

# SUPERIOR COURT

(Class Action)

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL.

No.: 500-06-001195-227

DATE: May 6, 2024.

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

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**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

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## **JUDGMENT RESOLVING A DIFFICULTY IN CONNECTION WITH THE IMPLEMENTATION OF THE AGREEMENT**

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### **1. THE CONTEXT**

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

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| <p>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 “<b>Amazon Class</b>”)</p> | <p>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<br/>(le « <b>Groupe Amazon</b> »)</p> |
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[2] On December 5, 2023, the parties reached a settlement agreement (the «**Settlement Agreement**»).

[3] 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).

[4] On February 23<sup>rd</sup>, 2024, the Court approved the Settlement Agreement between Plaintiff and Defendants.

[5] According to Amazon’s records, there were approximately 176,151 Amazon Class Members.<sup>1</sup> Seventeen (17) Class Members opted-out<sup>2</sup>. No objection to the Settlement was received prior to or made at the hearing.

[6] The Settlement provides that until the claims take-up rate reaches approximately \$1,532,714.40 (i.e. the amount before the refunds are reduced on a *pro rata* basis) – each Amazon Class Member would receive a 100% refund of the price paid for their extended warranties (excluding sales taxes).

[7] Over and beyond such amount, the payments to Amazon Class Members would be reduced on a pro-rata basis.

[8] Amazon Class Members had to submit a claim by March 12, 2024, to 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).

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<sup>1</sup> R-2.

<sup>2</sup> R-4.

[9] The Court appointed Concilia Services Inc. to administer the notice program and the claims process.

[10] At the Settlement Agreement hearing, the Fonds d'aide aux actions collectives (FAAC) recommended the addition of a conclusion to the judgment to indicate that this matter is proceeding to a collective recovery.

[11] The FAAC also requested that the Court praise act of the fact that the value of Direct Credit Reimbursements unable to be delivered by emails (bounce back) would 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).

[12] The parties and the FAAC agreed that any remaining balance, after the payment of the Fonds levy, could be distributed to a charity to be determined at such time after the report on the Distribution Protocol.

[13] The Court agreed to order the collective recovery of the claims with individual payments to Amazon Class Members, the payment to Amazon Class Members of either the total amount paid for the Extended Warranty without taxes or a pro rata of same should the Settlement Fund be oversubscribed.

[14] According to paragraphs 40 and 41 of the approved Settlement Agreement, any undistributed portion of the Settlement Fund would first be paid to the FAAC as the Fonds levy pursuant to section 1 al. 1° of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives* and any remaining balance on a *cy-près* basis, to an organization agreed on by the Parties and approved by the Court.

[15] Pursuant to the Claims Administrator's report of March 24, 2024, claims submitted on March 12, 2024 by the Amazon Class Members total **\$1,255,716.83 CAD** for extended warranties purchased on the Amazon.ca website or mobile application plus **\$ 571.97 USD**. The Settlement Fund is therefore undersubscribed.

[16] There were an additional 122 claims made after the March 12 deadline totalling \$3,756.28 CAD. This brings the total claimed amount to **\$1,260,251.19 CAD**.

[17] Paragraph 18.6 of the Judgment confirms that "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] Parties are applying to this Court to modify one of the modalities of execution of the judgment. They submit that the remaining \$272,463.21 should be paid out to the Amazon Class Members.

[19] The parties agreed to add the sales taxes on top of the amount of each Refund (which were previously excluded), but need the Court's approval and order to modify paragraphs 13 and 38(a) of the Settlement to do so. The only modification requested is to change the word "**exclusive**" of sales taxes to "**inclusive**" of sales taxes.

[20] Accordingly, they recommend extending the claim deadline to May 13, 2024 and to allow for the addition of the sales taxes on top of the amount of each refund. This would bring the actual claim rate to approximately  $\$1,260,251.19 \times 1.14975 =$  **\$1,448,973.81** (which is about \$83,740.59 shy of depleting the settlement fund in its entirety).

[21] Parties are suggesting to send a "final" notice by email to each of the Class Members who have not yet made a claim. The notice would be identical to the last notice sent with one change being the extension of the Deadline for Submitting a Claim to May 13, 2024.

## **2. POWERS OF THE TRIBUNAL**

[22] Article 596 C.C.P. provides that the Tribunal disposes of the balance where there is one. It can assign it to a third party.

[23] The Court of Appeal held that the judgment approving a class action settlement agreement was an enforcement judgment and not a judgment ending the litigation. Under article 596 C.C.P., it is the Tribunal that gives the necessary instructions to the administrator to guide him in the performance of his office.

[24] The Court of Appeal's judgment in *Option consommateurs c. Infineon Technologies*,<sup>3</sup> states:

[52] De même, la règle énoncée au 1er alinéa de l'article 597 C.p.c. voulant que le tribunal doit être convaincu que la liquidation individuelle ou la distribution aux membres est « impraticable, inappropriée ou trop onéreuse » avant d'envisager une attribution à des tiers s'applique tout autant au reliquat qui survient en aval d'une liquidation ou d'une distribution, et ce, malgré que cette règle ne soit pas expressément énoncée au 3e alinéa de l'article 596. Ainsi, il incombe au tribunal qui constate qu'un reliquat subsiste à la suite (en aval) d'une liquidation ou d'une distribution, de considérer des mesures correctrices permettant de liquider individuellement ou de distribuer le recouvrement collectif aux membres (campagnes d'information additionnelles, augmentation des distributions aux membres qui se sont manifestés, nouvelles règles de liquidation ou

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<sup>3</sup> *Option consommateurs c. Infineon Technologies*, 2019 QCCA 2132, para. 52.

de distribution, etc.) avant d'envisager une attribution à un tiers. Cette règle s'applique donc à une attribution du reliquat qui survient en aval d'une liquidation ou d'une distribution, même si elle n'est pas expressément énoncée au 3e alinéa de l'article 596 C.p.c., puisqu'elle découle du 1er alinéa de l'article 597 C.p.c. et que, comme nous l'avons déjà noté, les deux dispositions doivent être lues et interprétées comme un tout cohérent.

[25] In *Therrien c. Sony Interactive Entertainment*, Justice Martin Sheehan, J.S.C., refers to *Infineon* and writes:<sup>4</sup>

[9] Before approving the distribution of a residual balance, the Court **must** consider remedial measures to maximize the distribution to members.<sup>5</sup>

### 3. DISCUSSION

[26] Article 597 C.C.P. provides that, in the context of a liquidation or an individual distribution of members' claims, the court may award the balance (amount after the co-determination of costs, fees and disbursements) to the third party it designates. The conditions laid down in this article require that the individual liquidation or distribution be impracticable, inappropriate or too onerous.

[27] The Court of Appeal<sup>6</sup> confirmed that a balance may arise when a liquidation or distribution mechanism for collective recovery proves ineffective and eligible members do not avail themselves of it. In such a case, the third paragraph of article 596 C.C.P. applies. It states:

596 [...]

[...]

S'il y a un reliquat, le tribunal en dispose comme il le fait lorsqu'il attribue un montant à un tiers, en tenant compte notamment de l'intérêt des membres. Si le jugement a été prononcé contre l'État, le reliquat est versé au Fonds Accès Justice.

[28] The Court must therefore satisfy itself that the proposed redistribution is in the best interests of the Amazon Class Members. This is indeed the case. There are no

<sup>4</sup> *Therrien c. Sony Interactive Entertainment*, 2022 QCCS 4073, para. 9.

<sup>5</sup> *Option consommateurs c. Infineon Technologies*, 2019 QCCA 2132, par. 52.

<sup>6</sup> *Consumer Option v. Infineon Technologies*, 2019 QCCA 2132.

prejudice to the Amazon Class Members whether or not they have chosen so far to avail themselves from the distribution.

**FOR THESE REASONS' THE COURT:**

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| <p>[29] <b>PROLONGE</b> la Date limite pour la présentation d'une demande de Remboursement du 12 mars 2024 au 13 mai 2024;</p>  | <p><b>EXTENDS</b> the Deadline for Submitting a Claim from March 12, 2024, to May 13, 2024;</p>   |
| <p>[30] <b>ORDONNE</b> à l'administrateur des réclamations d'envoyer un/des avis supplémentaire(s) par courriel aux membres du groupe Amazon, identique à la dernière version envoyée, avec pour seul changement la mise à jour de la Date limite pour la présentation d'une demande de Remboursement au 13 mai 2024;</p>   | <p><b>ORDERS</b> the Claims Administrator to send additional notice(s) by email to the Amazon Class Members, identical to the last version sent, with the only change being the updated Deadline for Submitting a Claim to May 13, 2024,</p>  |
| <p>[31] <b>DÉCLARE</b> que les paragraphes 13 et 38(a) du règlement sont modifiés en remplaçant le mot « excluant » les taxes de vente par « incluant » les taxes de vente;</p>   | <p><b>DECLARES</b> that paragraphs 13 and 38(a) of the Settlement are modified by replacing the word "exclusive" of sales taxes to "inclusive" of sales taxes;</p>  |
| <p>[32] <b>ORDONNE</b> à l'Administrateur des réclamations Services Concilia inc. de transmettre d'ici le 11 juin 2024, un rapport détaillé de distribution au Tribunal et au Fonds d'aide aux actions collectives indiquant notamment, les montants distribués aux membres du groupe Amazon, le montant des honoraires et débours versés aux avocats du groupe et à l'Administrateur des réclamations;</p> | <p><b>ORDERS</b> the Claims' Administrator, Concilia Services inc. to provide prior to June 11, 2024, a detailed distribution report to the Tribunal and to the Fonds d'aide aux actions collectives indicating, among other things, the amount distributed to Amazon Class Members, the amount of fees and disbursements paid to Class Counsel and the Claims Administrator;</p> |
| <p>[33] <b>ORDONNE</b> aux parties de demander un jugement de clôture lorsque l'administration du règlement sera complétée;</p>   | <p><b>ORDERS</b> the parties to ask for a closing judgment once the administration of the Settlement is completed;</p>  |

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| [34] <b>DÉCLARE</b> 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. | <b>DECLARES</b> 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. |
| [35] <b>LE TOUT</b> , sans frais de justice.   | <b>THE WHOLE</b> , without legal costs.   |

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PIERRE NOLLET, J.S.C.

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Hearing date: On docket **Erreur ! Signet non défini.**