

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

SUPERIOR COURT
(Class Actions)

No : 200-06-000166-135

JOAN FORTIN

and

GABRIEL BOULERICE MARTEL

Plaintiffs

v.

THE BANK OF NOVA SCOTIA

Defendant

SETTLEMENT

WHEREAS on April 14, 2015, the Honourable Superior Court Justice Serge Francoeur authorized a Class Action against the Defendant on behalf of all persons in the following groups:

First group

All consumers in Quebec who, since July 15, 2010 and until the final judgment on this motion, purchased a new Hyundai vehicle from one of the Hyundai dealers and who have signed a contract of sale by instalment with the respondent that does not disclose and calculate the value of the cash rebate as a credit charge.

Second group

All consumers in Quebec who, since February 11, 2011 and until the final judgment on this motion, purchased a new Kia vehicle from one of the Kia dealers and who have signed a contract of sale by instalment with the respondent that does not disclose and calculate the value of the cash rebate as a credit charge.

Third group

All consumers in Quebec who, since September 26, 2011 and until the final judgment on this motion, have purchased a new Mazda or Mitsubishi vehicle from one of the Mazda or Mitsubishi dealerships and who have signed a contract of sale by instalment with the respondent that does not disclose and calculate the value of the cash rebate as a credit charge.

WHEREAS the period covered by the three groups was extended to July 1, 2016 by way of a re-amendment granted by the Court on February 14, 2019;

WHEREAS on June 18, 2015, the Plaintiffs filed their Motion to institute a class action;

WHEREAS on March 3, 2016, the Defendant filed its Defence, whereby it denies any liability or owing any amount to Class Members as a result of this Class Action;

WHEREAS in its Defence, the Defendant sets out, among other things, the evolution of the disclosure of cash rebates in its contract documents during the Class Period;

WHEREAS the contract document "Customer Disclosure Form - Purchase Options - Vehicle Financing Costs - Cost of Borrowing Disclosure - Cash Discounts", in place for a limited period of time during the Class Period, did not specifically disclose or calculate the value of the cash rebate as a credit charge;

WHEREAS in its Defence, the Defendant sets out that the existence and value of the cash rebate were disclosed prior to the conclusion of the contract of sale by instalment, notably by dealers, and were widely advertised;

WHEREAS for the remainder of the Class Period, the contract documents disclosed and calculated the value of the cash rebate as a credit charge, either in the contract of sale by instalment or in its addendum;

WHEREAS cash rebates were not offered on all vehicles purchased by Class Members during the Class Period;

WHEREAS on April 5, 2019, the Parties took part in a full day mediation before the Honourable François Rolland Ad. E., former Chief Justice of the Superior Court of Quebec;

WHEREAS the mediation resulted in an agreement between the Parties to settle this Class Action, in accordance with the terms set out below, this Settlement being intended to fully and finally resolve all claims relating to this Class Action for the entire Class Period;

WHEREAS the Parties are of the opinion that this Settlement is fair and reasonable and that it is in the best interests of Class Members;

WHEREAS this Settlement and its approval by the Court, if any, will not constitute an admission of liability or of the existence of damages of any kind by the Defendant;

WHEREAS this Settlement is entered into solely to buy peace and to avoid the costs and the risks associated with a trial;

NOW THEREFORE, subject to the approval of this Settlement by the Court, in consideration of the undertakings, agreements and releases set forth herein and for the purpose of being legally bound, the Parties agree as follows:

1. INTERPRETATION

Unless the context requires a different meaning, the following definitions apply to the settlement. A word or expression that expresses a number must be interpreted in such a way that the singular includes the plural and vice versa. The same applies to a word or expression used in the masculine gender, which must be interpreted as including the feminine and vice versa, where appropriate:

- 1.1. **"Administration Fees"** means the total and lump sum amount of one hundred and fifty-six thousand three hundred and eighty-two Canadian dollars (**Can\$156,382**) taxes included to be paid to the Claims Administrator pursuant to an agreement between the Parties and the Claims Administrator;
- 1.2. **"Agreement in Principle"** means the agreement in principle reached following mediation on April 5, 2019 in full and final settlement of this Class Action and which is attached as Appendix A hereto;
- 1.3. **"Approval Hearing"** means the hearing to be conducted by the Court to determine whether the Settlement should be approved pursuant to article 590 of the Quebec *Code of Civil Procedure*;
- 1.4. **"Approval Judgment"** means the judgment approving the Settlement;
- 1.5. **"Balance"** refers to the Settlement Amount, less Class Counsel Fees and the Administration Fees;
- 1.6. **"BDO Report"** means the expert report dated March 1, 2018 prepared by the accounting firm BDO Canada LLP filed in support of the Defendant's Defence;
- 1.7. **"Claims Administrator"** refers to Collectiva, Services en recours collectifs Inc.;
- 1.8. **"Class Action"** refers to the class action brought against the Defendant before the Superior Court of Quebec in this matter bearing the number 200-06-000166-135, as well as all pleadings, examinations, expert opinions, and documents filed or communicated by the Parties;
- 1.9. **"Class Counsel"** refers to the law firm Adams Avocat Inc.;
- 1.10. **"Class Counsel Fees"** means an amount representing not more than 25% of the Settlement Amount, plus taxes, which represents the total amount of eight hundred and seventy-two thousand three hundred and thirteen Canadian dollars (**Can\$862,313**) or such other amount as may be determined by the Court;
- 1.11. **"Class Members"** refers to all persons included in the First, Second or Third groups of the Class Action;

- 1.12. **"Class Member Entitled to an Amount"** refers to Class Members for which a cash rebate was offered on their vehicle and who have signed one of the 13,452 contracts of sale by instalment during the period of the Customer Disclosure Form (*Formulaire de divulgation au client*) identified in Table 2 of the BDO Report reproduced in the Agreement in Principle, namely:
- (a) Hyundai: Contract signed between July 15, 2010 and January 24, 2013
 - (b) Kia: Contract signed between February 11, 2011 and January 24, 2013
 - (c) Mazda: Contract signed between September 26, 2011 and November 13, 2012
 - (d) Mitsubishi: Contract signed between September 26, 2011 and January 24, 2013
- 1.13. **"Class Member Not Entitled to an Amount"** refers to Class Members for which a cash rebate was not offered on their vehicle and/or who have signed a contract of sale by instalment outside the period of the Customer Disclosure Form referred to in paragraph 1.12;
- 1.14. **"Class Period"** refers to the periods covered by the First, Second and Third groups of the Class Action, namely:
- (a) Hyundai: between July 15, 2010 and July 1, 2016 (First group)
 - (b) Kia: between February 11, 2011 and July 1, 2016 (Second Group)
 - (c) Mazda and Mitsubishi: between September 26, 2011 and July 1, 2016 (Third group)
- 1.15. **"Court"** refers to the Superior Court of Quebec sitting in the District of Quebec, presided over by the Honourable Serge Francoeur or his replacement, as the case may be.
- 1.16. **"Defendant"** refers to The Bank of Nova Scotia;
- 1.17. **"Defendant's Counsel"** refers to the law firm of Audren Rolland LLP;
- 1.18. **"Distribution Date"** means the date indicated on the cheque to be sent by the Claims Administrator to Class Members Entitled to an Amount;
- 1.19. **"Distribution End Date"** means the date on which the six (6) month period following the Distribution Date expires;
- 1.20. **"Effective Date"** means the date on which the Approval Judgment becomes a final judgment;
- 1.21. **"Exclusion Period"** means the period of thirty (30) days from the date of publication of the Notices to Members during which Class Members may opt out of the Class Action;
- 1.22. **"Last Known Address"** means the most recent address of the Class Members Entitled to an Amount, which has been updated by them or the Claims Administrator, as the case may be;

- 1.23. **"Notice to Members"** means the notice to inform Class Members of the Approval Hearing, the main terms of the Settlement, and their right to opt out of the Class Action, as set out in Appendix B hereto;
- 1.24. **"Parties"** refers to the Plaintiffs and the Defendant;
- 1.25. **"Plaintiffs"** refers to Joan Fortin, Gabriel Boulerice Martel and the Class Members;
- 1.26. **"Remaining Amount"** means the amount of the Balance that has not been distributed to Class Members Entitled to an Amount at the End Date of the Distribution, as well as any unused amount from the Administration Fees, less the percentage deducted by the Fonds d'aide aux actions collectives pursuant to section 1. 1 a) to d) of the *Regulation respecting the percentage deducted by the Fonds d'aide aux actions collectives*;
- 1.27. **"Settlement"** means this agreement, including the appendices;
- 1.28. **"Settlement Amount"** means a total amount of three million Canadian dollars (**Can\$3,000,000**), as described in the Agreement in Principle;

2. THE SETTLEMENT

Settlement Amount

- 2.1. The Parties agree, for the Settlement Amount, to settle definitively all Plaintiffs' claims relating to or that may relate to the Class Action, including Class Counsel Fees, court costs, applicable taxes, and the Administration Fees.

Right of Class Members to opt out of the Settlement

- 2.2. Class Members may opt out of this Settlement by sending the opt-out form set out in Appendix C hereto duly completed to the Claims Administrator. The form must be received no later than thirty (30) days following the date of publication of the Notice to Members, failing which Class Members will be barred from opting out.
- 2.3. In the event that more than two hundred (200) Class Members opt out of the Settlement, the Defendant may, at its sole discretion, decide to proceed with payment of the Settlement Amount. The Defendant may also elect to terminate this Settlement, in which case it will be deemed null and void and the Parties and Class Members will then be returned to the condition they were in prior to the signing of the Settlement. The Defendant shall notify Class Counsel of its choice within thirty (30) days of the end of the Exclusion Period.

Distribution of the Settlement Amount

- 2.4. Subject to the approval of the Court, the Settlement Amount will be remitted and distributed as follows:
- (a) Within thirty (30) days of the Effective Date, the Defendant shall pay the entire Settlement Amount in trust to the Claims Administrator;
 - (b) Within ten (10) days of receipt of the Settlement Amount, the Claims Administrator shall pay the Class Counsel Fees to Class Counsel by cheque paid to the order of Adams Avocat Inc.;
 - (c) Within thirty (30) days of receipt of the Settlement Amount, the Claims Administrator shall distribute the Balance to Class Members entitled to an Amount as follows:
 - (i) The Balance will be divided equally among the 13,452 contracts of sale by instalment identified in the BDO Report and the Agreement in Principle. This amount, which will be paid for each of the 13,452 contracts of sale by instalment, will include applicable taxes;
 - (ii) In the event that two or more Class Members Entitled to an Amount have co-signed one of the 13,452 contracts of sale by instalment, the amount awarded to such contract shall be divided equally among the number of co-signers;
 - (iii) Payment of the amounts referred to in paragraphs 2.4 (c) (i) and (ii) shall be made by cheque, sent by mail to the Last Known Address. The cheque will be accompanied by a letter of transmittal, in accordance with the procedures to be approved by the Court;
 - (iv) Class Members Not Entitled to an Amount will not be entitled to any cash or other compensation since the cash rebate was either disclosed in their contract of sale by instalment or its addendum, or not offered on their vehicle;
 - (d) Within thirty (30) days of the Distribution End Date, the Claims Administrator shall pay the amounts due pursuant to the percentage levied by the Fonds d'aide aux actions collectives in accordance with section 1. 1 (a) to (d) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*. At the same time, it will also pay the Remaining Amount in equal shares to the Claude Masse Foundation and the Laboratoire sur les actions collectives de l'Université de Montréal.

Accountability

- 2.5. Within thirty (30) days of payment of the Remaining Amount, the Claims Administrator shall send to the Parties and their counsel and shall file with the Court an affidavit signed by one of its representatives reporting its administration.

Closing Judgment

- 2.6. Within thirty (30) days of the filing in the court record of an affidavit signed by one of the representatives of the Claims Administrator reporting its administration, the Parties shall request the Court to issue a closing judgment.

Condition

- 2.7. Except for the Class Counsel Fees and subject to Section 2.3 hereof, the Settlement is conditional upon its approval by the Court, failing which it shall be deemed null and void and the Parties and Class Members shall then be returned to the state in which they were prior to the signing of the Settlement.

Collaboration

- 2.8. The Parties undertake to cooperate in order for the Settlement to be approved and to receive its full effect. To this end, the Parties and their counsel undertake to jointly submit to the Court that the Settlement and all of its provisions are fair and reasonable and that it was entered into in the interests of the Parties and Class Members.

Approval of the Settlement

- 2.9. The Approval Hearing will be held on the date set by the Court after the Exclusion Period and the time limit set out in Section 2.3 have expired.

Class Counsel Fees

- 2.10. Class Counsel will not claim any other fees or expenses from anyone in relation to the Class Action.
- 2.11. In the event that the Court does not approve in full the requested Class Counsel Fees, the difference between the fees requested and the approved fees will be added to the benefit of the Class Members entitled to compensation in order to increase the Balance to be distributed.

3. RELEASE

- 3.1. In consideration of the Settlement, the Plaintiffs, on their own behalf and on behalf of their heirs, directors, predecessors, successors, assignees, beneficiaries and successors in title, give full discharge to the Defendant, its predecessors, representatives, parent companies, affiliates, member companies, subsidiaries and/or other related companies, officers, directors, employees, shareholders, agents, mandataries, sales representatives, successors, assignees, beneficiaries and successors in title, attorneys and insurers with respect to any claim, cause of action, action, mode of action and any event arising, directly or indirectly, from the Class Action for the entire Class Period.

- 3.2. The Parties declare that they understand the meaning of this release and/or any relevant legislation relating to restrictions on releases. In this respect, the Parties declare that they have benefited from the advice of their respective lawyers.

4. MISCELLANEOUS PROVISIONS

- 4.1. The Settlement reflects the entire agreement between the Parties and replaces all previous agreements between them, if any. The Parties declare and confirm that no declaration, including an oral declaration, has been made that is not contained in the Settlement. The Parties also agree that the Settlement may only be amended by a written instrument signed by all signatories of this Transaction and submitted to the Court for approval and that such amendment shall only take effect if the Court issues a final judgment approving it.
- 4.2. This Settlement constitutes a transaction within the meaning of article 2631 C.C.Q. and article 590 C.C.P.
- 4.3. The Settlement is without admission of liability of any kind whatsoever.
- 4.4. The Notice to Members shall be the only notice with respect to the Transaction and, following the Approval Judgment or Closing Judgment, no other notice shall be published or disseminated to Class Members, notwithstanding article 591 of the *Quebec Code of Civil Procedure*.
- 4.5. The Court retains exclusive and continuing jurisdiction over the Class Action and any dispute relating to the Settlement, including any dispute relating to its interpretation.
- 4.6. The Parties and their counsel agree that they will not prepare any press releases or convene any press conferences with respect to the Settlement.
- 4.7. Any communication with respect to the implementation and execution of the Settlement must be made in writing, either by mail, courier or e-mail, or by phone to the Claims Administrator at the following address:
- COLLECTIVA, services en recours collectifs Inc.
2170 René-Lévesque Boulevard W., Suite 200
Montreal, Quebec H3H 2T8
Telephone (514) 287-1000 / Toll-free: 1 (800) 287-8587
Email: cashrebate@collectiva.ca
- 4.8. The Settlement is signed in six (6) copies, each of which is an original.

4.9. The Settlement is governed by the law in force in Quebec.

IN WITNESS WHEREOF, Joan Fortin, Gabriel Boulerice Martel, the Defendant and their counsel have signed the Settlement:

Signed in Lévis, on 16 October 2019

Signed in St-Jérôme, on 18 October 2019

(s) Joan Fortin

(s) Gabriel Boulerice Martel

Joan Fortin

Gabriel Boulerice Martel

Signed in Toronto, on 16 October 2019

Signed in Montreal, on 18 October 2019

(s) John Hiscock

(s) Adams Avocat Inc.

The Bank of Nova Scotia

Adams Avocat Inc.

Signed in Montreal, on 17 October 2019

(s) Audren Rolland

Audren Rolland LLP

APPENDIX A

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC
No: 200-06-000166-135

(Class Action)
SUPERIOR COURT

JOAN FORTIN

and

GABRIEL BOULERICE MARTEL

Plaintiffs

v.

THE BANK OF NOVA SCOTIA

Defendant

AGREEMENT IN PRINCIPLE

1. This agreement in principle is the result of a mediation before the Honourable François Rolland, former Chief Justice of the Quebec Superior Court.
2. The parties have come to an agreement in principle to settle the present class action (including the claims of class members added as per the reamendment authorized on February 14, 2019).
3. The total settlement amount agreed upon is three million Canadian dollars (**\$3,000,000 CDN**) ("Settlement Amount"), which includes all claims for principal, interest and costs, costs of administration and notices, and legal fees to be determined by the Court.
4. The Settlement Amount will be allocated as follows:
 - a) Administration costs to distribute the payments to class members¹;
 - b) Costs of publication of notices (one English newspaper and one French newspaper);
 - c) Class counsel fees (25% of the Settlement Amount) plus applicable taxes, subject to the Court's approval. Any amounts payable to the Fonds d'aide aux actions collectives will be paid from the approved counsel fees;

¹ The third-party administrator will have to be agreed upon by the parties.


- d) The remainder, after the above costs and fees have been deducted from the Settlement Amount, will be distributed equally based on the number of contracts (13,452) identified in *Période de Formulaire de divulgation au client*, Table 2, p.8 of the BDO report annexed to the present agreement²;
 - e) No amount will be paid for the contracts identified in *Période de l'annexe au contrat de vente à tempérament* and in *Période du contrat de vente à tempérament modifié*, Table 2, p.8 of the BDO report, and the contracts of those class members which were added by the amendment approved on February 14, 2019.
5. In no event shall the total amount to be paid by The Bank of Nova Scotia exceed the amount of three million Canadian dollars (**\$3,000,000 CDN**).
 6. The Bank of Nova Scotia will pay the costs of mediation.
 7. The parties will cooperate to obtain Court approval of the settlement and will cooperate to implement the settlement, once approved. None of the parties, nor their respective counsel, shall be entitled to any additional costs or any amounts associated with obtaining approval or implementing settlement.
 8. In the event that Court approval of the settlement is not obtained, this agreement shall cease to be of any force or effect, and the parties reserve all their rights with respect to the continuation of the litigation in that event.
 9. The Court approval of the settlement shall include a release of all claims against the Bank by any class member with respect to all matters that were, or could have been, raised in this action.
 10. With the exception of the payment of the costs of the mediation, no payments shall be made by the Bank pursuant to the present agreement, unless and until Court approval has been obtained.
 11. The parties understand and agree that the present agreement and the consideration referred to herein shall not be deemed to be an admission of liability by the Bank. The Bank does not admit any liability or obligation of any kind whatsoever to the plaintiffs or any of the class members and such liabilities and obligations are in fact denied.
 12. The parties agree that the terms of the present agreement will apply to and be binding in all respects upon, and enure to the benefit of, direct and indirect parents and subsidiaries, and the successors, affiliates, related parties, estates, heirs, and assigns of the parties.

² The Settlement Amount will be divided up by the number of contracts, rather than the number of class members. The payment for each contract will include all applicable taxes.


13. The present agreement shall be construed in accordance with and governed by the laws of the Province of Quebec and the laws of Canada applicable therein, and the parties hereby attorn to the exclusive jurisdiction of the Quebec courts for the purposes of any legal dispute that may arise with respect to the interpretation or enforcement of the present agreement.
14. The parties have requested that the present agreement be drafted in English. Les parties ont demandé que le présent document soit rédigé en anglais.

Montreal, April 5, 2019

Montreal, April 5, 2019


ADAMS AVOCATS INC.
Attorneys for Joan Fortin
and Gabriel Boulerice Martel


AUDREN ROLLAND LLP
Attorneys for The Bank of Nova Scotia



JOAN FORTIN ET GABRIEL BOULERICE MARTEL
C. BANQUE DE NOUVELLE-ÉCOSSE

Rapport d'expertise

28 février 2018

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

PRIVILÉGIÉ ET CONFIDENTIEL

A handwritten signature in blue ink, appearing to be the initials 'SM' with a horizontal line underneath.

Enfin, puisqu'au cours de la période visée par la présente action collective, les rabais au comptant étaient divulgués dans trois documents différents, nous avons divisé notre analyse en conséquence. En effet, les 40 461 contrats étaient répartis entre les manufacturiers comme suit¹³ :

Tableau 2 - Répartition des contrats par document

document	Hyundai		Kia		Mazda		Mitsubishi		Total
Formulaire de divulgation au client	15 juillet 2010 au 24 janvier 2013	5	11 février 2011 au 24 janvier 2013	5 019	26 septembre 2011 au 13 novembre 2012	8 371	28 septembre 2011 au 24 janvier 2013	57	13 452
Annexe au Contrat de vente à tempérament	23 janvier 2013 au 13 novembre 2013	249	23 janvier 2013 au 13 novembre 2013	4 646	14 novembre 2012 au 13 novembre 2013	2 566	25 janvier 2013 au 13 novembre 2013	-	7 461
Contrat de vente à tempérament modifié	14 novembre 2013 au 14 avril 2015	7 430	14 novembre 2013 au 14 avril 2015	4 027	14 novembre 2013 au 14 avril 2015	4 401	14 novembre 2013 au 14 avril 2015	3 690	19 548
									40 461

8.2 RÉSULTATS - SCÉNARIO 1 : PRIX DE VENTE DU VÉHICULE

8.2.1 Période du Formulaire de divulgation

En fondant notre analyse comparative sur le prix de vente du véhicule (sans prendre en considération la mise de fonds ou la valeur du véhicule remis en échange), durant la période où le Formulaire de divulgation au client était en place, nos calculs révèlent qu'il était plus avantageux de financer au taux subventionné pour 12 837 contrats (sur 13 452 contrats), soit dans 95,4 % des cas.




¹³ Hyundai n'offrait aucun rabais au comptant du 1^{er} mai 2011 au 24 janvier 2013 et Mitsubishi n'offrait aucun rabais au comptant du 28 septembre 2011 au 30 juin 2012, ni du 1^{er} décembre 2012 au 24 janvier 2013. Cela explique pourquoi il y a moins de contrats pour ces deux manufacturiers pendant la période où le Formulaire de divulgation au client était en place. De plus, Mitsubishi n'offrait aucun rabais au comptant durant la période où l'Annexe au contrat de vente à tempérament était en place.