

**SUPERIOR COURT
(Class Action)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-06-000989-190

DATE: January 25, 2021

PRESIDING: THE HONORABLE DONALD BISSON, J.S.C.

GERTRUDE GILLICH
Plaintiff

v.

APR (SAINT-JEAN) INC. (doing business as Mercedes-Benz West Island)
Defendant

and

LPC AVOCAT INC.
Plaintiff's Attorney – mis en cause

and

FONDS D'AIDE AUX ACTIONS COLLECTIVES
Mis en cause

**RERECTIFIED JUDGMENT ON THE APPLICATION TO APPROVE A CLASS
ACTION SETTLEMENT AGREEMENT**

[1] **CONSIDERING** that on May 21, 2020, the Court authorized the class action against the Defendant on behalf of the following group:¹

Tous les consommateurs qui, depuis le 14 mars 2016, ont payé	All consumers who, since March 14, 2016, paid to Mercedes-Benz West
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¹ *Gillich c. Mercedes-Benz West Island*, 2020 QCCS 1582.

à Mercedes-Benz West Island ou à APR (SAINT-JEAN) INC. (« MBWI ») des frais pour exercer leur option d'achat (« rachat ») de leur véhicule à la fin de la location qui n'étaient pas divulgués dans leur contrat de location;	Island or APR (SAINT-JEAN) INC. ("MBWI") a fee to exercise their option to purchase their vehicle ("buyback") at the end of their lease which was not disclosed in their lease;
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[2] **CONSIDERING** that the Representative Plaintiff alleged that the Defendant violated section 228 of the *Consumer Protection Act*² ("CPA") and that the Defendant has always denied any wrongdoing or having any liability;

[3] **CONSIDERING** the Settlement Agreement executed by the parties (the "Transaction")³;

[4] **CONSIDERING** that on December 4, 2020, the Court approved the pre-approval notice program contemplated by the Transaction⁴;

[5] **CONSIDERING** that the pre-approval notices were sent to each of the 124 Class Members⁵;

[6] **CONSIDERING** that the Representative Plaintiff, Gertrude Gillich, now brings before this Court an *Application to Approve a Class Action Settlement and for Approval of Class Counsel's Fees* (the "Application");

[7] **CONSIDERING** that the Transaction reached between the parties provides for the following notable benefits:

- a) Collective recovery with a total Award Amount of \$86,880.70, to be distributed amongst the 124 Class Members identified by the Defendant (clauses 1.1(iii), 2.1 and 2.3)⁶;

² RLRQ, c. P-40.1

³ Exhibit MC-1.

⁴ *Gillich c. APR (Saint-Jean) inc. (Mercedes-Benz West Island)*, 2020 QCCS 4146.

⁵ Exhibit MB-2. Following the sending of the notices on December 10, 2020, six class members did not receive the notice, as the addresses in their files are no longer valid, as appears from Annex B of the Affidavit of Nick Avdeliodis of January 18, 2021. Following the sending of the notices on December 10, 2020 and until January 18, 2021, ten class members have not claimed the notice addressed to them at the post office, as appears from Annex C of the Affidavit of Nick Avdeliodis of January 18, 2021. In the Court's opinion, this does not change its decision and its approval of the Transaction.

⁶ The original Transaction stipulated that there were 126 Class Members. According the Affidavits of Nick Avdeliodis, there are in fact 124 Class Members who paid a total of 127 buyback fees, since some paid for more than one vehicle. One class member owns three vehicles and another class member owns two vehicles, for a total of one hundred and twenty-six (126) vehicles, in addition to the Plaintiff.

- b) Each Class Member will receive a lump sum cash payment in the amount of \$412.00, net of all fees and expenses, per buyback paid (clause 2.1);
- c) This cash amount of \$412 compares favourably with the average buyback fee charged by the Defendant;
- d) There is no need for Class Members to produce receipts or a proof of payment, nor to do anything at all in order to receive the compensation;
- e) Payments will be sent by cheque via the mail to the Class Members' address on file;
- f) The Defendant will pay the 124 Class Members a net amount of \$412.00 each (per buyback fee paid) and Class Counsel's fees and disbursements will be paid on top of the \$412.00 cash payments and not deducted therefrom;
- g) The Transaction provides for collective recovery and any remaining balance shall be paid to the Fonds d'aide aux actions collectives levy pursuant to the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*⁷ (clause 7.1);
- h) The Defendant will act as the claims administrator, thus avoiding to decrease the amounts paid to Class Members in order to pay for a third party claims administrator;
- i) Although not provided for in the Transaction, the Affidavit filed by the Defendant's representative declares that it stopped charging the buyback fees on March 14, 2019, when the action was issued and as soon as it was served⁸;

[8] **CONSIDERING** all of the exhibits filed, as well as the Affidavit of Nick Avdeliodis of December 15, 2020, Exhibit MB-2, the Affidavit of Nick Avdeliodis of January 18, 2021, the Affidavit of Me Zukran of January 14, 2021 and the Affidavit of the Plaintiff Gertrude Gillich of January 19, 2021, Exhibit MB-6;

[9] **CONSIDERING** that the Court finds that the Transaction is fair and reasonable and in the best interest of Class Members;

[10] **CONSIDERING** the guiding principles⁹ for determining whether a transaction should be approved and the Court's findings that:

- a) The Defendant denies any liability or wrongdoing. Therefore, the parties would have entered into a contradictory and costly debate;

⁷ RLRQ, c. F-3.2.0.1.1, r. 2.

⁸ Exhibit MB-2.

⁹ *Halfon v. Moose International Inc.*, 2017 QCCS 4300, par. 22.

- b) The risks of Class Members obtaining no compensation, the expenses, complexity and duration of further litigation weigh in favour of approval;
- c) The Transaction was reached by experienced fully informed counsels after arm's length negotiations following the authorization of the class action;
- d) Following the dissemination and publication of the pre-approval notices, no Class Members have registered any objections to the Transaction and no Class Members have requested to be excluded from the class action;
- e) There is no reason to believe that the parties did not act in good faith or colluded;
- f) The compensation to each Class Member in the amount of \$412.00, without any deductions, is very beneficial in the circumstances;
- g) The process to receive compensation is simple; payments will be sent by cheque to each Class Member, without the need to file a claim;
- h) The terms and conditions of the Transaction, including the amounts offered are fair, reasonable, adequate and worthy of approval;

[11] **CONSIDERING** that Class Counsel is asking the Court to approve the amount of \$26,064.21 plus taxes for its extrajudicial fees and \$3,700.00 plus taxes for disbursements and expenses, on top of the compensation offered to Class Members;

[12] **CONSIDERING** the role that the Court must play in determining the reasonableness of the fees claimed by Class Counsel¹⁰;

[13] **CONSIDERING** the mandate signed by the Representative Plaintiff¹¹;

[14] **CONSIDERING** that in the present matter, the fees requested by Class Counsel are fair and reasonable and are therefore approved;

[15] **CONSIDERING** that the payment of a disbursement to the Representative in the amount of \$300, as provided for at clause 5.2 of the Settlement Agreement, is allowed by Article 593 of the *Code of Civil Procedure* ("CCP"), as it is a disbursement (...), and not a compensation for time and effort¹²;

¹⁰ *Gosselin c. Loblaws inc.*, 2019 QCCS 3941, par. 14; *Pellemans c. Lacroix*, 2011 QCCS 1345, par. 50-54.

¹¹ Exhibit MB-4.

¹² Compensation for time and effort is no longer possible to be allowed to a representative plaintiff in a settlement agreement: *Attar c. Fonds d'aide aux actions collectives*, 2020 QCCA 1121, par. 15-20 and 31 (application for leave to appeal to the Supreme Court of Canada pending, filed on November 4, 2020, no. 39373). What is allowed is an indemnity for disbursements and an amount to cover legal costs and the lawyer's professional fee. Here, the Affidavit of the Plaintiff Gertrude Gillich of January


[16] **CONSIDERING** that the Mis en cause Fonds d'aide aux actions collectives has no specific objection to the Transaction;

[17] **CONSIDERING** Articles 590 and 593 CCP;

POUR CES MOTIFS, LE TRIBUNAL :	FOR THESE REASONS, THE COURT:
[18] ACCUEILLE la demande du Représentant en approbation de la transaction et pour l'approbation des honoraires des avocats du groupe;	[19] GRANTS the Representative Plaintiff's Application to Approve the Settlement Agreement and for Approval of Class Counsel's Fees;
[20] DÉCLARE que les définitions contenues dans la transaction s'appliquent et sont incorporées au présent jugement, et en conséquence en font partie intégrante, étant entendu que les définitions lient les parties à la transaction;	[21] DECLARES that the definitions set forth in the Settlement Agreement apply to and are incorporated into this judgment, and as a consequence shall form an integral part thereof, being understood that the definitions are binding on the parties to the Settlement Agreement;
[22] APPROUVE la transaction (« Settlement Agreement ») conformément à l'article 590 du <i>Code de procédure civile du Québec</i> , et ORDONNE aux parties de s'y conformer;	[23] APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> , and ORDERS the parties to abide by it;
[24] DÉCLARE que la transaction (incluant son préambule et ses annexes) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe et qu'elle constitue une transaction en vertu de l'article 2631 du <i>Code civil du Québec</i> , qui lie toutes les parties et tous les Membres du Groupe tel qu'il est énoncé aux présentes;	[25] DECLARES that the Settlement Agreement (including its Preamble and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i> , which is binding upon all parties and all Class Members at set forth herein;
[26] ORDONNE et DÉCLARE que le présent jugement, incluant la transaction, lie chaque Membre du Groupe;	[27] ORDERS and DECLARES that this judgment, including the Settlement Agreement, shall be binding on every Class Member;
[28] ORDONNE à la défenderesse de notifier par courriel à chaque Membre du	[29] ORDERS the Defendant to notify each Class Member to their address on

19, 2021, Exhibit MB-6, shows that this amount of \$300 cover the following expenses of Ms Gillich: photocopies, bank fees, travel costs and meals.

Groupe à leur dernière adresse au dossier, dans les 20 jours suivant le jugement approuvant la transaction, avec l'avis d'approbation de la transaction, Pièce MB-3 (annexes C), afin de les informer de l'approbation de la transaction;	file, within 20 Days following the Judgment Approving the Settlement Agreement, with the Notice of Approval of the Settlement Agreement, Exhibit MB-3 (Schedule C), in order to inform them of the approval of the Settlement Agreement;
[30] APPROUVE le paiement aux Avocats du Groupe de leurs honoraires extrajudiciaires au montant de 26 064,21 \$ plus taxes et des débours de 3 700,00 \$ plus taxes;	[31] APPROVES the payment to Class Counsel of its extrajudicial fees in the amount of \$26,064.21 plus taxes and disbursements of \$3,700.00 plus taxes;
[32] APPROUVE le versement du débours de 300 \$ à la demanderesse, tel que prévu à la clause 5.2 de la transaction;	[33] APPROVES the payment of a disbursement to the Representative in the amount of \$300, as provided for at clause 5.2 of the Settlement Agreement;
[34] ORDONNE aux parties de faire rapport de l'exécution du jugement avec diligence;	[35] ORDERS the Parties to diligently render account of the execution of the judgment;
[36] RÉSERVE le droit du Fonds d'aide aux actions collectives de formuler une demande au Tribunal pour réclamer une partie de tout reliquat, le cas échéant, après que les montants aient été distribués aux membres du groupe conformément à la transaction, le tout conformément à loi;	[37] RESERVES the right of the Fonds d'aide aux actions collectives to apply to the Court to claim a portion of any amount remaining (<i>reliquat</i>), if any, after the proceeds of the settlement have been distributed to class members pursuant to the Settlement Agreement, the whole in accordance with law;
[38] LE TOUT , sans frais de justice.	[39] THE WHOLE , without legal costs.



DONALD BISSON, J.S.C.

Me Joey Zukran
LPC Avocat inc.
Attorney for Plaintiff

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Hearing date: January 20, 2021