

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUEBEC
DISTRICT DE MONTREAL

No: 500-06-000824-165

DATE: March 5, 2021

BY THE HONOURABLE THOMAS M. DAVIS, J.S.C.

ANTONIO BRAMANTE
Representative Plaintiff

v.

LES RESTAURANTS MCDONALD DU CANADA LIMITÉE
Defendant

JUDGMENT

INTRODUCTION

[1] On November 14, 2018, the Court authorized a class action against the Defendant, Les Restaurants McDonald du Canada Limitée (“**McDonald’s**”) in the present matter.

[2] The Representative Plaintiff, Antonio Bramante, alleged that McDonald’s had violated section 248 of the *Consumer Protection Act*¹ in its promotions, by using toys to make Happy Meals more attractive to the minor consumer.

[3] McDonald’s has always denied any wrongdoing or having any liability in relation to this promotion.

[4] A settlement agreement was signed by the parties on January 7 and January 8, 2020 respectively (the “**Settlement Agreement**”). The Court is asked to approve it, including the legal fees and disbursements agreed to by McDonald’s.

1. CONTEXT

[5] As a precursor to this judgment, on January 27, 2020, the Court approved the pre-approval notice program contemplated by the Settlement Agreement, scheduled the settlement approval hearing for June 18, 2020 and ordered the publication of the notices to class members by no later than April 15, 2020.

[6] On March 2, 2020, the Court granted the parties’ application to modify the class definition, in order to include the end date of April 15, 2020, consistent with the Class Period defined in the Settlement Agreement, to read as follows:

«Tout consommateur au sens de la Loi sur la protection du consommateur du Québec qui, entre le 15 novembre 2013 et le 15 avril 2020, a acheté au Québec pour un enfant de moins de 13 ans alors présent dans un restaurant McDonald, un jouet ou un Joyeux festin, durant une campagne publicitaire destinée aux enfants à l’intérieur de tel magasin. »

“Every consumer pursuant to the Québec *Consumer Protection Act* who, from November 15th, 2013 to April 15th, 2020 purchased in Québec for a child under 13 years of age then present inside a McDonald’s restaurant, a toy or Happy Meal, during an advertising campaign directed at children taking place inside the restaurant.”

[7] The publication of the notices was suspended due to the COVID-19 pandemic forcing restaurant closures, which made the posting of the notices in restaurants difficult, or in some cases impossible.

[8] The Court lifted the suspension on August 25, 2020 and both ordered the publication of the notices by no later than November 17, 2020 and fixed the opt-out and objection deadlines for January 18, 2021.

[9] The approval hearing was set for January 22, 2021 and took place as scheduled.

[10] Following the publication of the pre-approval notices pursuant to the Court’s orders, no class members objected to the Settlement Agreement, nor did any class members requested their exclusion from the settlement.

[11] The Settlement Agreement is straight forward, providing for a \$1 million cy-près payment to be equally divided between four hospital foundations, the payment to be used for a children’s vocation. These are:

- Fondation CHU Sainte-Justine;

- Montreal Children's Hospital Foundation;
- Jewish General Hospital Foundation, with the funds going to the Children and Adolescent Care Programs; and
- Fondation CHU de Québec, with the funds going to the Neonatal Intensive Care Unit at the Centre Hospitalier de l'Université Laval et Centre mère-enfant Soleil.

[12] Hence, the Settlement Agreement reflects the fact that, in the circumstances, it would be impractical to establish a distribution mechanism to class members and that in any event, the recovery for each individual (if any) would be extremely modest. Other honorable solutions exist to allow class members to benefit from what might be described as an indirect compensation. The payments to these foundations with the funds to be used for children (the target audience for the Happy Meal toys) is the solution chosen by the parties.

[13] In addition, McDonald's must implement the following practice changes within forty-five days of this judgement:

- Change the physical toys for images of the toys, which will be approximately the same size as the physical toys, in its restaurant toy/book displays;
- Place the images of the toys above the images of the books in its restaurant toy/book displays (i.e. inverting the current placement where the book images are above the toys in the display);
- Subject to any legal prohibition on McDonald's ability to sell books or toys in its restaurants, commit to displaying images of both books and toys in its toy/book displays for at least two (2) years following the implementation of the Practice Changes in sections 10(a) and 10(b);
- Age-gate the English and French language pages concerning the Happy Meal toys on its company website; and
- Not use interactive toy/book displays as long as s. 248 CPA remains in force.²

[14] Perhaps curiously, in finalizing their agreement, the lawyers for the parties do not seem to have considered that the *Fonds d'aide aux actions collectives (Fonds)* is entitled to 30% of the \$1 million payment,³ thereby reducing the amount remitted to each charity to \$175,000, rather than the \$250,000 that had been anticipated. Of

² Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees.

³ *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR, c. F-3.2.0.1.1, r.2.

course, the vocation of the *Fonds* is also honourable as, among other things, it makes class actions more accessible.

[15] The agreement provides for Class Counsel's fees and disbursements to be paid by McDonald's in addition to the \$1 million cy-près payment. McDonald's has agreed to pay up to \$415,000 plus applicable taxes for fees and \$25,000 for disbursements, subject to the Court's approval. With the Court's approval, this would mean that McDonald's would pay Mtre Zukran's firm an additional \$502,146.25, subject to it remitting the taxes.

[16] The settlement is not contingent on the fee award that the Court will make.

[17] Prior to undertaking the mandate, Mtre Zukran entered into an agreement with Mr. Bramante, which provided for extrajudicial fees being paid at the higher of 30% "de la somme perçue" in relation to the class action, or the amount established using a multiplier of 3.5 based on the hours worked by Class Counsel. Mtre Zukran has provided the Court with time charges showing time of over 856 hours, mostly at his hourly rate of \$300.

2. ISSUES IN DISPUTE

[18] The Court is essentially called upon to decide two issues, the reasonableness of the settlement and whether the payments to Class Counsel, particularly the fees, are appropriate.

[19] In considering the latter question, the Court will need to evaluate Mtre Zukran's position that the Court should consider what he describes as the total monetary value of the Settlement Agreement, an amount of \$1,502,146.25,⁴ to determine the percentage of "la somme perçue" that the agreed upon fees of \$415,000 would represent.

3. ANALYSIS

3.1 Introduction

[20] The criteria used to analyze the reasonableness of settlement agreements are well established. By way of example, one might consider Justice Chatelain's judgment in *Halfon c. Moose International Inc.*:

[21] En vertu de l'article 590 C.p.c., une transaction qui a pour objet le règlement d'une action collective n'est valable que si elle est approuvée par le Tribunal, et ce, après qu'avis en ait été donné aux membres.

⁴ This amount includes the settlement amount of \$1,000,000, the fees of \$415,000, plus applicable taxes and disbursements of \$25,000.

[22] Il est de jurisprudence constante que les tribunaux approuveront cette transaction si elle est juste et raisonnable et qu'elle répond au meilleur intérêt des membres. Les critères développés par la jurisprudence et qui guident le Tribunal quant à l'approbation de la transaction sont bien connus et ne sont pas contestés :

- a) les probabilités de succès du recours;
- b) l'importance et la nature de la preuve administrée;
- c) les termes et les conditions de la transaction;
- d) la recommandation des procureurs et leur expérience;
- e) le coût des dépenses futures et la durée probable du litige;
- f) la recommandation d'une tierce personne neutre, le cas échéant;
- g) le nombre et la nature des objections à la transaction;
- h) la bonne foi des parties; et
- i) l'absence de collusion.

[23] Ces critères ne sont pas cumulatifs. Ils doivent plutôt être appréciés et pondérés dans leur ensemble, et ce, selon les faits et circonstances propres à chaque espèce. Dans le cadre de cette appréciation, le Tribunal doit encourager la conclusion d'un règlement lorsque cela est possible. Il faut également retenir qu'une entente négociée afin d'éviter les risques et les coûts d'un procès comporte nécessairement des compromis de part et d'autre. Aussi, une transaction n'a pas à rechercher la perfection. Toutefois, des motifs graves et sérieux peuvent justifier le refus d'approuver une transaction.⁵

[References omitted]

[21] Actions such as this one do give reason for pause, as from the outset it should have been obvious that the monetary recovery for the class members would have been nominal and that the cost of distributing any recovery would have been prohibitive. The limited nature of the potential recovery might even allow the Court to call into question the appropriateness of a Class Action in these circumstances.⁶ On the other hand, over and above the settlement payout, seemingly a modest sum for a company like McDonald's, it has agreed to some behavior modification, no doubt a good thing.⁷

⁵ 2017 QCCS 4300.

⁶ *Emond v. Google LLC*, 2021 ONSC 302, para 30.

⁷ *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58, para. 108.

[22] In the big picture, the Court considers the settlement to be in the interests of the members of the class, subject to its comments on the extrajudicial fees. From the outset, McDonald's took the position that its practices were appropriate, and still believes that to be the case. The authorization was hard fought and the same would likely have proved true for the hearing on the merits. The legal conclusion on whether McDonald's committed any of the faults alleged and the consequences thereof, if any, remain uncertain.

[23] The risks of the case being dismissed on the merits, the expenses and the duration of further litigation also weigh in favour of approval of the Settlement Agreement.

[24] Finally, the Settlement Agreement was reached by experienced fully informed lawyers after arm's length negotiations, only after the authorization of the class action and preliminary discovery.

[25] It is also important that following the dissemination and publication of the pre-approval notices, no Class members have registered any objections to the Settlement Agreement and no Class members have requested to be excluded from the class action.

[26] There is no reason to believe that the parties did not act in good faith or colluded in arriving at the Settlement Agreement.

3.2 The Cy-près Payment

[27] The Court considers the Cy-près payment to be a good resolution to the dispute. There were several potential hurdles to recovery by individual clients. How would they have been identified? What were their damages given that most, if not all, received the product that they contracted for? It follows that damages, if any, would have been symbolic at best.

[28] The four charities have a children's vocation and based on the testimony heard by the Court, will commit the funds to children's causes. The current context makes these donations even more useful.

[29] The *Fonds* is an agency established in the public interest, whose mission is to ensure the financing of class actions in the manner provided for by law and to disseminate information respecting the exercise of such actions. The \$300,000.00 that it will receive will no doubt be helpful to its mission.

[30] This Court has approved Cy-près settlements when the individual liquidation of the class members' claims or the distribution of an amount to each class member is impracticable, inappropriate or too costly as contemplated by article 597 C.C.P.⁸

[31] On balance, it is appropriate to do so here.

3.3 The Extrajudicial Fees

[32] The Court is troubled by several elements of the fee claim.

[33] Firstly, it seems at least mildly surprising that the parties' lawyers did not contemplate that the *Fonds* had the right to withhold 30% of the settlement. Mtre Zukran holds himself out as being very experienced in class actions and indeed has some significant and important achievements, but the Court cannot help but think that, as the advocate for the class with an interest in maximizing the benefit to the members thereof, he should have known that the end result of the Settlement Agreement would be each foundation receiving a payment of \$175,000 and not \$250,000. The fact that the benefit to the Class is indirect does not change the Court's view.

[34] The concept that a charitable donation would be a remainder and subject to the prescribed payment to the *Fonds* is not new. It was discussed as long ago as 1995 in the matter of *Fonds d'aide aux recours collectifs c. Syndicat des employés d'entretien et de garage du transport de la C.U.M.*⁹ The Court of Appeal considered the consequences of a collective recovery by way of a donation more recently in *Fonds d'aide aux recours collectifs c. Option Consommateurs*:

[37] L'appelant invoque au soutien de sa thèse l'arrêt *Fonds d'aide aux recours collectifs c. Syndicat des employés d'entretien et de garage du transport de la C.U.M.* (l'arrêt *SECUM*). Cette décision traitait d'un problème assez nettement différent du nôtre. Le Fonds d'aide au recours collectif – qui est aussi l'appelant dans le dossier ici sous étude – avait intenté une action contre un syndicat après que celui-ci, en qualité de partie défenderesse dans un recours collectif, eut transigé avec le représentant et conclu un règlement. Selon ce règlement, les parties désignaient deux organismes à but non lucratif et une coopérative pour que leur soit versée la totalité du montant que le syndicat se déclarait prêt à déboursier pour mettre fin au litige. Une clause de la transaction constatait que la distribution aux membres du groupe représenté était difficilement praticable dans les circonstances. Comme le remarque Mme la juge Tourigny, les parties elles-mêmes s'étaient conformées au régime de l'article 1034 *C.p.c.* La principale question de fond était donc de savoir si le montant à même lequel le Fonds prétendait effectuer un prélèvement en vertu du *RPFARC* constituait un reliquat visé par l'article 1034 *C.p.c.* Cette question était soulevée

⁸ *Halfon v. Moose International Inc*, supra note 5, paras. 19 and 26; *Elkoby c. Google inc./ Google*, 2018 QCCS 2623 (see para. 35 of the Google transaction providing for a \$1 million settlement with cy-près payments made to fund the University of Montreal and the University of Ottawa's joint research programs.

⁹ 1995 CanLII 4675 (QC CA).

dans le cadre d'une action du Fonds intentée contre la partie défenderesse après approbation de la transaction. En accueillant l'appel du Fonds et en répondant par l'affirmative à cette question, notre cour décidait en somme qu'après collocation des frais de justice et des honoraires de l'avocat du représentant, un montant versé en règlement d'un recours collectif selon une formule empruntée à l'article 1034 *C.p.c.* constitue un reliquat assujetti au *RPFARC*.¹⁰

[References omitted]

[35] In sum, this is not a novel question.

[36] Moving now to the mandate agreement itself, the section on the payment of legal fees reads as follows:

b) Les honoraires extrajudiciaires du montant le plus élevé des deux calculs suivants :

i. Un montant égal à trente pour cent (30%) plus toutes les taxes applicables de la somme perçue (incluant les intérêts) en relation avec la présente action collective, de quelque source que ce soit, par transaction ou à la suite d'un jugement, et ce, dès l'ouverture du présent dossier.

ou

ii. Un montant égale à multiplier le nombre total d'heures travaillées par mon avocat en fonction de ton taux horaire, qui est actuellement 300,00 \$ de l'heure plus toutes les taxes applicables. Ce montant sera ensuite multiplié par un multiplicateur de 3,5 pour arriver aux honoraires extrajudiciaires totale (les taux horaire sont revus sur une base annuelle et sont donc sujet à des augmentations éventuelles).

Ces honoraires extrajudiciaires s'étendent aux sommes perçues pour et au nom de tout le groupe et des sous-groupes visé par la présente action collective, et sont en sus des honoraires qui pourraient être attribués audit procureur. Dans le cas où un montant spécifique n'est pas attribué collectivement ou dans l'ensemble, que ce soit par règlement ou par jugement, ou lorsque chaque membre du groupe est indemnisé uniquement pour sa réclamation individuelle, section b. (i) ci-dessus doit être interprétée comme signifiant trente pour cent (30%) plus taxes de la valeur totale comme si tous les membres du groupe avaient fait une telle réclamation.

[37] The agreement entered into between the parties benefits from a presumption of validity and should only be called into question if it is unreasonable and unjustified to the members in the circumstances of the matter.¹¹ The amount of extrajudicial fees might reasonably be between 15 and 33% of the amount recovered.¹²

¹⁰ 2006 QCCA 441.

¹¹ *Boyer c. Agence métropolitaine de transport (AMT)*, 2014 QCCS 5518.

¹² *Ibid.*

[38] This said, a discussion of appropriate legal fees should likely include reference to the Court of Appeal's judgment in *Option Consommateurs c. Banque Amex du Canada*, where the Court stated:

[61] Le législateur confie au juge un rôle de gardien et de protecteur des droits des membres. Ainsi, bien que pertinente à l'examen de la question, aucune convention d'honoraires intervenue entre le représentant et son avocat ni aucune entente d'honoraires conclue entre le représentant, son avocat et les parties adverses dans le cadre d'une transaction présentée pour approbation ne lient le juge.

[62] Le tribunal ne doit pas hésiter, au besoin, « à réviser ces honoraires en fonction de leur valeur réelle, à les arbitrer et à les réduire s'ils sont inutiles, exagérés, ou hors de proportion au regard de ce que le groupe retire du recours ». ¹³

[References omitted]

[39] One of the elements considered by Justice Claudine Roy in first instance also merits mention:

[110] Les tribunaux doivent être vigilants pour éviter que l'action collective ne devienne qu'une source d'enrichissement pour les avocats en demande et une source de financement pour des organisations sans but lucratif. ¹⁴

[40] Or, as Justice MacDonald says in *Kett v Kobe Steel, Ltd.*: "As Justice Douglas recently stated: "The ultimate purpose of the class action vehicle is to benefit the class, not their lawyers." ¹⁵

[41] Applying the principles here, the Court does not question that there is an important, but indirect, benefit to the class, but that benefit is either \$700,000 or \$1,000,000 depending on whether one characterizes the payment to the *Fonds* as a benefit to the class. Even taking the higher number, the extrajudicial fees of \$415,000 seem high.

[42] But how are they to be considered in light of the Settlement Agreement? Should the Court accept Mtre Zukran's position that the extrajudicial fees of \$415,000 represent 27.62% of the total payout of \$1,502,146.25 and are, therefore, well within the 30% contingency agreed to with Mr. Bramante?

[43] To justify his position, Mtre Zukran refers to Justice Pierre-C. Gagnon's judgment in *Abihisira c. Stubhub inc.*, ¹⁶ where Justice Gagnon seems to calculate the percentage

¹³ 2018 QCCA 305.

¹⁴ *Option Consommateurs c. Banque Amex du Canada*, 2017 QCCS 200.

¹⁵ 2020 BCSC 1977, para. 58.

¹⁶ 2019 QCCS 5659.

that the extrajudicial fees represented using the total payout by Stubhub, including the legal fees.¹⁷ However, the settlement agreement is not produced, so it is difficult to fully analyse Stubhub's obligations.

[44] Fortunately, in this matter, the Court has the benefit of the mandate agreement with Mr. Bramante. As the matter was settled by a transaction, the Court must consider the words: "de la somme perçue...par transaction". The amount payable to the class as a result of the settlement agreement with McDonald's is \$1,000,000. Indeed, McDonalds has also agreed to pay legal fees (\$415,000), plus taxes and disbursements (\$25,000), but until the present judgment, the amount of the legal fees was uncertain. Therefore, the Court cannot find that the intent of Mr. Bramante was that the 30% contingency would apply to an uncertain amount subject to the approval of the Court. Rather, it concludes that the word "perçue" applies to monies collected and paid to class members or for their benefit (the indirect compensation agreed to in the Settlement Agreement) and does not include the amount paid to Class Counsel.

[45] The following words in the mandate agreement cement this view of the Court:

Ces honoraires extrajudiciaires s'étendent aux sommes perçues pour et au nom de tout le groupe et des sous-groupes visé par la présente action collective ...

[46] Taxes paid to the two governments cannot be viewed as monies collected for the class. The Court has the same view of the legal fees, albeit acknowledging that that the payment of the legal fees does indirectly benefit the class, given that some legal work was required for the class to benefit from the settlement. However, it seems curious and inappropriate that class counsel would be able to calculate the value of its contingency payment by including in the calculation, a sum over and above the indirect compensation agreed to and that is ultimately going into its own pockets.

[47] As a final comment on this topic, even if the Court is not correct in its conclusion that the agreed percentage of 30% applies only to \$1,000,000, it also concludes that the payment of \$415,000, or 41.5% of the \$1,000,000 amount that will actually benefit society, is not appropriate. With respect, it seems beyond the frontier of the caution raised by Justice Roy in the *Amex* matter.

[48] This said, do the number of hours worked by Mtre Zukran, or the agreed upon multiplier of 3.5 allow the Court to ignore this concern and award the \$415,000 agreed to by McDonald's?

[49] Going back to the *Amex* matter, Justice Roy set out the basic principles:

¹⁷ *Ibid.* par. 72 g).

[83] Le caractère juste et raisonnable des honoraires d'un avocat s'analyse à l'aide des critères mentionnés aux articles 101 et 102 du *Code de déontologie des avocats* :

- l'expérience;
- le temps et l'effort requis et consacrés à l'affaire;
- la difficulté de l'affaire;
- l'importance de l'affaire pour le client;
- la responsabilité assumée;
- la prestation de services professionnels inhabituels ou exigeant une compétence particulière ou une célérité exceptionnelle;
- le résultat obtenu;
- les honoraires prévus par la loi ou les règlements;
- les débours, honoraires, commissions, ristournes, frais ou autres avantages qui sont ou seront payés par un tiers relativement au mandat que lui a confié le client.¹⁸

[Reference omitted]

[50] Unpacking some of these elements, Mtre Zukran clearly has experience in class actions. He might well be justified in commanding an hourly rate higher than the \$300 that was agreed to by Mr. Bramante. On the other hand, this experience belies the large number of hours described as "research" in Mtre Zukran's time charges or even the significant number of hours spent drafting a relatively straight forward authorization application. The Court has the same comment in relation to the hours dedicated to the drafting of the argument plan for the authorization hearing and to a lesser extent, those spent on the originating application and the argument plan for the settlement approval hearing.

[51] There are also a significant number of entries dedicated to what can be described as clerical work, an example being the "organizing of exhibits" or even travelling to court to file the authorization application.

[52] Mtre Zukran also accounts for numerous visits to various McDonald's locations, after the filing of the authorization application. No doubt one, or even a couple of these were warranted, but should they all have been done by Class Counsel or his associate? The Court notes over 25 hours for this activity, which it believes could have been done by a paralegal or student.

¹⁸ *Option Consommateurs c. Banque Amex du Canada*, supra note 14.

[53] Interviews with the media are also recorded in the time entries. Mtre Zukran's lawyer argued quite eloquently that these were appropriate, referring the Court to *Girard c. Vidéotron*.¹⁹ And, the Court agrees to a point; however, the real moment that the publicity surrounding a class action becomes important and most useful is following the authorization of the action. It is of more questionable value before and again here there are some 25 hours recorded for pre-authorization interviews. The Court wonders whether these are really beneficial to the class members, although, as Mtre Zukran's lawyer pointed out they may have an effect in encouraging behavioral change by a defendant or even promoting settlement.

[54] The Court does not question that the hours accounted for were spent by Mtre Zukran, but finds them to be excessive given his experience and the limited scope of the legal issues raised by the proposed class action. The difference between the fees that would be payable using the 30% contingency as opposed to the 3.5 multiplier also gives credence to the Court's view that the hours spent were too high. The former would lead to fees before taxes of \$300,000, or perhaps of \$432,000 based on McDonald's paying \$1,440,000 before taxes to settle the matter (although, as the Court has said, it believes the intent of the parties would lead to the former amount). Using the 3.5 multiplier, 856 hours and Mtre Zukran's rate of \$300 per hour, the fees payable would be \$898,800.

[55] The Court offers this illustration because it is inconceivable that when signing the mandate agreement, that Mr. Bramante and Mtre Zukran would have contemplated such a considerable difference between the fees that might be payable using the multiplier when compared to those payable using the percentage of 30%. Hence, the hours spent do not seem to reflect what should have been reasonably contemplated at the outset of the file.

[56] A lawyer taking on class action has an obligation to the representative plaintiff and the class similar to that of a lawyer to any client. Before instituting proceedings, the likely recovery should be evaluated and the time spent on the file should be managed accordingly. This is, of course, far from an exact science, but the hours spent on a class action matter should not be out of proportion to the complexity of the matter and the result obtained. There are cases where the multiplier may not be the best way to determine the fees as it may not encourage the efficient use of time and resources.

[57] Moving now to the difficulty of the matter, it was quite straight forward. The principle questions were set out in the authorization judgment:

- a) Does McDonald's make use of commercial advertising directed at persons under thirteen years of age in its restaurants?

¹⁹ 2019 QCCS 2412.

b) Does McDonald's commercial advertising directly incite a child to buy or to urge another person to buy goods or to seek information about it?

c) In the affirmative, what is the appropriate remedy for a violation of section 248 CPA?²⁰

[58] As one notes, there is basically one question of law to consider and a relatively straight forward fact pattern.

[59] The "difficulty" with the matter really flowed from McDonald's vigorous contestation of the application at the authorization stage and the tenacity of Mtre Zukran in seeing it through should not go unnoticed.

[60] As to the result, as the Court has said, it is an honourable one in the circumstances. Several children's charities benefit and there will be some behaviour modification on the part of McDonald's.

[61] So this said, what of Mtre Zukran's affirmation that the \$415,000 in extrajudicial fees requested by Class Counsel represent a multiplier of 1.73 (modified to 1.69 in the written argument), which is in the range of what the jurisprudence has found to be fair and reasonable?²¹ In fact, even the 3.5 multiplier agreed to by Mr. Bramante is within that range, although at the high end of it.

[62] As the Court has already discussed, in this case the multiplier is not the best way to determine the fees, given its reservations over the number of hours. Of course, the Court cannot determine with precision the number of hours that were really necessary. That exercise would have required a lengthy hearing, the scope of which would not have been a good use of judicial resources.

[63] A better approach is for the Court to fall back on the 30% contingency, which when used with the \$1,000,000 cy-près payment leads to an appropriate amount for extrajudicial fees of \$300,000. The Court also recognizes that the matter required more time than anticipated due to it being highly contested, such that it is appropriate to award an additional amount which, somewhat arbitrarily, it fixes at \$50,000, or 5% of \$1,000,000.

[64] In conclusion, considering the cy-près payment of \$1,000,000, the Court concludes that legal fees of \$350,000 plus applicable taxes are appropriate, albeit somewhat generous.²²

²⁰ *Bramante c. Restaurants McDonald's du Canada limitée*, 2018 QCCS 4852, para. 57.

²¹ *Marcil c. Commission scolaire de la Jonquière*, 2018 QCCS 3836, para. 125 at footnote 22.

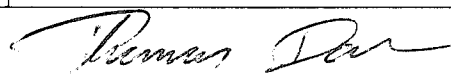
²² In an interim judgment rendered on March 19, 2020, the Court exceptionally approved the advance payment of Class Counsel's fees in the amount of \$207,500.00 plus taxes and the \$25,000.00 inclusive of taxes in disbursements; *Bramante c. Restaurants McDonald du Canada limitée*, 2020 QCCS 1006.

[65] The disbursements of \$25,000 are reasonable.

PAR CES MOTIFS, LE TRIBUNAL: FOR THESE REASONS, THE COURT:

<p>[66] ACCUEILLE en partie la demande du demandeur en approbation de l'entente de règlement (« la transaction ») et pour l'approbation des honoraires des avocats du groupe;</p>	<p>GRANTS the Representative Plaintiff's Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees in part;</p>
<p>[67] 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;</p>	<p>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;</p>
<p>[68] APPROUVE la transaction conformément à l'article 590 du <i>Code de procédure civile du Québec</i>, sous réserve de l'ordonnance sur les honoraires extrajudiciaires et ORDONNE aux parties de s'y conformer;</p>	<p>APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i>, subject to the order on extrajudicial fees and ORDERS the parties to abide by it;</p>
<p>[69] DÉCLARE, sous réserve de l'ordonnance sur les honoraires extrajudiciaires, 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'énoncé aux présentes;</p>	<p>DECLARES, subject to the order on extra-judicial fees, 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;</p>
<p>[70] ORDONNE et DÉCLARE que le présent jugement, incluant la transaction, lie chaque Membre du Groupe qui ne s'est pas exclu;</p>	<p>ORDERS and DECLARES that this judgment, including the Settlement Agreement, shall be binding on every Class Member who has not excluded himself of herself;</p>

[71] APPROUVE le paiement aux Avocats du Groupe des honoraires extrajudiciaires de 350 000 \$, plus les taxes applicables et les débours prévus au paragraphe 12 de la transaction;	APPROVES the payment to Class Counsel of extrajudicial fees in the amount of \$350,000, plus applicable taxes and the disbursements as provided for at Section 12 of the Settlement Agreement;
[72] ORDONNE que les prélèvements pour le <i>Fonds d'aide aux actions collectives</i> soient remis conformément à la <i>Loi sur le Fonds d'aide aux actions collectives</i> et au <i>Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives</i> ;	ORDERS that the levies for the <i>Fonds d'aide aux actions collectives</i> be remitted according to the <i>Act Respecting the Fonds d'aide aux actions collectives</i> and the <i>Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives</i> ;
[73] ORDONNE aux parties de faire rapport de l'exécution du jugement dans un délai de 90 jours du present jugement;	ORDERS the parties to render account of the execution of the judgment within 90 days of the present judgment;
[74] LE TOUT , sans frais de justice.	THE WHOLE , without legal costs.



 THOMAS M. DAVIS, J.C.S.

Mtre Joey Zukran
 LPC AVOCAT INC.
 aAttorneys for the Representative Plaintiff

Mtre Bernard Amyot, Ad. E.
 LCM AVOCATS INC.
 Senior counsel

Mtre Doug Mitchell
 IMK S.E.N.C.R.L/IMK L.L.P.
 Attorneys for the Defendant

Hearing date: January 22, 2021

TABLE OF CONTENTS

INTRODUCTION 1

1. Context..... 2

2. Issues in dispute 4

3. Analysis..... 4

 3.1 Introduction 4

 3.2 The Cy-près Payment..... 6

 3.3 The Extrajudicial Fees 7

TABLE OF CONTENTS..... 16