C A N A D A
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No: **500-06-001211-222**

SHAI MEDALSY

Plaintiff

v.

MAPLEBEAR INC.
-and-
MAPLEBEAR CANADA ULC, in continuance of proceeding for Maplebear Canada Inc.
-and-
MAPLEBEAR DELIVERY CANADA ULC, formerly known as Maplebear Delivery Canada Inc.

Defendants

APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES

(Article 590 *C.C.P*. and Article 32 of an *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1.)

TO THE HONORABLE JUSTICE PIERRE NOLLET OF THE SUPERIOR COURT OF QUEBEC, DISTRICT OF MONTREAL, DESIGNATED TO PRESIDE OVER THE PRESENT CLASS ACTION, THE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:

PART ONE: OVERVIEW OF THIS APPLICATION

1. On October 10, 2023, the Parties participated in a full day Judicial Settlement Conference (hereinafter "JSC" or "*CRA*") presided by the Honorable Retired Justice Willaim Fraiberg. The Parties settled many elements of the matter that day, in principle, and continued their arms-length serious negotiations for several months thereafter.

2. The Parties ultimately arrived at a formal Settlement Agreement signed on October 30 and 31, 2024.

3. On December 5, 2024, the Parties submitted the signed Settlement Agreement to this Honorable Court and sought an order authorizing the bringing of a class action for settlement purposes only, approving the notices to Class Members of the pending settlement approval hearing and opt out procedure.

4. That same day, the Parties received comments from this Honorable Court regarding the Settlement Agreement.

5. As a result of the receipt of these comments, on January 17 and 18, 2025 the Parties signed an Amendment to the Settlement Agreement.

6. The Plaintiff communicates herewith a copy of the Settlement Agreement, the Amendment to the Settlement Agreement, and schedules thereto, as **Exhibit R-1.1**.

7. The Plaintiff also communicates herewith, as **Exhibit R-1.2**, a consolidated (combined) version of the Settlement Agreement and the Amendment to the Settlement Agreement, and as **Exhibit R-1.3** a French translation of said consolidated version (collectively referred to as the "**Settlement Agreement**" or "**Settlement**" or "**Proposed Settlement**").

8. Except to the extent they are modified by this Application, the definitions set out in the Settlement Agreement apply and are incorporated herein.

9. On January 24, 2025, this Honourable Court *inter alia* authorized the class action for settlement purposes, approved the Notice Program (Schedule C to the Settlement Agreement), approved the pre-approval notices (Schedules A and B to the Settlement Agreement), and set the opt out deadline and the written objections deadline at March 10, 2025.

10. Pursuant to the Court approved Notice Program (Schedule C of the Settlement Agreement), on February 6, 2025, the Defendants sent the Notices, in French and English , by email to all Class Members for whom Defendants had an email address, including Class Members who previously opted out from receiving promotional/marketing emails, the whole as more fully appears from Defendants' March 14, 2025 affidavit, communicated herewith as **Exhibit R-2**, **filed under seal at Defendants' request.**

11. In addition, on February 6, 2025, the undersigned attorneys posted the Settlement Agreement, the January 24, 2025 Judgment, and the relevant notices on its firm website and on the Quebec Class Actions Registry.

12. Moreover, on February 7, 2025, the undersigned attorneys sent the Notices, in English and French, by email to all Class Members having previously registered themselves with the undersigned attorneys in this matter.

13. The nature of this Application requires Class Counsel to disclose in broad terms its efforts in advancing this litigation, as well as certain discussions regarding the claims, the defences and/or the settlement negotiations. Nothing in this Application and associated affidavits are intended to waive, nor should it be construed as a waiver of, attorney-client, litigation or other privilege or confidentiality that may attach to the information outlined herein.

14. In this Application, the Plaintiff (with consent of the Defendants) respectfully seeks this Honourable Court's approval of:

    (a) the Settlement Agreement (as amended); and

(b) Class Counsel Fees detailed at Section 9 of the Settlement Agreement, together with applicable taxes.

PART TWO: THE FACTS

15. Since June 15, 2021, Defendants began operating a technology platform to facilitate the sale and delivery of groceries and other products from a variety of retailers in the Province of Quebec (including in and around Montreal, Quebec City, Sherbrooke and Gatineau).

16. Defendants operate and maintain the Instacart Canada Platforms (mobile application and the Instacart.ca website) in Quebec allowing their customers to order groceries and other products from many retailers, for delivery, including without limitation the following list of vendors:

- Super C
- Maxi
- Metro
- Adonis
- Dollarama
- Costco
- Sephora
- Walmart
- Linen Chest
- Giant Tiger
- Pharmaprix
- Bureau en Gros
- Michaels
- Kiehl’s
- les Aliments M&M

17. Plaintiff placed an order on the Instacart Canada Platform and alleges he was charged a higher price than that advertised, displayed and indicated at the initial review stage of the transaction (aside from applicable GST and QST).

18. Accordingly, on December 1, 2022, Plaintiff commenced and filed the *Application for Authorization to Institute a Class Action,* pursuant to Articles 574 and following of the *C.C.P*. (the "**Application for Authorization**"), before the Superior Court of Quebec, District of Montreal, against Defendants which asserted claims under the *Consumer Protection Ac*t, CQLR, c. P-40.1 and the *Civil Code of Québec*, CQLR, c. CCQ-1991, in relation to the completion of a transaction on the Instacart Canada Platforms and the charging of a Fee.

19. Defendants field their Answers on December 28, 2022 and January 20, 2023, followed by the filing of an *Application for leave to examine the Plaintiff* on July 4, 2023.

20. As mentioned above, on October 10, 2023, the Parties participated in a full day *CRA* presided by the Honorable Retired Justice Willaim Fraiberg, settling many elements of the matter that day, in principle. The Parties continued their arms-length serious negotiations for several months thereafter and ultimately arrived at the Settlement Agreement (as amended).

PART THREE: TERMS OF THE SETTLEMENT AGREEMENT

21. As mentioned, the Settlement Agreement was executed on October 30 and 31, 2024 and amended on January 17 and 18, 2025. The Settlement is of course subject to and contingent upon the approval of this Honourable Court.

22. The Settlement Agreement does not constitute, nor is it to be deemed, construed or interpreted as constituting, an admission or concession by the Defendants or Plaintiff regarding the truth of the allegations or liability.

23. The Settlement defines multiple terms at its Section 2, including the following, *inter alia*:

- "**Class**" and "**Class Member(s)**" means all customers who completed a transaction on the Instacart Canada Platforms during the Class Period and who placed an order for delivery in Québec and paid a price that included a Fee.

- "**Class Period**" means the period starting on June 15, 2021 and ending on July 31, 2024.

- "**Credit**" means a credit in the form of a non-transferable, non-refundable, and non-cash convertible credit with a Credit Value and a 24-month expiration date applied to the Accounts of Credit Eligible Members pursuant to the Agreement and to be used as a means of payment for a transaction on the Instacart Canada Platforms.

- A "**Credit Eligible Member**" means a Class Member that satisfies the following criteria:

    1. He/she placed at least one order during the Class Period via the Instacart Canada Platforms, for delivery to an address situated in the Province of Québec and was charged a non-optional Fee on this order;

    2. He/she has not submitted a Request for Exclusion; and

    3. He/she must have an active Account at the time of Credit issuance and he/she must not have voluntarily deleted or deactivated his/her account or have been suspended or removed from the Instacart Canada Platforms due to a violation of Instacart's Terms and Conditions.

- "**Credit Value**" means the amount to be applied to the Accounts of Credit Eligible Members and calculated as the Distribution Fund divided equally between all Credit Eligible Members.

- "**Distribution Fund**" means the amount of $469,000 to be distributed equally between Credit Eligible Members as a Credit.

- "**Fee(s)**" means a service fee, delivery fee or any other type of fee or charge shown on the sub-total or invoice of a given transaction on the Instacart Canada Platforms, but excluding any tax or duty chargeable under federal or provincial legislation where such tax or duty must be charged directly to a customer to be remitted to a public authority.

- "**Settlement Amount**" means the amount of seven hundred thirty-four thousand five hundred and ninety-two dollars and twenty-five cents ($734,592.25), being the total maximum amount of the Defendants' monetary obligations under this Agreement, and inclusive of capital, interest, additional indemnity, taxes, legal fees and costs of all kinds.

- "**Total Settlement Value**" means the Settlement Amount and the Business Practice Change provided for at Section 4.3 below.

24. The Parties agree in the Settlement Agreement that the Settlement provides for the payment by Defendants of the Settlement Amount, namely the amount of $734,592.25, being the total maximum amount of the Defendants' monetary obligations under the Settlement Agreement, and inclusive of capital, interest, additional indemnity, taxes, legal fees and costs of all kinds.

25. The Settlement provides for Credits to be issued to Credit Eligible Members.

26. As confirmed at clauses 4.2 and following of the Settlement Agreement, the Credits are not the only consideration to Class Members provided for by the Settlement.

27. As detailed at clause 4.3 of the Settlement Agreement, and as part of the negotiated settlement herein (stemming from the *CRA*), the Parties have also agreed to an additional consideration provided by this Settlement to Class Members and to future Québec users of the Instacart Canada Platforms, namely that the Defendants agreed to implement and maintain a business practice change to their online transaction process for Québec users of the Instacart Canada Platforms (the "**Business Practice Change**").

28. Screenshots illustrating this new Business Practice Change, as negotiated between the settling parties at and after the *CRA*, and which as already implemented by the

Defendants as at the date of the execution of the Settlement Agreement, are included in Schedule D of the Settlement Agreement.

29. Indeed, the Business Practice Change was implemented as a result of and pursuant to the Settlement reached herein. In this regard, the Parties did not wish to wait for the Court approval of the proposed Settlement before having the Business Practice Change implemented, which is to the benefit of all Quebec consumers.

30. Accordingly, the Defendants agree that Québec users of the Instacart Canada Platforms will remain able to see and determine on the first screen or page where goods are selected the amount of non-optional Fee(s) that may apply on an order, namely before they start selecting goods to purchase from a retailer.

31. This means that the total value of the consideration and relief offered to Quebec Class Members herein increases with the passage of time, thanks to the negotiated and already implemented Business Practice Change (as mentioned, to the benefit of all Quebec consumers).

32. According to Defendants records, there are 90,848 Quebec Class Members who paid a Fee during the Class Period, namely before the Business Practice Change was put into effect by the Defendants.

33. As detailed at clauses 5.1 to 5.3 of the Settlement Agreement, within 30 Days of the Effective Date, the Credit will be made available directly in the Account of each Credit Eligible Member.

34. The Credit Eligible Members shall not be required to provide any further information or take any further action.

35. Pursuant to clause 5.2 of the Settlement Agreement and as detailed in the approved Notice Program (Schedule C), the Defendants will send emails, in French and English, to all Class Members to inform them of the Settlement approval by the Court and inform them that the Credit is available for use.

36. In addition, the Credit will be automatically applied toward payment in respect of the first transaction made by a Credit Eligible Member on the Instacart Canada Platforms after the Credit has been made available on the Account.

37. Moreover, and detailed in clause 5.4 of the Settlement Agreement, the Defendants will also send an email reminder to Credit Eligible Members, who have not done so, at 12 and 22 months, in French and English, to use the Credit prior to the expiration of the 24-months following the distribution of the Credit.

38. The Defendants' payment of the Settlement Amount and implementation of the Business Practice Change will be in full satisfaction of the Released Claims against the Released Parties, which has been defined in the Settlement Agreement (as mended) , as follows:

> "**Released Claims**" means any and all actions, claims, demands, rights, suits, and causes of action of whatever kind or nature that could have been, or in the future might be asserted by the Plaintiff or any Class Member or any Releasing Party either in the Action or in any action or proceeding in this Court or in any other court or forum, against the Released Parties, including damages, costs, expenses, penalties, and attorneys' fees (except for Class Counsel's Fees provided at Section 9 below), known or unknown, suspected or unsuspected, in law or equity arising out of or relating to the allegations made in the Action or in the Application for Authorization. For avoidance of doubt, this includes all such claims that relate in any way to any Fee displayed or charged during a transaction on the Instacart Canada Platforms during the Class Period. However, this does not include other claims or causes of action regarding the goods or services themselves which were purchased on the Instacart Canada Platforms.

PART FOUR: APPROVAL OF THE SETTLEMENT AGREEMENT

39. The Parties respectfully seek this Honorable Court's approval of the Settlement Agreement (including its Recitals and Schedules) and the issuance of a Final Judgment Approving Settlement compelling the Parties and the Class Members to comply with its terms and conditions for the reasons that follow, which will be further elaborated at the settlement approval hearing.

40. Pursuant to the Settlement Agreement, the Parties are collaborating and have agreed to request approval by this Honorable Court of this Settlement Agreement.

41. Article 590 of the *C.C.P*. requires that the Court approve a transaction settling a class action if the Court is satisfied that the terms of the settlement are fair, reasonable and in the best interests of the class.

42. The Parties believe and submit that the Settlement Agreement is fair, equitable and reasonable, and the Plaintiff submits that it is in the best interests of the Class Members and amounts to an adequate resolution of the Class Action, *inter alia*, for the reasons detailed below.

43. The Settlement Agreement is evidently subject to this Honorable Court's approval, hence the present application.

The Probability of Success

44. While the Plaintiff maintains that his action is well founded, Defendants vigorously deny his claims and allegations.

45. It is clear that the Parties would have entered into a serious adversarial debate, *inter alia*, with respect to Defendants' conduct and alleged faults and negligence, the applicable law and alleged violation of same with regard to Quebec Class Members, the existence of damages, and the quantum of any damages, all of which would have an impact on the Court's appreciation of the merits of the case.

46. We estimate the length of the further litigation of the Class Action to be at least three years excluding any appeals.

47. Any trial would also have involved bringing in Class Members to testify, extensive discoveries and extensive expert evidence by both parties.

48. Ultimately, it remains far from certain that Plaintiff would succeed at trial in proving his claims against the Defendants, with respect to either fault and liability or the amount of damages to which Class Members may be entitled.

49. As such, and as is the case in all class actions, there was always the risk that the class action would not be successful on the merits, after many years of litigation. This risk is abated through the Settlement Agreement, which guarantees compensation to Settlement Class Members.

50. A recent discussion on the uncertainty in case law regarding the probabilities of success in such a consumer class action can be found in *Nam c. 9050-8391 Québec inc*., 2024 QCCS 3672, at par. 84 and following.

51. As this Honorable Court had also previously mentioned in the case of *Abihsira vs. Ticketmaster Canada LP et. al*., 500-06-001153-218, December 7, 2022, at paragraphs 29-31:

> "[29] Any litigation involves some level of risk.
>
> [30] One of these serious risks to such litigation was recently confirmed on the merits of a class action in *Union des consommateurs c. Air Canada* [2022 QCCS 4254, paras. 38-45, 140, 154, 156, 158, 160, 186]. where the Court, after concluding that Air Canada committed a violation of the *Consumer Protection Act*, dismissed the class action because it concluded that consumers would have paid the final price regardless and, as such, did not suffer any prejudice. Even if this judgment is eventually under appeal, it illustrates the serious risks faced by the Representative Plaintiff and the Class members.
>
> [31] The risk that the Class action be unsuccessful on the merits, after many years of litigation, is always present."

The recommendation of Experienced Counsel and Approval of the Plaintiff

52. Class Counsel and counsel for Defendants, who have significant expertise in the area of class actions including consumer class actions, have negotiated and recommended the terms and conditions of the Settlement Agreement (with the assistance of the Honorable Retired Justice Willaim Fraiberg).

53. Class Counsel believes that the settlement is fair to the Class Members in light of the risks that would arise from continuing the litigation and in light of the benefits that the Settlement Agreement immediately offers the Class Members.

54. Defendants consent to the present Application and also seek to have the Settlement Agreement approved by the Court.

55. In light of the above, Class Counsel believes that the Settlement Agreement is fair and reasonable, respects the rule of proportionality and provides substantial relief and benefits to the Class Members in the circumstances and in light of the risks that would arise from continuing the litigation.

56. Plaintiff has full knowledge of the case and has provided his instructions and consent to enter into said Settlement Agreement on his behalf and on behalf of the Class Members.

The Future Expenses and the Probable Length of the Litigation

57. If the case was to proceed, there would be protracted litigation, as well as very extensive and costly discoveries and significant expert costs, as detailed above.

58. In addition, and as previously mentioned, the present action would take several years to be decided first at the authorization stage and then on the merits, and any Judgment in favor of the Class Members could be appealed, which would cause further delays.

59. It is in the interests of judicial economy and proportionality that the Settlement Agreement be approved.

The Number and Nature of any Opt-Outs and/or Objectors

60. In the January 24, 2025 Pre-Approval Judgment, this Honorable Court set the deadline for filing a written objection and opt-out deadline at March 10, 2025.

61. The Court docket listing (*plumitif*), communicated as **Exhibit R-3**, shows that no one has filed an exclusion in this file as at today's date and only 1 person sent an email to the undersigned Class Counsel asking to be excluded from the Class Action (although not having filed anything into the Court record).

62. To date, no Class Members have submitted an objection to the Settlement Agreement.

The Good Faith of the Parties and the Absence of Collusion

63. The Settlement Agreement was the product of good faith, adversarial, and arm's length negotiations over the course of many months, including a full day *CRA*.

64. Defendants contested all aspects of the Class Action, as detailed hereinabove, and the settlement negotiations lasted many months. The case, including the negotiations that led to the settlement, were all done in an adversarial manner and hard fought up until the end.

PART FIVE: APPROVAL OF CLASS COUNSEL FEES AND DISBURSEMENTS

65. The Professional Mandate & Attorneys' Fee Agreement was signed by Plaintiff and Class Counsel on December 1, 2022.

66. The Professional Mandate & Attorneys' Fee Agreement signed with the Plaintiff provides for the following calculation of Class Counsel Fees:

(a) all disbursements incurred;

and

(b) attorneys' fees with regard to the present class action of the <u>higher of the following two calculations</u>:

(i) an amount equal to thirty-three percent (33%) of the total amount received, including interest, from any source whatsoever, whether by settlement or by judgment;

or

(ii) an amount equal to multiplying the total number of hours worked on by the attorneys or other professionals in accordance with their hourly rates, which range between $350 and $750 per hour. This amount will then be multiplied by a multiplier 3.5 to arrive at the total fee. (The hourly rates are reviewed from time to time)

and

(c) all applicable taxes on said amounts in paragraphs (a) and (b).

These attorneys' fees extend to all sums received for and in the name of the whole group affected by the present class action (or potentially received if determined on a collective basis) and are in addition to the judicial fees that can be attributed to the attorneys. In the case where a specific amount of money is not awarded collectively, whether by settlement or by judgment, or where each class member is compensated only for their individual claim, section b. (i) above shall be read to mean thirty-three percent (33%) of the total value as if every possible class member made such a claim.

67. A mandate agreement between a representative plaintiff and class counsel binds the class members. In a case in which it is fair and reasonable to class members and not contrary to the provisions of the *Civil Code of Quebec*, the Court should respect the

mandate agreement and apply it in its entirety[1]. Indeed, the mandate agreement is to be presumed valid and binding according to case law[2].

68. According to Section 9 of Settlement Agreement, and as agreed upon by the parties, Class Counsel are asking this Honorable Court to approve payment by Defendants of a fixed amount representing all expenses, fees and taxes in the amount of CAD $231,000 plus GST and QST.

69. As per clause 9.1 of the Settlement Agreement, Defendants confirm that they agree to pay said amount in Class Counsel Fees and confirm that the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Parties and the Class.

70. The said Class Counsel Fees are more than reasonable under the circumstances of this case, given the significant amount of time spent and invested by Class Counsel in instituting and pursuing this matter and in negotiating and concluding the Settlement, and the significant risk taken by Class Counsel in taking on this matter on a purely contingency basis.

71. In addition, since the signing of the Settlement Agreement, Class Counsel have and will continue to devote significant time to answer and address Class Members' multiple queries, issues, and comments directly and they will maintain and update their firm website www.lexgroup.ca, both in French and in English, to inform Class Members of the settlement process going forward, aside from Class Counsel's ongoing communications with counsels for Defendants this matter, and the media if required (in this regard, an interview has already been given by the undersigned attorneys as a result of the pre-approval notice program).

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1 Guilbert c. Sony BMG Musique (Canada) inc., 2007 QCCS 432, paras. 26 & 45 (confirmed by the Court of Appeal in *Sony BMG Musique (Canada) inc. c. Guilbert*, 2009 QCCA 231)

2 *Nam c. 9050-8391 Québec inc*., 2024 QCCS 3672, at par. 117; *Option Consommateurs* c. *Banque Amex du Canada*, 2018 QCCA 305, at par.66-69; *Beauchamp* c. *Procureure générale du Québec*, 2019 QCCS 2421; *Association des jeunes victimes de l'église* c. *Harvey*, 2022 QCCS 1956; *A.B.* c. *Clercs de Saint-Viateur du Canada*, 2022 QCCS 2484; *Regroupement des citoyens du quartier Saint-Georges inc.* c. *Alcoa Canada ltée*, 2022 QCCS 2071.

72. Finally, Class Counsel have not received any funding from the *Fonds d'aide aux actions collective* in the present matter.

73. As per clause 2 of the Professional Mandate & Attorneys' Fee Agreement signed by the Plaintiff, 33% of the total $734,592.25 Settlement Amount would represent $242,415.442 (plus taxes and disbursements). Accordingly, the agreed amount being requested is less than what is determined in the signed mandate agreement.

74. As concerning what amounts are to consider as the total settlement value when applying the percentage mentioned in the said mandate agreement, and as concerning the value of the Business Practice Change applicable going forward for countless consumers, the Honorable Justice Duprat J.C.S, in the case of *Rabin c. HP Canada Co*., [2019 QCCS 1511](), at par 26 and footnote 6, confirmed the following:

> "The total amount recovered could be calculated by taking into account multiple factors including the presumption that every Class Member could potentially make a claim up to the maximum of the Settlement CAP, the Plaintiff's approved claim of $5,000 under the Settlement, **HP's undertaking not to take any action to employ Dynamic Security on the Class Printers in the future**, the approved Class Counsel Fees, the Claims Administrators' costs and disbursement, and the notification costs." the Court should include all benefits offered to the Class Members, the administration costs, the notification/publication costs and the Class Counsel Fees and disbursements themselves"[3]. (emphasis added)

75. Indeed, this Honorable Court consistently considers a behavior modification as an important advantage to a settlement, as it satisfies one of the objectives of bringing a class action, see for example *Preisler-Banoon c. Airbnb Ireland*, 2020 QCCS 270 (at par. 33), *Holcman c. Restaurant Brands International Inc.*, 2022 QCCS 3428 (at par. 47), *Nicolas c. Vivid Seats*, 2023 QCCS 4409 (at par. 32-33).

3. Also see *Nam c. 9050-8391 Québec inc*., 2024 QCCS 3672, at par. 67-75 (the Honorable Justice Lussier J.S.C.), *Benabou c. StockX*, 2022 QCCS 2527, at par. 43 (v) (the Honorable Justice Lussier J.S.C.), and *Zuckerman* c. *Target Corporation Inc*., 2018 QCCS 2276 at par. 32 (iii) and footnote 16 (the Honorable Justice Hamilton, J.S.C. as he then was).

76. In *Bitton c. Amazon.com.ca (Amazon.com.ca, inc.)*, 2024 QCCS 1387 (at par. 18 (18.1) and 42), this Honorable Court confirmed that the business practice change was "key" and "likely one of the most important benefits of the Settlement.":

> "[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.
>
> (…)
>
> **2.4 The results obtained**
>
> [42] The result here is really the key. Plaintiff succeeded is having Amazon's practices improved, for the benefit of all consumers. This was achieved in a relatively short time.[4]"

77. Accordingly, the agreed upon Class Counsel Fees amount being submitted for approval (i.e. less than the 33% of the agreed upon Settlement Amount, without quantifying the value of the serious Business Practice Change), represents a reduction and compromise as compared to what the Plaintiff agreed to as being reasonable in the Professional Mandate & Attorneys' Fee Agreement.

78. 30% to 33% is within the range of reasonableness, as confirmed by the Court of Appeal, *inter alia,* in *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, at par. 58.

79. Indeed, Quebec class action case law generally applies either a percentage ranging from 15% and 33%, or a multiplier varying between 2-3 and 6.15[5] (although in the

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[4] Also see *Bitton c. Home Depôt of Canada Inc*., 2023 QCCS 5170, at par. 13 (13.1) and 30.

5 Marcil c. Commission scolaire de la Jonquière, 2018 QCCS 3836, par. 125 at footnote; Option Consommateurs c. Banque Amex du Canada, 2018 QCCA 305, paras. 36 (citing para. 112 of the decision

A.B. case, the Court of Appeal moves away from the systematic use of multipliers). In this regard, we refer to the case of *Marcil c. Commission scolaire de la Jonquière*, 2018 QCCS 3836, in which the Court catalogued and enumerated many cases wherein multipliers of up to 6.15 were acceptable[6].

80. As of the date of this Application (March 17, 2025), the straight docketed time of Class Counsel in this matter, is the following, for a total of $159,045 (plus taxes) in fees, plus $2,651.02 in disbursements (taxes included):

Lawyer	Total Time Spent in Hours	Hourly Rate
David Assor	187.35 h	$750
Sarah Rasemont	52.95 h	$350
Total hours:	240.30 h	
Total Disbursements:	$2,651.02	

81. Based on past experience and involvement in the post-settlement administration of other class action settlements, the work involved for Class Counsel's ongoing future obligations to the settlement process beyond the final approval hearing will continue. In particular, Class Counsel estimates that such work represents in this particular case an approximate amount of $25,000 to $35,000.

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rendered in first instance), 66 (see footnotes 33 and 34 citing *Pellemans c. Lacroix*, 2011 QCCS 1345, where the Court approved a 4.5 multiplier at paras. 121-123) and 73.

6 Marcil c. Commission scolaire de la Jonquière, 2018 QCCS 3836, par. 125 at footnote 22 :

> « Voir, par exemple, les affaires *Surprenant* c. *Société canadienne de la Croix-Rouge*, [2001] AZ- 50667013 (C.S.), par. 3 (multiplicateur de 3,4); *Desjardins* c. *Canada (Procureur général)*, 2007 QCCS 2797, par. 93 (multiplicateur de 3,75); *Pellemans*, par. 121 (multiplicateur de 4,5); *Adams*, par. 29, 33 (multiplicateur implicite de 6,15); *Brown*, par. 71 (multiplicateur de 4); *Parsons* v. *Canadian Red Cross Society*, 2000 CanLII 22836 (ON SC), par. 66 (appel rejeté sur requête : *Parsons* v. *Canadian Red Cross Society*, 2001 CanLII 24094 (ON CA); (demande d'autorisation de pourvoi à la Cour suprême du Canada rejetée) (multiplicateurs entre 3,07 et 4,29). »

82. Accordingly, the requested amount of Class Counsel Fees under the Settlement Agreement is lower than what was agreed to in the Professional Mandate & Attorneys' Fee Agreement signed with the Plaintiff. It also represents a more than reasonable percentage of the significant total settlement value herein.

83. Finally, the Class Members are not being asked to support any portion of these Class Counsel Fees, since same are being paid by Defendants on top of the amount set aside for the Credits.

Time to be Spent by Class Counsel

84. As mentioned above, based on past experience and involvement in the post-settlement administration of other class action settlements, it is likely that Class Counsel's ongoing future obligations to the settlement process will involve work beyond the final approval hearing, especially concerning the process of Class Members inquiring about using their Credit, reporting to the Court, etc.

85. This extra future time also includes being available to all Class Members over the next several years as Class Members may have questions or issues to be resolved regarding their Credits.

86. At all times during the proceedings and after the final approval hearing, Class Counsel engaged and will engage with Class Members in the language of their choice (French or English), in order to keep them informed of the proceedings.

87. No additional fees or disbursements will be requested by Class Counsel for this future work.

The Experience of the Attorneys

88. Me David Assor is a member in good standing of the Quebec Bar since 2001 and of the Law Society of Ontario since 2021. Me Assor has practiced general commercial and civil litigation since 2001 and specialized in plaintiff-side class action litigation since 2005. In 2011, Me Assor created the law firm of Lex Group Inc. which is also specialized in litigation in general and class actions in particular. As such, a vast majority of class counsel's work is in class actions which are all done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed, which in some cases is quite significant.

89. Me Assor is also a repeat contributor / writer on class action issues and case law on the legal research website *La référence* and is a repeat guest lecturer on the topics of class actions and privacy law at the McGill University Faculty of Law.

90. Me Assor has been a sitting member of the Quebec Bar's Disciplinary Committee since 2016, is a sitting member of the Bar of Montreal's Liaison Committee with the Superior Court in Civil Matters since 2023, has been a member of the board of directors of the Lord Reading Law Society since 2016 (immediate former Bar Liaison), has sat as a member of the Bar of Montreal's Access to Justice in the English Language Committee from 2016 to 2019, was a member of the Advocates' Society, and was named a Governor of the Quebec Bar Foundation in 2020.

91. Aside from Me Assor who has handled this matter since its original filing, the other professional(s) listed above were junior attorneys or professionals who worked exclusively for Lex Group Inc. at the relevant time.

92. At all relevant times, Lex Group Inc. paid regular salaries to said junior professionals all the while continuing to prosecute this class action, and other class actions, without any guarantee of compensation.

Time Dedicated

93. Since 2022 in the present matter, Class Counsel has dedicated significant time and disbursements to the present file, as detailed above, all without any guarantee of payment.

94. At all times, this litigation was high-risk. Class Counsel conducted extensive legal research and documents review in support of this claim, and dealt with the Class Members who were interested in the case.

95. The process of finalizing the Settlement Agreement continued for many months following the achievement of a settlement in principle (which was facilitated through the *CRA* process, as mentioned). Further work was also undertaken in anticipation of the notice approval and the settlement approval hearing (including the preparation of the present Application).

96. Further, Class Counsel will be maintaining contact with the Class Members who will be calling and/or e-mailing Lex Group Inc. pursuant to the notification detailed in the Settlement Agreement.

The Importance of the Issue

97. Consumer protection issues are directly related to the access to justice of several thousands of persons.

98. Often, claims of this nature involve relatively small sums of money for which individuals are not ready to initiate a lawsuit. It is one of the reasons why a class action is often the only way to obtain justice against large companies or institutions.

99. If it were not for this class action, many Class Members would not have been likely to institute individual actions to recover damages.

The Difficulties of this Case

100. Some of the difficulties of litigating this case at trial would have been for the Plaintiff to prove to the Court the damages suffered after the Class Member nonetheless agreed to place their purchase.

101. As mentioned above, a recent discussion on the uncertainty in case law regarding the probabilities of success in such a consumer class action can be found in *Nam c. 9050-8391 Québec inc*., 2024 QCCS 3672, at par. 84 and following.

102. As this Honorable Court had also previously mentioned in the case of *Abihsira vs. Ticketmaster Canada LP et. al*., 500-06-001153-218, December 7, 2022, at paragraphs 29-31:

> "[29] Any litigation involves some level of risk.
>
> [30] One of these serious risks to such litigation was recently confirmed on the merits of a class action in *Union des consommateurs c. Air Canada* [2022 QCCS 4254, paras. 38-45, 140, 154, 156, 158, 160, 186]. where the Court, after concluding that Air Canada committed a violation of the *Consumer Protection Act*, dismissed the class action because it concluded that consumers would have paid the final price regardless and, as such, did not suffer any prejudice. Even if this judgment is eventually under appeal, it illustrates the serious risks faced by the Representative Plaintiff and the Class members.
>
> [31] The risk that the Class action be unsuccessful on the merits, after many years of litigation, is always present."

103. The claims herein would have been the subject of extensive debate and contestation.

104. These important questions would have also required extensive testimony including possible expert evidence.

<u>The Risk Assumed</u>

105. As is oftentimes the case in class actions, the risk of success or failure was borne entirely by Class Counsel. In the present matter, Class Counsel took on the entire case on a contingency basis.

106. This meant that 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.

107. Indeed, the Professional Mandate & Attorneys' Fee Agreement provides the following:

> « 5. Les parties conviennent que ni le Représentant ni aucun membre du groupe visé par la présente action collective n'aura à payer aucun honoraire, déboursés ou frais à l'exception de ce qui est convenu au paragraphe 2 de la présente Convention. »

108. As detailed above, Defendants vigorously contested all elements of the class action proceedings.

109. Given that in the case of failure, Class Counsel receives nothing – and even risks losing – in the case of success, they should be properly compensated for their efforts and for the financial risk (both in time and money) that they have assumed.

110. The Court of Appeal has recently confirmed the following in *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527:

> [54] Il est ainsi généralement admis que pour apprécier le caractère juste et raisonnable des honoraires, le juge doit aussi considérer le risque couru par les avocats. **Dans le contexte d'une convention d'honoraires à pourcentage, la Cour supérieure a reconnu que ce facteur pourrait même primer sur le temps consacré au dossier par les avocats. Dans tous les cas, le risque doit s'apprécier au moment où les avocats ont reçu le mandat du représentant, et non au moment de la demande d'approbation.**
>
> (Emphasis added).

111. As the Honorable Justice Bisson recently emphasized the importance of rewarding the risk taken by class Counsel in approving the *Herron* settlement: [7]

> [57] Les enjeux en matière d'actions collectives sont très importants sur le plan financier et le cabinet qui accepte d'œuvrer en demande accepte d'assumer la totalité des frais du recours et de n'être payé qu'en cas de succès.
>
> [58] Pour assurer la viabilité du véhicule procédural qu'est l'action collective, il est essentiel que des avocats compétents acceptent de prendre de tels risques. Or, sans une compensation en cas de succès qui tient compte du risque assumé, aucun avocat n'aurait d'intérêt à accepter de tels risques.
>
> [59] Lorsque les procureurs du groupe ont accepté d'agir en l'espèce, ils ne se fiaient pas sur la possibilité qu'une entente à l'amiable soit conclue; ils étaient plutôt prêts à aller jusqu'au bout et à investir tout le temps, les efforts et les ressources financières nécessaires pour mener à terme l'action collective, ne sachant pas si le dossier sera gagné ou perdu au mérite.

112. Class Counsel accepted the mandate in the present matter, solely accepting all of the risks in time and disbursements, and being ready to prosecute this matter all the way until final judgment on the merits, including any possible appeals along the way. It has worked diligently to advance this litigation to the point of settlement, without any payment for its fees or any guarantee of payment.

113. To conserve and to safeguard the important societal benefits preserved by class actions, especially in the area of consumer protection, it is important that Class Counsel receive a fair payment on their time to provide the appropriate incentive to future counsel.

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7. *Schneider (Succession de Schneider) c. Centre d'hébergement et de soins de longue durée Herron inc.*, 2021 QCCS 1808, par. 57-59.

The Professional Services are Unusual and Require Specific Expertise

114. There are only a small number of attorneys who take on class action matters in Quebec and Canada.

115. This type of work requires particular expertise and professionalism.

116. Often, in this type of work, communication with the public and media is also necessary (e.g. by communicating with Class Members, maintaining and updating a website, being interviewed and issuing press releases, etc.). This requires the firm to be more proactive in order to protect the interests of the Class Members.

117. In this particular case, the media has already reported on the proposed settlement herein.

The Result Obtained

118. We have already fully summarized the Settlement hereinabove.

119. The simple procedure for receiving and using the Credits, including the future reminder notices to be sent by the Defendants as per the Settlement, will ensure that Class Members will use their Credits.

120. In addition, we have listed above a long list of very popular and very used retailers offering their products via the Instacart Canada Platforms, including many grocery stores. This will also increase the likelihood of the Credits being used, quickly. This represents a significant benefit and advantage being offered by the proposed Settlement Agreement herein.

121. Moreover, as mentioned, the already implemented Business Practice Change offers invaluable future benefits to all Quebec consumers and promotes consumer protection in general, as a whole.

122. The Notice Program which was approved and ordered by the Court, and which has been implemented as mentioned above, has also increased the likelihood that a great majority of the potential Credit Eligible Members will look for and use their eventual Credits.

123. Indeed, since the dissemination of the Notices, many Class Members have contacted the undersigned attorneys expressing their desire to participate in the Settlement and/or be included in the Class Action.

Fees Not Contested

124. Defendants do not oppose the request for Class Counsel Fees and have agreed to pay said amount.

125. Further, no Class Member has indicated their intention to contest the request for Class Counsel Fees despite having received the pre-approval notice and the information being published on the undersigned attorneys' firm website and on Class Actions Registry.

126. The undersigned attorneys respectfully submit that said requested Class Counsel Fees and disbursements, are fair and reasonable under the circumstances and considering the significant and beneficial results obtained for the Class Members.

127. The Class Counsel Fees being requested have been considered acceptable by the Courts in similar circumstances, for instance in the case law already cited and discussed above.

PART SIX: CONCLUSION

128. Plaintiff and Class Counsel respectfully submit that the Court should approve the Settlement Agreement reached between the Parties given that it is more than reasonable, appropriate and in the best interests of the Parties and the Class Members, and considering the complexities of the proceeding and the risk faced by the Plaintiff and by Class Counsel going forward.

129. In reaching this settlement, Class Counsel and Plaintiff engaged in lengthy arm's length negotiations, which involved a full day Judicial Settlement Conference (*CRA*).

130. Plaintiff respectfully submits that the Settlement Agreement allows for a quick and easy form of relief and significant compensation for the Class Members and should be approved by this Honorable Court.

131. The Settlement has also already provided significant relief to all Quebec consumers in the form of the already implemented Business Practice Change.

132. The requested Class Counsel Fees represent less than what the Professional Mandate & Attorneys' Fee Agreement signed by the Plaintiff provides, reflect the time and disbursements expended by Class Counsel, the complexities of the

proceeding and the risk faced by Class Counsel from the outset of this case, and the very significant benefits offered by the Settlement. As such, we respectfully submit that the Class Counsel Fees are fair and reasonable and ought to be approved.

133. The Defendants have reviewed the present Application before its filing and support it and consent to it being granted according to its conclusions below.

POUR CES MOTIFS, PLAISE AU TRIBUNAL DE:	**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**
DÉCLARER qu'aux fins du présent jugement, les définitions énoncées dans l'Entente de règlement s'appliquent et sont intégrées au présent jugement;	**DECLARE** that for the purposes of the present judgment, the definitions in the Settlement Agreement apply and are integrated in the present judgment;
ACCUEILLIR la *Demande d'approbation d'un règlement d'une action collective et des Honoraires des Avocats du Groupe*;	**GRANT** the *Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees*;
ORDONNER et DÉCLARER que l'Entente de règlement (y compris son préambule et ses Annexes) est juste, raisonnable et dans l'intérêt des Membres du Groupe de Règlement, est approuvé en vertu de l'article 590 *C.p.c.*, doit être mise en œuvre selon ses dispositions, et constitue une transaction au sens de l'article 2631 du *Code civil du Québec*;	**ORDER AND DECLARE** that the Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Settlement Class Members, is hereby approved pursuant to Article 590 *C.C.P.*, shall be implemented in accordance with all of its terms, and constitutes a transaction pursuant to article 2631 of the *Civil Code of Quebec*;
ORDONNER que l'Entente de règlement règle entièrement les Réclamations quittancées à l'égard des Parties libérées, et inclus, sans s'y limiter, tous les intérêts, les taxes, les frais, les coûts, et les Honoraires des Avocats du Groupe;	**ORDER** that the Settlement Amount is in full satisfaction of the Released Claims against the Released Parties, and is all-inclusive of, without limitation, interest, taxes, fees, costs, and Class Counsel Fees;

ORDONNER que les Honoraires des Avocats du Groupe soient payés conformément à l'article 9 de l'Entente de règlement;	**ORDER** that the Class Counsel Fees be paid in accordance with Section 9 of the Settlement Agreement;
ORDONNER aux parties de demander un jugement de clôture lorsque l'administration du règlement sera complétée;	**ORDER** the parties to ask for a closing judgment once the administration of the Settlement is completed;
DÉCLARER 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 de règlement, et ce, jusqu'à ce qu'il ait rendu un jugement de clôture;	**DECLARE** 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 Settlement Agreement until such time as the Tribunal has rendered a closing judgment.
LE TOUT sans frais de justice.	**THE WHOLE** without legal costs.

MONTREAL, MARCH 17, 2025

(s) Lex Group Inc.

Lex Group Inc.
Per: David Assor
Class Counsel
Attorneys for the Plaintiff

SOLEMN DECLARATION

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

1. THAT I am one of the attorneys for the Plaintiff in the present case;

2. THAT all the facts alleged in the present *APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES* are true and accurate to my personal knowledge;

And I have signed:

[redacted]

DAVID ASSOR

Solemnly affirmed before me
in Montreal (Quebec),
this 17th day of March, 2025

[redacted]

Commissioner for oaths for
the Province of Québec

[redacted]

NOTICE OF PRESENTATION

TO : **Me Simon J. Seida**
Me Cristina Cataldo

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Attorneys for Defendants

TAKE NOTICE that the *APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES* will be presented for adjudication before the Honourable Justice Pierre Nollet, J.S.C., on **March 25, 2025, at 9:30 AM, in Room 2.08** of the Montréal Courthouse located at 1 Notre-Dame Street East, Montréal, Québec, or as soon thereafter as counsel can be heard.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, MARCH 17, 2025

(s) Lex Group Inc.

Lex Group Inc.
Per: David Assor
Class Counsel
Attorneys for the Plaintiff

Nº.: **500-06-001211-222**

SUPERIOR COURT
(CLASS ACTION)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SHAI MEDALSY

Plaintiff

-vs-

MAPLEBEAR INC.
-and-
MAPLEBEAR CANADA ULC, in continuance of proceeding for Maplebear Canada Inc.
-and-
MAPLEBEAR DELIVERY CANADA ULC, formerly known as Maplebear Delivery Canada Inc.

Defendants

APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES

ORIGINAL

Me David Assor

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