

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action)

NO: 500-06-000780-169

MICHAEL ATTAR

Applicant

v.

RED BULL CANADA LTD.

and

RED BULL GMBH

Defendants

and

FONDS D'AIDE AUX ACTIONS  
COLLECTIVES

Impleaded Party

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APPLICATION TO APPROVE THE PLAINTIFF'S HONORARIUM PROVIDED FOR IN  
A NATIONAL CLASS ACTION SETTLEMENT  
(Article 593 C.C.P.)

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TO THE HONOURABLE CHANTAL TREMBLAY OF THE SUPERIOR COURT OF  
QUEBEC, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE  
REPRESENTATIVE PLAINTIFF AND HIS COUNSEL SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. The sole purpose of the present application is to respectfully ask the Court to approve the payment of the Plaintiff's honorarium provided for in the National Settlement Agreement signed between Mr. Attar and the Red Bull Defendants, a copy of which is communicated herewith as **Exhibit H-1**;
2. Section III.D.(d) of the Settlement Agreement provides as follows:

*Representative Plaintiff's Disbursements.* If approved by the Court as part of the Settlement Agreement, Red Bull agrees

the Representative Plaintiff will be entitled to receive up to CAD \$5,000 from the Settlement Fund in consideration for his disbursements and the time and effort that he has put into the Action and its preparation and investigation, as well as in representing the interests of Settlement Class Members residing in the province of Quebec and in the rest of Canada. The Claims Administrator shall disburse the sum of up to CAD \$5,000 (subject to Court approval) to the Representative Plaintiff from the Settlement Fund within ten (10) business days after the Effective Date or such other date thereafter as mutually agreed upon by the Claims Administrator and Class Counsel.

3. Both the long form and short form pre-approval notices disseminated to Class Members in accordance with the notice program approved by the Court (filed herewith as **Exhibit H-2**) expressly mentioned the payment an honorarium to Mr. Attar:

***Long form Pre-Approval Settlement Notice (Annex 1):***

**WHAT THE SETTLEMENT PROVIDES:**

Red Bull has agreed to pay the total amount of \$850,000 (the “Settlement Fund”) to settle the Action. If the proposed settlement is approved, the Settlement Fund will be used to: [...] (c) pay the Plaintiff an honorarium of \$5,000 (subject to the Court’s approval).

***Short form Pre-Approval Settlement Notice (Annex 1A):***

**What Does the Settlement Provide?** If the Settlement is approved, Red Bull agrees to pay the total amount of \$850,000 (the “Settlement Fund”) to be used to [...] (c) pay the Plaintiff an honorarium (not to exceed \$5,000, subject to the Court’s approval).

[our emphasis underlined].

4. The “Final Report” prepared on October 16, 2019 by the Claims Administrator, Velvet Payments, filed herewith as **Exhibit H-3** confirms that the Facebook campaign at a total cost of \$19,999.83, resulted in 68,143 link clicks reaching 1,446,933 people across Canada;
5. As a result of the Facebook campaign, media coverage and class counsel’s email blast (as more fully detailed at paragraphs 5 and 6 of the *Application for Settlement Approval*), a total of 308,150 users visited the settlement website ([www.energydrinksettlement.ca](http://www.energydrinksettlement.ca)) and 195,987 people registered their emails on

the settlement website. The sign-up period was open from August 22<sup>nd</sup>, 2019 to October 14, 2019;

6. One of the answers to a question on the FAQ section of the settlement website (<https://energydrinksettlement.ca/faq/>) is the following, as it appears from **Exhibit H-4**:

#### **What Does the Settlement Provide?**

If the Settlement is approved, Red Bull agrees to pay the total amount of \$850,000 (the "Settlement Fund") to be used to [...] (c) pay the Plaintiff an honorarium (not to exceed \$5,000, subject to the Court's approval).

7. Of the 195,987 people who registered their emails on the settlement website, not a single person has asked to opt-out of the settlement, nor has a single person objected to the settlement in general or specifically to the honorarium of \$5000 that Red Bull has agreed to pay the Plaintiff;
8. The Quebec jurisprudence is mixed on the issue of whether article 593 CCP allows for the payment of an honorarium to the lead plaintiff of a class action (see, for instance, *Muraton c. Toyota Canada inc.*, 2018 QCCS 4235 at paras. 75-77, where a \$2,000.00 honorarium was awarded; see *Auguste c. Air Transat*, 2019 QCCS 2253 at paras. 36-41 where a \$1000 honorarium was refused);
9. Since 2016, in some cases the *Fonds d'aide aux actions collectives* has contested settlements providing for an honorarium, while in other cases they have not;
10. In common law provinces, there appears to be no issue with awarding an honorarium to class action lead plaintiffs (see *Cannon v Funds for Canada Foundation*, 2017 ONSC 2670, paras. 13-18, where a \$50,000.00 honorarium was awarded);
11. The Representative Plaintiff is respectfully asking this Honourable Court to render a separate judgment concerning the honorarium so as not to delay the settlement approval and payment to class members should the honorarium become a contested issue by a third-party;

## **II. MR. ATTAR'S IMPLICATION**

12. Mr. Attar has been actively involved in the present class action before and since it was initially filed on February 18, 2016;
13. As it appears from paragraphs 84 to 86 of his *Amended Application to Authorize a Class Action* (April 7, 2017), he agreed to be the lead plaintiff in this class action "for the benefit of all Canadian consumers of Red Bull Energy Drinks who did not receive compensation as part of the settlements in the United States";

14. Without Mr. Attar filing his action, there is a possibility that Canadian consumers would have received nothing;
15. Although his individual claim is minor, immediately after filing the case in February of 2016, Mr. Attar's case and name were published across the province in a major French newspaper (which is often the case when class actions are filed), as it appears from the *Journal de Montréal* article filed herewith as **Exhibit H-5**;
16. When the class action was authorized for settlement purposes on July 23, 2019, the case and Mr. Attar were once again published in major English and French media outlets, as it appears from the articles filed herewith *en liasse* as **Exhibit H-6**;
17. In today's digital age, Mr. Attar's name will forever be associated with the "Red Bull class action" in Google searches. Mr. Attar was aware of this reality and accepted it because he knew that he was doing something good for Canadian consumers;
18. Mr. Attar was also actively involved in preparing for this case and in providing his attorneys with evidence, as it appears from the Affidavit sworn by Mr. Attar on November 3<sup>rd</sup>, 2019, filed herewith as **Exhibit H-7** and which includes the following:
  - “2. I was involved in the drafting and filing of the present class action and have been kept up-to-date of all developments by my attorneys;
  3. After filing the present class action, I became a member of the Association pour la santé publique du Québec, a non-profit organization who is active in monitoring product labelling of caffeinated energy drinks;
  4. I assisted my attorneys in the gathering of evidence for this case. For instance, on July 11<sup>th</sup>, 2016, I drove a total of 200 KM to Joliette (Saint-Gabriel-de-Brandon) and spent 4 hours on the road so that I could pick up a Red Bull Energy Drink can (filed as Exhibit P-14) that contained labelling that would help us in demonstrating our case;
  5. On December 11<sup>th</sup>, 2018, I participated in a meeting with the parties held at the Montreal Courthouse to review the settlement agreement;”

19. The honorarium requested is a modest amount, is not controversial as no class member has contested it, and serves as a token of appreciation to the average person who was willing to lead the present class action;
20. As such, it is respectfully submitted that the honorarium for the Representative Plaintiff is fair and reasonable in the circumstances.

<b>PAR CES MOTIFS, PLAISE AU TRIBUNAL :</b>	<b>FOR THESE REASONS, MAY IT PLEASE THE COURT TO:</b>
<b>[1] APPROUVER</b> le paiement au demandeur de l'indemnité prévue à la section III.D.(d) de l'Entente de Règlement;	<b>[1] APPROVE</b> the payment to the Representative Plaintiff of the indemnity provided for at Section III.D.(d) of the Settlement Agreement;
<b>[2] ORDONNER</b> aux défenderesses de verser la somme de 5 000 \$ au demandeur, Michael Attar, tel que prévue à la section III.D.(d) de l'Entente de Règlement;	<b>[2] ORDER</b> the Defendants to pay the amount of \$5,000 to the Representative Plaintiff, Michael Attar, as provided for at Section III.D.(d) of the Settlement Agreement;
<b>[3] LE TOUT</b> , sans frais de justice.	<b>[3] THE WHOLE</b> , without legal costs.

Montreal, November 3<sup>rd</sup>, 2019

*(s) LPC Avocat Inc.*

**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Representative Plaintiff

5800 blvd. Cavendish, Suite 411

Montréal, Québec, H4W 2T5

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

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**AFFIDAVIT OF MICHAEL ATTAR**

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I, Michael Attar, domiciled and residing at 2008 Goya Street, district of Laval, province of Quebec, H7S 1T1, solemnly affirm that:

1. That I am the Representative Plaintiff in the present Action;
2. That I have taken cognizance of the attached *Application to Approve the Plaintiff's Honorarium Provided for in a National Class Action Settlement* and the facts alleged therein are accurate to the best of my knowledge;
3. That said Application is made in good faith.

AND I HAVE SIGNED

  
\_\_\_\_\_  
Michael Attar

Solemnly affirmed before me at Montreal  
this 3<sup>rd</sup> day of November, 2019

  
\_\_\_\_\_  
Commissioner for Oaths for the province  
of Québec



CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
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Impleaded Party

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**LIST OF EXHIBITS**

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- Exhibit H-1:** Copy of Settlement Agreement signed between the Parties;
- Exhibit H-2:** *En liasse*, copies of the long form and short form pre-approval notices disseminated to Class Members;
- Exhibit H-3:** Copy of the “Final Report” prepared by Velvet Payments dated October 16, 2019;
- Exhibit H-4:** Screen capture of the FAQ section of the settlement website (<https://energydrinksettlement.ca/faq/>);
- Exhibit H-5:** Copy of the February 24, 2016 Journal de Montréal article titled “*Il veut poursuivre Red Bull pour manque de caféine*”;
- Exhibit H-6:** *En liasse*, copies of media articles concerning the Red Bull settlement from July and August 2019;

**Exhibit H-7:** Affidavit of Michael Attar dated November 3, 2019;

Montreal, November 3<sup>rd</sup>, 2019

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

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Telecopier: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)



## NOTICE OF PRESENTATION

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**TO: Me Nick Rodrigo**  
Davies  
[nrodrigo@dwpv.com](mailto:nrodrigo@dwpv.com)

**Me Paule Hamelin**  
**Me Mary Thomson**  
Gowling WLG  
[Paule.Hamelin@gowlingwlq.com](mailto:Paule.Hamelin@gowlingwlq.com)  
[Mary.Thomson@gowlingwlq.com](mailto:Mary.Thomson@gowlingwlq.com)

### **Attorneys for Red Bull**

**Me Frikia Belogbi**  
Fonds d'aide aux actions collectives  
Palais de justice de Montréal  
1, rue Notre-Dame Est, bureau 10.30  
Montréal, Québec, H2Y 186  
[frikia.belogbi@justice.gouv.qc.ca](mailto:frikia.belogbi@justice.gouv.qc.ca)

**TAKE NOTICE** that the present *Application to Approve the Plaintiff's Honorarium Provided for in a National Class Action Settlement* shall be presented for adjudication before the Honourable Chantal Tremblay, J.S.C., on **December 17, 2019 at 9:30 a.m. in room 1.156** of the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6.

Montreal, November 3<sup>rd</sup>, 2019

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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DISTRICT OF MONTREAL

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**MICHAEL ATTAR**

*Applicant*

-VS-

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*Defendants*

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HONORARIUM PROVIDED FOR IN A NATIONAL  
CLASS ACTION SETTLEMENT**  
(Article 593 C.C.P.)

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**ORIGINAL**

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Me Joey Zukran  
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**BL 6059**

**N/D: JZ-105**

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