

# SUPERIOR COURT

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No: 500-06-000549-101

DATE: May 30, 2016

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BY: THE HONOURABLE CHANTAL CORRIVEAU, J.S.C.

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**9085-4886 QUEBEC INC.**  
Petitioner

v.

**VISA CANADA CORPORATION**  
and  
**MASTERCARD INTERNATIONAL INCORPORATED**  
and  
**BANK OF AMERICA CORPORATION**  
and  
**BANK OF MONTREAL**  
and  
**BANK OF NOVA SCOTIA**  
and  
**CANADIAN IMPERIAL BANK OF COMMERCE**  
and  
**CAPITAL ONE FINANCIAL CORPORATION**  
and  
**CITIGROUP INC.**  
and  
**FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC**  
and  
**NATIONAL BANK OF CANADA INC.**  
and

**ROYAL BANK OF CANADA**  
and  
**TORONTO-DOMINION BANK**  
Respondents

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JUDGMENT

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[1] The Petitioner is seeking to approve a fourth settlement agreement in the present file reached between the Petitioner and Respondent Fédération des caisses Desjardins du Québec (“Desjardins”, the “Settling Respondent” and the “Desjardins Settlement Agreement”<sup>1</sup>)<sup>2</sup>.

**INTRODUCTION**

[2] The facts of this case were set out in detail in this Court’s Judgment approving the notice program relating to the Desjardins Settlement Agreement dated February 26, 2016.

[3] For the purposes of cohesiveness, the particulars have been reiterated below. Also, for the purposes of consistency, capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Desjardins Settlement Agreement.

[4] On December 17, 2010, the Petitioner filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the “Motion for Authorization”) against Respondents Visa Canada Corporation and MasterCard International Incorporated.

[5] On March 30, 2012, the Petitioner amended the Motion for Authorization to include Respondents Bank of America Corporation, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Capital One Financial Corporation, Citigroup Inc., Fédération des caisses Desjardins du Québec, National Bank of Canada Inc., Royal Bank of Canada, and Toronto-Dominion Bank (the “Amended Motion for Authorization”) on behalf of the following class:

“all residents in Quebec who, during some or all of the period commencing March 28, 2001 and continuing through to the present (the “Class Period”), accepted as a method of payment for the sale of a good or service Visa (the “Visa Class Members”) or MasterCard (the “MasterCard Class Members”) credit cards

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

<sup>2</sup> Note: The terms Plaintiff(s) and Defendant(s) have been replaced for the purposes of the Quebec Class Action with the terms Petitioner(s) and Respondent(s).

pursuant to the terms of merchant agreements, or any other group to be determined by the Court;"

[6] The Amended Motion for Authorization alleged, inter alia, that the Respondents were imposing significant anti-competitive restrictions on merchants to prevent them from encouraging customers to use lower-cost methods of payment and from declining to accept certain Visa and MasterCard credit cards with high fees.

[7] As alleged, the result of such conduct caused the charging to the Visa and MasterCard Class members of credit card processing fees and associated costs at a supra-competitive rate.

[8] The Petitioner is seeking to bring an action in damages, an injunction and an action in exemplary damages against the Respondents pursuant to the Competition Act, R.S.C., 1985, and pursuant to the Civil Code of Quebec, R.S.Q. 1991, c. 64.

[9] To date, three (3) out-of-court settlements have been reached in this file and approved by this Court by Judgment dated December 7, 2015:

- I. On August 16, 2013, a settlement was reached between the Petitioner and Respondent Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, an affiliate of Bank of America Corporation ("BofA" and the "BofA Settlement Agreement")<sup>3</sup>;
- II. On April 1, 2015, a settlement was reached between the Petitioner and Respondent Capital One Financial Corporation and Capital One Bank (Canada Branch) ("Capital One" and the "Capital One Settlement Agreement");
- III. On April 22, 2015, a settlement was reached between the Petitioner and Respondent Citigroup Inc. ("Citigroup" and the "Citigroup Settlement Agreement").

[10] The Respondents who entered into these agreements namely, (a) BofA, (b) Capital One, and (c) Citigroup, will be collectively referred to as the "Settled Respondents".

### **THE DESJARDINS SETTLEMENT AGREEMENT**

[11] On December 23, 2015, following arm's length negotiations between Class Counsel<sup>4</sup> and Desjardins, the Parties reached and entered into the Desjardins Settlement Agreement, to fully and finally settle all claims asserted against Desjardins in

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<sup>3</sup> The BofA Settlement was amended on July 7, 2014 and on July 8, 2014.

<sup>4</sup> Class Counsel means the following law firms: Consumer Law Group Inc., Branch MacMaster LLP, and Camp Fiorante Matthews Mogerman.

or related to the present Class Action and/or the Canadian Proceedings as per the Releasee provided for in the Desjardins Settlement Agreement.

[12] This Court has authorized the bringing of a class action against Desjardins for settlement purposes only and approved the notice of authorization and settlement hearing on February 26, 2016 – as did the Courts of British Columbia, Ontario, Alberta and Saskatchewan.

[13] The Desjardins Settlement Agreement applies to persons who are members of either or both of the following classes<sup>5</sup>:

Quebec MasterCard Settlement Class

“All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.”

Quebec Visa Settlement Class

“All natural persons, legal persons established in the private interest and partnerships, resident in Quebec, who, during the Class Period, accepted payments for the supply of goods or services by way of Visa Credit Cards pursuant to the terms of Merchant Agreements, except the Excluded Persons and any legal persons established for a private interest and any partnerships which at any time between December 17, 2009 and December 17, 2010 had under its direction or control more than 50 persons bound to it by contract of employment.”

[14] Similar class proceedings were commenced against the same Respondents, which charge substantially the same allegations in the Canadian provinces of British Columbia, Ontario, Alberta, and Saskatchewan (collectively, the “Canadian Proceedings”)<sup>6</sup> such that that all residents in Canada who, during the Class Period,

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<sup>5</sup> These Classes are substantially identical classes as those that have been authorized by this Court for the purposes of the BofA Settlement Agreement, the Capital One Settlement Agreement and the Citigroup Settlement Agreement.

<sup>6</sup> In the Supreme Court of British Columbia under court file number VLC-S-S-112003, in the Ontario Superior Court of Justice under court file number 11-426591, in the Court of Queen’s Bench of Alberta under court file number 1203-18531, and in the Court of Queen’s Bench of Saskatchewan under docket number 133 of 2013.

accepted payments for the supply of goods or services by way of MasterCard Credit Cards and/or Visa Credit Cards pursuant to the terms of Merchant Agreements, are covered by the Desjardins Settlement Agreement.

[15] The action is continuing against the following eight (8) Respondents: Visa Canada Corporation, MasterCard International Incorporated, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada Inc., Royal Bank of Canada, and Toronto-Dominion Bank (collectively, the "Non-Settling Respondents", each a "Non-Settling Respondent").

## **SETTLEMENT**

[16] The Petitioner and Desjardins have agreed to the terms of the Desjardins Settlement Agreement, the whole subject to the approval of this Court and that of the other Courts, and without any admission of liability whatsoever by Desjardins and for the sole purpose of resolving the dispute between the Parties.

[17] The following is a summary of the key terms of the Desjardins Settlement Agreement:

- A) Desjardins has agreed to pay \$9.9 million to Class Counsel for deposit into an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class Members (the "Settlement Amount"). Desjardins paid the Settlement Amount in the Trust Account on January 21, 2016,
- B) Desjardins has agreed to reimburse Class Counsel up to a maximum of \$50,000 for expenses reasonably incurred in publishing the Notice of Certification/Authorization and Settlement Hearing in accordance with a Plan of Dissemination that is no different in substance than that approved by the Courts in relation to the BofA Settlement Agreement, the Capital One Settlement Agreement and the Citigroup Settlement Agreement. Desjardins paid an amount of \$50,000 accordingly in the Trust Account on May 4, 2016, and
- C) Desjardins has also agreed to cooperate with the Petitioner and with Class Counsel by providing the following Documents<sup>7</sup> within thirty (30) days of the Effective Date or at a time that is mutually agreed upon:
  - a) Any Desjardins Documents in Desjardins' possession or control including data in the possession of its experts on certification/authorization, relevant to the issues raised in the Canadian Proceedings, including any Visa

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<sup>7</sup> "Documents" include (a) a document or report that will show the total interchange fees earned by Desjardins in relation to Canadian transactions during the Class Period and (b) a document or report that will show the total volume (in dollars) of Desjardins credit card transactions as issuer and acquirer during the Class Period.

Canadian transaction data between March 28, 2001 and the Effective Date, but excluding any Excluded Desjardins Documents, to the extent that such Desjardins Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights. Upon a request by the Plaintiffs/Petitioner or Class Counsel, Desjardins will provide for the authentication of any business records in this production, so identified by Class Counsel, pursuant to a single request made to Desjardins, and

- b) Any third party Documents in Desjardins' possession or control relevant to the issues raised in the Canadian Proceedings but excluding any Excluded Desjardins Documents, to the extent that such third party Documents are not protected against disclosure pursuant to any confidentiality obligations, court orders, or third party consent rights;

D) Desjardins' cooperation also extends to the following:

- a) Desjardins will reasonably consider making any requests necessary to obtain consent or authorization for the release of any Documents in its possession produced by third parties relevant to the issues raised in the Canadian Proceedings that cannot be disclosed pursuant to confidentiality obligations, court orders, or third party consent rights. If such consent or authorization is withheld, Desjardins will reasonably consider allowing the Plaintiffs/Petitioner to, at their own expense, assert any rights Desjardins has to permit production of such Documents to the Plaintiffs/Petitioner, provided that in no case shall Desjardins be required to advance or respond to contested proceedings to provide to Class Counsel Documents that are relevant to issues raised in the Canadian Proceedings,
- b) In connection with any Documents produced by Desjardins pursuant to the Desjardins Settlement Agreement<sup>8</sup>, Desjardins shall be at liberty to designate such Documents as "Confidential" or "Highly Confidential" pursuant to the Consent Order made in the BC Proceeding dated September 17, 2012 (the "BC Protective Order") or any other order which may be obtained, and
- c) Desjardins will make reasonable efforts to facilitate access to a person having knowledge of the issues raised in the Canadian Proceedings for a meeting to speak to Class Counsel for a period of 6 hours or less, which meeting, if any, is to take place in Quebec;

[18] In addition, the following amounts will be paid out of the Settlement Amount:

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<sup>8</sup> Including pursuant to a bar order which grants a Non-Settling Respondent an ability to apply for: (i) documentary or oral discovery from Desjardins; (ii) service of a request to admit or production on Desjardins; or (iii) production of a witness at a hearing or trial).

- (i) All Administration Expenses, including notice and publication costs and claims administration costs after the \$50,000 reimbursement is used up;
- (ii) Class Counsel Fees, including fees, disbursements, costs, interest and all applicable taxes and charges of Class Counsel; and
- (iii) Any amount owing to the *Fonds d'aide aux actions collectives* with regard to the Quebec Class at the time of distribution;

[19] Class Counsel will eventually propose a Distribution Protocol whereby it will create a plan to distribute the Settlement Amount and accrued interest to the Settlement Class members at a future date with Court approval. However, class counsel claims that this will occur at some later date in order to determine whether further settlements can be achieved with other Respondents, which would lower the relative cost of administration and distribution per settlement to the benefit of the Class.

[20] The Court has expressed that a distribution should occur sooner than later and that it cannot be suspended indefinitely.

[21] The release for the Settling Respondent includes and encompasses any and all claims related to the allegations of the Amended Motion for Authorization.

[22] The Opt-Out Deadline for the Quebec Settlement Classes expired on May 21, 2016 and the deadline to provide written comment or objections expired on May 17, 2016 as determined by this Court's Judgment dated February 26, 2016 – there have been no opt-outs or objections.

### **CLASS NOTICE**

[23] In accordance with the Desjardins Settlement Agreement and this Court's Judgment dated February 26, 2016 approving the Notice as well as the Method of Dissemination, notice was effected, beginning on March 22, 2016 in the following manner:

- a) English language notices in two (2) high-circulation national daily newspapers – The Globe and Mail, national edition (English), and the National Post, national edition (English),
- b) English and French notices in two (2) high-circulation daily newspapers in the province of Quebec: La Presse (French) and The Gazette (English),
- c) Additional publication in the Calgary Herald and the Edmonton Journal, at the direction of the Honourable Associate Chief Justice J.D. Rooke of the Court of Queen's Bench of Alberta,

- d) English and French language notices, as appropriate, in three (3) mass market national industry magazines – the Retail Council of Canada's Canadian Retailer Magazine, the Canadian Convenience Stores Association's C-Store Life, and the Canadian Business / PROFIT<sup>9</sup>,
- e) English and French language notices, as appropriate, were sent out to twenty (20) industry associations whose members accept Visa or MasterCard credit cards as a means of payment for goods or services requesting voluntary distribution to their membership by email or by posting on their websites– the Retail Council of Canada, the Canadian Federation of Independent Businesses (CFIB), the Retail Merchants Association of Canada (Ontario) Inc., the Canadian Restaurant and Foodservices Association, the Canadian Convenience Stores Association, the Canadian Federation of Independent Grocers (CFIG), the Food and Consumer Products of Canada, the Canadian Association of Chain Drug Stores, the Tourism Industry Association of Canada, the Canadian Independent Petroleum Marketers Association, the Canadian Jewellers Association, Small Business Matters, the Canadian Wireless Telecommunications Association (CWTA), the Canadian Association of Home and Property Inspectors, the Canadian Parking Association, the Association of Universities and Colleges of Canada, the Automotive Retailers Association, the Canadian Deals and Coupons Association, the Canadian Cosmetic, Toiletry and Fragrance Association, and the Canadian Franchise Association,
- f) E-mail communication to all persons who signed up to receive information on Class Counsels' websites,
- g) Posting in English and in French on Class Counsels' websites,
- h) A Request to the CBA National Class Action Registry to post the notice online, and
- i) Posting in English and in French on the dedicated settlement websites:
- <http://www.creditcardclassaction.com>, and
  - <https://www.creditcardsettlements.ca/>

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<sup>9</sup> The Pre-Approval Notice was not published in Canadian Restaurant and Foodservice News or Grocery Business Magazine, as these magazines each had next publication dates which were after the settlement approval hearings in the Canadian Proceedings. The Dissemination Plan accounts for this, making publication in industry magazines subject to reasonable publication deadlines.



## APPROVAL OF THE SETTLEMENT AGREEMENT

[24] This Court approves the Desjardins Settlement Agreement as fair, reasonable and in the best interest of the Settlement Class Members based on its analysis of the following factors as set out by the relevant case law, namely:

- « • les probabilités de succès du recours;
- l'importance et la nature de la preuve administrée;
- les termes et les conditions de la transaction;
- la recommandation des procureurs et leur expérience;
- le coût des dépenses futures et la durée probable du litige;
- la recommandation d'une tierce personne neutre, le cas échéant;
- le nombre et la nature des objections à la transaction;
- la bonne foi des parties;
- l'absence de collusion. »<sup>10</sup>

[25] In particular, this Court finds that:

- i. The amount offered in settlement is fair and adequate and worthy of approval and the cooperation elements of the Desjardins Settlement Agreement are valuable;
- ii. The Settlement was reached by experienced, fully-informed counsel after arm's length negotiations;
- iii. The parties engaged in sufficient investigation and information exchanged to intelligently negotiate the terms of the settlement;

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<sup>10</sup> *Tremblay c. Lavoie*, 2014 QCCS 4955, *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Option Consommateurs c. Union canadienne (L'), compagnie d'assurances*, 2013 QCCS 5505; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Conseil pour la protection des malades c. CHSLD Manoir Trinité*, 2014 QCCS 2280; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *Bouchard c. Abitibi-Consolidated Inc.*, (C.S.) Chicoutimi, dossier 150-06-000001-966, 15 juin 2004.

- iv. Class Counsel, who has extensive expertise in the area of class actions and who is most closely acquainted with the facts of the underlying litigation is recommending the approval of the settlement;
- v. The risk, expense, complexity and duration of further litigation weighs in favour of approval;
- vi. No Settlement Class Member has opted out of or objected to the Desjardins Settlement Agreement;
- vii. The negotiations occurred at arm's-length.

### **FEE APPROVAL**

[26] The Court is asked to approve Class Counsel fees and disbursements as fair and reasonable based on its analysis of the following factors as set out in sections 7, 101, and 102 of the Code of Professional Conduct of Lawyers<sup>11</sup>, particularly with a view to the objectives of class proceedings (i.e. access to justice, judicial economy, behaviour modification) and the risks assumed by Class Counsel<sup>12</sup>.

[27] Section 102 of the *Code of Professional Conduct of Lawyers* states:

"102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, extrajudicial costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him."

[28] In particular, the Court finds that the amount of fees claimed is reasonable based on the following:

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<sup>11</sup> RLRQ, c. B-1, r. 3.1.

<sup>12</sup> *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866.

- i) The Settling Respondent is not objecting to Class Counsel's fees in the amount requested, as appears from the Desjardins Settlement Agreement;
- ii) No Settlement Class member has objected to Class Counsel's fees. The Pre-Approval Notice disseminated to Settlement Class Members stated that Class Counsel would be requesting Class Counsel fees in the amount of up to 25% of the Settlement Amount;
- iii) Class Counsel in the other Courts are separately seeking approval from their respective Courts of a collective, national contingent legal fee of \$2,475,000.00, which amounts to 25% of the Settlement Amount, plus disbursements and applicable taxes;
- iv) The Mandate Agreement with the Petitioner provides that Quebec Class Counsel will receive the higher of 30% of the total value of the settlement or a multiplier of 3.5 times the total number of hours worked, plus disbursements and taxes. Quebec Class Counsel would have received higher fees through the multiplier route, nevertheless, the fees and disbursements sought are significantly less than those under the multiplier option;
- v) This action involves complex legal issues, which, in the absence of settlement, would involve lengthier proceedings with an uncertain resolution with respect to the Settling Respondent and possible appeals;
- vi) Class Counsel assumed all of the financial risks associated with initiating, financing, and maintaining the litigation;
- vii) Class Counsel fees, at present, represent a 1.29 multiplier on the actual time incurred, which is quite unusually low in the circumstances<sup>13</sup>;
- viii) Class Counsel has proved its ability to adequately, vigorously, and competently prosecute this action and the favourable settlement is attributable to the hard work, determination, diligence, and reputation of Class Counsel, who developed, litigated, and successfully negotiated the settlement to provide substantial relief to Settlement Class Members.

[29] This Judgment is based upon the foregoing findings of fact and conclusions of law, which are supported by the substantial evidence presented by the Parties hereto and the Settlement Class Members, all of which the Court has considered and is in the record before the Court.

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<sup>13</sup> *Guilbert c. Sony BMG Musique (Canada) inc.*, 2007 QCCS 432; *Sony BMG Musique (Canada) inc. c. Guilbert*, 2009 QCCA 231; *Sonego c. Danone inc.*, 2013 QCCS 2616.

[30] However, the Court is concerned with the fact that this case started in 2010, and that most of the past three years have been dedicated to reach the four out of Court settlements with those defendants represent approximately only 12% of the banking market share, which means that the non settling defendants represent 88% the banking markets share. It is now time that the case against the non settling defendants progresses before this Court. Therefore, the Court hereby approves the settlement and request for legal fees and disbursement and orders payment of the class counsel fees to be deposited in a trust account until further Court order.

[31] Also by September 30<sup>th</sup>, 2016 at the latest, class counsels and the non settling defendants must file in the Court record a detailed case protocol containing the procedural steps to be completed in order to satisfy the readiness for trial. At that time, class counsel may request from the Court the authorisation to obtain payment of the class counsel fees.

**POUR CES MOTIFS, LE TRIBUNAL :**

**WHEREFORE, THE COURT:**

[32] **ACCUEILLE** la présente requête;

[32] **GRANTS** the present motion;

[33] **ORDONNE** que, pour l'application du jugement, les définitions énoncées à l'Accord de règlement de Desjardins, R-1 (« l'Accord de règlement de Desjardins »), s'appliquent et y sont incorporées par renvoi;

[33] **ORDERS** that for the purposes of this Judgment, the definitions contained in the Desjardins Settlement Agreement, R-1 (the "Desjardins Settlement Agreement"), shall apply and are incorporated by reference;

[34] **DÉCLARE** que l'Accord de règlement de Desjardins 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 acceptable;

[34] **DECLARES** that the Desjardins Settlement Agreement 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 excluded themselves in a timely manner;

[35] **DÉCLARE** que l'ensemble de l'Accord de règlement de Desjardins fait partie intégrante du présent jugement;

[35] **DECLARES** that the Desjardins Settlement Agreement, in its entirety, is an integral part of this Judgment;

[36] **DÉCLARE** que l'Accord de règlement de Desjardins est valide, équitable, raisonnable, et dans le meilleur intérêt des Membres du Groupe de Règlement, de la Requérante et de l'Intimée Fédération des caisses Desjardins du Québec (« Desjardins »);

[36] **DECLARES** that the Desjardins Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members, the Petitioner, and the Fédération des caisses Desjardins du Québec ("Desjardins");

[37] **APPROUVE** l'Accord de règlement de Desjardins en conformité avec l'article 590 du

[37] **APPROVES** the Desjardins Settlement Agreement in accordance with Article 590 of the

*Code de procédure civile;**Code of Civil Procedure;*

[38] **ORDONNE** aux parties et aux Membres du Groupe de Règlement, sauf ceux exclus conformément à l'Accord de règlement de Desjardins et au présent jugement, de se conformer aux termes et conditions de l'Accord de règlement de Desjardins;

[38] **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 Desjardins Settlement Agreement and with this Judgment, are to abide by the terms and conditions of the Desjardins Settlement Agreement;

[39] **ORDONNE** et **DÉCLARE** que chaque Membre du Groupe de Règlement qui ne s'est pas valablement exclu du Groupe de Règlement sera considéré comme ayant donné une quittance complète, générale et finale à Desjardins et aux Parties quittancées en égard des Réclamations quittancées en conformité avec les termes de l'Accord de règlement de Desjardins;

[39] **ORDERS** and **DECLARES** that each Settlement Class Member that did not opt-out of the group will be deemed to have given discharge and to have given a complete, comprehensive and final release to Desjardins and the Releasees with respect to the Released Claims on the terms set out in the Desjardins Settlement Agreement;

[40] **ORDONNE** et **DÉCLARE** qu'à l'arrivée de la Date de prise d'Effet, Desjardins et les Parties quittancées auront obtenu quittance des Parties donnant quittance et seront réputées avoir obtenu quittance complète et pour toujours à l'égard de toutes les réclamations pour contribution et dédommagement eu égard aux Réclamations quittancées par les Parties donnant quittance en conformité avec les termes de l'Accord de règlement de Desjardins et la Quittance octroyée;

[40] **ORDERS** and **DECLARES** that on the Effective Date, Desjardins and the Releasees are granted discharge by the Releasors and will be deemed conclusively to have been given full release by the Releasors with respect to any claims for indemnification and contribution with respect to the Released Claims on the terms set out in the Desjardins Settlement Agreement and as per the Release granted therein;

[41] **ORDONNE** et **DÉCLARE** que, par l'Accord de règlement de Desjardins, la Requérante et les Membres du Groupe de Règlement renoncent expressément au bénéfice de la solidarité envers les Intimées non Parties aux Règlements, en ce qui a trait aux faits et actes des Parties quittancées et les Intimées non Parties aux Règlements sont ainsi libérés relativement à la Responsabilité Proportionnelle de Desjardins et des Parties quittancées prouvée au procès ou autrement, le cas échéant;

[41] **ORDERS** and **DECLARES** that, by the Desjardins Settlement Agreement, the Petitioner and Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Respondents with respect to the facts and deeds of the Releasees and the Non-Settling Respondents are thereby released with respect to the Proportionate Liability of Desjardins and the Releasees proven at trial or otherwise, if any;

[42] **ORDONNE** et **DÉCLARE** que la Requérante et les Membres du Groupe de Règlement ne pourront dorénavant réclamer et

[42] **ORDERS** and **DECLARES** that the Petitioner and the Settlement Class Members shall henceforth only be able to claim and recover

recupérer que les dommages, y compris les dommages punitifs, attribuables à la conduite et/ou aux ventes des Intimées non Parties aux Règlements et, pour plus de certitude, ne pourront réclamer d'elles aucun dommage compensatoire, punitif ou autre causé par ou attribuable aux, agissements et/ou ventes de Desjardins et des Parties quittancées et ce, de quelque façon que ce soit;

[43] **ORDONNE** et **DÉCLARE** que tout recours en garantie ou autre mise en cause pour obtenir une contribution ou une indemnité de Desjardins ou des Parties quittancées ou se rapportant aux Réclamations quittancées, est irrecevable et non avenu dans le cadre du présent dossier. Par précision, ce qui précède vise des recours récursoires et ne vise pas à limiter les réclamations et les causes d'actions indépendantes et directes et de bonne foi entre Desjardins et Visa en qualité d'Intimée Non Partie au Règlement et/ou entre Desjardins et MasterCard en qualité d'Intimée Non Partie au Règlement pour des réparations autres que celles recherchées par la requérante;

[44] **DÉCLARE** que les droits des Intimées non Parties aux Règlements de procéder aux interrogatoires au préalable d'un représentant de Desjardins, le cas échéant, seront déterminés selon les dispositions du Code de procédure civile, et Desjardins conserve le droit de s'opposer à de tels interrogatoires en vertu du Code de procédure civile;

[45] **APPROUVE** le paiement d'un montant d'honoraires légaux de 2 475 000,00 \$ en sus des débours d'un montant de 35,414.61\$ plus les taxes applicables à partir du Compte en Fiducie à être conservé dans un compte en fiducie jusqu'à nouvelle ordonnance de la Cour;

[46] **ORDONNE** que le Montant du Règlement, après déduction des montants payable aux Procureurs du Groupe pour les honoraires légaux, les débours plus les taxes

damages, including punitive damages, if any, attributable to the conduct of and/or sales by the Non-Settling Respondents, and, for greater certainty, they cannot claim any compensatory, punitive or other damages caused by or attributable to the conduct, and/or sales of Desjardins and the Releasees in any way whatsoever;

[43] **ORDERS** and **DECLARES** that any action in warranty or otherwise to obtain any contribution or indemnity from Desjardins or the Releasees or relating to the Released Claims, is inadmissible and void in the context of the present proceeding. For certainty, the above deals with claims over and is not intended to preclude bona fide independent and direct claims and causes of action between Desjardins and Visa as a Non-Settling Respondent and/or Desjardins and MasterCard as a Non-Settling Respondent for relief other than that claimed by the Petitioner

[44] **DECLARES** that any future right of the Non-Settling Respondents to examine any representative of the Desjardins, if any, will be determined according to the provisions of the Code of Civil Procedure and Desjardins shall have the right to oppose such an examination under the Code of Civil Procedure;

[45] **APPROVES** the payment of legal fees in the amount of \$2,475,000.00 plus disbursements in the amount of \$35,414.61 plus applicable taxes from the Trust Account to be kept in a trust account until further Court's order;

[46] **ORDERS** that the Settlement Amount, less amounts payable for Class Counsel fees, disbursements plus applicable taxes, be held in trust by Class Counsel for the benefit of the

applicables, soient détenus en fidéicommiss par les Procureurs du Groupe, au bénéfice du Groupe du Règlement jusqu'à ce qu'un jugement soit rendu par cette cour à la suite de la présentation d'une requête à cet effet;

[47] **DÉCLARE** que Desjardins et les Parties quittancées n'ont aucune responsabilité ni implication quant à l'administration de l'Accord de règlement de Desjardins, du Protocole de distribution, ou de l'administration, de l'investissement, ou de la distribution du Compte en Fiducie;

[48] **ORDONNE** que sous réserve du paragraphe 45 lorsque le montant dans le Compte en Fiducie sera distribué conformément au Protocole de Distribution, les prélèvements du Fonds d'aide aux actions collectives soient effectués seulement sur chaque réclamation faite par les membres résidant au Québec 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;

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

[50] **ORDONNE** et **JUGE** que cette action collective soit et est par la présente réglée contre Desjardins, sans frais et avec l'effet de force de chose jugée;

[51] **ORDONNE** que, sous réserve de ce qui est prévu dans le présent jugement, le présent jugement n'affecte pas les réclamations ou causes d'action qu'un Membre du Groupe de Règlement a ou pourrait avoir à l'encontre des Intimées non Parties aux Règlements en l'instance;

[52] **ORDONNE** que le présent jugement soit sans préjudice aux droits et aux défenses des Intimées non Parties aux Règlements en

Settlement Class until a judgment is rendered by the Court after the presentation of a motion to that effect;

[47] **DECLARES** that Desjardins and the Releasees have no responsibility or involvement in the administration of the Desjardins Settlement Agreement, the Distribution Protocol, or the administration, investment, or distribution of the Trust Account;

[48] **ORDERS** that under reserve of paragraph 45 at such a time when the amount in the Trust Account is distributed pursuant to the Distribution Protocol, the levies by the Fonds d'aide aux actions collectives will be collected only on each claim made by Quebec residents and be remitted according to the Loi sur le Fonds d'aide aux actions collectives and the Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives;

[49] **RESERVES** the right of parties to ask the Court to settle any dispute arising from the Desjardins Settlement Agreement;

[50] **ORDERS** and **ADJUDGES** that this class action be and is hereby settled as against Desjardins without costs and with prejudice;

[51] **ORDERS** that, except as provided herein, this Judgment does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Respondents in this action;

[52] **ORDERS** that this Judgment shall be entirely without prejudice to the rights and defences of the Non-Settling Respondents in this action;

l'instance;

[53] **ORDONNE** que rien dans ce jugement ne sera interprété comme un aveu par les Intimées non Parties aux Règlements de toutes les allégations de fait ou de droit invoquées par la Requérante en l'instance;

[53] **ORDERS** that nothing in this Judgment shall be construed as an admission by the Non-Settling Respondents of any allegations of fact or law asserted by the Petitioner in this action;

[54] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur les sites web des Procureurs du Groupe;

[54] **ORDERS** that a copy of this Judgment shall be posted on Class Counsel's websites;

[55] **DÉCLARE** que la version anglaise de l'Accord de règlement de Desjardins 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;

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

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

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

[57] **ORDONNE** aux parties de produire un protocole d'instance d'ici le 30 septembre 2016. À cette date, une conférence de gestion aura lieu;

[57] **ORDERS** the parties to produce a case protocol by September 30<sup>th</sup>, 2016. On that date, a management conference will take place;

[58] **LE TOUT**, sans frais de justice.

[58] **THE WHOLE**, without legal costs.

  

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CHANTAL CORRIVEAU, J.S.C.

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