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| **C A N A D A** | **S U P E R I O R   C O U R T**<br>**(Class Action)** |
| **PROVINCE OF QUEBEC**<br>**DISTRICT OF MONTREAL** | **MICHAEL GAGNON**<br>*Applicant* |
| **Nº : 500-06-000687-141** | -vs- |
| | **GENERAL MOTORS OF CANADA COMPANY** |
| | -AND- |
| | **GENERAL MOTORS LLC**<br>*Defendants* |
| | and |
| | **LE FONDS D'AIDE AUX ACTIONS COLLECTIVES**<br>*Impleaded Party* |

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| **PROVINCE OF QUEBEC**<br>**DISTRICT OF MONTREAL** | **MICHAEL GAGNON**<br>*Applicant* |
| **Nº : 500-06-000729-158** | -vs- |
| | **GENERAL MOTORS OF CANADA COMPANY** |
| | -AND- |
| | **GENERAL MOTORS LLC**<br>*Defendants* |
| | AND- |
| | **LE FONDS D'AIDE AUX ACTIONS COLLECTIVES**<br>*Impleaded Party* |

**AMENDED APPLICATION FOR SETTLEMENT AGREEMENT APPROVAL AND APPROVING PLAINTIFFS' COUNSEL FEES**
**(Arts. 590 and 593 C.C.P.)**

**TO THE HONOURABLE JUSTICE PIERRE NOLLET OF THE SUPERIOR COURT OF QUÉBEC, APPOINTED TO CASE MANAGE THE PROPOSED CLASS ACTION, THE APPLICANT STATES THE FOLLOWING:**

## I. NATURE OF THE MOTION

1. The purpose of this Application is to approve the Amended Settlement Agreement dated July 24, 2024 reached by the Parties in the present proceedings and the parallel actions, (the "**Settlement Agreement**") and its Schedules, attached hereto altogether in its original version in English and in a translated version in French as **EXHIBIT R-1**;

2. This motion for Settlement approval is brought in parallel with the motion brough in the proceeding of the Ontario Superior Court of Justice bearing Court File No. CV-14-502023-CP titled *Oberski et al. v. General Motors LLC et al.* seeking approval of the Settlement (the "**Ontario Action**") (collectively referred to as the "**Actions**");

3. This motion for settlement approval also applies to 12 parallel actions that were commenced across the country (collectively referred to as the "***Related Actions***"), the whole as it appears from the Solicitor Affidavit of Vincent Genova dated July 24, 2024 at paragraph 49, the affidavit and its Exhibits are communicated herein as **EXHIBIT R-2**;

4. The Settlement Agreement notably provides for a CAD $12 millions funds to compensate Settlement Class Members for the economic loss in relation to recalls implemented as of 2014 on various General Motors vehicles.

5. By way of the present Application, the Applicant Michael Gagnon seeks in the *Quebec Actions* an order:

a) declaring that the Settlement Agreement is fair, reasonable and in the best interests of the Quebec Class members and approving it pursuant to art. 590 of the *Code of Civil Procedure* and ordering that it be implemented in accordance with its terms;

b) approving the payment of the Plaintiffs' Counsel fees, expenses, costs, disbursements, and applicable taxes in the total amount of $4,397,500.00;

c) affirming JND Legal Administration ("JND") as the Settlement Administrator for the Settlement;

d) approving the form and content of the Approval Notice, substantially as set forth in Schedule "D" to the Settlement Agreement, and directing that it be published and disseminated in accordance with the Revised Notice Program ("Notice Program"), substantially as set forth in Exhibit "R-6" of the Notice Approval Order dated May 6, 2024 and attached herein as **EXHIBIT R-6,** and declaring that the form and manner of notice set out in the Approval Notice and the Notice Program satisfy the requirements of notice under Article 590 and following of the *CCP;*

e) approving the Claims Form in the form attached as Schedule “E” to the Settlement Agreement, and directing that the Claims Program be administered in accordance with the Settlement Agreement;

f) directing that the Defendants shall, within thirty (30) days of the Effective Date pay the Settlement Fund Amount (less any amounts the Defendants have paid for Preliminary Administrative Expenses) into the escrow accounts to be opened and maintained by JND, in accordance with the s. 6 of the Settlement Agreement;

g) directing that the Defendants shall, within thirty (30) days of the Effective Date pay $4,397,500.00 to Co-Lead Counsel, being the Plaintiffs’ Counsel Fee Amount.

h) directing that upon the Effective Date all the Quebec Settlement Class Releasing Parties shall be bound by the Settlement Class members’ Release;

i) directing that any Party may bring a motion to this Court at any time for directions with respect to the implementation or interpretation of the Settlement Agreement, on notice to all other Parties;

j) directing that the Approval Order be contingent on a parallel Approval Order being made by the Superior Court of Ontario in file Court File No. CV-14-502023-00CP, and that the terms of the Approval Order not be effective unless and until such order is made by the Superior Court of Ontario;

k) declaring that in the event that the Settlement Agreement is terminated in accordance with its terms, the Approval Order shall be null and void and of no force or effect; and

l) directing such further or other ancillary relief as counsel may request and this Honourable Court may permit.

2. All capitalized defined terms used in this Application have the meanings ascribed to them in Settlement Agreement, except to the extent that they are modified herein.

## II. **OVERVIEW**

3. This proceeding arises from defects in ignition switches and electric power steering (collectively referred to as the "Defects") in the Subject Vehicles designed and manufactured by Defendants from roughly 1997 to 2014. The Defects were subject to these Recalls (collectively referred to as the "Recalls"): Delta Ignition Switch Recall; Key Rotation Recall; Camaro Knee-Key Recall; and Electric Power Steering Recall. A table setting out the Defects and the corresponding Recalls and Subject Vehicles is attached as Exhibit "C" of solicitor's affidavit of Vincent Genova (EXHIBIT-R2);

4. The Applicant alleges that the Defects made the Subject Vehicles inherently dangerous. The Applicant further alleges that the Defendants were aware of the Defects, but failed to inform regulatory authorities and Class members of the Defects for years before the Recalls began in February 2014, as it appears from "*Re-Amended Application for authorization to institute a class action and to appoint a representative plaintiff*", in the file 500-06000687-141 and from "*Re-Amended Application for authorization to institute a class action and to appoint a representative plaintiff*", in the file 500-06-000729-158;

5. The Defendants deny the Applicant's allegations and do not admit any liability;

## III. PROCEDURAL BACKGROUND

6. On March 19, 2014, the Applicant brought his Application for Authorization against the Defendants General Motors of Canada and General Motors Company (the "**Defendants**") regarding the **ignition switch defect (**the "***Québec IS Action***") (File court number : **500-06-000687-141)**.

7. On January 23, 2015, the Applicant brought another Application for Authorization against the Defendants, General Motors of Canada and General Motors Company (the "**Defendants**") regarding the **electric power steering defect** (the "***Québec EPS Action***") (File Court number : **500-06-000729-158)**. The *Québec EPS Action* and *the Québec IS Action* are altogether called the "***Quebec Actions***";

8. After arms length negotiations, the Plaintiffs in the *Quebec Actions* and *Ontario Action* and the Defendants have entered into a Settlement to resolve on a national basis the *Ontario Action*, and the parallel *Quebec Actions*, pursuant to the terms and conditions contained in the Amended Settlement Agreement;

9. In furtherance of the proposed settlement, and as done in the Ontario Action, the Applicant sought to amend his Applications for authorization in the *Quebec Actions* to remove any allegation regarding any moral damages associated with owning a vehicle subject to the recalls, as it appears in the *Re-Amended motion to authorize the bringing of a class action and to ascribe the status of representative* in the *Québec IS Action* (500-06-000687-141) and in the *Amended motion to authorize the bringing of a class action and to ascribe the status of representative* (the *Québec EPS Action* (500-06-000729-158), as it appears from the Court file;

10. The amendments also sought to establish the proper scope of the Class in each of the *Quebec Actions*, and in particular define the vehicles targeted by the proposed Settlement;

11. On April 22, 2024, the Applicant filed a *Re-amended Application for the approval of notices to class members, to amend the Applications to institute a class action and authorize a class action for settlement purposes*;

12. On May 6, 2024, the *Quebec Actions* were authorized for settlement purposes and approved a Revised Notice Program together with a Revised Short Form Notice and Revised Long Form Notice regarding the eventual approval of a Settlement Agreement;

13. On May 15, 2024, the Court approved the dissemination of the Schedules of the Revised Notice Program, as it appears from the Court file;

14. The Settlement Approval Hearing for the Quebec Actions is set for July 31, 2024 at 9:30 a.m. as it appears from the Court file. The Settlement Approval Hearing for the Ontario Action is set for July 30, 2024;

## IV. <u>OTHER ACTIONS</u>

### *1) <u>Ontario Action and Related Actions</u>*

15. In parallel to this Application, the *Ontario Action* is also seeking the approval of the Settlement, Agreement and Plaintiffs' Counsel Fees, <u>that will be heard on </u>July 30, 2024 <u>(…)</u>;

16. In fact, the *Ontario Action* seeks damages and other relief on behalf of National Settlement Class excluding Quebec class members who owned or leased certain GM vehicles equipped with the allegedly defective Electric Power Steering *EPS Action* and the vehicles equipped with the allegedly defective Ignition switches of the *IS Action*. The *Ontario Action* alleges, among other things, that these vehicles were manufactured, marketed, sold, and leased with the Defects;

17. Plaintiffs' counsel in the *Ontario Action*, the *Quebec Actions* proceedings and the *Related Actions*, subsequently entered into a consortium to prosecute these actions on a national basis, in Ontario and Quebec for the province of Quebec;

18. On January 16, 2024, Justice Perell of the Ontario Superior Court of Justice certified the *Ontario Action* and the National Settlement Class for the purposes of settlement; discontinued class claims for wrongful death, personal injury claims under the *Family Law Act* (and analogous legislation in other Provinces), and actual physical property damage arising from a

motor vehicle accident involving a Subject Vehicle; appointed JND Legal Administration as Settlement Administrator to perform the duties set out in the Settlement Agreement; and approved the Short-Form Certification Notice, Long-Form Certification Notice and the Notice Program.

19. By the Amended Order of the Superior Court of Justice signed by Justice Glustein and dated May 7, 2024, which followed an initial order from Justice Perell dated January 16, 2024, the Ontario Superior Court of Justice certified the Ontario Action as a class proceeding to settle the economic loss claims of the Class members. Settlement Approval Hearing in Ontario will be held July 30, 2024 at 10:00 a.m. The Amended Order is attached as Exhibit "D" to the Ontario solicitor affidavit of Vincent Genova, EXHIBIT-R-2;

20. Twelve (12) parallel actions that were commenced across the country (collectively referred to as the "**Related Actions**"), the whole as detailed at paragraphs 49 of the Solicitor Affidavit, Vincent Genova, EXHIBIT R-2. If the Ontario and Québec Courts approve the Settlement, then counsel for the *Related Actions* shall seek the dismissal with prejudice pursuant to motions brought before the relevant court for each *Related Action*.

### *2) <u>US Actions</u>*

21. Similar economic loss class claims were filed in the United States in 2014 and litigated in the *In re: General Motors LLC Ignition Switch*, No. 14-MDL-2543 (JMD), Multi-District Litigation matter in the United States District Court for the Southern District of New York. The economic loss class claims in the U.S. litigation were resolved via a nationwide class certified for settlement purposes only, which was preliminarily approved by the MDL 2543 court on April 27, 2020, and finally approved by the MDL 2543 court on December 18, 2020,

the whole as detailed at paragraphs 26-35 of the Solicitor Affidavit, Vincent Genova, EXHIBIT R-2;

## V. **PROPOSED SETTLEMENT AGREEMENT**

### *A. OVERVIEW*

22. After arms length negotiations, the Plaintiffs in the *Ontario Action* and *Quebec Action*s and the Defendants have entered into a Settlement to resolve on a national basis the *Ontario Action*, and the *Quebec Actions*, pursuant to the terms and conditions contained in the Amended Settlement Agreement, Exhibit R-1;

23. The Amended Settlement Agreement is a product of negotiations facilitated by a mediator, the Honourable Justice Thomas Cromwell. It provides benefits to Class members claiming economic loss in relation to the Subject Vehicles. After agreeing to the principal terms set forth in the Amended Settlement Agreement, the Parties, with additional facilitation from Justice Cromwell, agreed to Plaintiffs' Counsel Fee Amount, which is separate and apart from the benefits provided to the Class members in the Settlement Agreement.

24. To resolve the divergence on the damages claims, the Plaintiffs and the Defendants took into account that the MDL 2543 Court that heard the US bellwether action had found that the Recalls were in fact effective (and in doing so had rejected the evidence of the Plaintiffs' expert Mr. Stevick) and that the US and Canadian regulators had expressed no concerns about the effectiveness of the Recalls. As a result, the Parties agreed that the Settlement Agreement would require that the Defects in the Subject Vehicles be remedied by free repairs pursuant to the Recalls. This resolved a portion of the Class members' damages by remedying the cause of the overpayment, and thus ensuring that the value of Subject Vehicles was aligned with the value the Class members had expected when they purchased or leased the Subject Vehicles;

25. What also weighed on the negotiations was the existence of certain potentially viable personal injury claims (supported by medical documents) of a handful of Class members[1]. As a pre-condition to resolving the economic loss claims of the Class members, the Parties agreed that compensation and closure must be provided to individuals (as well as their family members and, in certain cases, the estates of the aforementioned individuals) that had suffered personal injuries allegedly due to the Defects. Providing a comprehensive resolution to all Class members, regardless of if they suffered only economic losses or economic and physical injuries, was critical to the Parties, as well as to the Class members that had carried the burden of their losses for nearly a decade.

26. The Parties prioritized and honoured the interests of all Class members and reached a Settlement Agreement that ensured judicially efficient access to justice that did not come at the detriment of an individual Class members' interests;

27. Though, for Quebec residents, injuries and deaths caused by an automobile, by the use there of or by the load carried in or on an automobile, is indemnifiable by the Société de l'assurance automobile du Québec regardless of who is at fault;

28. These negotiations culminated in a Settlement Fund Amount of $12,000,000 for the economic loss claims of the class members from which payments will be made to eligible Class members, and to cover all Administrative Expenses;.

[1] These claims were settled separately on behalf of those class members that had viable claims for personal injuries (supported by medical documentation) and property damage. See paragraph 68 of the Ontario's Solicitor Affidavit (EXHIBIT R-2)

29. This Amended Settlement Agreement settles, subject to approval by this Honorable Court (insofar as the *Quebec Actions* are concerned) and the Ontario Superior Court of Justice (insofar as the *Ontario Action* is concerned), any and all claims asserted on behalf of the Québec Settlement Class and the National Settlement Class;

30. More specifically, the proposed Settlement Agreement is an economic settlement aiming to settle issues related to the GM electric power steering, Delta ignition switch, as well as key rotation, and Camaro knee-key recalls;

31. The Amended Settlement Agreement also provides the Plaintiffs' Counsel Fee Amount that GM shall pay to compensate any and all Plaintiffs' Counsel. This amount is separate, and is not drawn, from the Settlement Fund Amount. The Settlement Agreement provides that the Maximum Plaintiffs' Counsel Fee Amount is CAD $4,397,500.00.

32. For the reasons that follow, the Parties submit that the Settlement Agreement is fair, reasonable and in the best interests of the Class members when taking into consideration the results achieved in comparison to the US settlement of actions related to the same Subject Vehicles, Defects, and Recalls. The state of the law in Quebec and Canada on economic loss claims renders the chances of recovery uncertain, which further confirms that the Settlement achieved in this case is in the best interests of the Class members ;

## *B. <u>THE ECONOMIC LOSS SETTLEMENT</u>*

a. <u>Negotiation Process</u>

33. Plaintiffs' Counsel and counsel for the Defendants periodically canvassed the possibilities for resolving the cases. Informal steps in that regard began in or about the third quarter of 2020.

34. In broad terms, in exchange for the resolution of all Canadian class action litigation related to the Delta Ignition Switch Recall, Key Rotation Recall, Camaro Knee-Key Recall, and Electric Power Steering Recall:

a) a $12 million CAD Settlement Fund will be established, which will be used to pay compensation to Settlement Class members nationally with eligible economic loss claims. The Plaintiffs' Counsel Fee Amount will be paid separately and in addition to the $12 million Settlement Fund Amount. The $12 million Settlement Fund Amount is the full and total amount to be paid by the Defendants in this Settlement, other than the Plaintiffs' Counsel Fee Amount;

b) personal injury or wrongful death claimants, and claimants under the *Family Law Act* (and analogous legislation in other provinces), known to the Plaintiffs' Counsel and identified in the confidential settlement agreements will be eligible to participate in an aggregate settlement process set forth in the confidential settlement agreements entered into on their behalf by the Plaintiffs' Counsel with Defendants, in which Mr. Daniel Balhoff, an experienced neutral third party who facilitated the settlement of such claims in the United States, examines each claimant's individual documents and allocates a confidential settlement amount to each claim in exchange for a release, provided other terms and conditions of the settlement are met. No claims in respect of personal injury, wrongful death or under the *Family Law Act* (and analogous legislation) will be certified in the Ontario Action or the Québec Actions and the Settlement Class members' Release does not include the release of any individual claims for personal injury, wrongful death or actual physical property damage.

### ***b. Settlement Benefits***

35. Based on GM's best available data for all Subject Vehicles destined for sale in Canada that were affected by the Defects and Recalls, **80.24%** of the Net Settlement Amount will be attributed to the settlement of the Ontario Action and **19.76%** of the Net Settlement Amount will be attributed to the settlement of the Quebec Actions. This allocation between the Ontario Action,

which represents all Settlement Class members in all jurisdictions except Quebec, and the Quebec Actions is based on the GM's sales and distribution data.

36. The benefits available under the Settlement Agreement vary based on the Subclass to which a Settlement Class Member belongs. The allocations between Subclasses is based on the US Settlement allocations found in the decision issued by the Honourable Layn R. Phillips, a retired US federal judge court-appointed as the Economic Loss Settlement Mediator in MDL 2543. Judge Phillips' Allocation Decision is attached as Exhibit "**GG**" of the Solicitor's affidavit of Vincent Genova;

37. In short, the Delta Ignition Switch Class members shall receive twice (2x) the amount paid to each Eligible Claim by members of the Camaro Knee-Key and Electric Power Steering Subclasses. The Key Rotation Class members shall receive one-and-a-half times (1.5x) the amount paid to each Eligible Claim by members of the Camaro Knee-Key and Electric Power Steering Subclasses. The remaining amount will be divided on a *pro rata* basis by the Camaro Knee-Key and Electric Power Steering sub-Classes, based on the number of Eligible Claims.[2]

38. The Settlement Agreement sets out that the settlement amounts for each sub-Class and Class Member shall be calculated as follows:

a) <u>Base Payment Amount</u>: the Net Settlement Amount is divided by the number of Eligible Claims, with the Eligible Claims that fall *both* in the Delta Ignition Switch Subclass and the Electric Power Steering Subclass being counted twice;

a) <u>Adjusted Base Payment Amount</u>: the Base Payment Amount is multiplied by:

- ➢ a factor of two (2) for the Eligible Claims in the Delta Ignition Switch sub-Class;

[2] See paragraph 80 of the Solicitor's affidavit of Vincent Genova EXHIBIT R-2

- a factor of one-and-a-half (1.5) for the Eligible Claims in the Key Rotation sub-Class;
- a factor of one (1) for the Eligible Claims in the Camaro Knee-Key and Electric Power Steering sub-classes;

b) Total Value of the Eligible Claims for the Subclasses: the Adjusted Base Payment Amount is multiplied by the number of Eligible Claims for that sub-Class;

c) The Total Value of the Eligible Claims for each Subclass is totaled so that a percentage can be assigned to the Total Value of the Eligible Claims for each Subclass;

d) Prorated Value of Eligible Claims for each Subclass: Each Subclass's percentage is applied to the Net Settlement Amount; and

e) Final Base Payment Amount: the Prorated Value for each Subclass is divided by the number of Eligible Claims for that Subclass[3].

***Expected Payments to Each Subclass***

39. The benefits available under the Settlement Agreement vary based on the Subclass to which a Settlement Class Member belongs. The Expected Final Base Payment are detailed at paragraphs 36-39 of JND affidavit **(EXHIBIT-R3)** depending on 15%, 10% or 5% hypothetical Take-Up Rates. The expected payment amount that will be provided to Settlement Class Members in each Subclass is set out in the table below:

| **Subclass** | **Estimated Final Base Payment Amount (5% Take-Up)** | **Estimated Final Base Payment Amount (10% Take-Up)** | **Estimated Final Base Payment Amount (15% Take-Up)** |
|---|---|---|---|
| Delta Ignition Switch | $192.76 | $93.77 | $60.69 |
| Key Rotation | $144.57 | $70.32 | $45.52 |
| Camaro Knee-Key | $96.38 | $46.88 | $30.35 |
| Electric Power Steering | $96.38 | $46.88 | $30.35 |

[3] See paragraph 85 and following of the Solicitor's affidavit of Vincent Genova EXHIBIT R-2

### c) ***Use of the Settlement Fund Amount***

#### *i. Administrative Expenses*

40. Pursuant to sections 2.6 and 5 of the Settlement, the Settlement Fund Amount will cover all Administrative Expenses which include all fees and disbursements of, or incurred by, the Settlement Administrator to perform the duties and services necessary to implement the Settlement Agreement. Such duties and services include providing notice to the Settlement class members, administering deposits and disbursements from the escrow account, implementing and administering the Claims Program, and generally maintaining and administering the escrow account and Settlement Fund Amount.

41. The anticipated Administrative Expenses were based and calculated on an estimated Class Size of 1,344,000, which is derived from GM's sales and distribution data[4] and are detailed in the Jennifer M. Keough, JND affidavit (par. 24-35 of EXHIBIT-R3);

42. The Settlement Fund Amount is separate and apart from the fund for Plaintiffs' counsel fees, expenses, costs, disbursements and associated taxes. The only charges to the Settlement Fund Amount are the Administrative Expenses and taxes on interest earned. The payment of Administrative Expenses will be the only payment JND receives in relation to the Ontario Action and the Quebec Actions, the whole as detailed at paragraph 27-29 of JND affidavit (EXHIBIT-R3);

#### *ii* ***Funds Remaining After Claims Program***

[4] Par. 25 of the JND affidavit (EXHIBIT-R3).

43. Section 6.6 of the Settlement provides that any Unclaimed Balance of the Net Settlement Amount will be distributed as follows:

d) For the purposes of calculating the amount payable to the *Fonds d'aide aux actions collectives*, the percentage prescribed by the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c R-2.1, r 2, shall be multiplied by the 19.76% of the Unclaimed Balance from the Net Settlement Amount attributed to the Québec Actions; and

e) Any Unclaimed Balance from the 80.24% of the Net Settlement Amount attributed to the Ontario Action and/or the 19.76% of the Net Settlement Amount attributed to the Québec Actions shall be paid *cy-près* to a non-profit organization or organizations to be agreed to by GM and Co-Lead Counsel in writing, and approved by the Courts, less any amounts payable to Québec's *Fonds d'aide aux actions collectives*.

## *C. NOTICE AND ADMINISTRATION OF THE SETTLEMENT*

### 1) Notice Program and Form of The Notices

44. The Parties agreed to the form and content of the **Approval Notice** and Reminder Press Release;

45. The Approval Notice advised the Settlement Class Members who have not opted out of their rights to participate in the settlement and will provide them with information on how to submit a Claim Form and obtain Settlement benefits.

46. The Approval Notice and Reminder Press Release will be disseminated in accordance with the Notice Program and will substantially be in the form attached as Schedules "D" and "G" to the Settlement Agreement, the whole as detailed at paragraphs 40-57 of the JND Affidavit (EXHIBIT-R3);

47. Subject to the approval of the Courts, the Claim Forms will be substantially in the form attached as Schedule "E" to the Settlement Agreement, the whole as detailed at paragraphs 58-59 of the JND affidavit, EXHIBIT R-3;

48. Pursuant to the Settlement Agreement and Notice Program, the Approval Notice will be disseminated in English and in French;

49. The administrative costs and fees of the Claims Administrator, including the cost of the dissemination of the Approval Notice and the cost of the administration of the Settlement Agreement, are to be paid from the Settlement Amount pursuant to the Settlement Agreement;

## 2) Authorization Notice to and Response from Class Members

### *i. Overview of the Notice Program (JND affidavit)*

50. The Notice Program commenced on Monday May 20, 2024. The results of the Notice Program, as of July 24, 2024, are attached as Exhibit "C" to the JND affidavit (par. 12-20 of EXHIBIT R-3). The Notice Program effectively delivered Notice of Certification/Authorization, the Settlement Approval Hearings, and the right of Settlement Class members to opt-out or object to the Settlement ("Notice of Certification/authorization and Settlement Approval Hearings").

### *ii. Objections and Opt-Outs*

51. As of July 19, 2024, as at the deadline for Objections and opt-outs, there have been no Objection to the Settlement Agreement, as noted by the Settlement Administrator at paragraph 21 of the JND affidavit, EXHIBIT-R3;

52. As of July 19, 2024, there have been only six Opt-Out requests received from National Settlement Class members. However, one of the Opt-Outs was from an individual that owned a 1994 Buick Regal which is not one of the Subject Vehicles include in the Ontario Action or the Québec Actions, or in the Settlement Agreement and only one opt out request from Quebec Settlement Class members which was received by the Clerk of the Superior Court of Quebec, at detailed at paragraphs 22-23 of the JND affidavit (EXHIBIT-R3);

***3) Settlement Administrator***

53. The Parties agree that JND shall continue to serve as Settlement Administrator, subject to affirmation by the Courts. JND was appointed Settlement Administrator for the purposes of administering the Notice Program and Settlement Website. Plaintiffs' counsel now request that JND continue to serve as Settlement Administrator for the purposes of, among other things, administering the Claims Program and overseeing, managing, and administering the Settlement Fund Amount.

## VI. STATEMENT OF ISSUES, LAW & AUTHORITIES

1) ***Settlement Approval***

54. On this Application, the Court is required to determine if the proposed settlement is fair and reasonable, and in the best interest of Class members[5];

55. Under Article 590 CCP, a transaction in class action proceedings is only valid if it is approved by the Court. The criteria for evaluating whether the proposed settlement is fair and reasonable have been recently summarized in ***Zuckerman v Target Corporation Inc.*, 2018 QCCS 2276** at para. 20 and include consideration of:

- the likelihood of recovery or probability of success;
- the importance and nature of the evidence presented;
- the terms and conditions of the transaction;
- the recommendations of counsel, and their experience;
- the likely cost and time involved in pursuing the action to a conclusion;
- the recommendation of a neutral third party, if any;
- the number and nature of objections to the settlement;
- the good faith of the parties; and
- the absence of collusion between the parties.

[5] *Bouchard* c. *Abitibi Consolidated*, 2004 CanLII 26353 (QC CS), par. 16

56. Each case and each proposed settlement must be considered on its own merits, and not every one of these considerations will necessarily have to be present, applicable, or satisfied in each and every case. The transaction must be viewed in a global sense;[6]

57. Settlements need not be perfect, and the question is not whether the settlement meets the individual needs of any particular class member, but whether it is fair and reasonable and in the best interests of the class as a whole;[7]

58. Given that the settlement of a litigation is always encouraged, the Court should not refuse to approve the settlement agreement, other than for serious reasons;[8]

**(a)** ***The likelihood of recovery and probability of success;***

59. A primary concern with any settlement is whether the settlement is truly in the "best interests" of the class, taking into account the relative risk of proceeding to a trial and receiving a judgment on the merits;

60. The Applicant contends that the Defendants committed faults in the design or manufacture of their vehicles and that these faults resulted in alleged damages or losses suffered by the Applicant or any Class Member;

61. The Defendants deny all of these allegations, deny any liability, and believe that they have meritorious defenses to the claims alleged in the Actions;

62. Notwithstanding the Defendants' denial of any liability or culpability, to avoid protracted litigation in respect of the Subject Vehicles and to bring finality to the Quebec and Ontario Actions, the Defendants wish to settle all claims for economic loss asserted in these Actions;

63. Taking these competing positions into account, Plaintiffs' Counsel were motivated to settle the litigation because of the significant risks associated with this case;

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[6] *Comité d'environnement de Ville-Emard (CEVE) v Stodola*, 2016 QCCS 1834, at para. 18.
[7] *Jacques v Pétroles Therrien inc.*, 2010 QCCS 5676, at para. 112.
[8] *Mailhot v Diabète Amiante inc.*, 2010 QCCS 1789, at paras. 17-19.

64. Indeed, as detailed at paragraphs 94-102 of the Genova Affidavit (EXHIBIT R-2) the recent jurisprudential developments in Canada created increased litigation risks for plaintiffs in product liability class actions, diminishing the prospect of substantial damage awards. The same can be said in Quebec, where Courts limited recovery prospects when a recall is successfully implemented[9] or required class members to show a real financial impact to obtain compensatory damages, even in consumer protection cases.[10]

65. There is a real and tangible benefit to the Class members that will receive compensation *now* as opposed to several years from now at the conclusion of a contested trial and likely appeal therefrom;

66. As a consequence, the negotiated Settlement Agreement provides almost immediate benefit to the members of the Class and provides for a more guaranteed outcome and meaningful recovery of compensation;

67. The Settlement Agreement represents a reasonable and just resolution given the facts at play. The Settlement Agreement was negotiated at arm's length by experienced counsel who had the requisite information available to them;

68. Given the relevant civil law, tort and contract law principles applicable to the approval to settlement agreement in Ontario and Quebec, it is unlikely that any litigated outcome - in addition to being time consuming and costly, and carrying inherent risk - would result in a significantly better recovery for Class members;

69. In light of the significant risks of proceeding to trial, and the potentially limited recovery with the Quebec Actions limited only to residents of Québec, Class Counsel was willing to consider settlement options;

(b) ***Settlement Agreement terms and conditions***

[9] *Fortin c. Mazda Canada inc.*, 2016 QCCA 31.
[10] *Fortin c. Mazda Canada inc.*, 2022 QCCA 635 (leave to appeal to the Supreme Court denied, *Lise Fortin c. Mazda Canada inc.*, 2023 CanLII 19758 (SCC); *Union des consommateurs c. Air Canada*, 2022 QCCS 4254, on appeal, 500-09-030343-222; *Duguay c. General Motors du Canada ltée*, 2023 QCCS 3223; *Lussier c. Expedia inc.*, 2024 QCCS 472, Notice of Appeal, 2024-06-14.

70. The Settlement Agreement provides benefits to Class members depending on the vehicles defects as per the Settlement Agreement;

71. Claims will be evaluated by the Claims Administrator;

72. Claims will be evaluated by the Claims Administrator. In the event the Claims Administrator is unable to resolve any disputes that arise between the Parties regarding the administration of the Claims Program or the performance of the Claims Administrator, the Superior Court of Quebec retains jurisdiction for Québec residents while Ontario residents can seek the assistance of the Ontario Superior Court of Justice;

**(c)** ***Class Counsel recommendations and experience***

73. The Settlement Agreement was negotiated in good faith at arm's length and by experienced counsel on both sides and have a lengthy history and a wealth of experience in class action litigation;

74. Given all of the considerations that must be undertaken by this Honorable Court, Class Counsel submits that the Settlement Agreement is fair, within the zone of reasonableness, and in the best interests of the Class members, and recommends that it be approved.

**(d)** ***The cost and time in pursuing the action to a conclusion***

75. Class actions, such as the present one, are expensive to pursue, as documentary discovery alone, including expert opinions, is extensive and time consuming;

76. It is likely that a trial of this action would take weeks or months, and its preparations would require a significant investment of time on the part of all Parties and the Court;

77. Significant further disbursements could be expected, including several hundred thousand dollars for the possible retention of experts necessary for the prosecution of the action;

78. It is likely that the trial of the Quebec Action would be scheduled several years in the future, significantly delaying access to justice and compensation for the Class;

79. The Settlement Agreement avoids the need for much of this expense and provides far more timely access to compensation for members of the Class;

80. Moreover, as the Settlement Agreement provides for the resolution of all Canadian Actions, it represents judicial economy and is in the interests of the judicial systems in Quebec and Ontario;

***(e) The number and nature of objections***

81. There have been no objection and only 4 valid opt-outs[11]. Only one of the opt-out relates to Quebec Action file No. 500-06-000729-158, and it pertains to a Cadillac SRX 2014. Pursuant to Schedule A of the Settlement Agreement, this is not a Subject Vehicle (only Cadillac SRX 2004-2006 are included). The Quebec opt out is not a valid opt-out and should be disregarded, a copy of the Quebec opt-out is communicated herein as **EXHIBIT R-7** ;

82. The very limited number of opt-outs and the absence of objection strongly militate for the approval of the Settlement Agreement, especially considering the size of the Class, estimated at 1,344,000 members,[12] and the robust Notice Program ordered by the Courts.

**(f)** ***The good faith of the Parties and the absence of collusion***

83. Pursuant to article 2805 of the *Civil Code of Quebec*, the Court is entitled to presume the presence of good faith in the absence of any evidence to the contrary;

[11] One of these opt-outs applies to a 1994 Buick Regal. This vehicle is not a Subject Vehicle. The whole as detailed at paragraphs 21-23 of the JND affidavit, EXHIBIT R-3.
[12] Paragraph 25 of JND affidavit (EXHIBIT R-2)

84. The Applicant submits that notwithstanding this presumption, the facts substantiate the assertion that there was no collusion between the Parties and that the Settlement Agreement has been negotiated in good faith;

85. Lengthy negotiations to settle this litigation began since 2020;

86. While the content of the negotiations is privileged and confidential, both Parties maintained their respective positions on the fundamental merits of the Actions, with a full appreciation of the facts, the issues, and the applicable laws;

87. An agreement on the terms of Settlement Agreement was finally reached in November 1, 2023;

88. The resulting Settlement Agreement is a compromise in which each Party made concessions in good faith to resolve the Canadian Actions and provide immediate and meaningful compensation to the members of the Class;

89. In the unfortunate event that the Settlement Agreement is not approved for any reason, counsel for the Applicant is prepared to advance the Quebec Action, notwithstanding reservations about the risks to the Class and the significant disadvantages as regards timeliness inherent to that course of action;

90. The settlement was concluded through mediation, with the help of a seasoned mediator.

91. The litigation, in both venues, could have been protracted and costly, for all parties.

92. The parties are in good faith and that there was no collusion;

93. The Applicant and Class Counsels all supports the Settlement as it is fair and reasonable

**2)** ***Approval of Class Counsel Fees, Art. 593 CCP***

***Counsel Fees***

94. Under the terms of the Settlement Agreement, the Defendants have agreed to pay Plaintiffs' (…) counsel's fees, expenses, costs, disbursements and associated taxes – all of which are separate and apart from the Settlement Fund Amount – of a maximum aggregate amount of $4,397,500.00.

95. The payment of the Plaintiffs' Counsel Fee Amount is governed by section 12 of the Settlement Agreement. Co-Lead Counsel agree and covenant that they shall not claim, seek, attempt to recover or otherwise collect any costs or fees in excess of the Maximum Plaintiffs' Counsel Fee Amount.

96. The Plaintiffs' Counsel Fee Amount is payable by GM by the later of thirty days after the Effective Date or the entry of both the Plaintiffs' Counsel Fee Amount Orders. The amount paid shall be allocated by Co-Lead Counsel among any and all Plaintiffs' counsel who represented any Person in the Actions and Related Actions.

97. The proceedings related to Co-Lead Counsel's request for the Court's approval of the Plaintiffs' Counsel Fee Amount, although heard alongside the Settlement Approval Hearing, are to be considered separately from the Settlement Approval Hearing such that any appeal from the Plaintiffs' Counsel Fee Amount Order(s) shall not constitute an appeal of the Approval Order.

98. Plaintiffs' Counsel have invested substantial time and incurred significant expense in advancing this litigation for the past 10 years and have carried substantial disbursements and associated opportunity costs during that time. As the total amount payable by GM under the Settlement is $16,397,500, the Maximum Plaintiffs' Counsel Fees Amount of $4,397,500

represents approximately a maximum of **20%**[13] contingency fee (once disbursements is deducted). As will be described below, it is respectfully submitted that Plaintiffs' counsel's request for $4,397,500 in fees, disbursements, and taxes is fair and reasonable and should also be approved, (the actual percentage is lower as the Plaintiffs' Counsel Fee Amount is inclusive of disbursements);[14]

99. As for the Ontario Action, the Co-lead counsel Rochon Genova LLP ("***RG***") has incurred fees of approximately **$1,097,077.26** (inclusive of HST) and disbursements of approximately **$245,080.96** (inclusive of HST) totalling **$1,342,158.22**. Kim Spencer McPhee Barristers P.C. ("KSM") has incurred fees (inclusive of HST) of approximately **$860,057.13** and disbursements (inclusive of HST) of approximately **$41,747.21**, totalling **901,804.34**. As for the Plaintiffs' Counsel team, Merchant Law Group ("MLG"), as of April 2024, MLG had incurred to pursue the Quebec Actions fees of approximately **$ 739,151.89** (inclusive of taxes) and for all the MLG Related Actions fees for approximately **$ 507,367.07**. As for the disbursements for the Quebec Actions and the MLG Related Actions, MLG had incurred approximately **$21,223.60** (inclusive of taxes), for a grand total of **$1,246,518.96** (inclusive of taxes ) and Sutts Strosberg LLP had incurred fees of approximately **$621,720** and disbursements of approximately **$357,903**, totalling **$979,623** (inclusive of HST). McKenzie Lake Lawyers LLP incurred fees of approximately **$167,437** and disbursements of **$21,312**, totalling **$188,749**.[15]

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[13] Net : Counsel Fee **$ 4,397,500.00** (Less HST **$571,675** + Disbursements **$687,266.77)** = $3,159,781.83
$3,138,558.23 /$16,397,500,000 = less then 20% (19.14%)

[14] See paragraphs 19 and 122 of the Ontario Solicitor's affidavit (EXHIBIT R-2)

[15] See paragraph 132 of the Ontario Solicitor's affidavit (EXGIBIT R-2)
Plaintiffs' Counsels (Co-Lead counsel and Plaintiffs Counsels' Team) incurred total disbursements of approximately $**687,266.77** **($666,043.17)** and counsel fees of approximately of **$4,658,853.52.**

100. The Quebec Funds has not covered any fees or disbursements incurred by Quebec Counsels for the Quebec Actions. Quebec Class counsel assumed all fees and disbursements since the institution of the Quebec Actions in 2014;

101. When executing the Term Sheet, the Co-Lead Counsel and the Plaintiffs' Counsel team, including MLG for Quebec would undertake significant further work to complete the formal Settlement Agreement and to bring this action to the settlement approval stage. They have, in fact, incurred fees for this time, and will continue to incur fees throughout the Claims Program.[16]

102. The Professional Mandate & Attorneys Fee Agreement entered into by the Applicant Gagnon provided for the payment to MLG of all disbursements incurred, plus the 30% of the total amount recovered, as fully demonstrated by a copy of the retainer agreement signed by the Applicant Micheal Gagnon, attached herein as **EXHIBIT R-4**;

103. Given the resources, time and funds devoted to and invested in this litigation and in light of the results achieved and the significant litigation risks avoided, the requested Plaintiffs' Counsel Fee Amount is appropriate and reasonable, and ought to be awarded in this proceeding. Over 10 years, Co-Lead Counsel and the Plaintiffs Counsels Team, including MLG have diligently prosecuted the Actions.

104. Plaintiffs' counsels have also gained significant benefit for the class by cooperating and aligning the Ontario actions, Quebec Actions with parallel or analogous actions in other

[16] In this context, the requested Plaintiffs' Counsel Fee Amount represents a premium of approximately $985,165.44 on the fees and disbursements, plus taxes, actually incurred by Co-Lead and Actions Counsel, See paragraph 133 of the Ontario Solicitor's affidavit (EXHIBIT R-2)

jurisdictions, including the U.S. Plaintiffs' counsel has attended in-person meetings in the US, including attending at the Delphi facility to conduct due diligence interviews related to the development and manufacturing of the ignition switches that are critical to these proceedings.

105. Due to the law relating to economic loss evolving in a manner unfavourable to the Plaintiffs' position in this litigation, Plaintiffs' Counsel faced the significant risk that they would receive no compensation for the significant fees, disbursements and opportunity costs incurred by vigorously prosecuting this proceeding. Despite this, Co-Lead Counsel continued to move this litigation forward, engage leading experts, expend time and costs to investigate the issues of this proceeding, including attending meetings, investigations and mediations in the U.S., as well as Canada.

106. Further, Co-Lead Counsel successfully maneuvered through the complex settlement of both the economic loss claims of all class members and the personal injury claims of certain class members, including the estates and family members of those who had suffered serious injuries, including death.

107. Throughout these proceedings, Plaintiffs' Counsel also remained in constant communication with the Representative Plaintiffs and various class members, keeping them apprised of the proceedings, advising them of their interests as well as the risks and benefits of further litigation, and otherwise communicating with them to ensure that the litigation progressed in a manner desirable to the class members. If the Court approves the Settlement, the Plaintiffs' counsel firms will continue to expend time and costs advising class members about the Settlement and Claims Program.

108. Given that the award of the Plaintiffs' Counsel Fee Amount will be shared amongst all Plaintiffs' counsel in the Actions and Related Actions, awarding Plaintiffs' Counsel Fee Amount of $4,397,500 is reasonable and fair, and serves the purpose of contingency fees in class proceedings, which is to incentivise class counsel to bring proceedings that are necessary to provide access to justice but are, without a reasonable contingency fee, economically unviable;

109. In class actions, there is no doubt that the duty of reviewing the professional fees of class counsel rests with the Court which must assess whether the fees are fair and reasonable, justified by the circumstances and proportional to the services rendered;

110. Class Counsel have extensive experience in the preparation and litigation of class actions both in Quebec and in the common law provinces, including in particular, consumer and misrepresentation class actions;

111. Significant risks exist that would make prosecution of the Quebec Action and the Other Canadian Actions through trial a risky proposition, not the least of which that the Defendants have a number of potential defences to the substantive claims which could eliminate or reduce the damage awards available for the benefit of Class members;

112. The pursuit of class action litigation is an inherently specialized area of the law, and Class Counsel's significant past experience in this area was a particular asset to the Class;

113. Many Class members , including the representative plaintiff, have suffered economical losses;

114. Plaintiffs' Counsel accepted the entirety of the risk associated with the prosecution of the Quebec Actions and Ontario Actions. Neither the FAAC nor any other third-party funder

provided support, funding, or insurance in respect of the authorization motion or the proceedings themselves;

Litigation risks

115. A key benefit of the Settlement Agreement is the avoidance of the significant litigation risks the Class members would otherwise have faced.

116. ***First***, there is a risk that the Plaintiffs' claims may fail in light of the jurisprudence on claims of pure economic loss.[17]

117. ***Second***, although in the US it was adjudicated and found that GM continues to be liable for Subject Vehicles designed and manufactured by Old GM, the jurisprudence of the Court of Appeal for Ontario is not favourable to the Plaintiffs' position that GM and GM Canada are liable for the Subject Vehicles designed and assembled by Old GM[18].

118. ***Third***, while the Plaintiffs assert that the caselaw supports the Plaintiffs' theory that out-of-pocket expenses and loss of income arising from a defective product are compensable,[19] the Defendants argue that the Plaintiffs' claim for consequential damages are not compensable. They assert that the alleged harm does not "rise above the ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept."[20]

[17] For details on litigation risks, see paragraphs 94 and following of the Solicitor's affidavit of Vincent Genova, EXHIBIT R-2.
[18] See paragraph 97 of the Solicitor's affidavit of Vincent Genova, EXHIBIT R-2.
[19] *McIntosh v. Takata Corporation*, 2020 ONSC 968 at para 13; *McIntosh v. Takata Corp.*, 2019 ONSC 1317 at para 10; *Stevenson v. Mazda Motor Corp.*, 2019 ONSC 1323 at para 9; *Crisante v. DePuy Orthopaedics Inc.*, 2013 ONSC 5186 at para 35
[20] *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27 at para. 9.

119. Notwithstanding the divergent positions, the Plaintiffs acknowledge that this claim may require individual assessments for each Class members, after a common issues trial. In light of this, the proposed Settlement for economic loss that provides an individual claims process is preferable and in the best interest of the class members.

120. The compensation to be paid to Class Counsel was disclosed in the Notice of Settlement Approval. To the extent that any objections may exist as to the quantum of Class Counsel Fees, all Class members have had an opportunity to voice the same;

121. Given the resources, time and funds devoted to and invested in this litigation, and in light of the results achieved and the significant litigation risks avoided, the Maximum Plaintiffs' Counsel Fee Amount is appropriate and reasonable, and ought to be awarded in this proceeding.

## *VI. SUPPORT FOR THE ECONOMIC SETTLEMENT AGREEMENT*

### (1) Representative Plaintiff

122. The Applicant approves of the Settlement Agreement and has sworn an affidavit in support of the present Application, attached herein as **EXHIBIT-R-5**;

### (2) Class Counsel

123. Given the voluntary steps taken by the Defendants to remedy the alleged defects, the benefits provided by the Settlement, and that the terms of the Settlement are comparable with the terms of the settlement reached in similar US litigation[21], Class Counsel views the Settlement Agreement as fair, reasonable, and in the best interests of Settlement Class Members;

## VII. CONCLUSION

[21] On the US litigation and US settlement, see paragraphs 26-35 of the Ontario Solicitor Affidavit, Vincent Genova, EXHIBIT R-2;

124. Given the voluntary steps taken by the Defendants to remedy the alleged defects, and the benefits provided by the Settlement, Class Counsel views the Settlement Agreement as fair, reasonable, and in the best interests of Settlement Class Members

125. The Settlement Agreement is contingent upon this Honourable Court's approval and a corresponding order by the Ontario Superior Court of Justice ;

126. For all the above reasons, this nationwide settlement is in the best interests of the Class members and represents a fair and a reasonable resolution to the *Quebec Action*, the *Ontario Action* and the *Related Actions*;

127. Plaintiffs' Counsel individually and collectively view the Settlement Agreement as fair and reasonable and in the best interests of the of the Class members. This Settlement Agreement settles, subject to approval by this Honourable Court, any and all class claims asserted in the *Ontario Action* and *Quebec Actions*;

128. For all the above reasons, this nationwide Settlement is in the best interests of the Settlement Class and represents a fair and a reasonable resolution to the present litigation for all persons who have lease or purchased a Settlement Class Vehicle in Canada, including Quebec and will ensure that all Settlement Class Members have an opportunity to receive benefits and reliefs under the present Settlement;

129. The present Application is well founded in law and in facts;

| **FOR THESE REASONS, MAY IT PLEASE THE COURT:** | **POUR CES MOTIFS, PLAISE AU TRIBUNAL DE :** |
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| **GRANT** this <u>*Amended*</u> *Application for Settlement Agreement Approval* <u>*And Approving Plaintiffs'' Class Counsel Fees*</u>; | **ACCUEILLIR** la présente *Demande d'approbation d'une Entente de règlement* <u>*et approbation des Honoraires des Avocats du Groupe modifiée*</u> *;* |
| **DECLARE** that for the purposes of the Order and unless otherwise defined in the Order, the definitions set out in the Settlement Agreement | **DÉCLARER** que, sauf indication contraire au présent jugement ou modification par celui-ci, les définitions utilisées au présent dispositif ont la signification qui leur est attribuée à |

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| attached as Exhibit "R-1" apply to and are incorporated into the Order; | l'Entente de règlement Pièce « R-1 » définie aux motifs du présent jugement ; |
| **DECLARE** that the Settlement Agreement is fair, reasonable and in the best interests of the Quebec Settlement Class and constitutes a transaction pursuant to the article 2631 of *Civil Code of Québec;* | **DÉCLARER** que, l'Entente de Règlement est juste, raisonnable et dans le meilleur intérêt des Membres du Groupe de Règlement du Québec et constitue une transaction au sens de l'article 2631 du *Code civil du Québec ;* |
| **APPROVE** the Settlement Agreement and all Exhibits thereto pursuant to s 590 of the *Code of Civil Procedure*, C.Q.L.R., c. C-25.01; | **APPROUVER** l'Entente de règlement dans son intégralité et toutes ses Pièces, en vertu de l'article 590 du *Code de procédure civile,* C.Q.L.R., c. C-25.01 *;* |
| **DECLARE** that the Settlement Agreement (including all preambles, recitals, and schedules) is incorporated by reference into and forms part of this Order and is binding upon the Parties and all Quebec Settlement Class members who have not validly opted out in accordance with the terms of the Settlement Agreement. | **DÉCLARER** que, l'Entente de Règlement (y compris tous les préambules, les considérants et les annexes) est incorporée par renvoi au présent jugement et en fait partie intégrante et qu'elle lie les Parties et tous les Membres du Groupe du Règlement du Québec qui ne se sont pas valablement exclues conformément aux modalités de l'Entente de Règlement. |
| **DECLARE** that where any term of the Order and the Settlement Agreement conflict, the terms contained in the Order shall govern; | **DÉCLARER** qu'en cas de conflit entre le présent Jugement et l'Entente de Règlement, ce Jugement prévaudra ; |
| **ORDER** that this Order is contingent upon a parallel Approval Order being made by the Ontario Superior Court of Justice in the action titled *Oberski et al. v. General Motors LLC et al.,* bearing Ontario Superior Court of Justice Court File Court File No. CV-14-502023-00CP approving the Settlement Agreement, and that the terms of this Order shall not be effective unless and until such order is made by the Ontario Superior Court of Justice; | **ORDONNER** que l'entrée en vigueur de l'Entente de Règlement soit conditionnelle à une ordonnance de la Cour supérieure de justice de l'Ontario dans le dossier *Oberski et al. v. General Motors LLC et al.,* Court File No CV-14-502023-00CP approuvant l'Entente de Règlement, (…) le présent jugement ne prendra effet que lorsque cette ordonnance est rendue; |
| **ORDER** that in the event that the Settlement Agreement is terminated in accordance with its terms, this Order shall be null and void and of no force or effect; | **ORDONNER** que si l'Entente de Règlement ne prend pas effet selon ses modalités, conformément à ses modalités, la présente Ordonnance serait nulle, sans effet et sera inopérante ; |

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| **APPROVE** the form and content of the Approval Notice, attached as Schedule D to the Settlement Agreement, Exhibit R-1; | **APPROUVER** la forme et le contenu de l'Avis d'Approbation, Annexe D de l'Entente de Règlement, Pièce R-1; |
| **ORDER** that the Approval Notice shall be published and disseminated by the Claims Administrator as soon as reasonably possible after the Effective Date, in English and French, in the manner set out in the Settlement Agreement and the Notice Program, Exhibit « R-6 »; | **ORDONNER** que l'Administrateur des Réclamations publie et dissémine l'Avis d'Approbation dès qu'il est raisonnablement possible de le faire après la date d'Entrée en Vigueur, en anglais et en français, de la manière prévue dans l'Entente de règlement et dans le Plan de Notification, tel que présenté à la Pièce « R-6 »; |
| **ORDER** that JND is appointed as Claims Administrator and that the Claims Administrator shall administer the Settlement in accordance with the Settlement Agreement (…); | **ORDONNER** que JND, soit nommé à titre d'Administrateur des Réclamations et que l'Administrateur des réclamations exécutera ses obligations de la manière prévue par l'Entente de règlement (…) ; |
| **APPROVE** the form and content of the Claim Form, attached as Schedule E to the Settlement Agreement, Exhibit R-1; | **APPROUVER** la forme et le contenu du Formulaire de Réclamation, Annexe E de l'Entente de Règlement, Pièce R-1; |
| **ORDER** that any Quebec Settlement Class member who has validly opted out of the Settlement by the Opt-Out Deadline in accordance with the terms of the Settlement Agreement and the Order of this Court dated May 6, 2024 is not bound by the Settlement Agreement, is not entitled to any Settlement Benefits, and shall no longer participate or have the opportunity in the future to participate in the Quebec Actions or the settlement thereof. | **ORDONNER** que tout Membre du Groupe de Règlement du Québec qui s'est valablement exclu de l'Entente de Règlement avant la Date Limite d'Exclusion et conformément à ses modalités et du jugement daté du 6 mai 2024 n'est pas lié par l'Entente de Règlement, n'a droit à aucun avantage du Règlement et ne pourra plus participer ou n'aura plus l'occasion à l'avenir de participer aux Actions du Québec ou au présent Règlement; |
| **ORDER** that any Quebec Settlement Class member who has not validly opted out of the Settlement by the Opt-Out Deadline in accordance with the terms of the Settlement Agreement and the Order of this Court dated May 6, 2024 is bound by the terms of the Settlement Agreement and may not opt out of the Quebec Actions in the future. | **ORDONNER** que tout Membre du Groupe visé par l'Entente de Règlement du Québec qui ne s'est pas valablement exclu du Règlement avant la Date Limite d'Exclusion et conformément à ses modalités et du jugement daté du 6 mai 2024 soit lié par les modalités de l'Entente de Règlement et ne pourra plus s'exclure des Actions du Québec; |

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| **ORDER** that the Defendants shall, before the Effective Date, pay the Preliminary Administrative Expenses into an escrow account to be opened by JND; | **ORDONNER** que les Défenderesses doivent, avant la Date d'Entrée en Vigueur, verser les Frais Administratifs Préliminaires dans un compte séquestre qui sera ouvert par JND. |
| **ORDER** that within thirty (30) days of the Effective Date, the Defendants shall pay into the escrow account to be opened by JND the Settlement Fund Amount, in accordance with the Settlement Agreement, less any amount paid for Preliminary Administrative Expenses. | **ORDONNER** que, dans les trente (30) jours suivant la Date d'Entrée en Vigueur, les Défenderesses versent sur le compte séquestre qui sera ouvert par JND le montant du Fonds de Règlement, conformément à l'Entente de Règlement, moins tout montant payé pour les Frais Administratifs Préliminaires. |
| **ORDER** that JND may, prior to disbursement of the Net Settlement Amount to Eligible Claimants, withhold from the Settlement Fund Amount an amount agreed to by the Parties to cover such tax liabilities that may be incurred after the commencement of distribution of the Net Settlement Amount to Eligible Claimants. | **ORDONNER** que JND puisse, avant le déboursement du Montant net du Règlement aux Réclamants éligibles, retenir un montant convenu par les Parties pour couvrir les obligations fiscales qui peuvent être encourues après le début de la distribution du Montant net du Règlement aux Réclamants éligibles |
| **ORDER** that JND shall attribute 80.24% of the Net Settlement Amount to the settlement of the Ontario Action, and 19.76% of the Net Settlement Amount to the settlement of the Quebec Actions, pursuant to s.6.4.1 of the Settlement Agreement. | **ORDONNER** que JND attribue 80,24 % du Montant Net du Règlement au règlement de l'Action de l'Ontario et 19,76 % du Montant net du Règlement au règlement des Actions du Québec, conformément à l'article 6.4.1 de l'Entente de Règlement. |
| **ORDER** that JND shall use the Net Settlement Amount for the payment of Eligible Claims in accordance the Claims Program and the Settlement Agreement; | **ORDONNER** que JND utilise le Montant Net du Règlement pour les paiements des Réclamations Admissibles conformément au Programme de Réclamations et à l'Entente de Règlement ; |
| **ORDER** that Pursuant to s. 6.6 of the Settlement Agreement, JND shall distribute any Unclaimed Balance of the Net Settlement Amount in the following manner:<br><br>a. JND shall pay to the *Fonds d'aide aux actions collectives* the percentage of the Unclaimed Balance prescribed by the *Regulation respecting the percentage withheld* | **ORDONNER** que, conformément à l'article 6.6 de l'Entente de Règlement, JND distribue tout solde non-réclamé du Montant Net du Règlement de la manière suivante :<br><br>a. JND versera au Fonds d'Aide aux Actions collectives le pourcentage du solde non réclamé prescrit par le Règlement sur le pourcentage retenu par le Fonds d'aide aux |

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| *by the Fonds d'aide aux actions collectives*, CQLR c. R-2.1, r. 2, multiplied by 19.76%; and<br><br>b. JND shall pay any remaining Unclaimed Balance *cy-près* to a non-profit organization or organizations to be agreed to by the Defendants and Co-Lead Counsel in writing, and approved by the Courts, less any amounts payable to the *Fonds d'aide aux actions collectives;* | actions collectives, RLRQ c. R-2.1, r. 2, multiplié par 19,76 % ; et<br><br>b. JND doit verser cy-près tout solde non réclamé à un ou plusieurs organismes à but non lucratif dont les Défenderesses et les Co-avocats principaux ont convenu par écrit et qui ont été approuvés par les tribunaux, moins les montants payables au Fonds d'aide aux actions collectives; |
| **APPROVES** the Plaintiff's Counsel fees of $4,397,500.00, pursuant to Settlement Agreement; | **APPROUVE** les Honoraires des Avocats du Groupe de $4,397,500.00, applicables, conformément à l'Entente de Règlement; |
| **DECLARE** that the fees, being an amount separate and distinct from the Settlement Fund Amount, to be paid to Plaintiff's Counsel fees are fair and reasonable; | **DÉCLARE** que le Montant des honoraires des Avocats du Groupe, étant un montant séparé et distinct du Fonds de Règlement, sont justes et raisonnables; |
| **ORDER** that the Defendants shall, within thirty (30) days of the Effective Date, pay the Plaintiffs Counsel Fee Amount to Co-Lead Counsel in accordance with s.12.3 of the Settlement Agreement as full and final compensation for the aggregate amount of fees, expenses, costs, disbursements, and associated taxes incurred by any and all plaintiffs' counsel in the Actions and Related Actions; | **ORDONNER** que les Défenderesses doivent, dans les trente (30) jours suivant la Date d'Entrée en Vigueur, payer le montant des honoraires des Avocats du Groupe aux Co-Avocats Principaux conformément à l'article 12.3 de l'Entente de Règlement à titre de compensation complète et finale pour le montant total des honoraires, dépenses, coûts, débours et taxes connexes encourus par tous les Avocats du Groupe dans les Actions et les Actions Connexes; |
| **ORDER** that, after paying the Ontario Class Proceedings Fund, the Co-Lead Counsel shall allocate the Plaintiffs' Counsel Fee Amount, among any and all plaintiffs counsel, including Co-Lead Counsel and Actions Counsel, who represent any Person in the Actions and Related Actions, including purported Settlement Class Members, as Co-Lead Counsel deems fit. | **ORDONNER** que les Co-Avocats Principaux, et ceci après avoir payé l'Ontario Class Proceedings Fund, de répartir le Montant des honoraires des Avocats du Groupe entre tous les avocats des représentants, y compris les Co-Avocats Principaux et les Avocats du Groupe, qui représentent toute Person dans les Actions et les Actions connexes, y compris les présumés Membres du Groupe du Règlement, |

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| | selon ce que les Avocats du Groupe jugeront approprié. |
| **ORDER** that, upon the Effective Date, all Quebec Settlement Class Releasing Parties shall be bound by the Settlement Class Members' Release; | **ORDONNER** qu'à à la Date d'Entrée en vigueur, toutes les Parties Quittancées du Groupe du Règlement du Québec seront liées par la quittance des Membres du Groupe visé par le Règlement ; |
| **ORDER** that this Court will retain an ongoing supervisory role for the purpose of implementing, administering and enforcing the Settlement Agreement, subject to the terms and conditions set out in the Settlement Agreement, in accordance with s.14.2 of the Settlement Agreement; | **ORDONNER** que cette Cour exercera un rôle de supervision pour les fins de la mise en œuvre, l'administration et l'application de l'Entente de Règlement, sujet aux modalités et conditions prévues à l'Entente de Règlement, conformément à l'article 14.2 de l'Entente de Règlement ; |
| **ORDER** that any party may bring an application to this Court at any time for directions with respect to the implementation, interpretation, administration, or enforcement of the Settlement on notice to all other Parties; | **ORDONNER** que toute partie puisse soumettre à cette Cour, en tout temps, une demande pour obtenir des directives concernant l'application ou l'interprétation de l'Entente de Règlement avec notification préalable aux Parties; |
| **THE WHOLE** without costs. | **LE TOUT**, sans les frais de justice |

Montreal, July 30, 2024

Merchant Law Group

**Merchant Law Group LLP**
Attorneys for the Applicant

## NOTICE OF PRESENTATION

**TO: Mtre. Stéphane Pitre**
**BORDER LADNER GERVAIS LLP**
1000, rue De La Gauchetière Ouest, bureau / suite 900,
Montréal, QC, Canada H3B 5H4
Telephone : 514.954.3147 |
Fax: 514-397-8515
Email : SPitre@blg.com

**TAKE NOTICE** that the present *Amended Application For Settlement Agreement Approval And Approving Plaintiffs' Counsel Fees* will be presented for adjudication on July 31st 2024, in room 16.12 and will be heard by Honourable Justice Pierre Nollet of the Superior Court of Québec, District of Montréal, at the Montreal Courthouse situated at 1 Notre-Dame street East, Montréal, Québec.

**DO GOVERN YOURSELVES ACCORDINGLY.**

**MONTRÉAL, July 30 , 2024**

Merchant Law Group

**MERCHANT LAW GROUP LLP**
Attorneys for the Applicant

**Christine Nasraoui**

| | |
|---|---|
| **From:** | Microsoft Outlook <MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@merchantlaw.com> |
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Leray, Alexis (ALeray@blg.com)

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## Christine Nasraoui

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**№.: 500-06-000687-141**
**№.: 500-06-000729-158**

**S U P E R I O R   C O U R T**
DISTRICT OF MONTREAL

**MICHAEL GAGNON**

*Applicant*

vs

**GENERAL MOTORS OF CANADA COMPANY**

-AND-

**GENERAL MOTORS LLC**

*Defendants*

-AND-

**LE FONDS D'AIDE AUX ACTIONS COLLECTIVES**

*Impleaded Party*

**AMENDED APPLICATION FOR SETTLEMENT AGREEMENT APPROVAL AND APPROVING PLAINTIFFS' COUNSEL FEES**
**(Arts. 590 and 593 C.C.P.)**

**ORIGINAL**

**Me Christine Nasraoui**
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