans l'Entente;	DECLARES that Defendants' payment of the amounts as detailed in the Settlement will be in full satisfaction of the Released Claims against the Releasees as defined in the Settlement;
[60] ORDONNE le recouvrement collectif des réclamations avec paiement individuel des réclamations des membres	ORDERS the collective recovery of the claims with individual payments to Class Members
[61] APPROUVE le paiement des honoraires et débours des avocats du groupe prévus à l'article 33 de l'Entente;	APPROVES the payment of Class Counsel Fees and disbursements provided for at Article 33 of the Settlement

<p>[62] APPROUVE le processus de distribution prévu à la partie XI de l'Entente et ORDONNE aux parties de s'y conformer;</p>	<p>APPROVES the distribution process pursuant to section XI of the Settlement and ORDERS the parties to abide by it;</p>
<p>[63] 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>[64] ORDONNE à l'Administrateur des réclamations Services Concilia inc. 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 montant des honoraires et débours versés aux avocats du groupe et à l'Administrateur des réclamations, le solde du fonds de règlement après distribution, le nombre et la valeur des fonds non encaissés, le reliquat, s'il en subsiste, le montant qui sera prélevé pour le Fonds d'aide, ainsi que le montant du solde du reliquat qui sera versé à une organisation, 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 Claims' Administrator, Concilia Services inc. 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 amount of fees and disbursements paid to Class Counsel and the Claims Administrator, the balance of the Settlement Fund after distribution, the number and value of uncashed funds, the balance, if any, the amount to be paid out of the Fonds d'aide, and the amount of the remainder of the balance to be paid to an organization 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>[65] DÉCLARE que le reliquat du fonds de règlement, s'il en subsiste sera sujet au prélèvement prévu à l'article 1.1 du <i>Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives</i> (RLRQ, c. F-3.2.0.1.1, r. 2)</p>	<p>DECLARES that the remainder of the Settlement Fund, if any, will be subject to the levy provided for in section 1.1 of the Regulation respecting the percentage levied by the Fonds d'aide aux actions collectives (CQLR, c. F-3.2.0.1.1, r. 2)</p>
<p>[66] 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>[67] 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>[68] LE TOUT, sans frais de justice.</p>	<p>THE WHOLE, without legal costs.</p>

PIERRE NOLLET, J.S.C.

Me Joey Zukran
 Me Léa Bruyère
 LPC AVOCATS INC.
 Attorneys for the Plaintiff

Me Alexandre Fallon
 Me Sophie Courville-Le Bouyonnec
 OSLER, HOSKIN & HARCOURT LLP
 Attorneys for Amazon Defendants.

Me Jennifer Lemarquis
 Me Ryan Mayele
 Attorneys for the Fonds d'aide aux actions collectives

Hearing date: February 20, 2024