

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000772-158

DATE: May 3, 2019

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

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**FRANÇOIS MICHAUD**

Plaintiff

v.

**SANOFI-AVENTIS CANADA INC.**

and

**SANOFI-AVENTIS U.S. LLC**

and

**SANOFI S.A.**

and

**SANOFI WINTHROP INDUSTRIE**

and

**MEDIVATIVE TECHNOLOGIES LLC**

Defendants

and

**LE FONDS D'AIDE AUX ACTIONS COLLECTIVES**

Mis en cause

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JUDGMENT

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## INTRODUCTION

[1] Following the authorization of the present Class Action for settlement purposes, Plaintiff François Michaud is seeking approval of a settlement agreement entered into with Defendants on March 8<sup>th</sup>, 2018, following arm's length negotiations, which agreement was amended by way of a further agreement dated October 3, 2018 (collectively, the **Settlement Agreement**)<sup>1</sup> and to obtain permission to disseminate the Settlement Approval Notice to the class. He also seeks the approval of the Class Counsel Fees set out in the Settlement Agreement and the approval of an honorarium of \$2,000 to be paid to him.

[2] For the purposes of consistency, capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Settlement Agreement.

[3] The facts of this matter are set out in detail in the Court's judgment rendered on February 27, 2019 authorizing the class action for settlement purposes and approving the notice program relating to the Settlement Agreement.<sup>2</sup>

## THE SETTLEMENT AGREEMENT

[4] The Settlement Agreement fully and finally settles all claims asserted against the Defendants as set out in the proposed class action and in the action instituted in the Province of Saskatchewan, which together capture a national class.

[5] This Court has authorized the bringing of a class action against the Defendants for settlement purposes only and approved the Pre-Approval Notice — as did the Court in Saskatchewan.<sup>3</sup>

[6] The Settlement Agreement applies to the following Settlement Class in Quebec:

All Persons who, at any time between December 11, 2012 and the Pre-Approval Notice Date:

- (i) purchased, used, ingested or acquired an Allerject Device in Quebec; or
- (ii) are the spouses, children, grandchildren, parents, grandparents, brothers, and sisters of the individuals identified in subparagraph (i) who by reason of their relationship to those individuals are entitled to assert a claim.

[7] Plaintiff and Defendants have agreed to the terms of the Settlement Agreement, the whole subject to the approval of this Court and that of the Saskatchewan Court, without any admission of liability whatsoever by Defendants and for the sole purpose of resolving the dispute between the Parties.

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<sup>1</sup> Exhibit R-1

<sup>2</sup> *Michaud c. Sanofi-Aventis Canada Inc.*, 2019 QCCS 797.

<sup>3</sup> *Natrop v. Sanofis-Aventis Canada Inc.* (April 18, 2019), Regina QBG 2757 of 2015 (Sask QB).

[8] The key terms of the Settlement Agreement are the following:

- a) A Settlement Fund in the amount of \$200,000 for the benefit of individuals and Public Health Insurers in relation to the personal injury sustained for having used a non-expired Allerject Device due to an allergic reaction that did not provide the expected pharmacological response and required additional emergency medical treatment and/or hospitalization relating to the use of the Allerject Device;
- b) An Extended Exchange Program permitting the individuals who still have an Allerject Device to exchange it in a local pharmacy for an Epi-Pen® epinephrine auto-injector at no charge for a period of 12 months following the present judgment.<sup>4</sup>

[9] The release in favour of Defendants includes and encompasses any and all claims related to the allegations of the Proceedings and that are captured by the definition of Released Claims in the Settlement Agreement.

[10] The Pre-Approval Notice has been properly disseminated and the Opt-Out Deadline for the Quebec Settlement Class expired on April 8<sup>th</sup>, 2019. There have been no opt-outs or objections to the Settlement Agreement.

#### **APPROVAL OF THE SETTLEMENT AGREEMENT**

[11] This Court approves the Settlement Agreement as fair, reasonable and in the best interest of the Quebec Settlement Class based on its analysis of the following factors as set out by the relevant case law.<sup>5</sup>

[12] In particular, this Court finds that:

- a) The amount offered in settlement is fair and adequate and worthy of approval;
- b) The Settlement Agreement was reached by experienced, fully-informed counsel after arm's length negotiations;
- c) Class Counsel is recommending the approval of the settlement;
- d) The risk, expense, complexity and duration of further litigation weighs in favour of approval;
- e) No Settlement Class Member has opted out of or objected to the Settlement Agreement.

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<sup>4</sup> See sections 4 and 5 of the Settlement Agreement.

<sup>5</sup> See by way of example: *Zuckerman c. Target Corporation Inc.*, 2018 QCCS 2276; *Tremblay c. Lavoie*, 2014 QCCS 4955, *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778.

[13] The Court also recognizes that the *Régie de l'assurance maladie du Québec* has agreed to the terms of the Settlement Agreement insofar as it may be entitled to assert subrogated claims in respect of insured health services provided to members of the Settlement Class in Quebec.

[14] The Settlement Agreement provides that at such time as the Settlement Fund is distributed pursuant to the Settlement Agreement, the levies by the *Fonds d'aide aux actions collectives* shall be collected and remitted in accordance with the *Act respecting the Fonds d'aide aux actions collectives*<sup>6</sup> and in accordance with the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*.<sup>7</sup>

[15] More specifically, if any amount remains in the Settlement Fund after the payment of expenses and claims to eligible members of the Settlement Class, the Fonds will be entitled to payment of a portion of that remainder, prior to the payment of any approved Supplemental Class Counsel Fees as described below, as prescribed by the Regulation. This being a multi-jurisdictional national action, the percentage entitlement is to be 22.6%, reflecting the relative size of the population of Quebec to the rest of Canada as of January 1, 2019 per Statistics Canada.

#### **APPROVAL OF THE SETTLEMENT APPROVAL NOTICE**

[16] The Settlement Notice will be published in accordance with the Notice Program<sup>8</sup> to inform the Class Members of the process and deadline to file a Claim Form and claim from the Settlement Fund.

#### **APPROVAL OF CLASS COUNSEL FEES**

[17] As of April 5, 2019, Merchant Law had, since the commencement of the actions in both Saskatchewan and Quebec, docketed a total of \$375,231.30 of time in connection with the pursuit of authorization/certification and settlement, and incurred \$6,289.57 in out-of-pocket disbursements on behalf of the Class. Merchant Law further represents, referring to these time entries, that lawyers called to the Quebec Bar docketed \$191,573 of time, although a review of the dockets shows that, in some measure they worked on both the Quebec and Saskatchewan matters.

[18] The Professional Mandate & Attorneys Fee Agreement entered into by Plaintiff provided for the payment to Merchant Law of all disbursements incurred, plus the greater of 30% of the total amount recovered or such amount as may be approved by the Court, plus any applicable taxes thereto.

[19] Given the nature of the settlement, Merchant Law argues that a simple percentage-based contingency assessment is not appropriate. While the value of the

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<sup>6</sup> RLRQ, c. F-3.2.0.1.1.

<sup>7</sup> RLRQ, c. F-3.2.0.1.1, r. 2.

<sup>8</sup> Exhibit R-2.

Settlement Fund from which claims will be paid is \$200,000 it points out that the Extended Exchange Program (permitting individuals to exchange remaining qualified Allerject units for an Epi-Pen® auto-injector) will provide additional non-monetary benefits.

[20] Plaintiff requests the Courts of Saskatchewan and Quebec to collectively approve an initial award of legal fees in the amount of \$300,000, inclusive of fees, disbursements, taxes (GST, QST, HST, etc.) in both the Saskatchewan and Quebec national class actions. No further deduction in benefits or charge of any kind will be made by Class Counsel to any member of the class as a result of the settlement.

[21] In its judgment, the Saskatchewan Court of Queen's Bench has declared the requested payment of \$300,000 to be reasonable.

[22] The Settlement Agreement provides that in the event there is a remaining amount in the Settlement Fund after the payment of Claims, honoraria, administration, notice expenses, and any applicable taxes, Class Counsel may apply to the Court and request that this remainder be paid to Merchant Law as Supplemental Class Counsel Fees. The Settlement Agreement states the following in this regard:

- a) At the end of the Claims period, once all Claims of the Settlement Class Members and the Public Health Insurers have been determined and paid, all honoraria, Claims Administration Expenses, Notice Expenses, and any applicable taxes, have been paid from the Settlement Fund, if there remains a balance in the Settlement Fund, Class Counsel may petition a Court to obtain additional remuneration not exceeding the net balance. If the designated Court refuses Class Counsel's petition for Supplemental Class Counsel Fees, in whole or in part, the balance will be remitted to Food Allergy Canada. The Parties agree that subject to an order of the Courts, they will seek to have the Saskatchewan Court designated as the Court to evaluate the Supplemental Class Counsel Fees and seek leave from the Quebec Court not to require its approval of the Supplemental Class Counsel Fees.<sup>9</sup>

[23] No arguments were presented to the Court on why it should not be called upon to consider a request for Supplemental Class Counsel Fees in relation to the Quebec action. Therefore, the Court will make no ruling on this question, which, for the moment, is hypothetical in any event.

[24] A determination of whether Class Counsel Fees are fair and reasonable is made in consideration of the provisions of sections 7, 101, and 102 of the *Code of Professional Conduct of Lawyers*<sup>10</sup> and article 593 C.C.P. The Court of Appeal's directions in *Options Consommateurs c. Banque Amex du Canada*, where the Court stated the following are also relevant:

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<sup>9</sup> Settlement Agreement, section 9(2)(a).

<sup>10</sup> RLRQ, c. B-1, r. 3.1.

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

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

[63] L'exercice de cette fonction de contrôle des honoraires des avocats du représentant constitue la mise en œuvre d'un pouvoir discrétionnaire qui mérite retenue de la part de la Cour d'appel.<sup>11</sup>

[References omitted]

[25] In support of the payment of the fees agreed to in the Settlement Agreement, Plaintiff argues:

- Counsel pursuing this action have extensive experience in the preparation and litigation of class actions both in Quebec and in the common law provinces including, in particular, medical device class actions.
- Significant risks exist to pursue the prosecution of this action through trial, including the fact that the number of actual claimants with any significant claim is likely to be very small. Moreover, the Defendants may have a number of potential defences for the substantive claims which could reduce or eliminate the awards available for the benefit of the members of the Settlement Class.
- Merchant Law accepted the entirety of the risk associated with the prosecution of the Saskatchewan and Quebec actions. Neither the Fonds nor any other third-party funder provided support, funding, or insurance in respect of the authorization motion or the proceeding itself.
- The results achieved for the class represent adequate compensation for the losses which have been incurred.
- The compensation to be paid to Class Counsel was disclosed in the notice announcing the proposed settlement and the date of the settlement approval hearings. There were no objections as to the quantum of Class Counsel Fees, all members of the class having had an opportunity to voice an objection if they had so desired.

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<sup>11</sup> *Options Consommateurs c. Banque Amex du Canada*, 2018 QCCA 305, at paras. 60-68.

[26] The Court will approve the fee amount agreed to in the Settlement Agreement, particularly in light of its approval on a national basis by the Saskatchewan Court. It also notes that granting the requested amount will not negatively affect the payments to the class members provided for in the Settlement Agreement.

[27] However, the Court considers that some comments are in order. Respectfully, the Court is of the view that the carriage of this file is perhaps not a model that is well suited to national proceedings. While the team of lawyers assigned to the matter no doubt possesses the expertise required to bring a file of this nature to term, a review of the time charges raises the following concerns:

- A significant portion of the charges relate to internal consultation between members of the team;
- Well in excess of 60 hours was spent translating the Saskatchewan and Quebec applications, which seems excessive;
- Significant time was entered in relation to "file review".

[28] Other more minor issues give reason for pause:

- In the Court's view, discussions with journalists, should not be charged;
- Nor should discussions regarding the content of the retainer agreement.

[29] From a more general perspective, and although the Court acknowledges that this perspective is imperfect given the information that the Court has access to, the amount of time consecrated to the file is somewhat surprising, given the size of the class and given the amount of the Settlement Fund. Were the Court to be analysing the fee request solely in relation to a Quebec action, it would have significant concerns about the fees claimed, in the nature of those raised in paragraph 62 of the *Amex* decision.

[30] Finally, Plaintiff asks the Court to order the payment of an honorarium of \$2,000.

[31] The Court had occasion to consider the payment of an honorarium in *Mahmoud c. Société des casinos du Québec inc.* and decided as follows:

[35] The right to an indemnity is set out in article 593 C.C.P., the first paragraph of which reads as follows:

<p><b>593.</b> Le tribunal peut accorder une indemnité au représentant pour le paiement de ses débours de même qu'un montant pour le paiement des frais de justice et</p>	<p>593. The court may award the representative plaintiff an indemnity for disbursements and an amount to cover legal costs and the lawyer's</p>
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des honoraires de son avocat, le tout payable à même le montant du recouvrement collectif ou avant le paiement des réclamations individuelles.	professional fee. Both are payable out of the amount recovered collectively or before payment of individual claims.
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[36] This is new law and was considered by Justice Lalande in *Frank-Fort Construction inc. c. Porsche Cars North America Inc.*:

"[68] Sous l'ancien Code de procédure civile, les tribunaux avaient tendance à accorder l'indemnisation du représentant si celle-ci était prévue dans une transaction et était raisonnable. Depuis l'entrée en vigueur du nouveau Code de procédure civile, l'article 593 C.p.c. prévoit spécifiquement « une indemnité au représentant pour le paiement de ses débours de même qu'un montant pour le paiement des frais de justice et des honoraires de son avocat ». La ministre de la Justice a précisé que cet article « vise à indemniser le représentant des débours qu'il fait pour mener à bien l'action collective, sans lui allouer cependant une rémunération pour le temps et l'énergie consacrés à l'affaire ». Le but est donc d'éviter de donner à la fonction de représentant un caractère lucratif. En effet, selon Yves Lauzon :

L'emploi du terme « débours » exclut la rémunération personnelle du représentant. Le statut de représentant ne doit pas être assimilé à un emploi et doit demeurer la démarche d'un justiciable pour exercer ses droits. Par ailleurs, il est juste que le représentant qui donne de son temps soit remboursé pour des débours engagés dans le cadre de ses fonctions. "

[References omitted]

[37] Justice Lalande refused the payment to the representative that had been agreed to in the settlement agreement.

[38] In *Zouzout c. Wayfair* Justice Monast also required the parties to amend a settlement agreement that had provided for remuneration to be paid to the representative plaintiff.

[39] Justice Gagnon discussed this question in *Muraton c. Toyota Canada inc.*, in a situation where the settlement agreement provided for the payment of an indemnity to the representative over and above the amounts payable to class members. He reasoned as follows:

"[75] Habilement, Me Assor plaide que l'article 593 C.p.c. ne s'applique pas directement ici. Selon lui, cette disposition veut protéger les membres contre un prélèvement pécuniaire survenant au détriment du recouvrement collectif. Or, ici, l'Accord de règlement stipule que l'indemnité des cinq représentants doit se payer distinctement et en sus de ce que reçoivent les membres.

[76] L'argument est valable, mais ne fait qu'atténuer l'intention du législateur.

[77] Voulant arbitrer équitablement, le Tribunal approuve un paiement de 2 000 \$ à M. Muraton."

[40] The case at bar differs somewhat from the above situations, since the payment in question does not form part of the settlement agreement and is to be paid out of the fees otherwise payable to Class Counsel.

[41] Should this make a difference?

[42] While the Court respects the position taken by Justice Gagnon, the intent of the legislator is that only disbursements shall be paid to the class representative. Mr. Mahmoud's evidence is to the effect that the sum he is asking for is related to loss of income. Although it will not be paid out of monies otherwise destined to the application of the settlement, it would be remitted out of the total amount of the settlement agreed to by the parties. Therefore, the Court will not order the payment of this amount to Mr. Mahmoud.<sup>12</sup>

[32] There is no reason to depart from that reasoning here, particularly as no disbursements have been alleged. The Court will not order the payment of an honorarium to Plaintiff.

**POUR CES MOTIFS, LE TRIBUNAL :**

**WHEREFORE, THE COURT:**

[33] **ACCUEILLE** la présente demande;

[33] **GRANTS** the present Application;

[34] **DÉCLARE** que, pour l'application du présent jugement, les définitions contenues dans la Convention de règlement (Pièce R-1) s'appliquent et y sont incorporées par renvoi;

[34] **DECLARES** that for the purposes of this Judgment, the definitions set out in the Settlement Agreement (Exhibit R-1), shall apply and are incorporated by reference;

[35] **APPROUVE** le règlement de cette action collective suivant les termes de la Convention de règlement, en conformité avec l'article 590 du *Code de procédure civile*;

[35] **APPROVES** the settlement of this class action in accordance with the terms of the Settlement Agreement, pursuant to article 590 of the *Code of Civil Procedure*;

[36] **DÉCLARE** que la Convention de règlement (incluant son Préambule et ses Annexes) est valide, équitable, raisonnable, et dans le meilleur intérêt des Membres du Groupe du Québec;

[36] **DECLARES** that the Settlement Agreement (including its Preamble and its Exhibits) is fair, reasonable and in the best interests of the Quebec Settlement Class;

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<sup>12</sup> 2018 QCCS 4526.

[37] **DÉCLARE** que la Convention de règlement (incluant son Préambule et ses Annexes) constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, liant toutes les parties et tous les Membres du Groupe de Règlement qui ne se sont pas exclus en temps opportun;

[38] **DÉCLARE** que la Convention de règlement (incluant son Préambule et ses Annexes) fait partie intégrante du présent Jugement et a la même force exécutoire qu'une décision de cette Cour;

[39] **ORDONNE** que la Convention de règlement soit mise en œuvre conformément à ses termes;

[40] **ORDONNE** aux Parties et aux Membres du Groupe de Règlement, sauf ceux exclus conformément à la Convention de règlement, de se conformer aux termes et conditions de la Convention de règlement;

[41] **ORDONNE** qu'en conformité avec la Convention de règlement, à la Date de prise d'Effet, le recours du Québec sera rejeté avec l'effet de force de chose jugée, sans frais;

[42] **ORDONNE** qu'à la Date de prise d'Effet, le Demandeur François Michaud et les autres Parties donnant quittance donneront une quittance complète et absolue aux Parties quittancées à l'égard des Réclamations quittancées, en conformité avec la Convention de règlement;

[37] **DECLARES** that the Settlement Agreement (including its Preamble and its Exhibits) constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Settlement Class Members who have not opted-out in a timely manner;

[38] **DECLARES** that the Settlement Agreement (including its Preamble and its Exhibits) is an integral part of this Judgment and has the same enforceability as a decision from this Court;

[39] **ORDERS** that the Settlement Agreement shall be implemented in accordance with its terms;

[40] **ORDERS** the Parties and the Settlement Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the Settlement Agreement, to abide by the terms and conditions of the Settlement Agreement;

[41] **ORDERS** that as set out in the Settlement Agreement, upon the Effective Date, the Quebec Class Action will be dismissed with prejudice and without costs;

[42] **ORDERS** that, upon the Effective Date, the Plaintiff François Michaud and all other Releasors forever and absolutely release the Releasees from the Released Claims, in accordance with the Settlement Agreement;

[43] **ORDONNE** au Demandeur François Michaud et aux autres Parties donnant quittance de ne pas instituer, poursuivre, maintenir ou faire valoir directement ou indirectement, au Canada ou ailleurs, en leur nom ou au nom de tout groupe ou toute autre personne, toute action, poursuite, cause d'action, réclamation ou demande à l'encontre des Parties quittancées ou toute autre personne qui peut réclamer une contribution ou une indemnité d'une Partie quittancée relativement à toute Réclamation quittancée ou toute affaire qui lui est liée, en conformité avec la Convention de règlement;

[44] **ORDONNE** que Trilogy Class Action Services soit nommé Administrateur des réclamations en conformité avec la Convention de règlement;

[45] **ORDONNE** à l'Administrateur des réclamations de s'acquitter de ses obligations en conformité avec la Convention de règlement;

[46] **ORDONNE** que le Montant du Règlement soit détenu en fidéicomis par le Procureur du Groupe au bénéfice du Groupe du Règlement en conformité avec les termes et modalités de la Convention de règlement ou toute autre ordonnance de la Cour, le cas échéant;

[47] **ORDONNE** que lorsque le Montant du Règlement sera distribué conformément à la Convention de règlement, les prélèvements du *Fonds d'aide aux actions collectives* soient effectués et soient remis conformément à la *Loi sur le Fonds d'aide aux actions collectives*, et le *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*;

[43] **ORDERS** the Plaintiff François Michaud and all other Releasors not to institute, continue, maintain or assert either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released claim or any matter related thereto, in accordance with the Settlement Agreement;

[44] **ORDERS** that Trilogy Class Action Services be appointed as Claims Administrator in accordance with the Settlement Agreement;

[45] **ORDERS** the Claims Administrator to perform its obligations as provided in the Settlement Agreement;

[46] **ORDERS** that the Settlement Fund be held in trust by Class Counsel for the benefit of the Settlement Class in accordance with the terms and condition of the Settlement Agreement or any further order by this Court, as the case may be;

[47] **ORDERS** that at such a time when the Settlement Fund is distributed pursuant to the Settlement Agreement, the levies by the *Fonds d'aide aux actions collectives* be collected and remitted in accordance with the *Act respecting the Fonds d'aide aux actions collectives* and with the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*;

[48] **ORDONNE** que s'il reste une somme dans le Montant du Règlement suivant le paiement de toutes les Réclamations des Membres du Groupe de Règlement et des Assureurs-maladie publics, des honoraires, des Frais d'administration des réclamations, des Frais d'avis, et toutes taxes applicables, les prélèvements du *Fonds d'aide aux actions collectives* en vertu de la *Loi sur le Fonds d'aide aux actions collectives* et le *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives* seront remis à la hauteur de 22,6 % du reliquat, avant la déduction ou distribution des Honoraires Additionnels des Avocats pouvant être accordés;

[49] **DÉCLARE** que les Défenderesses et les Parties quittancées n'ont aucune responsabilité ni implication quant à l'administration ou la distribution du Montant du Règlement;

[50] **APPROUVE** l'Avis de d'approbation de la transaction essentiellement en la forme de l'avis se trouvant aux Annexes D1 et D2 de la Convention de règlement (Pièces R-5 et R-6);

[51] **ORDONNE** que l'Avis de d'approbation de la transaction soit publié et diffusé essentiellement en conformité avec le Plan de Diffusion se trouvant dans l'Annexe C de la Convention de règlement (Pièce R-2);

[52] **APPROUVE** la forme et le contenu du Formulaire de réclamation, se trouvant dans l'Annexe F de la Convention de règlement (Pièce R-7);

[53] **DÉCLARE** que, dans l'éventualité où la Convention de règlement est résiliée suivant ses termes, sans

[48] **ORDERS** that if any amount remains in the Settlement Fund after the payment of all Claims of the Settlement Class Members and Public Health Insurers, honoraria, Claims Administration Expenses, Notice Expenses, and any applicable taxes, levies payable to the *Fonds d'aide aux actions collectives* in accordance with 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* shall be remitted based on 22.6% of said remaining balance before the deduction or distribution of any Supplemental Class Counsel Fees as may be ordered;

[49] **DECLARES** that the Defendants and the Releasees have no responsibility or involvement in the administration or distribution of the Settlement Fund;

[50] **APPROVES** the Settlement Notice substantially in the form as set forth within Exhibits D1 and D2 to the Settlement Agreement (Exhibits R-5 and R-6);

[51] **ORDERS** that the Settlement Notice shall be published and disseminated substantially in accordance with the Notice Program as set forth within Exhibit C to the Settlement Agreement (Exhibit R-2);

[52] **APPROVES** the form and content of the Claim Form set forth within Exhibit F to the Settlement Agreement (Exhibit R-7);

[53] **DECLARE** that if the Settlement Agreement is terminated in accordance with its terms, then, without restricting the

restreindre l'application des dispositions de la Convention de règlement :

- a) les ordonnances incluses dans le présent Jugement seront écartées et n'auront plus aucun effet, sans préjudice aux droits des parties;
- b) toutes les négociations, les déclarations et les procédures liées à la Convention de règlement seront réputées être sans préjudice aux droits des parties au Québec et les parties seront réputées être replacées dans leurs positions respectives au Québec, immédiatement avant la signature de la Convention de règlement, ce qui comprend le droit des défenderesses de contester l'autorisation;

application of the provisions of the Settlement Agreement:

- a) the Orders included in the present Judgment shall be set aside and be of no further force or effect and without prejudice to any party; and
- b) all negotiations, statements and proceedings relating to the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties with respect to Quebec, and the Parties shall be deemed to be restored to their respective positions with respect to Quebec existing immediately before the Settlement Agreement was executed, which includes, for the Defendants, the right to contest authorization;

[54] **RÉSERVE** le droit des parties de s'adresser à la Cour pour solutionner quelque litige que ce soit découlant de la Convention de règlement;

[54] **RESERVES** the right of parties to ask the Court to adjudicate any dispute arising from the Settlement Agreement;

[55] **DEMEURE SAISI** de toute question relative au recours du Québec et/ou à l'administration, l'interprétation, la mise en œuvre ou l'exécution de la Convention de règlement;

[55] **REMAINS** seized with any issues that may arise with respect to the Quebec Class Action and/or the administration, interpretation, implementation and enforcement of the Settlement Agreement;

[56] **APPROUVE** que les frais d'avocats de 300 000 \$, incluent tous les déboursés, frais légaux, taxes et autres frais applicables;

[56] **APPROVES** the Class Counsel fees of \$300,000, inclusive of all disbursements, legal fees, taxes, and other applicable charges;

[57] **DÉCLARE** que la version anglaise de la Convention de règlement constitue l'entente entre les parties et que dans l'éventualité d'un conflit quant à son interprétation, la version anglaise aura préséance sur sa traduction française;

[57] **DECLARES** that the English version of the Settlement Agreement is the true agreement between the parties and shall prevail over the French translation in the event of any contradiction;

[58] **DÉCLARE** que dans le cas de divergence entre les conclusions françaises et anglaises de ce Jugement, la version anglaise prévaudra;

[58] **DECLARES** that in the case of any discrepancy between the French and English conclusions of this Judgment, the English version will prevail;

[59] **LE TOUT**, sans frais.

[59] **THE WHOLE**, without costs.



THOMAS M. DAVIS, J.S.C.

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