

**SUPERIOR COURT  
(Class Actions)**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000941-183

DATE: March 8 , 2021

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

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**SERGIO LIMA**  
Applicant

v.

**GOOGLE LLC**  
Defendant

-and-

**FONDS D'AIDE AUX ACTIONS COLLECTIVES**  
Impleaded Party

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**JUDGMENT APPROVING THE SETTLEMENT AGREEMENT  
AND CLASS COUNSEL FEES**

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- [1] **CONSIDERING** the Applicant's *Application for Approval of a Class Action Settlement and Class Counsel Fees* (the "**Application**");
- [2] **CONSIDERING** that on August 15, 2018, the Applicant filed an Application for Authorization to Institute a Class Action and to Obtain the Status of Representative ("Application" or "Action"), on behalf of the following class:
- "All persons residing in Québec who owned or used a smartphone running the Android operating system in 2017, or any other group to be determined by the Court."
- [3] **CONSIDERING** the material filed in the Court record, including the national settlement agreement dated November 30, 2018 (the "**Settlement Agreement**");
- [4] **CONSIDERING** that the Settlement Agreement has been approved in both British Columbia and Ontario;<sup>1</sup>

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<sup>1</sup> *Emond v. Google LLC*, 2021 ONSC 302; *Chartrand v. Google LLC*, 2021 BCSC 7.

- [5] **CONSIDERING** that by virtue of the Settlement Agreement, Google LLC has agreed to pay an inclusive amount of \$1,000,000 to resolve the litigation, without admission of liability;
- [6] **CONSIDERING** that after deduction for class counsel fees, disbursements (including costs of notice) and applicable taxes, and any payments to representative plaintiffs in the BC and Ontario Actions, and the *Fonds d'aide aux actions collectives* in respect of the Quebec Action, the Settlement Agreement provides for the remaining amount to be distributed by way of cy-près donation to the Law Foundation of British Columbia, the Law Foundation of Ontario, and the *Fondation du Barreau du Québec*, in equal shares (to the extent possible), such that Class members will not receive direct payments under the Settlement Agreement;
- [7] **CONSIDERING** that following the receipt of the experts' reports, the Class counsel realized that it was technically impossible to identify individuals who might have been the victims of the alleged fault of Google, the whole as is well explained by both Justice Tucker in the British Columbia judgment and Justice Morgan in the Ontario judgment;
- [8] **CONSIDERING** that the criteria used to analyze the reasonableness of settlement agreements are well established and are well explained by Justice Chatelain in *Halfon c. Moose International Inc.*;<sup>2</sup>
- [9] **CONDIDERING** that cy-près payments have been considered appropriate to settle matters of this nature;<sup>3</sup>
- [10] **CONSIDERING** that the appropriate notice was published in French and in English and that no objection or opt-out was filed by Quebec Class Members;
- [11] **CONSIDERING** that this Court is of the opinion that the Settlement Agreement reached between the parties is fair, reasonable and in the best interest of Class Members and complies with articles 590 and 593 C.C.P.;
- [12] **CONSIDERING** that the parties' joint request to approve the Settlement Agreement, the absence of opposition to such request and the submissions of the *Fonds d'aide aux actions collectives*;
- [13] **CONSIDERING** the Applicant's attorneys' "Retainer and Contingency Fee Agreement" with the Applicant provides that the Applicant's attorneys are entitled, as legal fees, to 33 1/3% of the amounts obtained for class members by way of a settlement;
- [14] **CONSIDERING** that in light of Justice Morgan's judgment in Ontario, the legal fees requested by the Applicant are 30% of the amounts obtained for class members by way of settlement;

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<sup>2</sup> 2017 QCCS 4300, par. 22 and 23.

<sup>3</sup> *Elkoby c. Google inc./ Google* 2018 QCCS 2623.

[15] **CONSIDERING** that the Court concludes that the legal fees should be limited to 30%, largely for the same reasons as Justice Morgan;

**POUR CES MOTIFS, LE TRIBUNAL :**      **FOR THESE REASONS, THE COURT:**

[6] **ACCUEILLE** la présente demande;      [6] **GRANTS** the present Application;

[7] **ORDONNE** que, sauf indication contraire dans le présent jugement ou tel que modifié par celui-ci, les termes commençant par une majuscule utilisés dans les présentes ont le sens défini dans l'Entente de règlement;

[7] **ORDERS** that, except as otherwise specified in, or as modified by this judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement;

[8] **ORDONNE et DÉCLARE** que l'Entente de règlement (y compris son Préambule et ses Annexes) :

a) est juste, raisonnable et dans le meilleur intérêt des membres du groupe;

b) est par les présentes approuvée conformément aux articles 590 et 593 C.p.c.; et

c) doit être mise en œuvre conformément à toutes ses conditions;

[8] **ORDERS and DECLARES** that the Settlement Agreement (including its Preamble and its Schedules):

a) is fair, reasonable and in the best interests of the Class Members;

b) is hereby approved pursuant to articles 590 and 593 C.C.P.; and

c) shall be implemented in accordance with all of its terms;

[9] **ORDONNE** que le montant du règlement énoncé dans l'Entente de règlement sera fourni en pleine satisfaction des obligations de la défenderesse en vertu de l'Entente de règlement;

[9] **ORDERS** that the Settlement Amount set forth in the Settlement Agreement shall be provided in full satisfaction of the obligations of the Defendant under the Settlement Agreement;

[10] **DÉCLARE** que l'Entente de règlement constitue une transaction conforme à l'article 2631 du *Code civil du Québec* qui lie toutes les parties et tous les Membres du Groupe qui ne se sont pas exclus en temps opportun;

[10] **DECLARES** that the Settlement Agreement constitutes a transaction in conformity with article 2631 of the *Civil Code of Quebec* which is binding upon all parties and all Class Members who have not excluded themselves in a timely manner;

[11] **DÉCLARE** que tous les Membres du Groupe, à moins qu'ils ne se soient retirés avant la date limite de retrait, seront réputés avoir choisi de participer au règlement et seront liés par l'Entente de règlement et le présent jugement;

[11] **DECLARES** that all Class Members, unless they opted out prior to the Opt-Out Deadline, shall be deemed to have elected to participate in the Settlement and shall be bound by the Settlement Agreement and this Judgment;

[12] **APPROUVE** le paiement aux avocats du groupe de leurs honoraires au montant 300 000 \$ et débours extrajudiciaires;

[13] **DISPENSE** les parties de tout autre avis aux Membres du Groupe suite à l'approbation de la transaction;

[14] **ORDONNE** que les prélèvements pour le *Fonds d'aide aux actions collectives* prévus à l'Entente de règlement soient remis conformément à la *Loi sur le Fonds d'aide aux actions collectives* et au *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*;

[15] **ORDONNE** que le don cy-près soit fait conformément à l'Entente de règlement à : the Law Foundation of British Columbia, the Law Foundation of Ontario et la Fondation du Barreau du Québec;

[16] **DÉCLARE** que, dans l'éventualité où l'Entente de règlement est résiliée conformément à ses modalités, le présent jugement sera déclaré nul et sans effet;

[17] **ORDONNE** qu'une copie du présent jugement soit affichée sur le site Internet des avocats du groupe et sur le Registre des actions collectives du Québec;

[18] **PREND ACTE** de l'engagement des avocats du demandeur de produire un rapport d'administration quant à la distribution du montant du règlement, conformément à l'article 59 du *Règlement de la Cour supérieure en matières civiles*, et d'en notifier le Tribunal et le Fond d'aide aux actions collectives;

[12] **APPROVES** the payment to Class Counsel of its extrajudicial fees of \$300,000 and disbursements;

[13] **EXEMPTS** the parties from any further notice to Class Members members following approval of the transaction;

[14] **ORDERS** that the levies for the *Fonds d'aide aux actions collectives* as provided for in the Settlement Agreement be remitted according to the *Act respecting the Fonds d'aide aux actions collectives* and the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*;

[15] **ORDERS** that the Cy-près Donation be made in accordance with the Settlement Agreement to: the Law Foundation of British Columbia, the Law Foundation of Ontario and the Fondation du Barreau du Québec;

[16] **DECLARES** that in the event that the Settlement Agreement is terminated in accordance with its terms, that this Judgment shall be declared null and of no effect;

[17] **ORDERS** that a copy of this Judgment shall be posted on Class Counsel's website as well as the Québec Class Action Register;

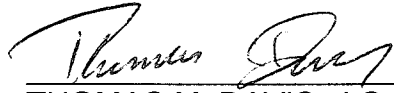
[18] **TAKES NOTICE** of the Applicant's counsel's undertaking to produce a report on administration of the settlement funds, pursuant to section 59 of the *Regulation of the Superior Court of Québec in civil matters*, and to give notice thereof to the Court and the Fonds d'aide aux actions collectives;

[19] **DÉCLARE** que le Tribunal demeure saisi du dossier jusqu'au prononcé du jugement de clôture;

[19] **DECLARES** that the Court remains seized of the matter until a closing judgment is pronounced;

**SANS FRAIS.**

**WITHOUT COSTS.**



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THOMAS M. DAVIS, J.C.S.

Mtre Careen Hannouche  
KLEIN AVOCATS PLAIDEURS INC.  
Counsel to the Applicant

Mtre Noah Boudreau  
FASKEN MARTINEAU DUMOULIN  
Counsel to the Defendant

Mtre Kloé Sévigny  
FONDS D'AIDE AUX ACTIONS COLLECTIVES

Hearing date: February 19, 2021