

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

NO: 500-06-000526-109

DATE: October 12th , 2016

**IN THE PRESENCE OF: THE HONOURABLE MARIE-FRANCE COURVILLE,
J.S.C.**

ANTHONY SNYDER
-and-
ANDREW WINKLER
Petitioners

c.

MATTEL CANADA INC.
-and-
MATTEL, INC.
-and-
FISHER-PRICE CANADA INC.
-and-
FISHER-PRICE INC.
Respondents

JUDGMENT

[1] The Court is seized of an omnibus motion for: (a) authorization of a class action for settlement purposes; (b) approval of a class action settlement; (c) approval of a notice to class members (d) approval of class counsel fees; and (e) approval of incentive awards to the Petitioners.

I. INTRODUCTION

[2] On October 4, 2010, the Petitioners filed a Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the "Motion for Authorization") against the Respondents.

[3] The Motion for Authorization alleged, *inter alia*, that the Respondents were negligent in the manufacture, production, distribution, marketing and/or sale of toys which were recalled due to their inherent, hidden defects which have rendered these products unsafe and/or dangerous. Although the Respondents had issued a voluntary recall of these toys on September 29 and 30, 2010, the Motion for Authorization alleged that it was merely a band-aid remedy as it was the responsibility of the parents and/or guardians to inform themselves about the products that they bought and to verify if their product had been subject to a recall, to stop using them for their intended purpose, to contact the Respondents and to wait for a repair kit that would possibly render their products safe for use by children (which they were expressly and/or impliedly told were safe prior to and/or during their purchases).

[4] The damages alleged in the Motion for Authorization were the costs of purchasing the recalled products, including sales taxes, the loss of use and enjoyment of the recalled products (if only for the time period in which the modification kit was requested and when it was eventually delivered), the loss of value of the Recalled Products, trouble, inconvenience and loss of time, and any and all bodily injuries caused by the recalled products.

[5] On December 28, 2012, a parallel proceeding was instituted by the offices of Consumer Law Group ("CLG") in the province of Ontario in *Vell v. Mattel Canada, Inc. et al.*, Court File No. CV-12-470990-0001 00CP (the "Ontario Proceeding") and by so doing, aptly ensured that all residents in Canada would be protected.

[6] As at January 19, 2015, the parties executed a national settlement agreement (the "Settlement Agreement")¹.

[7] The parties agreed to seek certification of a national class (excluding Quebec) [defined as the "Ontario Settlement Class" at section A (24) of the Settlement Agreement] and approval of the Settlement Agreement before the Ontario Superior Court of Justice² and authorization of a Quebec-only class [defined as the "Quebec Settlement Class" at section A (33) of the Settlement Agreement] and approval of the

¹ Exhibit R-1.

² On September 16, 2016, Justice Perell of the Ontario Superior Court of Justice approved the Settlement Agreement.

Settlement Agreement by this Court. The Quebec Settlement Class is defined as follows:

“all Persons in Quebec, except Excluded Persons³, who:

- (i) purchased or acquired (including by gift) a Recalled Product⁴ for or on behalf of themselves or a minor child over whom they have custody and control as a parent or guardian, or to be given as a gift to another Person; or
- (ii) are the parent or guardian of a minor child who purchased or acquired (including by gift) a Recalled Product.”

II. AUTHORIZATION OF THE CLASS ACTION FOR SETTLEMENT PURPOSES

[8] In order to approve the Settlement Agreement, the class action must first be authorized to allow the Petitioners to bring the class action on behalf of the Class Members.

[9] The Respondents are consenting to the authorization of the Motion for Authorization for settlement purposes only.

[10] Where the respondents consent to the authorization of a class action for settlement purposes, the criteria set forth at article 575 C.C.P. must still be met, but are applied with a certain *souplesse*, being somewhat flexible and/or relaxed and taking into account the fact of the settlement⁵.

[11] In light of this standard and, under reserve of the rights of the Respondents, the Motion for Authorization dated October 4, 2010, the Exhibits in support thereof and the Affidavits of the Petitioners dated October 6, 2016 amply justify granting the Motion for Authorization.

³ “Excluded Persons” means:

- (a) all Persons who purchased or acquired Recalled Products(s) for resale;
- (b) all Defendants and their affiliated entities, legal representatives, successors and assigns; and
- (c) with respect to the Quebec Settlement Class only, any legal person established for a private interest, partnership or association which has had under its control more than 50 persons bound to it by a contract of employment at any time after October 8, 2009. However, the Parties have mutually agreed to omit subsection (c) above, from the definition given that the new *Code of Civil Procedure* no longer contains this restriction.

⁴ “Recalled Products” are listed in Exhibit “A” to the Settlement Agreement.

⁵ *Dupuis c. Polyone Canada inc.*, 2016 QCCS 2561; *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Schachter c. Toyota Canada inc.*, 2014 QCCS 802; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534, 9085-4886 *Québec inc. c. Visa Canada Corporation*, 2015 QCCS 5914.

(a) The claims of the members of the Class raise identical, similar or related issues of law or fact

[12] The Settlement Agreement specifies that following as the common issue upon which this Court may authorize the class action:

Were the Defendants, or any of them, negligent in the manufacture, distribution, sale and/or recall of the Recalled Products?⁶

[13] The Court agrees that such a common question would serve to advance the resolution of the litigation with respect to all the class members and would not play an insignificant role in the outcome of the case⁷.

(b) The facts alleged appear to justify the conclusions sought

[14] Both the Motion for Authorization, as well as the Settlement Agreement, are intended to compensate Class Members for their injuries relating to the Recalled Products.

[15] Taking account of the fact that the Respondents are consenting for the purposes of settlement to this criterion, this Court is of the opinion that the facts, if taken as true, appear to justify the conclusions sought.

(c) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

[16] Quebec residents who were exposed to the Respondents' Recalled Products are dispersed across the province.

[17] Given the costs and risks inherent in an action before the Courts, people would, at best, hesitate to institute an individual action against the Respondents⁸ and individual litigation of the factual and legal issues raised would increase delay and expenses to all parties and to the court system.

⁶ Exhibit R-1 at A (6).

⁷ *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1; *Sibiga c. Fido Solutions inc.*, 2016 QCCA 1299.

⁸ "The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30." [*Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004)] and *Lambert c. Whirlpool Canada, L.P.*, 2015 QCCA 433, in dissent at 52 to 57.

(d) The capacity of the Petitioners to properly represent the Class Members

[18] Even in the context of a contested proceeding, the criteria to be an adequate representative is not very demanding and in *Lévesque c. Vidéotron, s.e.n.c.*, 2015 QCCA 205, Justice Bélanger explains the criteria as having become “minimaliste”:

« [23] ... la Cour suprême reprend d’abord les enseignements du professeur Lafond⁹ et réitère les trois facteurs à considérer pour évaluer la représentation adéquate : 1) l’intérêt à poursuivre; 2) la compétence du représentant, et 3) l’absence de conflit avec les membres du groupe. La Cour suprême ajoute toutefois que « [A]ucun représentant proposé ne devrait être exclu, à moins que ses intérêts ou sa compétence ne soient tels qu’il serait impossible que l’affaire survive équitablement ». Ce faisant, la Cour suprême envoie un message plutôt clair quant au niveau de compétence requis pour être nommé représentant. Le critère est devenu minimaliste. »

[19] This Court is of the opinion that the Petitioners, who are themselves Quebec Settlement Class Members, will fairly, properly and adequately protect and represent the interests of the Class.

[20] The Petitioners have been involved in the legal proceedings in terms of its prosecution as well as settlement negotiations and have kept their fellow Class Members informed about the progress of the case through their attorneys’ website – all in the best interests of the Class Members.

[21] There is no indication of any possible conflict of interest with any Quebec Settlement Class Members.

[22] This Court is of the opinion that the criteria set out at 575 C.C.P. appear to have been met and that the Petitioners should be appointed as Class Representatives of the Quebec Settlement Class for settlement purposes.

III. APPROVAL OF THE SETTLEMENT AGREEMENT

[23] Article 590 C.C.P. stipulates that the transaction is valid only if it is approved by the Court.

⁹ Pierre-Claude Lafond, *Le recours collectif comme voie d’accès à la justice pour les consommateurs*, Montréal, Les Éditions Thémis, Montréal, 1996, p. 419.

[24] This requirement stems from the Court's role as guardian and protector of the class members who are not parties themselves to the proceedings and although they are represented by the class representatives, they are not generally consulted individually with regards to the conduct of the litigation.

[25] Before approving the Settlement Agreement, this Court must satisfy itself that the settlement terms are fair, reasonable and in the best interests of the Class Members.

[26] In *Pellemans c. Lacroix*¹⁰, Justice Prévost reviews the criteria that must guide the Court who is called upon to approve a settlement;

« [20] Appelé à approuver une transaction, le tribunal doit tout d'abord s'assurer qu'elle est juste, équitable et dans le meilleur intérêt des membres du groupe¹¹. Les critères devant le guider sont généralement les suivants :

- 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 collusion¹².

¹⁰ *Pellemans c. Lacroix*, 2011 QCCS 1345

¹¹ *Bouchard c. Abitibi Consolidated*, REJB 2004-66455 (C.S.), par. 16 (j. Y. Alain).

¹² *Dabbs c. Sun Life*, [1998] O.J. 1598 (C.S.J.Ont.); *Arsenault c. Société immobilière du Québec*, C.S. Chicoutimi, no 150-06-000001-974, 6 juillet 2001, j. Jean Lemelin; LAFOND, Pierre-Claude, *Le recours collectif, le rôle du juge et sa conception de la justice*, Éditions Yvon Blais, 2006, p. 178-180.

[21] L'analyse de ces critères constitue un exercice délicat puisque l'habituel débat contradictoire fait place à l'unanimité des parties qui ont signé la transaction et qui ont tout intérêt à la voir approuvée par le tribunal. D'une part, le juge n'a généralement qu'une connaissance limitée des circonstances et des enjeux du litige. D'autre part, il doit en principe encourager le règlement des litiges par la voie de la négociation, ceci étant généralement dans le meilleur intérêt des parties. Le Tribunal doit donc se montrer vigilant. »

[27] These factors ought not be applied in a stringent, formulaic manner and not all nine (9) factors need be satisfied. Instead, the Court should look at the totality of these factors in light of the specific circumstances involved in the case.

[28] This Court will first address the terms and conditions of the Settlement Agreement itself.

(a) Key terms of the Settlement Agreement:

28.1. For Settlement Class Members who were sent Modification Kits prior to the Notice Date¹³ (i.e. publication of the Settlement Notice):

Settlement Class Members who requested and were sent a Modification Kit by Mattel pursuant to a Recall prior to the Notice Date will automatically receive a cheque from Mattel in the amount of \$8.00 per Modification Kit sent, up to a maximum of three (3) such Modification Kits (\$24.00 total) per Person and/or address;

28.2. For Settlement Class Members who submit valid Modification Kit Claims between the Notice Date and the Claims Deadline¹⁴:

Settlement Class Members who: (i) are in possession of one or more Recalled Products on the Notice Date; (ii) have not been sent a Modification Kit by Mattel in respect of such Recalled Product(s); and (iii) who make or submit a valid Modification Kit Claim in respect of such Recalled Product(s) to Mattel on or after the Notice Date and before the Claims Deadline, will be entitled to receive the Modification Kit(s) requested and a cheque from Mattel in the amount of \$8.00 per valid Modification Kit Claim submitted, up to a maximum of three (3) such Modification Kit Claims (\$24.00 total) per Person and/or address¹⁵;

¹³ The Notice Date is the date that the Settlement Notice will be published.

¹⁴ The Claims Deadline will be at 5:00 P.M. EST, 90 days after the Notice Date.

¹⁵ All Settlement Class Members who request a Modification Kit prior to the Claims Deadline will receive it in the mail as well as the \$8.00 cheque – there is no practical difference between 28.1 and 28.2 other than timing.

[Sections '28.1' and '28.2' above are referred to as "Settlement Benefits" and/or as "Settlement Consideration"]

28.3. Limitations on Settlement Benefits:

- a) One Modification Kit Per Recalled Product: Settlement Class Members are entitled to a maximum of one (1) Modification Kit and a maximum amount of \$8.00 for each Recalled Product purchased or acquired per Person and/or address; and
- b) Total Settlement Benefits not to Exceed \$200,000.00: In the event that the total amount that would be payable in respect of Modification Kits sent and valid Modification Kit Claims submitted exceeds \$200,000.00, the amounts of all cheques payable to Settlement Class Members shall be reduced *pro rata* to a total of \$200,000.00;

28.4. The *Fonds d'aide aux actions collectives* shall be entitled to a deduction of 2% of the Settlement Benefits paid to Quebec Settlement Class Members;

28.5. The Respondents have agreed to pay the following amounts separately and over and above the Settlement Benefits:

- a) All Notice Expenses;
- b) Class Counsel Fees in the amount of \$75,000 plus applicable taxes; and
- c) Incentive Awards to the Petitioners and to the Ontario plaintiff in the amount of \$500 each (\$1,500 total);

[collectively, the "Settlement Costs"]

28.6. The Respondents will also be covering their own in-house claims administration costs and expenses, including organizing Settlement Class Members' claims, printing of cheques, and the various mailings to Settlement Class Members. Class Counsel will be performing other claims administrations tasks such as the receipt of correspondence from Settlement Class Members, including opt-outs and objections, as well as responding to Settlement Class Members' questions and inquiries by telephone and email;

28.7. The Settlement Benefit cheques shall be mailed to Settlement Class Members within 90 days of the Claims Deadline, by regular mail to the mailing address provided by the Settlement Class Member for the delivery of the Modification Kit. The amount of any Settlement Benefit cheques that are returned by Canada Post as undeliverable, if any, shall revert to Mattel;

- 28.8. The Respondents will receive a release for any and all claims related to the allegations of the Quebec and/or Ontario Proceeding and the Recalled Products, but this release does not include individual claims for personal injury;
- 28.9. In order to receive a Modification Kit and thus, the \$8.00 cheque per Modification Kit sent, eligible Settlement Class Members need only complete and submit such a request to the Respondents, through the Respondents' designated Recall and Safety Alerts website <http://service.mattel.com/us/recall.aspx>;
- 28.10. The Claims Deadline will be at 5:00 P.M. EST, 90 days after the Notice Date (i.e. publication of the Settlement Notice). As of August 31, 2016, there have been approximately 14,500 requests for Modification Kits - approximately 13,500 have already been mailed and approximately 1,000 are currently being processed;
- 28.11. The Opt-Out Deadline will expire 90 days after the Notice Date. As of October 5, 2016, there have been no opt-outs of the Settlement Agreement;
- 28.12. The deadline for a Class Member to object expired on September 6, 2016 (i.e. 10 days prior to September 16, 2016, the Ontario Hearing Date). As of the date of this Judgment, there have been no objections to the Settlement Agreement.

[29] In accordance with the Settlement Agreement and this Court's Judgment approving the Hearing Notice dated July 12, 2016, notice was effected on August 6, 2016 in accordance with the Hearing Notice Dissemination Plan in the following manner:

- a) By publishing once, in each of the following newspapers, in either English or French, as is appropriate:
 - i) The Globe and Mail, national edition, and
 - ii) La Presse, national edition,
- b) By posting on Class Counsel's website at www.clg.org, and
- c) By Class Counsel providing it to any person who so requests;

[30] The Settlement Agreement also provides that within sixty-five (65) days of obtaining this Court's Approval¹⁶, the Settlement Notices¹⁷ shall be disseminated in English and French (where applicable) in the following manner:

Short-Form Settlement Notice (Exhibit R-2):

By publishing once, in each of the following newspapers, in either English or French, as is appropriate for each newspaper:

- i) The Globe and Mail, national edition,
- ii) National Post, national edition,
- iii) La Presse,
- iv) The Montréal Gazette, and
- v) The Vancouver Sun;

Long-Form Settlement Notice (Exhibit R-3):

- a) By posting on Class Counsel's website at www.clg.org, and
- b) By Class Counsel providing it by regular mail to any person in Canada who so requests.

(b) Probability of success of the action

[31] The preamble of the Settlement Agreement specifically indicates that the Respondents deny the Petitioners' allegations and claims, deny any wrongdoing or liability, deny that the Petitioners or the Class Members have any justifiable claim for relief, and deny that they have any liability to the Petitioners or to the Class Members.

[32] It is clear that the Parties would have entered into a serious and contradictory debate, which has been assuaged through the fact of settlement.

[33] These factors militate strongly in favour of the approval of the Settlement Agreement.

(c) The recommendation of experienced counsel

[34] Class Counsel has extensive expertise in the area of consumer class actions, has an exemplary track record, and has been most closely acquainted with the facts of the underlying litigation for the past six (6) years, has negotiated and recommended the terms and conditions of the Settlement Agreement.

¹⁶ The Ontario Superior Court of Justice has already approved the Settlement Notices.

¹⁷ Exhibits R-2 and R-3.

[35] Class Counsel has come to this opinion in the context of having been immersed in the facts and legal issues and having undergone extensive negotiation.

(d) The future expenses and probable length of litigation

[36] Litigating most any case, and, in particular, a class action, unquestionably involves lengthy litigation and extensive costs.

[37] Further, the present action would likely take several years to be decided on the merits and would be subject to appeals, causing further delay.

(e) The number and nature of objections

[38] Despite the dissemination of the Hearing Notice, there have been no objections to date, which is indicative that Quebec Settlement Class Members are satisfied with the Settlement Agreement.

[39] In addition, there have been no opt-outs to the Settlement Agreement indicating same.

(f) Good faith of the parties and the absence of collusion

[40] This Court has no doubt as to the good faith of the parties and the terms and conditions of the Settlement Agreement do not lead to any inferences of collusive behaviour.

[41] Courts encourage settlements in general and strive to encourage them as they result from a willingness of the parties to avoid the risks, costs, and delays involved in trials.

[42] A Settlement Agreement that results from arms-length negotiations between the parties necessarily involves a number of compromises on both sides.

[43] For the reasons set out above, this Court is of the opinion that the Settlement Agreement is fair, reasonable, and in the best interests of the Quebec Settlement Class Members.

IV. APPROVAL OF CLASS COUNSEL FEES

[44] The terms of the Settlement Agreement include the payment of \$75,000 plus applicable taxes to Class Counsel for its fees.

[45] The Court approves Class Counsel Fees 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*¹⁸, 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 Counsel¹⁹.

[46] 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.”

[47] In particular, the Court finds that the amount of fees awarded is fair and reasonable based on the following considerations:

- i) The Respondents have agreed to pay Class Counsel Fees up to the amount requested;
- ii) No Class Member has objected to Class Counsel's fees. The Hearing Notice disseminated to Class Members specifically stated the amount of Class Counsel fees being requested;
- iii) The amount of Class Counsel fees is significantly below that which is provided for in the Mandate Agreements with the Petitioners and reflects a compromise arrived at by the parties;

¹⁸ RLRQ, c B-1, r. 3.1.

¹⁹ *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866.

- iv) Class Counsel fees, at present, represent a 0.42 negative multiplier on the actual time incurred²⁰;
- v) Class Counsel assumed all of the financial risks associated with initiating, financing, and maintaining the litigation. Class Counsel invested a substantial amount of time and financial resources to prosecute this case without any guarantee of compensation or even the recovery of its disbursements since it began and would have received nothing had this case not come to a successful outcome;
- vi) The action involves complex legal issues and, in the absence of a settlement, would involve lengthy proceedings with an uncertain resolution and possible appeals;
- vii) The positive result for Settlement Class Members is attributable to the hard work and perseverance of Class Counsel who relentlessly pursued the case to its fruitful conclusion; and
- viii) Class Counsel has more than proved its ability to vigorously and competently prosecute this action and this favourable settlement is attributable to the hard work, determination, diligence, and reputation of Class Counsel;

V. APPROVAL OF THE INCENTIVE AWARDS TO THE PETITIONERS

[48] It has become quite common to include a provision in a settlement agreement to provide for modest compensation in the form of an honorarium payable to a petitioner due to his or her efforts in assisting with the litigation that benefits fellow class members.

[49] In the present case, the Petitioners undertook the proceedings on behalf of the Class who are benefitting as a result of their time and effort. If they are not compensated for this, the Class Members would be enriched at their expense.

[50] In this case, the Settlement Agreement provides for the payment of Incentive Awards in the amount of \$500 to both Petitioners.

[51] This Court is of the opinion that this amount is reasonable in the circumstances.

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

²⁰ *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.

[52] **ORDONNE** que, sauf indication contraire aux présentes, aux fins du présent jugement, les définitions énoncées dans l'Entente de Règlement sont applicables et incorporées dans ce jugement;

[52] **ORDERS** that, unless otherwise provided herein, for the purposes of this Judgment, the definitions set out in the Settlement Agreement apply and are incorporated herein;

[53] **ACCUEILLE** la requête des Requérants en autorisation d'exercer une action collective et de leur attribuer le statut de Représentants du Groupe pour les fins de règlement;

[53] **GRANTS** the Petitioners' motion to authorize the bringing of a class action and to appoint themselves as Class Representatives for settlement purposes;

[54] **AUTORISE** l'exercice de l'action collective aux fins de règlement, assujéti aux modalités de l'Entente de règlement, au nom du Groupe suivant :

[54] **AUTHORIZES** the class action for settlement purposes, subject to the terms of the Settlement Agreement, on behalf of the following Class:

« *Toutes les personnes au Québec, sauf les Personnes Exclues, qui:*

"All Persons in Quebec, except Excluded Persons, who:

(i) *ont acheté ou ont acquis (y compris par don) un Produit Rappelé pour leurs comptes ou celui d'un enfant mineur dont elles ont la garde et le contrôle en tant que parents ou tuteurs, ou pour être donné comme cadeau à une autre personne; ou*

(i) *purchased or acquired (including by gift) a Recalled Product for or on behalf of themselves or a minor child over whom they have custody and control as a parent or guardian, or to be given as a gift to another Person; or*

(ii) *sont les parents ou les tuteurs d'un enfant mineur qui a acheté ou acquis (y compris par don) un Produit Rappelé »;*

(ii) *are the parent or guardian of a minor child who purchased or acquired (including by gift) a Recalled Product";*

[55] **ATTRIBUE** aux Requérants Anthony Snyder et Andrew Winkler le statut de Représentants-Demandeurs pour les personnes incluses dans le Groupe du Québec pour fins de règlement;

[55] **APPOINTS** the Petitioners Anthony Snyder and Andrew Winkler as the Representative Plaintiffs of the persons included in the Quebec Class for settlement purposes;

[56] **ACCUEILLE** la requête des Requéranants en approbation de l'Entente de Règlement;

[56] **GRANTS** the Petitioners' motion to approve the Settlement Agreement;

[57] **IDENTIFIE** aux fins de règlement seulement, la question commune comme étant la suivante:

[57] **IDENTIFIES** for the purposes of settlement only, the common issue as follows:

Est-ce que les Défendeurs, ou l'un d'eux, ont été négligent dans la fabrication, la distribution, la vente et/ ou le rappel des Produits Rappelés?

Were the Defendants, or any of them, negligent in the manufacture, distribution, sale and/or recall of the Recalled Products?

[58] **DÉCLARE** que l'Entente de Règlement (incluant son préambule et ses Annexes) :

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

- a) est juste, raisonnable et qu'elle est dans le meilleur intérêt des Membres du Groupe du Québec,
- b) est approuvée en vertu de l'article 590 C.C.P., et
- c) sera mise en œuvre conformément à ses dispositions;

- a) is fair, reasonable and in the best interest of the Quebec Settlement Class Members,
- b) is hereby approved pursuant to article 590 C.C.P., and
- c) shall be implemented in accordance with all of its terms;

[59] **DÉCLARE** que l'Entente de Règlement constitue une transaction, conformément à l'article 2631 du *Code civil du Québec*, qui lie toutes les parties et tous les Membres du Groupe du Québec, tel qu'énoncé ci-dessous;

[59] **DECLARES** that the Settlement Agreement constitutes a transaction in conformity with article 2631 of the *Civil Code of Quebec*, which is binding upon all parties and all Quebec Settlement Class Members at set forth hereinbelow;

[60] **APPROUVE** la forme et le contenu de l'Avis d'approbation tel que prévu essentiellement dans le Formulaire-Abrégé (Annexe R-2) et dans le Formulaire-Complet (Annexe R-3);

[60] **APPROVES** the form and content of the Settlement Notice substantially as set forth in the Short-Form as Exhibit R-2 and in the Long-Form as Exhibit R-3;

[61] **ORDONNE** que l'Avis d'approbation soit publié et distribué essentiellement selon les modalités du Plan de diffusion de l'Avis d'approbation prévu à l'Entente de Règlement;

[61] **ORDERS** that the Settlement Notice shall be published and disseminated substantially in accordance with the Settlement Notice Dissemination Plan as set forth in the Settlement Agreement;

[62] **DÉCLARE** que la forme et le mode d'avis, tels que décrits dans l'Avis d'approbation, et le plan d'avis, tel que qu'approuvé dans ce jugement, représentent une façon juste et raisonnable d'aviser toutes les personnes ayant droit de recevoir l'avis et satisfont aux exigences de préavis en vertu des articles 579, 581 et 590 C.C.P.;

[62] **DECLARES** that the form and manner of notice as set out in the Settlement Notice and the notice plan as approved herein represents fair and reasonable notice to all persons entitled to notice, and satisfies the requirements of notice under articles 579, 581 and 590 C.C.P.;

[63] **ORDONNE** que la Date de l'avis ait lieu dans les trente (30) jours après la Date d'effet;

[63] **ORDERS** that the Notice Date shall occur within thirty (30) days after the Effective Date;

[64] **ORDONNE** que, conformément aux termes de l'Entente de Règlement, les Intimées paient tous les Coûts d'Avis;

[64] **ORDERS** that, in accordance with the terms of the Settlement Agreement, the Respondents shall pay all Notice Expenses;

[65] **ORDONNE** que la date limite pour s'exclure soit quatre-vingt-dix (90) jours à compter de la Date de l'avis;

[65] **ORDERS** that the Opt-Out Deadline shall be ninety (90) days from the Notice Date;

[66] **ORDONNE** que tous les Membres du Groupe du Québec qui se sont valablement exclus de l'action collective du Québec ne soient pas liés par l'Entente de règlement, n'aient aucun droit à l'égard de l'Entente de règlement, et ne reçoivent pas de prestations tel que prévu dans l'Entente de règlement;

[66] **ORDERS** that any member of the Quebec Settlement Class who has validly opted out of the Quebec Proceeding shall not be bound by the Settlement Agreement, shall have no rights with respect to the Settlement Agreement, and shall not receive any Settlement Benefits as provided in the Settlement Agreement;

[67] **ORDONNE** que tous les Membres du Groupe du Québec soient réputés avoir choisi de participer au Règlement et soient liés par l'Entente de Règlement et par ce

[67] **ORDERS** that all Quebec Settlement Class Members shall be deemed to have elected to participate in the Settlement and shall be bound by the Settlement

jugement, à moins qu'ils se soient exclus conformément à l'article F.1. de l'Entente de règlement et comme décrit dans les Avis d'approbation;

Agreement and this Judgment, unless they have excluded themselves in accordance with Section F.1. of the Settlement Agreement and as described in the Settlement Notices;

[68] **ORDONNE** que la Date limite des réclamations soit quatre-vingt-dix (90) jours à compter de la Date de l'avis;

[68] **ORDERS** that the Claims Deadline shall be ninety (90) days from the Notice Date;

[69] **ORDONNE** que seuls les Membres du Groupe du Québec à qui ont été envoyés des Kits de modification avant la Date de l'avis ou qui soumettent des réclamations valides pour un ou des Kit(s) de modification avant la Date limite des réclamations conformément aux articles D. et E. de l'Entente de règlement de l'Entente de règlement aient le droit de recevoir des prestations en vertu de l'Entente de règlement;

[69] **ORDERS** that only those Quebec Settlement Class Members who were sent Modification Kits prior to the Notice Date or who submit valid Modification Kit Claims prior to the Claims Deadline in accordance with the provisions in Sections D. and E. of the Settlement Agreement shall be entitled to receive any Settlement Benefits pursuant to the Settlement Agreement;

[70] **ORDONNE ET DÉCLARE** que les quittances énoncées dans l'Entente de règlement auront plein effet et que chaque Partie donnant quittance aura libéré et sera définitivement réputée avoir entièrement, définitivement et pour toujours, libéré les Parties quittancées des Réclamations de cette Entente de Règlement;

[70] **ORDERS AND DECLARES** that no Person shall submit a Modification Kit Claim containing information that the Person knows to be false and that any Person who knowingly submits a false Modification Kit Claim shall be in contempt of this Judgment;

[71] **ORDONNE** que chaque Partie donnant quittance n'initiera ni ne poursuivra aucune action ou procédure relative, en aucune façon, aux Réclamations quittancées contre toute personne qui, dans le cadre d'une telle action ou procédure, initiera ou continuera toute réclamation, demande reconventionnelle, réclamation additionnelle ou toute demande de contribution, indemnité ou toute autre réparation contre une Partie quittancée;

[71] **ORDERS** that each Releasor shall not commence or continue any action or take any proceeding relating in any way to the Released Claims against any Person or Persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees;

[72] **ORDONNE ET DÉCLARE** que, sous réserve de l'art 580 C.C.P, chaque Membre du groupe du Québec consent et sera réputé avoir consenti au rejet de toute autre action qui a déjà été commencée contre les Parties quittancées, sans frais de justice;

[72] **ORDERS AND DECLARES** that, subject to art. 580 C.C.P., each Quebec Class Member shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees, without legal costs;

[73] **ORDONNE ET DÉCLARE** que, sous réserve de l'art 580 C.C.P, chaque Autre Action intentée au Québec devra être et est, par les présentes, rejetée contre les Parties quittancées, sans frais de justice;

[73] **ORDERS AND DECLARES** that, subject to art. 580 C.C.P., each Other Action commenced in Quebec shall be and is hereby dismissed against the Releasees, without legal costs;

[74] **ORDONNE** que les prélèvements par le Fonds d'aide aux actions collectives soient effectués et 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*;

[74] **ORDERS** that the levies by the *Fonds d'aide aux actions collectives* be collected 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*;

[75] **ORDONNE** que, sans affecter la finalité du présent jugement, cette Cour conserve sa juridiction sur l'action collective du Québec et les parties impliquées, y compris les Requérants, les Intimées et les Membres du Groupe du Québec pour toutes les questions relatives à l'action collective du Québec, y compris la supervision, l'administration, la mise en œuvre, l'application et l'interprétation de l'Entente de règlement et du processus de réclamation des Kits de modification déjà mentionnée, l'application de ce jugement, et toutes procédures liées à l'Entente de règlement, à la fois avant et après que l'approbation de ce règlement devienne définitive et qu'il ne soit plus permis de faire appel;

[75] **ORDERS** that without affecting the finality of this Judgment, this Court shall retain continuing jurisdiction over the Quebec Proceeding and the parties thereto, including the Petitioners, the Respondents and the members of the Quebec Class for all matters relating to the Quebec Proceeding, including supervising, administering, implementing, enforcing and interpreting the Settlement Agreement and the Modification Kit Claims process thereunder, the enforcement of this Judgment, and all proceedings related to the Settlement Agreement, both before and after the approval of this Settlement becomes final and is no longer subject to appeal;

[76] **ORDONNE ET JUGE** que l'action collective du Québec soit et est, par la présente, réglée contre les Intimées, le tout sans frais de justice;

[76] **ORDERS AND ADJUDGES** that the Quebec Proceeding be and is hereby settled against the Respondents, the whole without legal costs;

[77] **APPROUVE** le versement aux Avocats du Groupe des honoraires extrajudiciaires et débours, tel que prévu à l'Entente de Règlement;

[77] **APPROVES** the payment to Class Counsel of its extrajudicial fees and disbursements as provided for in the Settlement Agreement;

[78] **ORDONNE** que les Représentants du Groupe du Québec reçoivent des honoraires de 500 \$ chacun en reconnaissance de leurs efforts dans la poursuite de l'action collective jusqu'au règlement;

[78] **ORDERS** that the Petitioners shall be paid an Incentive Award of \$500 each in recognition of their efforts in prosecuting the class action through settlement;

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

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


MARIE-FRANCE COURVILLE, J.S.C.

M^e Jeff Orenstein
M^e Andrea Grass
GROUPE DE DROIT DES CONSOMMATEURS/ CONSUMER LAW GROUP INC.
Attorneys for the Petitioners

M^e Julie Himo
NORTON ROSE FULBRIGHT CANADA LLP
Attorneys for the Respondents

Hearing Date: October 12, 2016