

Translated from the original French

SUPERIOR COURT
(Class Action Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF QUEBEC

No.: 200-06-000225-188

DATE: July 30, 2021

PRESIDING: THE HONOURABLE DAMIEN ST-ONGE, J.S.C.

LAURY HARVEY

Plaintiff

v.

ARCTIC CAT INC.

and

ARCTIC CAT SALES INC.

and

YAMAHA MOTOR CANADA LTD./YAMAHA MOTEUR DU CANADA LTÉE

and

YAMAHA MOTOR CORPORATION, U.S.A.

and

YAMAHA MOTOR CO. LTD.

Defendants

**JUDGMENT ON APPROVAL OF A TRANSACTION
AND TO APPROVE COUNSEL FEES**

OVERVIEW

[1] The plaintiff requests that the Court approve the National Settlement Agreement and order its implementation.

[2] He also seeks approval for the payment of class counsel fees, which total \$256,937.89, including disbursements of \$2,748.29.

[3] For the reasons hereinbelow, the requests are granted.

[4] The agreement is fair, equitable, and in the interest of members.

[5] Furthermore, the counsel fees are justified by the circumstances and proportionate to the services rendered.

ANALYSIS

[6] On July 22, 2019, the undersigned judge was appointed by the Associate Chief Justice at the time to ensure special case management and hear any proceedings in this class action.

[7] On March 8, 2020, the Court authorized the class action against the defendants, defined the common cause of action, described the class, approved the content and means of dissemination of the pre-approval notice to class members and ascribed to the plaintiff the status of representative plaintiff.

[8] The Court also appointed a claims administrator, namely EPIC Global Inc., for the purposes of a national settlement agreement and subject to the conditions stipulated in such agreement.

[9] A pre-approval notice was published and no member opted out of the proposed settlement before the prescribed deadline to object.

[10] The plaintiff seeks the approval of the Agreement entered into by the parties on January 21, 2021, definitively settling the entire dispute.

[11] The Court must look after the interests of the members. To do so, it must ensure that the transaction or settlement agreement, like the class counsel fees, achieve the conclusions sought in the class action suit.¹

1. Is the proposed settlement fair, reasonable and in the interest of the intended class members?

1.1 Conclusion

¹ *L'Oratoire Saint-Joseph du Mont-Royal v. J.J.*, 2019 SCC 35; *Solkin (Succession de Solkin) c. Procureur général du Canada*, 2021 QCCS 1665, at paras. 11–13.

[12] The Court answers this question in the affirmative and declares the settlement between the parties to be fair, reasonable, and in the interest of the members.

1.2 Relevant facts

[13] The class members are persons who purchased or leased one of the snowmobiles contemplated in the action, namely:

[TRANSLATION]

All persons in Canada who purchased and/or leased a snowmobile with a 7000 or 1049cc engine designed, developed, manufactured, commercialized and/or sold by one of the defendants (the "Affected snowmobiles" **).

**The Affected snowmobiles are the following models, for the years 2014 to 2018:

- From Arctic Cat :
 - ZR 7000 LXR
 - ZR 7000 Sno Pro
 - ZR 7000 Limited
 - ZR 7000 El Tigre
 - ZR 7000 RR
 - Pantera 7000
 - Pantera 7000 Limited
 - M 7000 Sno Pro
 - XF 7000 Cross Country
 - XF 7000 Crosstour
 - XF 7000 High Country
 - XF 7000 Limited
 - XF 7000 LXR
 - XF 7000 Sno Pro
 - XF 7000 Cross Country Sno Pro

- From Yamaha:
 - The Viper series

[14] The Settlement Agreement provides for settlement benefits in kind, cash, or convertible credits, which can be combined by the same Settlement Class Member, namely someone:

- Who owns or leases a snowmobile that has not reached a maximum distance travelled of 30,000 kilometres may be entitled to have the permanent fix for the starter installed free of charge (Category 1 Claim – Extended repair program);

- Who, prior to September 14, 2020, had the starter control unit of a snowmobile reprogrammed pursuant to certain service bulletins, may be entitled to receive a credit of C\$80 or C\$160 (Category 2 claim – Repair work credit);
- Who, prior to September 14, 2020, incurred compensable disbursements arising from a defective snowmobile starter may be entitled to a credit of C\$200 per incident, up to a maximum of three incidents, for a maximum combined credit value of C\$600 (Category 3 claim – Compensable disbursements);
- Who, at the relevant time: (1) had the status of past owner and (2) had sold their snowmobile on a date subsequent to the circumstances for which credits are offered, may be entitled to recover, on an individual basis, an amount payable in cash equal to the combined value of the credits he or she would otherwise have been entitled to receive and redeem during the claims period (Category 4 claim – Settlement benefits to past owners).

[15] The credits can be applied to a wide variety of goods and services in the ordinary course of using a snowmobile and any credit balance that is unused at the end of the claims period set out in the National Settlement Agreement will be convertible into cash.

[16] The claims process is simple, quick, and efficient.

[17] The defendants are entirely responsible for the administrative costs, including those related to the notices and the cost of managing the claims, as well as the class counsel fees and disbursements.

[18] The class action concerns approximately 12,869 snowmobiles, and the total value of the credits and compensable disbursements exceeds \$1,000,000 for the defendants.

1.3 Legal principles

[19] Section 590 *C.C.P.* states:

590. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.

In the case of a transaction, the notice must state that the transaction will be submitted to the court for approval on the date and at the place indicated. It must specify the nature of the transaction, the method of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also inform class members that they may assert their contentions before the court regarding the proposed transaction and the distribution of any remaining balance. The judgment approving the transaction determines, if necessary, the mechanics of its execution.

[20] The Court agrees with the remarks of Sheehan J. in *Solkin (Succession de Solkin) c. Procureur general du Canada, supra*:

[TRANSLATION]

[15] Although article 590 *C.C.P.* does not state any specific criterion, it is now trite law that the role of the court that is called upon to approve a transaction is to ensure that the transaction is fair and equitable, and in the fundamental interest of the class members. In so doing, the Court must weigh the benefits of the agreement for members and compare them to the disadvantages. It must also take into account the initial objectives of the originating application and compare them with the concrete advantages of the transaction for members. Finally, the Court must ensure that [TRANSLATION] “the integrity of the judicial process is maintained.”

[16] Quebec case law has mainly also adopted certain additional criteria elaborated by Sharpe J. in *Dabbs v. Sun Life Assurance Co. of Canada*:

- 16.1 Likelihood of success of the case
- 16.2 Amount and nature of discovery evidence
- 16.3 Terms and conditions of settlement
- 16.4 Recommendation of counsel and their experience
- 16.5 Future expense and likely duration of litigation
- 16.6 Recommendation of neutral parties, if any
- 16.7 Number and nature of objections to the transaction; and
- 16.8 The good faith of the parties and the absence of collusion.

[17] As certain judges have noted: [TRANSLATION] “analysis is a delicate exercise, because once an agreement is reached, the usual adversarial process gives way to unanimity of the parties that signed the transaction and which have every interest in seeing it approved by the Court.” Furthermore, at the approval stage, the Court [TRANSLATION] “generally has only limited knowledge of the circumstances and issues of the dispute.”

[18] Nonetheless, even if it must remain vigilant, failing a breach of public order, the Court must approve a transaction if such transaction meets the criteria and is in the fundamental interest of class members.

[19] On the one hand, the Court must encourage the settling of disputes through negotiation since such a solution is generally in the fundamental interest of the parties. Indeed, a quick resolution of disputes promotes access to justice. It avoids long and costly trials, which helps to conserve judicial resources. These

advantages respect the objective stated in the preliminary provision of the C.C.P., which reads: “This Code is designed to provide, in the public interest, means to prevent and resolve disputes and avoid litigation through appropriate, efficient and fair-minded processes that encourage the persons involved to play an active role.”

[20] On the other hand, reducing the time between the filing of the application and the distribution of the benefits has an impact on the rate of claims and members’ ability to prove that they belong to the class.

[21] For the same reason, a simple, quick, and efficient claims process that minimizes administrative costs also promotes the approval of the agreement.

[22] The agreement does not have to be perfect. It must be remembered that an agreement negotiated to avoid the risks and costs of a trial will necessarily contain mutual concessions. Since settlement discussions are protected by privilege, the reasons leading to these compromises are not always disclosed.

[23] It is not up to the Court to modify all or part of the transaction concluded between the parties, even though it may suggest to the parties that they amend it to correct certain deficiencies to ensure its approval. The proposed discharge must be the subject of special attention so that it does not release the defendants from liability for behaviours that do not arise from the assertions made in the complaint or for which the plaintiffs are not compensated.²

[Footnotes omitted.]

1.4 Discussion

[21] The required notices³ were sent, and the administrator filed its reports.⁴

[22] There are no requests to opt out of the Agreement.⁵

[23] It only remains for the Court to determine, based on the criteria listed above, whether the Agreement is reasonable, since it does not have to be perfect.

1.4.1 Likelihood of success of the case and the evidence

[24] The defendants deny any liability or fault in the present case.

[25] The grounds and conclusions of the application involve significant testimonial and documentary evidence as well as expert opinion over a period of close to ten years.

² *Solkin (Succession de Solkin) c. Procureur général du Canada*, supra note 1, at paras. 15–23.

³ Exhibit R-2.

⁴ Exhibit R-4.

⁵ Exhibit R-3.

[26] The technical nature of the causes of action alleged and the issues constitute a heavy burden for the plaintiff, the result of which could be uncertain.

[27] An agreement was reached even before the class action was authorized. The class action was authorized for the purpose of presenting an application for the approval of the Agreement.

[28] In spite of the broad criteria to authorize a class action, certain judgments have refused similar proceedings concerning latent defects or manufacturing or design defects in motor vehicles.⁶

[29] Furthermore, a judgment on authorization in no way impedes the defendants' right to appeal, which would cause delays and additional costs to the parties.

[30] There also remains a risk that all or part of some conclusions, members, or heads of damage may be rejected.

[31] Overall, none of the parties could be sure of the outcome of the dispute and a reasonable compromise was in the interest of all.

1.4.2 Settlement terms and conditions

[32] Section 5 of the National Settlement Agreement identifies the Settlement Class Members and the settlement benefits to which each one is entitled based on his or her personal situation.

[33] The benefits are in addition to the permanent fix of the starter on Affected snowmobiles.

[34] The defendants⁷ undertake to grant credits on a wide range of possible transactions for goods and services offered in the ordinary course of snowmobile use.

[35] In addition, any balance of credit that is unused by the member will be convertible into one lump-sum cash payment.

[36] Finally, it appears from the sworn statement signed by one lawyer for the class that the amount of \$200 offered per incident, up to a maximum of three (3) incidents, compensates the disbursements incurred by a member where the defective starter failed to work.

⁶ *Hébert c. Kia Canada inc.*, 2015 QCCA 1911; *Dei Guidice c. Honda Canada Inc.*, 2005 CanLII 20593 (QC CS)

⁷ Sworn statement of Scott Weinmann, Arctic Cat Sales, dated June 15, 2021 and sworn statement of Peter Smallman-Tew, Yamaha Motor Canada Ltd., dated June 16, 2021.

[37] Administrative costs, including expenses relating to the notices to members, are entirely payable by the defendants in addition to the class counsel fees and disbursements, which will be discussed later.

[38] As for the claims process, it seems that it is simple and efficient. It provides for the equitable treatment of the members' claims.

[39] The administrator retained has the necessary resources to appropriately manage the members' claims and make use of adapted technological methods and a vast dealer network to implement the National Settlement Agreement.

[40] In conclusion, the conditions of the Agreement ensure fair, equitable and efficient treatment of the claims of the Settlement Class Members.

1.4.3 Recommendation of counsel and their experience

[41] Members have the privilege of benefiting from counsel who have extensive and solid experience in class action lawsuits, as do the defendants.

[42] The Agreement was reached following a rigorous negotiation process and is based on objective elements that take into account mutual and reciprocal concessions.

[43] The Court has no hesitation in accepting Counsel's recommendation to approve the Agreement between the parties.

1.4.4 Future expense and likely duration of litigation

[44] It is a matter of judicial notice that a case challenged in this matter, also involving foreign corporations, can only result in a considerable investment of time and financial and human resources for the parties.

[45] In addition to significant factual and documentary evidence, the issues call for complex expert evidence.

[46] All these elements lead to a long trial and proceedings stretching out over several years, not to mention possible appeals in the course of proceedings or of the final judgment.

[47] This criterion also supports approving the Agreement.

1.4.5 Recommendation of neutral parties

[48] This criterion does not apply here.

1.4.6 Number and nature of objections to the National Settlement Agreement

[49] It appears from the evidence⁸ and submissions from class counsel, that despite notices to the class members and their widespread dissemination, there have been no objections or requests to opt out from Settlement Class Members.

[50] This all points to the reasonableness of the Agreement.⁹

1.4.7 The good faith of the parties and the absence of collusion

[51] Mr. Harvey, representing the class members, approves of the Agreement and seeks the Court's approval. He has been in attendance since the beginning of the proceedings and has fully assumed his role as representative.

[52] The transaction has been negotiated in good faith and there is no collusion to benefit or disadvantage anyone.

1.4.8 Additional considerations relating to a transaction by way of credit

[53] The credits granted to the Settlement Class Members may easily be used by the class members for any future use of their snowmobile and for a targeted range of goods and services commonly used by those who enjoy snowmobiling.

[54] In the Court's opinion, this is the equivalent of cash compensation.

[55] Furthermore, financial compensation for unused credits will be given to class members who want it.

[56] Even though settlements by way of credits or coupons have been the subject of some criticism by scholarly commentary and case law in the past decade, the current state of case law is that indemnities in the form of credits do not per se compromise the fairness and reasonableness of a transaction, although the Court may, depending on the circumstances, be especially vigilant when analyzing it.¹⁰

[57] Each case turns on its own facts and must be analyzed according to its specific circumstances and particularities.

[58] A review of this scholarly criticism and case law as a whole argues in favour of approving the National Settlement Agreement, both in light of the usual analysis criteria and of the considerations specific to the use of credits.

[59] In fact, the Court considers the following from the National Settlement Agreement and Exhibits REG-1 to 5, including the affidavits filed in the record:

⁸ Exhibits R-3 and R-4.

⁹ *Samson c. Busbud Inc.*, 2019 QCCS 5059; *Halfon c. Moose International Inc.*, 2017 QCCS 4300.

¹⁰ *Abihisira c. Stubhub Inc.*, 2020 QCCS 2593, at paras 25–37.

- (a) The goals of deterrence and behaviour modification (whether or not the allegations of the class action are true) are achieved by the permanent fix offered free of charge by the defendants to the Settlement Class Members;
- (b) The use of credits concerns two (2) of the four (4) categories of settlement benefits, because Category 1 claims are satisfied in kind (permanent fix free of charge) and Category 4 claims are satisfied through a cash payment, making the National Settlement Agreement a hybrid type compromise;
- (c) The value of the credits is reasonable, even high, given the foreseeable damage and the relevant case law guidelines, and covers all or part of the payment of a broad range of relatively short-term, predictable everyday consumer goods and services;
- (d) It is highly likely that the credits will be used considering, in particular, (1) the long-term business relationship between the authorized dealers and the Settlement Class Members, (2) the broad range of products and services that can be obtained for the credits to meet the regular snowmobile maintenance needs of Settlement Class Members, (3) the two-year claim period, (4) the simple and efficient online claims process described previously and (5) the defendants' extensive national network of authorized dealers for the purposes of the National Settlement Agreement;
- (e) The full convertibility of unused credit balances for Category 2 and 3 claims at the end of the claim period;
- (f) The direct correspondence between, on the one hand, the settlement indemnities and the credits issued and, on the other hand, the failure of the starter and the alleged damage;
- (g) The absence of undesirable incentives to obtain useless or costly goods and services for the Settlement Class Members; and
- (h) The lack of any connection or consequence between, on the one hand, the cost of notices, managing claims, and class counsel fees and, on the other hand, the value of the credits.

[60] The credits offered by the defendants quickly and efficiently provide a fair indemnity that is directly related to the issues raised by the class action;

[61] These credits cover a broad range of possible transactions in the form of predictable everyday consumer goods and services for the members, with retail prices varying between C\$14 and C\$950, while the value of the credits may vary between C\$80 and C\$760.

[62] As a result, the value of the credits is sufficient to allow Settlement Class Members to make transactions without having to pay anything, where such possible transactions meet their regular needs.

[63] Moreover, the hybrid nature of the National Settlement Agreement (repairs in kind, credits, and cash payments) as well as the convertibility of balances that are unused by the end of the claim period provides appropriate compensation in kind and in cash.

[64] In conclusion, the National Settlement Agreement entered into between the parties offers a fair and reasonable compromise that meets the interest of the Settlement Class Members. It is the result of intensive negotiation involving give and take to achieve a transaction that is fair and equitable for the Settlement Class Members and the defendants;

[65] Furthermore, there is nothing to prevent the Court from keeping EPIQ Global Inc. as the claims administrator for the purposes of managing the notice program, the treatment of claims, and the distribution of the cash amounts payable to the Settlement Class Members.

2. Class Counsel Fees and disbursements under the National Settlement Agreement

2.1 Conclusion

[66] The Court approves the payment of class counsel fees in the amount of \$254,189.60, and disbursements in the amount of \$2,748.29.

[67] An application to approve additional fees may also be submitted to the Court.

2.2 Facts relevant to this issue

[68] The table of class counsel fees¹¹ shows a total of 292.1 hours worked in this file by various class counsel.

[69] At the outset, class counsel services were retained based on a contingency fee of 30% of any amount recovered under the judgment.

[70] However, during negotiations between the parties, which led to the National Settlement Agreement, it was agreed that class counsel fees and disbursements would be assumed by the defendants.

¹¹ Exhibit RH-2.

[71] It was agreed that a 2.5 multiplier would be applied to the fees invoiced by class counsel, based on the hourly rate of each lawyer and for the work done since the beginning of the proceedings until the date of the agreement in principle.

[72] The fees are payable in addition to the amounts and/or credits to be paid to class members.

2.3 Legal principles

[73] Article 593 of the *Code of Civil Procedure* regulates the payment of class counsel fees and disbursements:

593. The court may award the representative plaintiff an indemnity for disbursements and an amount to cover legal costs and the lawyer's professional fee. Both are payable out of the amount recovered collectively or before payment of individual claims.

In the interests of the class members, the court assesses whether the fee charged by the representative plaintiff's lawyer is reasonable; if the fee is not reasonable, the court may determine it.

Regardless of whether the Class Action Assistance Fund provided assistance to the representative plaintiff, the court hears the Fund before ruling on the legal costs and the fee. The court considers whether or not the Fund guaranteed payment of all or any portion of the legal costs or the fee.

[74] In *Masson c. Telus Mobilité*¹² Samson, J. stated that before a judge can approve counsel fees, he or she must be convinced that they are fair and reasonable in view of the circumstances of the case and proportionate to the services rendered.

[75] He also added:

[TRANSLATION]

[16] As a general rule, a class action is quite often supported by a law firm, which assumes all the risks by way of a contingency fee agreement for a percentage once a settlement is ratified by the court or there is a final judgment.

[17] Since a class action is a tool to access justice, the Court must carefully analyze the fee agreement. It must not discourage counsel by using an approach that is too conservative because only lawyers can institute such proceedings. That said, the ultimate winners should not be the lawyers, but the class members, who are, for the most part, simple consumers. In order to strike a fair balance, the Court must consider the work done by the lawyer and the level of risk personally assumed.

¹² *Masson c. Telus Mobilité*, 2020 QCCS 4496

[76] The Court has historically approved the multiplier method to determine the reasonableness of the fees claimed by Class Counsel.

[77] In *Lépine c. Société canadienne des postes*,¹³ the judge stated:

[TRANSLATION]

[30] This net amount totalling \$715,345.30 is, in this case, the average hourly rate of \$229.28 for the 1,248 hours worked in this file, using a multiplication factor of 2.5. After analyzing the file, the court finds that both the number of hours worked and the average hourly rate, as well as the multiplication factor of 2.5 are reasonable under the circumstances.

[31] In fact, clause 7 of the mandate I-1, signed in 2001, provides that the remuneration of counsel acting for the plaintiff (ULL), will be determined by taking into account, *inter alia*, counsel's usual hourly rate of \$300 (subject to change in the future), if the mandate is terminated after authorization of the class action.

[32] In any event, since the intervenor's extrajudicial fees are fully borne by the defendant Canada Post, the class members do not suffer any prejudice.

[33] In light of the foregoing, the court finds that the amount of \$800,000 for counsel fees and judicial and extrajudicial disbursements as well as legal costs payable to the intervenor by Canada Post for the services rendered until May 9, 2011, is reasonable and fully justified, and must therefore be approved.

[78] In general, the multiplier varies between 2 and 3.2.¹⁴

[79] Finally, fees must also be assessed in terms of the factors set forth in the *Code of Professional Conduct of Lawyers*,¹⁵ and more specifically in sections 7, 101 and 102.

2.4 Discussion

[80] Class counsel are seasoned lawyers with many years of experience in class action lawsuits.

[81] The Court was able to observe the experience and professionalism of the attorneys, whose lead counsel has completed more than 40 class action suits over the years.

¹³ *Lépine c. Société canadienne des postes*, 2017 QCCS 1407.

¹⁴ *Schachter c. Toyota Canada inc.*, 2014 QCCS 802 (multiplier of 2); *Sonego c. Danone inc.*, 2013 QCCS 2616 (multiplier of 3.2); *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432 (multiplier of 2.5), incidental appeal allowed for the sole purpose of substituting an amount of \$590,700 for \$585,700, granted as counsel fees.

¹⁵ *Code of Professional Conduct of Lawyers*, CQLR, c. B-1, r 3.1.

[82] The time spent on the file as at September 14, 2020, seems reasonable considering the nature of the case, as well as the hourly rates of each intervenor.

[83] Moreover, there is still a sizable amount of work to be done to supervise the distribution of amounts under the National Settlement Agreement and to meet the requests of the Settlement Class Members.

[84] The lawyers assumed all the financial risks of the class action as well as the disbursements; even if they obtained financial assistance from the Class Action Assistance Fund, none of it was used for this class action.

[85] Through their work, class counsel negotiated and completed an agreement for the benefit of the members totalling more than one million dollars (\$1,000,000).

[86] In the Court's view, it is appropriate to approve the Agreement with regard to the fees and disbursements agreed upon by and between the parties and that a multiplier of 2.5 be applied to the hours billed by class counsel until September 14, 2020.

[87] However, no multiplier shall be applied for the work done during the period between September 14, 2020, and the effective date of the final agreement.

[88] For ease of reference, the Court provides a simultaneous English translation of the conclusions of its judgment. In the event of any discrepancy, the French version shall prevail.

FOR THESE REASONS, THE COURT:	PAR CES MOTIFS, LE TRIBUNAL :
[88] GRANTS the present application;	[88] ACCUEILLE la présente demande;
[89] DECLARES that, for the purposes of the present judgment, in addition to the definitions used in it, the definitions set out in the National Settlement Agreement joined as exhibit R-1 shall apply and be incorporated herein by reference;	[89] DÉCLARE que, pour l'application du présent jugement, au surplus des définitions utilisées dans celui-ci, les définitions contenues dans l'Entente de règlement nationale jointe à titre de pièce R-1 s'appliquent et sont incorporées par renvoi dans les présentes;
[90] DECLARES that in the case of conflict between the present judgment and the National Settlement Agreement, the present judgment shall prevail;	[90] DÉCLARE qu'en cas de conflit entre le présent jugement et l'Entente de règlement nationale, le présent jugement prévaut;
[91] DECLARES that the National	[91] DÉCLARE que l'Entente de règlement

Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;	nationale est valide, juste, raisonnable et dans le meilleur intérêt des membres du groupe visé par le règlement;
[92] DECLARES that the National Settlement Agreement constitutes a transaction within the meaning of sections 2631 and following of the <i>Civil Code of Québec</i> and that the present judgment binds all parties and Settlement Class Members;	[92] DÉCLARE que l'Entente de règlement nationale constitue une transaction au sens des articles 62631 et suivant du <i>Code civil du Québec</i> et que le présent jugement lie toutes les parties et tous les membres du groupe visé par le règlement;
[93] APPROVES the National Settlement Agreement in accordance with section 590 of the <i>Code of Civil Procedure</i> and ORDERS that it be implemented in accordance with its terms;	[93] APPROUVE l'Entente de règlement nationale conformément à l'article 590 du <i>Code de procédure civile</i> et ORDONNE qu'elle soit mise en œuvre en conformité avec ses termes;
[94] DECLARES that the entire National Settlement Agreement R-1 is an integral part of the present judgment;	[94] DÉCLARE que l'ensemble de l'Entente de règlement nationale R-1 fait partie intégrante du présent jugement;
[95] DECLARES that as of the settlement date, the releasors forever and absolutely release the releasees from the released claims.	[95] DÉCLARE qu'à compter de la date de règlement, les renonciateurs libèrent entièrement et à jamais les renoncataires des réclamations quittancées;
[96] ORDERS that the settlement benefits provided for in the National Settlement Agreement be distributed in accordance with its terms;	[96] ORDONNE que les indemnités de règlement prévues à l'Entente de règlement nationale soient distribuées en conformité avec ses termes;
[97] DECLARES that for the purposes of the implementation and administration of the National Settlement Agreement and of the decisions made by the Claims administrator, the Court shall retain a supervision and direction role, as the circumstances may require, and the parties recognize the Court's jurisdiction to these ends, subject to the	[97] DÉCLARE qu'aux fins de la mise en œuvre et de l'administration de l'Entente de règlement nationale et des décisions prises par l'administrateur des réclamations, le Tribunal conservera un rôle de supervision et de direction, selon ce que les circonstances peuvent exiger, et les parties reconnaissent la compétence du Tribunal à ces fins, sous réserve des modalités énoncées dans l'Entente de règlement nationale et du présent jugement;

<p>conditions set out in the National Settlement Agreement and in the present judgment;</p>	
<p>[98] MAINTAIN the appointment of EPIQ Global Inc. as claims administrator to administer the Notice Program, the claims process and the distribution of the amounts payable in cash to Settlement Class Members, as well as to carry out the other functions, roles and responsibilities of the claims administrator contemplated in the National Settlement Agreement;</p>	<p>[98] MAINTIENT la désignation d'EPIQ Global inc. à titre d'administrateur des réclamations aux fins d'administrer le Programme d'avis, le traitement des réclamations et la distribution des sommes payables en espèces aux membres du groupe visé par le règlement, et pour remplir les autres fonctions, rôles et responsabilités de l'administrateur des réclamations prévues dans l'Entente de règlement nationale;</p>
<p>[99] DECLARES that any information obtained from the Settlement Class Members, collected, used and stored by the claims administrator for the purposes of administering the National Settlement Agreement, be protected in accordance with the <i>Personal Information Protection and Electronic Documents Act</i>, and that information supplied by the Settlement Class Members is strictly private and confidential and shall not be disclosed without the explicit written consent of the concerned Settlement Class Member, except in accordance with the National Settlement Agreement or Court orders;</p>	<p>[99] DÉCLARE que toutes les informations reçues des membres du groupe visé par règlement, recueillies, utilisées et conservées par l'administrateur des réclamations aux fins de l'administration de l'Entente de règlement nationale, sont protégées en vertu de la <i>Loi sur la protection des renseignements personnels et les documents électroniques</i>,¹⁶ et que les informations fournies par les membres du groupe visé par le règlement sont strictement privées et confidentielles et ne seront pas divulguées sans le consentement écrit exprès du membre du groupe visé par le règlement concerné, sauf en conformité avec l'Entente de règlement nationale ou les ordonnances du Tribunal;</p>
<p>[100] ORDERS the claims administrator to provide the Court with all reports and such other information as it may require;</p>	<p>[100] ORDONNE à l'administrateur des réclamations de fournir au Tribunal tous les rapports et tous les autres renseignements que celui-ci pourrait demander;</p>
<p>[101] DECLARES that the releasors have no responsibility or obligation whatsoever regarding the administration of the National</p>	<p>[101] DÉCLARE que les renonciateurs n'ont aucune responsabilité ou obligation quelconque quant à l'administration de l'Entente de règlement nationale;</p>

¹⁶ *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

Settlement Agreement;	
<p>[102] ORDERS that the amount to be withheld by the Fonds d'aide aux actions collectives, as the case may be, from the unused balance of a credit validly issued pursuant to Sections 5.2 b) or 5.3 c) of the National Settlement Agreement shall be established and calculated in accordance with section 42 of the <i>Act respecting the Fonds d'aide aux actions collectives</i> and with section 1(3) of the <i>Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives</i> and shall be payable in cash to the Fonds d'aide aux actions collectives by the claims administrator EPIQ upon production of its final report establishing the validly constituted credit balances;</p>	<p>[102] ORDONNE que le montant à être prélevé par le Fonds d'aide aux actions collectives, le cas échéant, sur le solde inutilisé d'un crédit validement émis aux termes dans paragraphes 5.2 b) ou 5.3 c) de l'Entente de règlement nationale sera établi et calculé conformément à l'article 42 de la <i>Loi sur le Fonds d'aide aux actions collectives</i>¹⁷ et l'article 1(3) du <i>Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives</i> et sera payable en espèces au Fonds d'aide aux actions collectives par l'administrateur des réclamations EPIQ sur production de son rapport final établissant les soldes créditeurs valablement constitués;</p>
<p>[103] ORDERS that the amount to be withheld by the Fonds d'aide aux actions collectives, as the case may be, from an amount payable in cash to a past owner pursuant to Section 5.4 of the National Settlement Agreement shall be established and calculated in accordance with section 42 of the <i>Act respecting the Fonds d'aide aux actions collectives</i> and section 1(3) of the <i>Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives</i> and shall be payable in cash to the Fonds d'aide aux actions collectives by the claims administrator no later than ninety (90) days after the date on which the claims administrator determines that the past owner is entitled to receive this sum in cash;</p>	<p>[103] ORDONNE que le montant à être prélevé par le Fonds d'aide aux actions collectives, le cas échéant, sur un montant exigible en espèces par un ancien propriétaire aux termes de l'article 5.4 de l'Entente de règlement nationale sera établi et calculé conformément à l'article 42 <i>Loi sur le Fonds d'aide aux actions collectives</i> et l'article 1(3) du <i>Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives</i> et sera payable en espèces au Fonds d'aide aux actions collectives par l'administrateur des réclamations au plus tard quatre-vingt-dix (90) jours après la date à laquelle l'administrateur des réclamations détermine que l'ancien propriétaire a le droit de recevoir ce montant en espèces;</p>

¹⁷ *Act respecting the Fonds d'aide aux actions collectives*, CQLR, c. F-3.2.0.1.1.

<p>[104] DECLARES that, in the event that the National Settlement Agreement were to be terminated in accordance with its terms and conditions, the present judgement shall be set aside and declared null and void of no force or effect as if it never existed, upon presentation of an application and after notice to the parties to this effect.</p>	<p>[104] DÉCLARE que, dans l'éventualité où l'Entente de règlement nationale était résiliée conformément à ses conditions, le présent jugement devra être mis de côté et déclaré nul et non avenu et n'aura aucun effet comme s'il n'avait jamais existé, sur présentation d'une demande et après avis aux parties à cet effet;</p>
<p>[105] APPROVES substantially the form and content of the Settlement Notice, in French and in English, exhibits REG-13 and REG-14;</p>	<p>[105] APPROUVE substantiellement la forme et le contenu de l'Avis de règlement, en français et en anglais, pièces REG-13 et REG-14;</p>
<p>[106] APPROVES the Notice Program, exhibit REG-7 and ORDERS that the Settlement Notice be published and distributed substantially in accordance with its terms;</p>	<p>[106] APPROUVE le Programme d'avis, pièce REG-7, et ORDONNE que l'Avis de règlement soit publié et diffusé substantiellement en conformité avec ses termes;</p>
<p>[107] ORDERS that the Settlement Notice, exhibits REG-13 and REG-14 be published at the latest on September 9, 2021;</p>	<p>[107] ORDONNE que l'Avis de règlement, pièces REG-13 et REG-14, soit publié au plus tard le 9 septembre 2021;</p>
<p>[108] APPROVES substantially the form and content of the Claim Form, in French and in English, exhibit REG-4;</p>	<p>[108] APPROUVE substantiellement la forme et le contenu du Formulaire de réclamation, en français et en anglais, pièce REG-4;</p>
<p>[109] DECLARES that by the present judgment, the class action is settled out of Court;</p>	<p>[109] DÉCLARE que par le présent jugement l'action collective est réglée hors Cour;</p>
<p>[110] ORDERS the parties to report in a diligent manner as to the execution of the present judgment and INDICATES that the Court remains seized of the execution of the National Settlement Agreement until it has rendered a closing judgment;</p>	<p>[110] ORDONNE aux parties de rendre compte de façon diligente de l'exécution du présent jugement et INDIQUE que le Tribunal demeure saisi de l'exécution de l'Entente de règlement nationale jusqu'à ce qu'il ait rendu un jugement de clôture;</p>

[111] APPROVES the payment of the fees to class lawyers for an amount of 254 189,60 \$;	[111] APPROUVE le paiement des honoraires aux avocats du groupe pour un montant de 254 189,60 \$;
[112] APPROVES the payment of disbursements to class lawyers for an amount of 2 748,29 \$;	[112] APPROUVE le paiement des déboursés aux avocats du groupe pour un montant de 2 748,29 \$;
[113] ORDERS the payment by the defendants of the fees and disbursements to class lawyers for a total amount of 256 987,89 \$, the whole in addition to the settlement indemnities provided for in the National Settlement Agreement, within 30 days of this judgment;	[113] ORDONNE le paiement par les défenderesses des honoraires et déboursés des avocats du groupe pour un montant totalisant 256 987,89\$, le tout, en sus des indemnités de règlement prévues à l'Entente de règlement nationale, et ce dans un délai de 30 jours à compter du présent jugement;
[114] AUTHORIZES the class lawyers to present the Court a demand for approval of additional fees, in accordance with the terms of the National Settlement Agreement, within 30 days of this judgment;	[114] AUTORISE les avocats du groupe à présenter au Tribunal une demande d'approbation d'honoraires supplémentaires, conformément aux termes de l'Entente de règlement nationale, et ce, dans un délai de 30 jours à compter du présent jugement;
[115] THE WHOLE without legal costs.	[115] LE TOUT sans frais de justice.

(signed)

 DAMIEN ST-ONGE, J.S.C.

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Hearing date: June 18, 2021

Courtesy Translation