

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000859-179

DATE: November 10, 2023

PRESIDING: THE HONOURABLE SYLVAIN LUSSIER, J.S.C.

DENIS GAUTHIER

Representative Plaintiff
v.

DAVID BAAZOV

Defendant

ORDER APPROVING THE SETTLEMENT AGREEMENT AND OTHER RELIEF
(Articles 590, 593 and 595 of the C.C.P)

OVERVIEW

- [1] The present securities class action arises out of the Defendant's alleged misrepresentations relating to a potential going private transaction involving Amaya Inc. ("Amaya")¹, of which Defendant David Baazov was a director and shareholder at different times.
- [2] In September 2023, the Plaintiff and the Class reached a proposed agreement with Defendant David Baazov (the "Agreement"), subject to Court approval, to resolve all claims asserted against the Defendant and to provide a full and final settlement of this class action (the "Class Action"). For purposes of clarity, the Agreement

¹ The capitalized terms have the meaning ascribed thereto in the definitions contained in the Agreement.

does not resolve, settle, release or discharge any claims asserted by the Defendant against the Defendants in Warranty, including any claims contained in the Declaration in Forced Intervention.

- [3] The Agreement was reached without any admission of liability on the part of the Defendant. In fact, the Defendant has denied and continues to deny each, and all of the claims and allegations of wrongdoing made in the Class Action².
- [4] The Agreement provides that the Defendant will pay CDN\$1.8 million, inclusive of capital, interest, additional indemnity, Administration Expenses, Class Counsel Fees, taxes and any other costs or expenses related to the Class Action or the Agreement (the "Settlement Amount"), to resolve, settle and release all claims asserted, or which could have been asserted, against the Defendant by the Plaintiff on his own behalf or on behalf of the Class, as well as to avoid the further expense, inconvenience, distraction of burdensome litigation and risks inherent to this uncertain, complex and protracted litigation.
- [5] Except for the Defendant's obligation to pay the Settlement Amount, the Agreement provides that the Defendant and Counsel for the Defendant shall not have input on, responsibility for or any liability whatsoever with respect to the administration or implementation of the Agreement and Plan of Allocation. It also provides that Counsel for the Defendant cannot make any representations with respect to Class Counsel Fees. The Defendant and Counsel for Defendant have therefore not taken any position or made representations regarding the Plan of Allocation or Class Counsel Fees.
- [6] In this motion, the Plaintiff seeks, without objection from any Class Member:
- a. this Court's approval of the Agreement;
 - b. the approval of the Plan of Allocation, Notices and Notice Plan, Claim Forms, and to set the Claims Deadline; and
 - c. the approval of Class Counsel fees, disbursements, and ancillary relief.
- [7] For the reasons stated below, Class Counsel and the Plaintiff are of the view that the Agreement is fair, reasonable and in the best interests of the Class. In particular, they are of the view that:
- a. it is highly likely that the limitation set forth by the Quebec *Securities Act* would significantly limit the amount of recoverable damages that the Plaintiff and the Class could recover from the Defendant; and

² A copy of the Agreement is attached to the judgment approving the notices for the Settlement approval hearing, dated September 13th, and can be retrieved on Class counsel's website at

<https://www.faguyco.com/class-actions/baazov?lang=fr> or on the Registre des actions collectives at <https://www.registredesactionscollectives.quebec/fr/Consulter/ApercuDemande?NoDossier=500-06-000859-179>

Copie du texte de l'entente de règlement se trouve aux adresses ci-avant mentionnées, sur le site de l'avocat de groupe ou du Registre des actions collectives.

- b. the Agreement represents a significant monetary payment to and for the benefit of the Class.
- [8] Class Counsel and the Plaintiff recommend that this Honorable Court approve the Agreement.
- [9] Class Counsel and the Plaintiff jointly submit that the legal fees and disbursements, as well as other relief requested on this motion are appropriate and request that relief sought be granted.

FACTS RELEVANT TO THE APPROVAL OF THE SETTLEMENT

A. Background of the Present Class Action

- [10] The Class Action was authorized against the Defendant by judgment rendered by Justice François Duprat on August 7th, 2020³. The class was described as follows:

"Class" and "Class Members" are comprised of the following, other than Excluded Persons:

All persons and entities who purchased Amaya Inc. securities during the Class Period and held all or some of those securities until after the Corrective Disclosure;

"Class Period" means the period from February 1st, 2016 to November 21st, 2016, inclusively;

"Excluded Persons" means the Defendant and members of the Defendant's immediate family;

- [11] As expressed above, Class Counsel represented to this Court that the key component of the resolution for them is the limitation set forth by section 225.33 of the *Quebec Securities Act*, likely limiting the amount of damages recoverable from the Defendant. It states, in relevant part:

225.33 Unless the plaintiff proves that the defendant, other than the issuer, authorized, permitted or acquiesced in the release of the document or making of the public oral statement containing the misrepresentation, or the failure to make timely disclosure, while knowing it to be a misrepresentation or a failure to make timely disclosure, the damages payable are the lesser of:

(...)

(2) in the case of a natural person other than an expert, the greater of 50% of the aggregate of that person's compensation from the issuer and its affiliates and \$25,000 or, if the person is a director or officer of an influential person, the greater of 50% of the aggregate of that person's compensation from the influential person and its affiliates and \$25,000; and

(...)

For the purposes of subparagraph 2 of the second paragraph, "compensation" means compensation received during the 12-month period immediately preceding the day

on which the misrepresentation was made or on which the failure to make timely disclosure first occurred, together with the market value of all deferred compensation including, without limitation, options, pension benefits and stock appreciation rights, granted during the same period, valued as of the date that such compensation is awarded.

225.33. À moins que le demandeur n'ait prouvé que le défendeur, à l'exception de l'émetteur, a, en toute connaissance de cause, autorisé ou permis la publication du document ou la déclaration publique contenant l'information fausse ou trompeuse ou le manquement à une obligation d'information occasionnelle ou y a acquiescé, les dommages-intérêts doivent correspondre au moins élevé des montants suivants:

(...)

2° le montant maximal prévu au deuxième alinéa réduit de tout paiement de dommages-intérêts auxquels le défendeur a été tenu par jugement passé en force de chose jugée dans le cadre d'actions, concernant les mêmes informations fausses ou trompeuses ou le même manquement, intentées contre lui en vertu de la présente section ou de dispositions comparables de la législation en valeurs mobilières d'une autre autorité au sens de l'article 305.1 ainsi que de toute somme qu'il a payée dans le cadre de transactions relatives à de telles actions.

(...)

Pour l'application du paragraphe 2° du deuxième alinéa, la rémunération globale comprend la rémunération reçue par la personne au cours de la période de 12 mois précédant immédiatement le jour où l'information fausse ou trompeuse a été publiée ou le premier jour où il y a eu manquement à une obligation d'information occasionnelle, y compris la valeur de marché de toute rémunération différée, notamment des options, des prestations de retraite et des droits à la plus-value d'actions, consentie au cours de cette période, évaluée à la date où la rémunération a été attribuée.

[12] Class Counsel assessed that the limitation fund under section 225.33 would be between approximately \$500,000 and \$1,250,000, unless the Plaintiff can prove the Defendant released a document "knowing it to be a misrepresentation". After conducting oral and documentary discovery of the Defendant, Class Counsel and the Plaintiff are of the view that such evidence is lacking.

B. The Terms of the Agreement and the Proposed Allocation of the Settlement Amount

[13] The Agreement is contingent on the approval of this Court.

[14] Upon this Court's approval, the Agreement will result in the resolution of the Class Action, in its entirety.

[15] The Agreement provides for the payment by the Defendant of the Settlement Amount, inclusive of all administration expenses, class counsel fees, disbursements and applicable taxes.

[16] Class Counsel has identified two groups amongst Class Members based on when they purchased their securities in Amaya and submitted that the strength of the

claims of each group differed substantially.

- [17] In the circumstances, the parties believe that it is equitable and appropriate to allocate the Settlement Amount, after payment of all fees, expenses and disbursements, to reflect the relative strength of the claim pertaining to two applicable periods, and Class Counsel therefore proposes to allocate the Settlement Amount, as follows:
- a. 15% to Class Members who purchased securities between February 1, 2016 and November 13, 2016 (“Class I”); and
 - b. 85% to Class Members who purchased their securities on or after November 14, 2016 (“Class II”).
- [18] Notice of Class Counsel’s proposal for this allocation appeared in the Press Release and Notice to Class Members, who have been given the opportunity to object to this proposal and no objections were received.

THE CRITERIA TO APPROVE A CLASS ACTION SETTLEMENT

- [19] Article 590 *CCP* requires that a court approve a transaction settling a class action if the court is satisfied that the terms of the settlement are fair, reasonable and in the best interests of the class.
- [20] In that regard, when determining whether a transaction should be approved, courts are guided by the following principles:

[20] Le tribunal doit encourager le règlement à l'amiable en donnant effet à la volonté des parties, à moins qu'il y ait atteinte à l'ordre public.

[21] Le tribunal doit prendre garde de ne pas modifier significativement le contrat de transaction conclu par les parties. Le tribunal doit l'approuver tel quel ou refuser de l'entériner, quitte à renvoyer les parties négocier des modifications.

[22] Le tribunal ne doit pas exiger la perfection mais décider si enfin de compte, les avantages pour les membres l'emportent sur les inconvénients.⁴

[our emphasis]

- [21] The reasonability and fairness of proposed settlements are determined further to a review of the following criteria:
- 1- les probabilités de succès du recours collectif;
 - 2- l'importance et la nature de la preuve administrée;
 - 3- les termes et conditions de la transaction (c'est-à-dire, les avantages et les inconvénients pour les membres);
 - 4- la recommandation des avocats et leur expérience;

⁴ *Markus c. Reebok Canada inc.*, 2012 QCCS 3562, at paras. 20 to 22; see also *Halfon c. Mosse International Inc.*, 2017 QCCS 4300, at para. 23 and *Option Consommateurs c. Fédération des caisses Desjardins du Québec*, 2011 QCCS 4841, at paras. 26-27.

- 5- le coût des dépenses futures et la durée probable du litige;
- 6- la recommandation d'une tierce personne neutre, le cas échéant;
- 7- le nombre et la nature des objections à la transaction;
- 8- la bonne foi des parties;
- 9- l'absence de collusion.⁵

A. The Terms and Conditions of the Agreement

- [22] The Agreement provides for the payment by the Defendant in the amount of CDN\$1,800,000, all inclusive.
- [23] This amount will be payable 10 days after the present Judgment has been issued and the time for any appeal therefrom has expired.
- [24] This Settlement Amount is reasonable given the limitations provided for in the Quebec *Securities Act* and the information obtained by the Plaintiff and Class Counsel in the pursuit of the Class Action, according to what was represented by Class Counsel to this Court.

B. The Benefit to The Class

- [25] The proposed Agreement is beneficial to the Class in that it will put an end to the litigation as against the Defendant in exchange for immediate and fair compensation for the Class Members.

C. The Chances of Success

- [26] In Class Counsel's view, this matter presented risks with respect to the nature of the alleged misrepresentations, the lack of evidence and the amount the Class could obtain as recovery given the limitation provided for by the Quebec *Securities Act*. Defendant ardently defended against the Claim.
- [27] The proposed Agreement required compromise by the Parties and is the result of a balancing act between the risks and the benefits at the various stages of the litigation.

D. The Importance and Nature of the Administered Proof

- [28] As a result of Class Counsel's exhaustive work on the matter, including the review of the documents communicated by the Defendant and the conduct of his pre-trial examination, Class Counsel was able to evaluate the risks based on an appropriate evidentiary basis and to negotiate the Agreement.

E. The Anticipated Cost and Time to Obtain Recovery

- [29] The practical value of an expedited resolution of the Class Action is a significant

⁵ *Markus c. Reebok Canada inc.*, 2012 QCCS 3562, at para. 23; *Options consommateurs c. Infineon Technologies a.g.*, 2013 QCCS 1191, at para. 41; *Option consommateurs c. Infineon Technologies a.g.*, 2014 QCCS 4949 at para. 49 and *Pellemans c. Lacroix*, 2011 QCCS 1345, at para. 20.

factor to consider. It is to be remembered that the action was instituted in 2017.

[30] The Agreement will resolve the Class Action in its entirety.

[31] If the Agreement is not approved, the Class Action will proceed and Class Members will not be paid until it is concluded, if successful.

[32] It would likely have taken a few years before the issues were finally adjudicated and, if successful, before the Class Members would be able to recover any monetary compensation from the Defendant.

[33] As stated by Justice André Prévost, in *Pellemans c. Lacroix*, as to the probable course of these types of cases:

[24] Si l'affaire devait aller à procès, le jugement ne serait vraisemblablement prononcé que dans environ 20 ou 24 mois, avec la possibilité d'un appel à la Cour d'appel et, peut-être, à la Cour suprême du Canada. Et ce, sans compter le temps et l'argent qui seraient investis dans les autres recours connexes.

[25] En somme, le rejet du règlement proposé reporterait de cinq à dix ans tout espoir pour les membres d'un remboursement significatif de leurs investissements, sans garantie d'un résultat favorable.

[26] Dans les circonstances, la transaction apparaît juste, équitable et dans le meilleur intérêt des membres du groupe. Elle sera approuvée.⁶

F. Counsel's Recommendation and Experience

[34] Class Counsel, who have extensive expertise in the area of securities class actions and are closely acquainted with the facts underlying the Class Action, recommended the Plaintiff accept the proposed settlement since it is fair, reasonable, in the best interest of the Class, and promotes judicial efficiency and access to justice⁷.

G. The Number and Nature of Objections to the Agreement

[35] Notice of the Approval Hearing was distributed in accordance with the Order rendered by this Court on September 13, 2023.

[36] There have been no objections to the proposed Settlement Agreement, the Plan of Allocation, Class Counsel Fees or otherwise.

H. The Parties' Good Faith and the Absence of any Collusion

[37] The Court, having heard the Parties and reviewed the Plaintiff's sworn statement, is satisfied that:

⁶ *Pellemans c. Lacroix*, 2011 QCCS 1345, at paras. 24-26.

⁷ *Hollick v. Toronto (City)*, 2001 SCC 68, paragr. 27: "the three principal advantages of class actions – judicial economy, access to justice, and behaviour modification".

- a. This resolution is the product of arm's length and protracted adversarial negotiation.
- b. The resolution in principle occurred after protracted negotiation.
- c. The Agreement is the product of that negotiation as well as mutual concessions.⁸

I. Support of the Plaintiff

[38] The Plaintiff, who submitted a sworn statement to that effect, supports and recommends the approval of the Agreement which he considers fair and reasonable.

J. Conclusion

[39] The Court finds that, considering the complexity of the issues in the Class Action and the result achieved, the Agreement is fair and reasonable and in the best interests of the Class.

PLAN OF ALLOCATION

[40] The Plan of Allocation creates a claims-based process for Claimants to seek compensation from the settlement fund, net of administration and other expenses.

[41] The Plan of Allocation categorizes Claimants and adjusts the value of their claims in accordance with the merits of Class I and Class II's claims.

[42] The Plan of Allocation will require Claimants to file a claim with the details of their trading in Amaya securities to be used by the Administrator to first determine the different categories of purchases made and then, for each category, determine the Claimants' losses.

[43] The Plan of Allocation provides for a mechanism to exhaust the allocation in each portion of the Class (Class I or Class II) with a reversion for any remainder to members of the other subclass and divided and paid out on a pro rata basis.

[44] Regarding the scope of the claims process, the Administrator will review claims pursuant to the terms of the Plan of Allocation and determine a Claimant's share of the net settlement fund. Because of the costs of distribution, claims assessed at less than \$50.00 will not be paid out.

[45] If there is a dispute over a claim, the court appointed Referee will adjudicate any such dispute. The Referee suggested by the parties, Me Jonathan Nuss, has experience acting as such and his appointment is approved.

CLASS COUNSEL FEES

A. Applicable Criteria

⁸ *Option Consommateurs c. Infineon Technologies, a.g.*, 2013 QCCS 1191, at para. 40.

[46] Fair and reasonable class counsel fees should be approved by the Court.

[47] As stated by Justice Paul Chaput, in *Guilbert c. Sony BMG Musique (Canada) inc.*:

[34] La mesure de ce qui est juste et raisonnable, on la retrouve au Code (de déontologie des avocats):

8. Fixation et paiement des honoraires

3.08.01. L'avocat doit demander et accepter des honoraires justes et raisonnables.

3.08.02. Les honoraires sont justes et raisonnables s'ils sont justifiés par les circonstances et proportionnés aux services professionnels rendus. L'avocat doit notamment tenir compte des facteurs suivants pour la fixation de ses honoraires:

- a) l'expérience;
- b) le temps consacré à l'affaire;
- c) la difficulté du problème soumis;
- d) l'importance de l'affaire;
- e) la responsabilité assumée;
- f) la prestation de services professionnels inhabituels ou exigeant une compétence ou une célérité exceptionnelle;
- g) le résultat obtenu;
- h) les honoraires judiciaires et extrajudiciaires prévus aux tarifs.

3.08.03. L'avocat doit éviter toutes les méthodes et attitudes susceptibles de donner à sa profession un caractère de lucre et de commercialité.⁹

B. Class Counsel's Mandate

[48] The starting point for the reasonableness in Class Counsel's fee request is to examine the reasonableness of the retainer agreement entered into between Class Counsel and the Representative Plaintiff.

[49] Retainer agreements benefit from a presumption of validity and should only be set aside if they are not in the interests of class members, are against the law or contravene public order:

[50] La convention d'honoraires bénéficie donc en quelque sorte, d'une présomption de validité. Elle ne sera écartée que dans la mesure où il est démontré qu'elle n'est pas juste et raisonnable pour les membres dans les circonstances de l'affaire, ou pour l'un des motifs de nullité du contrat prévu au Code civil du Québec. Dans le cas contraire, elle sera appliquée intégralement:

[64] Lorsque le tribunal est d'avis que l'entente proposée est juste et raisonnable et qu'elle sert, à la fois, les intérêts des représentants et ceux des membres du groupe visé, il doit l'approuver. Il ne lui appartient pas de la modifier. Il ne doit pas substituer son jugement à l'accord des parties. Il peut refuser de l'approuver s'il juge qu'elle n'est pas dans le meilleur intérêt des membres du groupe ou s'il est d'avis qu'elle contrevient à la

⁹ *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432, at para. 34; see also *Pellemans c. Lacroix*, 2011 QCCS 1345, at para. 51.

loi ou à l'ordre public.¹⁰

[citation omitted].

[50] The Court of Appeal recently confirmed this view in *A.B. c. Clercs de Saint-Viateur du Canada*, that while mandate agreements do not bind a judge, they do benefit from a presumption of validity:

[51] La convention d'honoraires bénéficie d'une présomption de validité et ne peut être écartée que si son application n'est pas juste et raisonnable pour les membres « dans les circonstances de la transaction examinée ».¹¹

[51] As stated above, contingency fee agreements providing for a percentage of the recovery obtained, ranging from 15% to 33%, are considered fair and reasonable by the case law.¹²

[52] Percentage fee agreements have long since been recognized by Québec law, particularly in the context of class actions and Class Counsel have the right to expect their agreements will be honored, as stated by the Court of Appeal:

[57] Les conventions d'honoraires à pourcentage sont très répandues en matière d'action collective. Ce type de conventions présente des avantages considérables, notamment en ce qu'il favorise « l'accès à la justice pour des citoyens qui autrement n'en auraient pas les moyens » Il ne saurait être question ici de remettre en cause la validité et l'utilité de ce modèle de rémunération. Les avocats devraient être encouragés à accepter des mandats en matière d'action collective en sachant que le risque accepté sera compensé, le cas échéant. À cet égard, les avocats sont en droit de s'attendre que l'entente concernant leurs honoraires soit respectée.¹³

[53] When determining whether to approve a fee request from Class Counsel, courts take the class members' interests into account, but this should not be at counsel's expense. As stated by this Court:

[66] Pour le tribunal, veiller sur l'intérêt des membres ne consiste pas à prendre leur part au détriment indu des avocats qui travaillent pour le groupe, et encore moins à donner raison inconsidérément à tous les mouvements d'humeur. [...]

[67] Dans certains cas, l'intérêt des membres peut consister à garder les avocats motivés à persévérer même quand les procédures sont longues, ardues et risquées, au point où leur rémunération est nulle durant des mois et des années. Le paiement d'honoraires à un stade interlocutoire fait partie du coffre à outils à cet effet.¹⁴

(our emphasis)

[54] In a sworn statement, the Plaintiff expressed his support of the legal fee request by Class Counsel and has also stated that he believes that securities class actions

¹⁰ *Pellemans c. Lacroix*, 2011 QCCS 1345, at para. 50.

¹¹ *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, at para. 51.

¹² *Guilbert c. Sony Music BMG Canada Inc.*, 2007 QCCS 432, at para. 45; *A.B. c. Clercs de Saint-Viateur du Canada*, at para. 58.

¹³ *A.B. c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, at para. 57, (citation omitted).

¹⁴ *Option Consommateurs c. Infineon Technologies, a.g.*, 2013 QCCS 1191, at paras. 66-67.

provide access to justice to investors and that class counsel must be incentivized to bring actions such as the present one forward.¹⁵

- [55] As stated by Mr. Justice Belobaba “(...) it is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that the class action will continue to remain viable as a meaningful vehicle for access to justice.”¹⁶

C. The Risk Assumed by Counsel

- [56] Although the element of risk is not specifically identified at s. 102 of the *Code of Professional Conduct*, courts have held that they cannot disregard the fact that attorneys work on a case for a number of years without any guarantee of success.¹⁷
- [57] The risk assumed by Class Counsel is directly related to the level of complexity of a claim.
- [58] All of the risks of the Class Action as a whole are relevant to an assessment of risk for the purpose of determining this application for fees and disbursements.
- [59] The Plaintiff filed a claim pursuant to Title VIII, Chapter II, Division II of the *Quebec Securities Act*. As such, at the outset, the Plaintiff was faced with the necessity to demonstrate that his claim was brought in good faith and that there was a reasonable possibility that the claim would be resolved in their favor pursuant to s. 225.4 of the *Quebec Securities Act*.
- [60] This requirement is a heightened burden for authorization when compared to a regular class action. The Plaintiff’s evidentiary and legal burdens at authorization were therefore increased and the chances of success correspondingly decreased.
- [61] Moreover, securities class actions often require the hiring of experts at the inception of a matter to satisfy their burden and bring “some credible evidence” in support of their claims.
- [62] Incurring such an expense so early in the proceedings magnifies the risk where class counsel can be required to expend significant sums even before a case is even authorized.¹⁸
- [63] The procedural path giving rise to the Class Action, the substantive merits required to obtain authorization under the *Quebec Securities Act* and the nature of the substantive issues themselves add complexity and risk involved in securities class actions.
- [64] As stated by the Court of Appeal in *Clercs de St-Viateur*:¹⁹

¹⁵ Affidavit of D. Gauthier, Schedule 3.

¹⁶ *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537, at para. 19.

¹⁷ *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432, at para. 41.

¹⁸ *Catucci c. Valeant Pharmaceuticals International Inc. et al.*, 2019 QCCS 3622.

¹⁹ See also *Pellemans c. Lacroix*, 2011 QCCS 1345, at paras. 101-102.

[65] De simplement compter le nombre d'heures consacrées au dossier multiplié par les taux horaires applicables et d'appliquer un facteur multiplicateur de 2, 3, 4 ou même 5 est, dans mon opinion arbitraire, du moins à un certain degré. Le risque assumé au début du dossier n'est pas habilement traduit en chiffre, à savoir le facteur multiplicateur. Les facteurs ne tiennent pas compte des taux d'intérêt qu'un avocat peut être obligé d'assumer pendant qu'il finance l'action collective. Même si la méthode mesure le coût d'opportunité, elle ne sert pas à évaluer le risque dans les autres actions collectives payables à pourcentage que l'avocat accepte. Autrement dit, une saine gestion du risque implique l'acceptation de plusieurs mandats sachant qu'un certain nombre de causes seront probablement perdues et qu'ainsi, l'avocat se retrouvera sans aucune rémunération. D'ailleurs, le temps consacré au dossier dans ce type d'affaire est souvent secondaire dans l'analyse de la raisonnable des honoraires. Le risque assumé et le résultat obtenu devront normalement avoir préséance sachant que le poids à accorder à chaque facteur peut varier d'un cas à l'autre, selon les circonstances.

D. Class Counsel's Time and Expense

[65] Class counsel funded the entirety of the fees devoted to this case and received a small contribution from the Fonds d'aide for only a portion of the disbursements, totaling \$50,161.61.

[66] Class Counsel has invested over \$1,000,000 in time and disbursements in this matter, as appears from Class Counsel's sworn statement, Schedule 2, and the proposed counsel fee of \$540,000, which is 30% of the \$1.8M Settlement Amount, constitutes a substantial loss for Class Counsel according to Class Counsel's representations.

[67] Such losses are risks Class Counsel accepted by taking on contingency litigation.

E. The Complexity of the File and the Specialization of Counsel

[68] In many respects this file is unique. Having a lone individual defendant and seeking damages relating to a going private transaction are factors which the Court considers.

F. The Importance of the Matter to Class Members

[69] For the vast majority of Class Members, an individual action is not feasible, and this Class Action would be the only efficient vehicle for them to obtain access justice and pursue their claims.

G. Conclusion

[70] For these reasons, class counsel fees are approved as requested.

CONCLUSION

[71] **ON READING:**

- a. The motion materials;
- b. the Agreement;

- c. the sworn statements of:
 - i. The Plaintiff, sworn October 4, 2023;
 - ii. Class Counsel, sworn October 24th, 2023;
 - iii. The Administrator, sworn on September 27, 2023;

[72] **AND ON HEARING** the submissions of counsel for the Parties, being understood that Counsel for the Defendant and the Defendant did not make representations on Class Counsel Fees or the Plan of Allocation as per the terms of the Agreement;

[73] **CONSIDERING** that the Plaintiff and Class Counsel agree that Velvet Payments Inc. be appointed Administrator and that Mr. Jonathan Nuss be appointed as Referee;

[74] **AND ON BEING ADVISED** that:

- a. the Parties consent to these orders, save for the orders relating to the Class Counsel Fees, regarding which Counsel for the Defendant and the Defendant do not make any representation as per the Agreement, as well as the Plan of Allocation;
- b. as of the Objection Deadline there have been no objections to the proposed Agreement received by the Administrator;
- c. the Defendant has denied and continues to deny each, and all of the claims and allegations of wrongdoing made by the Plaintiff in the Class Action;
- d. the Parties have negotiated and entered into the Agreement, to resolve fully and permanently, all claims against the Defendant by the Plaintiff on his own behalf and/or on behalf of the Class, directly or indirectly connected with the Class Action, to avoid the further expense, inconvenience, and distraction of litigation and the risks inherent to an uncertain, complex and protracted litigation, and thereby to put to rest the Class Action;
- e. the Fonds d'aide has paid \$50,161.61 to Class Counsel to fund disbursements;

FOR THESE REASONS, THE COURT

POUR CES MOTIFS, LE TRIBUNAL :

[75] **DECLARES** that, except as otherwise stated, the definitions in the Agreement executed September 5 & 6, 2023 apply to and are incorporated into this Judgment;

[74] **DÉCLARE** qu'aux fins du présent Jugement, à moins d'indications contraires, les définitions dans l'Entente signée les 5 et 6 septembre 2023, s'appliquent et y sont incorporées;

[76] **GRANTS** the Application to Approve a Settlement

[75] **ACCUEILLE** la Demande pour

Agreement and Other Relief;

[77] **APPROVES** the Settlement Agreement and **DECLARES** that the Agreement is fair and reasonable and in the best interests of the Class Members;

[78] **DECLARES** that all provisions of the Agreement (including the Recitals and Definitions) form part of this Judgment and are binding upon the Defendant in accordance with the terms thereof, and upon the Plaintiff and all Class Members;

[79] **DECLARES** that in the event of a conflict between this Judgment and the Agreement, this Judgment shall prevail;

[80] **DECLARES** that:

- a. the Second Notice to Members and Press Release, **Annex B** to the Agreement is approved;
- b. the Second Notice Program, **Annex C** to the Agreement is approved;
- c. the Plan of Allocation, **Annex D** to the Agreement is approved;
- d. the Claim Form, **Annex E** to the Agreement is approved; and
- e. the Claims Deadline shall be at 11:59 p.m. (EST), sixty (60) days after the date of the last publication of the Second Notice;

[81] **APPOINTS** Velvet Payments Inc. is appointed as Administrator and Mr. Jonathan Nuss as Referee;

l'approbation de l'Entente de règlement et d'autres mesures;

[76] **APPROUVE** l'Entente et **DÉCLARE** que l'Entente est juste, raisonnable et dans les meilleurs intérêts des Membres du Groupe;

[77] **DÉCLARE** que toutes les clauses de l'Entente (y compris le préambule et les définitions) font partie du présent Jugement et sont exécutoires envers le Défendeur conformément aux modalités incluses, ainsi qu'envers le Demandeur et tous les Membres du Groupe;

[78] **DÉCLARE** qu'en cas de conflit entre le présent Jugement et l'Entente, ce Jugement aura préséance;

[79] **DÉCLARE** que :

- a. le Deuxième Avis aux Membres et le communiqué de presse, **Annexe B** de l'Entente, est approuvé;
- b. le Deuxième Programme d'Avis, **Annexe C** de l'Entente, est approuvé;
- c. le Plan de Répartition, **Annexe D** de l'Entente, est approuvé ;
- d. le Formulaire de Réclamation, **Annexe E** de l'Entente, est approuvé ;
- e. la Date Limite de Réclamation sera à 23h59 (HNE) soixante (60) jours après la date de la dernière publication du Deuxième Avis;

[80] **NOMME** Velvet Payments Inc. à titre d'Administrateur et M. Jonathan Nuss à titre d'Arbitre;

- [82] **ORDERS** that the Administrator may implement a procedure permitting brokers, law firms and third-party claims filing firms to make claims on behalf of their clients if they are authorized to do so;
- [83] **ORDERS** that the Class Members shall be given notice of the approval of the Agreement, the Plan of Allocation, and the Claims Deadline substantially in the form of the Second Notice and Press Release (Annex B) published and disseminated in accordance with the Second Notice Program and shall constitute good and sufficient service upon Class Members of notice of this Judgment and approval of the Agreement;
- [84] **ORDERS** that after publication and distribution of the Second Notice and Press Release in accordance with the Second Notice Program, the Administrator shall file with the Superior Court a sworn statement confirming the publication and distribution of the Second Notice as required by the Second Notice Program;
- [85] **DECLARES** that each Class Member is deemed to have fully, definitively and permanently resolved, settled and released the Defendant, including his mandataries, agents, representatives, partners, insurers, reinsurers, professionals, heirs, successors and assigns, from all released claims related to or connected with, directly or indirectly, the Class Action against the Defendant by the Plaintiff on his own behalf and/or on behalf of

[81] **ORDONNE** que l'Administrateur mette en œuvre une procédure permettant aux courtiers, cabinets d'avocats et sociétés de dépôt de réclamations tierces, de faire des réclamations au nom de leurs clients, s'ils sont autorisés à le faire;

[82] **ORDONNE** que les Membres du Groupe soient avisés de l'approbation de l'Entente, du Plan de Répartition et de la Date Limite de Réclamation, généralement sous la forme établie au Deuxième Avis et communiqué de presse (Annexe B) publié et diffusé conformément au Deuxième Programme d'Avis, lequel constitue une notification adéquate et suffisante du présent Jugement et de l'approbation de l'Entente aux Membres du Groupe;

[83] **ORDONNE** qu'après la publication et diffusion du Deuxième avis conformément au Deuxième Programme d'Avis, l'Administrateur dépose une déclaration sous serment auprès de la Cour Supérieure confirmant la publication et la diffusion du Deuxième avis conformément au Deuxième Programme d'Avis;

[84] **DÉCLARE** que chaque Membre du Groupe est réputé avoir fourni une quittance totale, permanente et définitive au Défendeur, incluant ses mandataires, agents, représentants, associés, assureurs, réassureurs, professionnels, héritiers, successeurs et ayants droit, pour toute réclamation quittancée en lien, directement ou indirectement, avec l'Action Collective intentée par le Demandeur en son nom personnel ou au nom du Groupe à l'encontre du Défendeur;

the Class he sought to represent;

[86] **DECLARES** that to seek payment of the Settlement Amount, a Class Member must file a properly completed Claim Form and the required supporting documentation in the claims administration portal on the website of the Administrator on or before the Claims Deadline unless the Superior Court decides otherwise;

[87] **AUTHORIZES** any one or more of the Parties, the Defendant's counsel, Class Counsel, the Administrator, or the Referee to apply to the Superior Court for directions in respect of any matter in relation to the Agreement and Plan of Allocation;

[88] **ORDERS** that no person may bring any action or take any proceedings against the Plaintiff, the Defendant, the Administrator, the Referee, or their employees, insurers, reinsurers, directors, officers, partners, employees, agents, trustees, servants, parents, consultants, underwriters, lenders, advisors, lawyers, representatives, successors, predecessors, assigns and each of their respective heirs, executors, attorneys, administrators, guardians, estates, trustees, successors and assigns for any matter in any way relating to the administration of the Plan of Allocation or the implementation of this Judgment except with leave of the Superior Court;

[89] **DECLARES** that Class Counsel

[85] **DÉCLARE** que pour demander un paiement du Montant du Règlement, tout Membre du Groupe doit déposer par le biais du portail d'administration des réclamations sur le site internet de l'Administrateur, un Formulaire de Réclamation dûment rempli et les pièces justificatives requises, au plus tard à la Date Limite de Réclamation, sauf si la Cour supérieure en décide autrement;

[86] **AUTORISE** toute Partie, les Avocats du Défendeur, les Avocats du Groupe, l'Administrateur ou l'Arbitre, à faire une demande à la Cour Supérieure pour obtenir des précisions ou directives sur toute question relative à l'Entente et au Plan de Répartition;

[87] **ORDONNE** que nulle personne ne pourra tenter une action ou engager de procédures judiciaires contre le Demandeur, le Défendeur, l'Administrateur, l'Arbitre ou leurs employés, assureurs, réassureurs, administrateurs, dirigeants, partenaires, agents, fiduciaires, préposés, parents, consultants, souscripteurs, prêteurs, conseillers, avocats, représentants, successeurs, prédécesseurs, ayants droit et chacun de leurs héritiers, exécuteurs testamentaires, procureurs, administrateurs, tuteurs, successions, fiduciaires et ayants droit respectifs pour toute question relative à l'administration du Plan de Répartition ou à l'exécution du présent Jugement, sauf avec la permission de la Cour supérieure;

[88] **DÉCLARE** que les Honoraires et les

Fees and Disbursements are fair and reasonable;

[90] **APPROVES** the Mandate between Denis Gauthier and Class Counsel, (Exhibit DG-1);

[91] **ORDERS** that Class Counsel Fees, in the amount of thirty (30%) percent of CDN \$1,800,000.00 plus disbursements in the sum of \$58,694.82, plus taxes on fees and disbursements shall be paid from the Settlement Amount forthwith after the Effective Date;

[92] **ACCEPTS** Class Counsel's undertaking to reimburse the *Fonds d'aide aux actions collectives* in the sum of \$50,161.61;

[93] **ORDERS** that the levies for the Fonds d'aide aux actions collectives as provided for in the Plan of Allocation 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*;

[94] **ORDERS** that after all the foregoing payments have been made, along with all other expenses related to the administration, the Administrator and the Referee have been paid, any remainder be paid to a charitable foundation chosen by Class Counsel and the Court;

[95] **THE WHOLE** without legal costs.

Déboursés des Avocats du Groupe sont justes et raisonnables;

[89] **APPROUVE** la Convention entre Denis Gauthier et les Avocats du Groupe, (Pièce DG-1);

[90] **ORDONNE** le paiement des honoraires des Avocats du Groupe, au montant représentant trente pourcent (30%) de 1 800 000.00 \$, et leurs débours au montant de 58 694,82 \$, plus les taxes sur les honoraires et débours, à même le Montant du Règlement dès la Date d'entrée en vigueur;

[91] **PREND ACTE** de l'engagement des Avocats du Groupe de rembourser le Fonds d'aide aux actions collectives, au montant de 50 161,61\$;

[92] **ORDONNE** que le montant prélevé pour le Fonds d'aide aux actions collectives prévu au Plan de Répartition soit 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*;

[93] **ORDONNE** qu'une fois tous les paiements susmentionnés effectués, ainsi que le paiement de toutes autres dépenses liées à l'administration, à l'Administrateur et à l'Arbitre, tout solde restant soit versé à un organisme de bienfaisance choisi par l'Avocat du Groupe et la Cour;

[94] **LE TOUT** sans frais de justice.

L'HONORABLE / THE HONOURABLE SYLVAIN LUSSIER, J.S.C

Mtre Shawn Faguy
Mtre Maryam d'Hellencourt
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Class Counsel

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Mtre Nathalie Guilbert
Mtre Ryan Mayele
FONDS D'AIDE AUX ACTIONS COLLECTIVES
Mis en cause

Hearing date : October 30, 2023