

SUPERIOR COURT

(Class actions)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No : 500-06-000907-184

DATE: June 17, 2024

UNDER THE PRESIDENCY OF THE HONORABLE PIERRE NOLLET, JCS

KARINE LEVY
Plaintiff

vs.

NISSAN CANADA INC.

Defendant

JUDGEMENT

[1] The plaintiff Levy is seeking approval of the Quebec portion of a national agreement ("**the Settlement Agreement or the Settlement**") regulating the fate of a class action relating to the compromise of personal information during a computer intrusion into the systems of the defendant Nissan Canada Inc. ("**Nissan**").

[2] The Superior Court of Ontario gave its approval to the settlement, subject however to the Superior Court of Quebec approving the Settlement for the Quebec portion.

1. DOES THE REGULATION NEED TO BE APPROVED?

1.1 RELEVANT FACTS

[3] After the authorization of the collective action in September 2019, modified by a decision of the Court of Appeal on April 28, 2021, Levy filed its introductory request

of proceedings on July 27, 2021. Members are informed of the authorization through the publication of notices in October 2021. A small number chose to exclude themselves at this time.

[4] On July 26, 2023, the parties participate in a private mediation chaired by the honorable former Justice of the Supreme Court of Canada Thomas Cromwell.

[5] Negotiations between the parties continue until January 4, 2024, when they reach the Settlement Agreement¹.

[6] The Quebec group is defined as follows:

All persons in Quebec: (i) whose personal or financial information held by Nissan

Canada were compromised in a computer intrusion of which the Respondent was informed by the perpetrators by email on December 11, 2017, or (ii) who received a letter from Nissan

Canada on or around January 2018 informing them of this computer intrusion;

All persons in Quebec: (i) whose personal or financial information held by Nissan

Canada was compromised in a data breach of which Respondent was advised by the perpetrators by email on December 11, 2017, or (ii) who received a letter from Nissan Canada on or about January 2018 informing them of such data breach.

[7] The total value of the Settlement, including attorneys' and administration fees, is \$2,721,742.62.

[8] The settlement creates two (2) capped settlement funds from which the settlement class will be compensated. These capped settlement funds total \$1,820,000, including a capped fund of \$1,410,000 intended to compensate class members who file an undocumented claim (Undocumented Fund). They will each be entitled to a lump sum of \$35. The second capped fund is \$410,000 and is intended for members who will submit documented claims up to an amount of \$2,500 per member (Documented Fund).

[9] As part of the negotiations, the parties agreed to pre-approve a documented claim in the amount of \$2,000 for Plaintiff Levy without the need for her to file a claim form or other document.

[10] Under the settlement, Nissan contributes \$490,000 toward the plaintiffs' attorneys' fees.

[11] Finally, Nissan pays all administration expenses to the designated claims administrator (Rice Point), up to \$411,742.62 (taxes included).

[12] In Quebec, the Regulation provides for individual settlement of claims.

[13] If the total claims exceed the established limits, compensation to class members will be reduced pro rata.

[14] In return, Nissan obtains a release from all members of the group who have not excluded themselves.

[15] Section 4.8 of the Settlement Agreement provides that “ the *balance of each of these funds will be paid as a donation to the Nissan Canada Foundation and Nissan may distribute it, at its sole discretion, to charitable organizations that are partners of this foundation.* The Claims Administrator shall transfer this balance to Nissan, as soon as possible, in trust for the Nissan Canada Foundation. »

[16] The payment of \$2,721,742.62 is called “non-reversionary”², meaning that in principle, no amount can be returned to the defendant. This amount must cover all claims from the Quebec and Ontario groups, lawyers' fees (the Court will return to the details later) and administrative costs.

[17] Depending on the parties, the estimated number of members of the group is 384,000 people in Quebec. A notice of hearing was delivered by email to 64,704 putative members of the Quebec class, published on the website of the class lawyers, in the register of class actions and on that of the claims administrator.

[18] On May 1 , 2024, a press release was published for Quebec, and an advertising campaign on social networks began between May 1 and 30, 2024³.

[19] Class members will be required to complete a claim form and submit it on time.

[20] The Settlement Agreement provides that members have 100 days to file their claim with the Claims Administrator. The Administrator has the final say on accepting or rejecting claims. He will report on his administration to the Court.

1.2 APPLICABLE PRINCIPLES

[21] Under article 590 CCP, the Court must approve the Regulation if it is fair and equitable and if it meets the fundamental interest of the members who will be bound by this one :

590. The transaction, acceptance of real offers or acquiescence are only valid if approved by the court. This approval cannot be granted unless notice has been given to the members.

In the case of a transaction, the notice states that it will be subject to court approval on the date and place indicated therein; it specifies the nature of the transaction and the planned mode of execution as well as the procedure that will be followed

² Request for approval, para.71.

³ R-5 (Rice Point Report of June 3, 2024). 411,120 impressions.

members to prove their claim. The notice also informs members that they can assert their claims in court regarding the proposed transaction and the disposition of the remainder, if applicable. The judgment which approves the transaction determines, if necessary, the terms of its execution.

[22] The Court must “keep in mind the main principles and objectives underlying class actions, weigh the advantages and disadvantages of the settlement, as well as the reciprocal concessions, the risks of a trial and the costs to be incurred »⁴.

[23] The Court must examine the transaction from the point of view of the three main objectives of class actions⁵, namely judicial economy, access to justice and deterrence⁶.

[24] As Madam Justice Poulin jcs writes in the case of *Sureau (Blondin) c. Coloplast Canada Corporation*⁷, and which the Court takes into account:

[33] Quebec jurisprudence has also mostly adopted certain additional criteria developed by Justice Sharpe in *Dabbs v. Sun Life Assurance Co. of Canada* :

- 33.1. the terms and conditions of the transaction;
- 33.2. the likelihood of success of the appeal;
- 33.3. the importance and nature of the evidence provided;
- 33.4. the recommendation of lawyers and their experience;
- 33.5. the cost of future expenses and the likely duration of the litigation;
- 33.6. the recommendation of a neutral third party, if applicable;
- 33.7. the number and nature of objections to the transaction; And
- 33.8. the good faith of the parties and the absence of collusion.

[34] As some judges have noted: “the analysis constitutes a delicate exercise since once an agreement is concluded, the usual contradictory debate gives way to the unanimity of the parties who signed the transaction and who have everything interest in seeing it approved by the court.” On the other hand, at the approval stage, the court “generally has only limited knowledge of the circumstances and issues of the dispute”.

[35] Nevertheless, even if it must remain vigilant in the absence of a violation of public order, the court must approve a transaction if it meets the criteria and meets the fundamental interests of the members.

⁴ *AB c. Clercs de Saint-Viateur du Canada*, 2023 QCCA 527, par. 34.

⁵ *Western Canadian Shopping Centers Inc. v. Dutton*, 2001 SCC 46, para. 27-29.

⁶ *Abihisira v. Stubhub inc.*, 2019 QCCS 5659, para. 21.

⁷ 2023 QCCS 3592.

[36] On the one hand, the court must encourage the resolution of disputes through negotiation since such a solution is generally in the fundamental interests of the parties. Indeed, rapid resolution of disputes promotes access to justice. It avoids long and costly trials, which contributes to the saving of judicial resources. These advantages respect the objective stated in the preliminary provision of the CPC according to which “The Code aims to enable, in the public interest, the prevention and settlement of disputes and litigation, by adequate, efficient, spirit-filled processes. of justice and promoting the participation of people.

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

[38] It is not up to the court to modify, in whole or in part, the transaction concluded by the parties, although it may suggest that the parties modify it to correct certain deficiencies in order to ensure approval. The proposed release should be given careful consideration to ensure that it does not absolve the defendants of any liability for conduct that falls outside the scope of the claims made in the complaint or for which the plaintiffs obtain no compensation. »

[References omitted]

[25] The court may take into account the agreement of the representative and the number of members who excluded themselves⁸.

1.3 PRELIMINARY DISCUSSIONS

1.3.1 The intervention of the FAAC

[26] The Fonds d'aide aux actions collectives (“**FAAC**”) wishes to comment on certain aspects of the request for approval of the Settlement and on the request for approval of the fees of the class lawyers.

[27] In a decision dating from 2021, Justice Morrison confirmed the right of the FAAC to address the Tribunal during the hearing of the application for approval of the Regulation both under the *Act respecting the assistance fund for collective actions*⁹ and under article 593 CCP¹⁰. Judge Morrison, however, insists, as have other judges¹¹, on the fact

⁸ *Schneider (Schneider Estate) c. Herron residential and long-term care center inc.*, 2021 QCCS 1808.

⁹ F-3.2.0.1.1.

¹⁰ *Zouzout c. Canada Dry Mott's Inc.*, 2021 QCCS 1815.

¹¹ See example *Union consommateurs v. Telus by inc.* <https://www.ccsnlii.org/fr/qc/qccs/doc/2023/2023qccs2270/2023qccs2270.html?resultIndex=1&resultId=7bfdccee1b704488afba6d8eba995f04&searchId=2024-04-10T12:24:32:300/b2256396a3f047538c1643c9990d2b52&searchUrlHash=AAAAAQ>

that this right of intervention must only be exercised when specifically authorized under the law¹².

[28] This right mainly concerns court costs, lawyers' fees of the group, the reimbursement of the amount of aid granted to the representative by the FAAC, the fees that the FAAC may collect and the allocation of the remainder to a third party.

[29] In the case of *Asselin v. AB SKF*, Judge Clément Samson, jcs on the occasion of an interim judgment on a request for direction, takes up certain comments of the honorable Pierre C. Gagnon jcs in the case of *Patterson v. Ticketmaster Canada Holdings*¹³ by accepting the possibility for the FAAC to comment on a request for approval of a transaction in certain circumstances and it names the following circumstances:

- The law that the FAAC demands compliance with is in Quebec a law of public interest;
- It may be a major difficulty, namely the legitimate understanding by a Quebecer of the scope of a settlement agreement submitted to the court;
- The absence of any consumer reduces possible discordant notes, because the plaintiff and the defendant are of the same opinion;
- This is not an untimely intervention on the part of the FAAC¹⁴.

[30] The Court of Appeal seemed to recognize the power of the FAAC to intervene on certain elements of a transaction, because it granted it permission to appeal the decision of Judge Samson, since it approved a regulation which was not, according to the FAAC, valid due to substantive defects¹⁵.

1.4 DISCUSSION ON THE MERIT OF THE AGREEMENT

[31] The relevant elements of the transaction are described above.

[32] Although the authorization judgment and the application initiating proceedings refer to a collective recovery, the parties chose to modify this aspect by opting for an individual recovery, only for the Quebec group.

[33] When it comes to collective recovery, it proceeds from a total amount determined, to be paid by the defendant. Any balance unclaimed by members then becomes a remainder to which the FAAC levy applies.

[BWIkZvbmRzIGQnYWlkZSBhdXggYWN0aW9ucyBib2xsZWNOaXZlcyIqIHRyYW5zYWNOaW9uIHlDqGdsZW1lbnQgInRyYWR1Y3Rpb24gZnJhbsOnYWIzZSIAAAAAAQ - _ftn6 2021 QCCS 2681;](#)
Disability-Life-Dignity c. St-Charles-Borromée Residence, CHSLD Downtown Montreal, 2018 QCCS 215.

¹² *Id.* Note 10, para. 63.

¹³ 2022 QCCS 3203, para. 47-49.

¹⁴ 2023 QCCS 2270.

¹⁵ 2023 QCCA 704. However, the case was not argued on the merits, the defendants-RESPONDENTS agreeing to partial acquiescence to the conclusions requested by the FAAC. [2023 QCCA 1592].

[34] In an individual recovery, there is no remainder. Indeed, after payment of claims deemed valid, unused amounts return to the defendant.

a Here, an amount up to \$1,820,000 will go to the payment of claims, [35] \$490,000 will be contribution to lawyers' fees and \$411,742.62 to administrative costs. If the capped funds are not exhausted by member claims and the portion of attorneys' fees not covered by the \$490,000, the balance returns to Nissan, which agrees to pay it to the Nissan Foundation.

[36] For what reasons do the parties choose to do this? According to Me Assor, the lawyer for the Quebec Group, the obligation of full payment by Nissan aims to ensure the dissuasive aspect, which is one of the objectives of collective actions to modify behavior deemed negligent or at fault.

[37] By choosing individual recovery and allocating the balance of the two capped funds to Nissan to benefit its Foundation, the parties circumvent the application of the FAAC withdrawal rules in the event of a remainder and avoid the Court designating the third party who would be entitled to the remainder as provided for in Articles 596 and 597 CPC

[38] The indeterminate, but determinable amount, thus attributed to Nissan, finds itself between two chairs. It is not a remedial measure within the meaning of article 595 paragraph 2 CCP since it does not intervene in the context of a collective recovery. It is also not the payment of compensation to a member since Nissan is not a member of the class action group.

[39] The Court could not ratify the payment of compensation to the defendant or for its benefit as part of a settlement. Since the decision of the Court of Appeal in *Option consommateurs v. Infineon Technologies*¹⁶, the majority clearly indicated that, in the context of collective recovery, the remainder can only be handed over to a third party.

[40] During an individual recovery, however, the unclaimed amounts are necessarily returned to Nissan, except for payment of fees. There was no need to specify this in the Settlement Agreement.

[41] Nissan's obligation to remit any unclaimed balance to its Foundation does not benefit members in any way. This obligation should not be found in the Settlement Agreement because it does not change anything in the evaluation of the fair and reasonable aspect of the settlement. In fact, it only serves to inflate the appearance of "value" of the regulation.

[42] The group's lawyer argued that the addition of this obligation was useful because it made it possible to sanction Nissan and achieve the objective of deterrence sought by the class actions.

[43] This perspective seems very optimistic to us. Nissan gives its own Foundation. This choice is certainly not the result of chance. There is no link between the objectives of this Foundation and this collective action. The tax benefits of such a donation by Nissan were not explained to the Court. We can also assume that Nissan will receive the benefit of favorable public opinion through the donations that its Foundation will then make with the sum received.

[44] The Court must therefore disregard this "gift" in assessing the fair and reasonable nature of the Regulations.

[45] The Tribunal does not have many options other than to assume that the members will claim their compensation for the full amount of the capped funds, although there is room for doubt on this point as well.

[46] As for the quantum of admissible claims, the amount of \$35 without documentary proof is reasonable, particularly because at this stage there is no proof that the computer intrusion possibly led to the theft of anyone's identity. it would be.

[47] The maximum amount of \$2,500 for documented claims is also reasonable considering the nature of the expenses that may have been incurred for members to protect themselves from identity theft. Members of the Group will not be required to prove a causal link other than their membership in the Group.

1.4.1 Chances of success

[48] This action was contested by Nissan, including through multiple appeal proceedings. In addition to private mediation, negotiations continued for many months afterward.

[49] The parties recognize that all these debates gave rise to significant costs and delays. For the future, we would have to rely on the testimony of members of the Quebec group and possibly on expert evidence, whether for damages or fault.

[50] All litigation involves a certain level of risk. It is possible that the damage was difficult to establish. A collective recovery process as envisaged by the introductory procedure would certainly have been more advantageous than that envisaged by the Settlement Agreement, but the Settlement Agreement has the advantage of ensuring compensation within a much shorter time frame.

[51] Continuing the case would necessarily increase costs and delays. The parties recognize the significant challenges, expenses and risks associated with protracted litigation.

1.4.2 Other elements to consider

[52] The parties are not informed of any claim whatsoever which may be documented and exceed \$2,500.

[53] Nissan informed its customers immediately after discovering the computer intrusion. It offered a free credit monitoring solution to 932,000 customers. The Tribunal does not know what proportion of the putative members accepted this proposal.

[54] After lengthy litigation, it may be more difficult to identify class members. This risk is mitigated by the Settlement, which provides compensation to all class members who submit a claim accepted by the Claims Administrator, whereas no one is compensated if the case is dismissed.

[55] The discretionary and final aspect of the compensation process can leave one wondering. The low value of Undocumented Claims may justify such a practice. In all respects, if Documented Claims were to be rejected peremptorily or without reasons, and despite the wording of article 4.3.2 of the Settlement Agreement, the Court does not believe that the members are deprived of any recourse since he will remain seized of the file to resolve any dispute, until the obligations are completely fulfilled and the closing judgment is obtained. The Court may intervene if necessary.

[56] The deadline for filing complaints was reduced from 365 days (provided for by article 600 CCP) to 100 days. In the context of a settlement, the parties are free to agree on a shorter deadline than that imposed on the Court in the context of a judgment. A short delay, however, is likely to reduce the value of the settlement.

[57] The Court also takes into account that this file is moving with numerous resources on both sides, including those of the State which dedicates a managing judge, court rooms, administrative and judicial staff to the file. and auditions. There is a significant saving to the court system in obtaining a settlement rather than persisting until trial.

1.4.3 The importance and nature of the proof to be administered.

[58] This case has progressed sufficiently for the parties to be able to assess the importance of the proof to be adduced, particularly with regard to negligence and damages. There is a significant energy gain resulting from the Regulation.

1.4.4 Exclusions

[59] The exclusions from collective action date back to 2021, well before the negotiation of the Regulation. Some members wishing to exclude themselves contacted the Group Lawyer without respecting the formalities of filing with the registry. The report indicates that 17 people excluded themselves from the collective action.

1.4.5 Collusion and good faith

[60] Good faith is presumed. There is no evidence of collusion.

1.4.6 Oppositions

[61] No opposition to the Settlement was presented to the Tribunal within the prescribed time limits. The parties conclude that this is proof that the Regulations satisfy the potential group members.

1.4.7 Lawyers' recommendation

[62] The lawyer for the Quebec group highlights his experience in class actions. This is not its first case of computer intrusion or data theft. He considers this settlement to be fair and reasonable. He comes to this conclusion

in light of the confidential settlement discussions and information exchanged at the settlement conference. The benefits that can be paid to members of the group immediately make it possible to offset the risks and delays envisaged.

The overall amount of the Settlement Agreement was negotiated by class counsel taking this assessment into account.

1.4.8 Pre-approval of plaintiff Levy's compensation

[63] As part of the negotiations, the parties agreed to pre-approve a documented claim in the amount of \$2,000 for the plaintiff Levy without the need for her to file a claim form or other document¹⁷.

[64] Negotiations leading to a settlement are confidential and privileged. The Court cannot interfere in these and cannot demand that they be revealed to it. The result of these negotiations must, however, respect the rules of public order. However, article 593 CPC prohibits the payment of compensation to the representative.

[65] The Court is not able to establish compliance with article 593 CCP of the sums paid given the absence of any proof. The Court does not know whether these are fees, disbursements or costs incurred to obtain protection against identity theft.

[66] The plaintiff Levy cannot benefit from the settlement because she would necessarily have a conflict of interest.

[67] The Court is aware that other decisions of the Superior Court sometimes approve this type of provision¹⁸. Others disapprove of them¹⁹. For the Court, the

¹⁷ R-1, art. 4.9.1.

¹⁸ *Benabou v. StockX*, 2022 QCCS 2527.

¹⁹ *Dubé v. Coopérative de Services EnfanceFamille.org*, 2024 QCCS 998.

decision of the Court of Appeal in *Attar v. Collective Action Fund*²⁰ is useful in determining the applicable rule.

[68] In *Attar*, the settlement provided for the payment of a pre-approved claim of \$5,000 to the plaintiff in consideration of his out-of-pocket costs, time and effort spent representing the members. The Court of Appeal refuses to approve it, because article 593 CCP aims to compensate the representative for the expenses he makes to carry out the collective action, without however allocating him remuneration for the time and energy dedicated to the case.

[69] Even in Ontario, approval of such compensation is not routine. In 2016, Justice Perrell wrote:

[81] Compensation to the representative plaintiff should not be routine and should be awarded only in exceptional cases. In determining whether the circumstances are exceptional, the court may consider among other things: (a) active involvement in the initiation of the litigation and retainer of counsel; (b) exposure to a real risk of costs; (c) significant personal hardship or inconvenience in connection with the prosecution of the litigation; (d) time spent and activities undertaken in advancing the litigation; (e) communication and interaction with other class members; and (f) participation at various stages in the litigation, including discovery, settlement negotiations and trial: *Robinson v. Rochester Financial Ltd.*, 2012 ONSC 911 at paras. 26-4421.

Here, the text of the Settlement Agreement does not detail what the amount [70] of \$2,000 awarded to Levy covers. The parties have chosen caution in the drafting. The three Ontario claimants also have their \$2,000 compensation pre-approved. The Court is unaware of the nature of the evidence offered in the Ontario case.

[71] In his pleadings, however, the group's lawyer clearly indicated the importance of the time devoted and the leadership exercised by the representative of the Quebec group, who could have been content to leave the burden to someone else of representation. These comments only confirm what is behind the pre-approval of the claim. There is an element that goes beyond simple disbursements, which the Tribunal cannot approve.

[72] The Group's lawyer indicated, in the absence of his client, that he would withdraw this request for pre-approval of her claim if the Court came to the conclusion that it obstructed the approval of the claim. 'Settlement Agreement.

[73] This is indeed the case. The Court concludes that the ratification of the Settlement Agreement will exclude the payment of compensation to the plaintiff Levy. This decision does not concern the compensation payable to the Ontario plaintiffs since they are governed by different legislative provisions and a different judgment.

20 2020 QCCA 1121.

21 *Lozanski v The Home Depot, Inc.*, 2016 ONSC 5447 (CanLII).

1.5 CONCLUSIONS ON THE REGULATION

[74] In this case, Nissan apparently did nothing wrong. It reacted responsibly and quickly to the computer intrusion perpetrated against it by computer hackers. Nissan does not need a dissuasive sanction. The likelihood of class members' success against Nissan, both in terms of liability and proof of any significant damage, is in the range of negligible to remote. The risk and

the costs in the event of failure of collective action would be substantial. In fact, a withdrawal from the collective action could have been acceptable in the circumstances without any advantage obtained by the members of the putative group.

[75] If a withdrawal proves acceptable, it is easy to conclude that the proposed settlement agreement, which confers certain benefits (albeit for a small part of the class), should be approved as fair, reasonable and within the best interests of the group members.

[76] The Settlement will be approved with the withdrawal of the pre-approved compensation for the Plaintiff Levy.

2. DO LAWYERS' FEES NEED TO BE APPROVED?

2.1 RELEVANT FACTS

[77] On February 11, 2018, Levy entrusted LEX GROUP Inc. Avocats with the mandate to represent the Quebec group and agreed on the fees payable at the same time ("The Agreement")²².

[78] The Agreement provides that legal fees will be calculated as follows: i) all disbursements incurred, and ii) as fees the highest rate of 33% of the amounts received, including interest or dues. total number of hours devoted to the file multiplied by an hourly rate varying between \$350 and \$700, the result itself being multiplied by 3.5.

[79] The Agreement also contains the following clause:

These attorneys' fees extend to all sums received for and in the name of the whole group affected by the present class action (or potentially received if determined on a collective basis) and are in addition to the judicial fees that can be attributed to the attorneys. In the case where a specific amount of money is not awarded collectively, whether by settlement or by judgment, or where each class member is compensated only for their individual claim, section b. (i) above shall be read to mean thirty-three percent (33%) of the total value as if every possible class member made such a claim.

[The Court underlines]

²² No part number has been assigned to the "Convention".

[80] The attorneys' fees must, according to paragraph 64 of the Request approval, be paid from the Undocumented Fund.

[81] Since the settlement of the Ontario and Quebec class actions was jointly negotiated, the lawyers and the plaintiffs agreed that the lawyers' fees would be shared at the rate of 25% of the total fees for the class lawyers of Quebec.

[82] The total fees claimed amount to \$816,522.79 (plus taxes and disbursements) for a total of \$1,018,664.10. ¼ of this amount for the Quebec group lawyer corresponds to \$254,666.

[83] According to the lawyer, the amount claimed is equivalent to 30% of the total sums recovered (of the result obtained). According to him, all the sums recovered include the amounts paid to the two capped funds (\$1,820,000), participation in lawyers' fees (\$490,000) and administration costs (estimated at \$411,740).

[84] The time invested by lawyers from Ontario alone corresponded, at the time of the settlement hearing in Ontario, to \$2,484,535.52 (taxes included)²³. No details were provided on the time invested by the Quebec group's lawyers.

2.2 APPLICABLE PRINCIPLES

[85] Lawyers' fees are assessed based on article 102 of the *Code of Ethics*²⁴ which stipulates:

102. Fees are fair and reasonable if they are justified by the circumstances and proportionate to the professional services rendered. The lawyer takes into account in particular the following factors when setting his fees:

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 for the client;

5° the responsibility assumed;

6° the provision of professional services that are unusual or require particular skill or exceptional speed;

7° the result obtained;

8° the fees provided for by law or regulations;

²³ Request for approval para. 61.

²⁴ CQLR c B-1, r 3.1.

9° disbursements, fees, commissions, rebates, costs or other benefits which are or will be paid by a third party in relation to the mandate entrusted to them by the client

[86] The Honorable Dominique Poulin recently reiterated the principles applicable to the approval of legal fees in class action matters²⁵ :

[31] The Court of Appeal sets out the legal framework applicable to the approval of fees in *Clercs de Saint-Viateur*. Justice Bisson summarizes it as follows in *Option Consommateurs v. Panasonic Corporation* :

[63] The Court summarizes the applicable law as follows:

- 1) The fee agreement benefits from a presumption of validity and can only be rejected if its application is not fair and reasonable for the members in the circumstances of the transaction examined;
- 2) No fee agreement binds the judge;
- 3) The criteria for judging the fairness and reasonableness of fees are based on those listed in article 102 of the *Code of Ethics for Lawyers*, which are not exhaustive, namely: experience; the time and effort required and devoted to the matter; the difficulty of the matter; the importance of the matter to the client; responsibility assumed; the provision of professional services that are unusual or require particular skill or exceptional speed; the result obtained; fees provided for by law or regulations; disbursements, fees, commissions, rebates, costs or other benefits which are or will be paid by a third party in relation to the mandate entrusted to it by the client;
- 4) The respective weight to be given to these criteria may vary depending on the circumstances;
- 5) The range of percentages deemed reasonable by the courts is normally between 15% to 33% (or even 20% to 33.33%) of the settlement fund;
- 6) The analysis by the Court cannot be limited to verifying whether the fee agreement provides for a percentage falling within a generally applied range;
- 7) The analysis process must instead begin with: a) the evaluation of all the criteria provided for in the *Code of Ethics of Lawyers*, other than that of the multiplier; and b) taking into account the risk assumed by lawyers. If we come to the conclusion that the amount (not the percentage) of fees payable is reasonable, the analysis can stop there. However, if the amount of fees seems unreasonable, it is therefore appropriate to take into account the hours devoted to the file and apply a multiplying factor to adjust the amount of fees so that it becomes reasonable.

²⁵ *Id.* note 19, para. 31 et seq.

[32] Percentage fee agreements are intended to respond to the risk assumed by the lawyers who finance the appeal over many years. As Judge Piché points out, *beyond the economic incentives to bring such appeals, there is the reality of practice where significant delays, a certain complexity of cases, a significant volume of evidence, and above all, uncertainty as to the favorable outcome of the case and therefore, as to the payment of fees.*

[33] While making it possible to offset the risks that lawyers assume, percentage fee agreements have advantages, by promoting access to justice for litigants who would otherwise not have the means to pursue an appeal. We cannot therefore discourage this type of agreement and lawyers *have the right to expect that they will be respected.*

[34] The Court of Appeal holds that the risk assumed by the lawyers and the result obtained constitute important factors in the analysis, even taking precedence depending on the circumstances. The risk must be assessed at the time the lawyers received the mandate.

[35] The result takes into account, among other things, the dissuasive effects that a substantial recovery may represent for the group, but negligible for each of the members on an individual level. Indeed, “[t]he *contribution to access to justice and the deterrence of reprehensible behavior can justify substantial fees to the extent that this type of action generates benefits for citizens which would not otherwise be achievable*”.

[36] It remains that the Court must ensure that the agreement is not “likely to give the profession a lucrative and commercial character” (*Code of ethics of lawyers*, article 7). In this regard, the Court of Appeal clearly emphasizes that care must be taken to support the application of a fee agreement and the payment of considerable fees in cases where the lawyer’s work does not justify it. , among other things if he was content to follow the course of a case in another jurisdiction.

[37] The application of fee agreements often results in an excess in relation to the time actually devoted to the case. It is therefore prohibited to undertake the analysis by considering the value of the real time spent, given the circular result of the exercise. This is why the Court of Appeal states that the analysis must begin by taking risk into account.

If the fees appear unreasonable, the multiplier factor measurement tool becomes useful. In this regard, the Court of Appeal states that the standard adopted by the Superior Court oscillates between 2 and 3, but that this does not mean that a multiplier higher than this standard necessarily justifies a reduction in fees.

3. DISCUSSION

[87] Although attorneys’ fees are substantial, they are not necessarily unreasonable.

[88] In 2017, Nissan sent notices to 932,000 Canadian customers to warn them of the computer intrusion. At the time of drafting the Request for Approval of the Settlement, Nissan estimated that there were 567,000 members of the Quebec and Ontario groups, including 384,000 in Quebec alone. The Quebec group was expanded by the Court of Appeal to add, among others, people who received notice from Nissan without having been the subject of identity theft.

[89] If, as estimated by Rice Point, the claims administrator, 200 members claim from the Documented Fund, each for \$2,000, the entire Documented Fund will be used. This hypothesis is supported solely by the experience of the Rice Point manager without reference to specific cases which would confirm the reasonableness of this assessment.

[90] In the case of *Benabou v. StockX26*, also a case of computer intrusion, the number of members of the group was estimated at 122,970 in Canada. The settlement had two aspects: a settlement fund of \$130,000 (based on documentation provided) and a subscription to a credit monitoring service.

[91] Besides the plaintiff's pre-approved claim in *Benabou*, only 4 other members were successful in having documented claims approved, the highest of which was \$259.35 and the lowest \$19.95.

[92] In *Zuckerman v. Target Corporation Inc.*²⁷, another computer intrusion case, the number of putative members was estimated at 60,000. The settlement had two aspects, besides the total cap of \$345,000. Members could claim up to \$5,000 for a documented claim and \$50 for an undocumented claim.

[93] However, apart from Representative Zuckerman's claim, pre-approved at \$4,999, no other member took advantage of the possibility of making a documented claim.

[94] In other words, the Rice Point hypothesis is difficult to accept. So, if only 20 members make a claim to the Documented Fund, for an amount of \$2,000 each, the undistributed sums will be \$370,000. These sums will be remitted to Nissan and could hardly be seen as part of the result obtained.

[95] As for Undocumented Claims, according to the claims administrator's report in *Benabou*, he received 211 claims, or less than 0.17%, of the estimated members while here Rice Point maintains that the claim rate will reach 16%. Of the 211 claims, only 164 were valid for credit monitoring coverage (22% denial rate while Rice Point estimates between 8% and 12%).

[96] The situation is even less enviable in the *Zuckerman affair*. Besides the representative's claim, there were only 32 claims accepted for a percentage of 0.05%.

[97] The Tribunal also notes the comment of Justice Perrell in a decision cited by my Ontario colleague 28:

[53] Unfortunately, as demonstrated by *Lavier v. MyTravel Canada Holidays Inc.*, 2012 ONSC 1673, rev'd 2013 ONCA 92, discussed below, the take up of benefits of settlements is often disappointing, and in the immediate case, there is a short claim period, so it remains to be determined whether the \$250,000 fund for identity theft insurance will be taken up. If it were fully taken up, then at most 5,000 of the 500,000 Class Members would secure a benefit. For present purposes, I, nevertheless, value this component of the settlement at \$250,000.

[98] As for the Undocumented Fund, the base amount of \$1,410,000 will first be reduced by attorneys' fees not covered by the payment of \$490,000. This is a subtraction of \$528,664.10 from the members' potential compensation since the attorneys' fees are taken first. The Undocumented Fund to be shared is therefore reduced to \$881,335.90.

[99] The percentage of fees requested is below the 33% provided for in the Convention (if taxes are excluded of course) if we accept the definition of the result obtained proposed by the parties.

[100] Levy and Lex Group agreed to define "result achieved" as if each member had made a claim to exhaust both funds. The Court cannot help but note that if each member were to claim their due, even without documentation, the compensation would cost much more to distribute than anticipated and would be for minimal amounts (probably less than \$229). This hypothesis is therefore subject to debate.

[101] The Tribunal ran different scenarios based in part on Rice Point's opinion as to the claim rate and the number of refused claims, but greatly increasing the range of possibilities.

	Members claimants	Fund No Documented capped	Rate Refusal		Rate Refusal		Rate Refusal	
Participation	566800	881,335.90	8%	Member amount	10%	Member amount	12%	Member amount
16%	90688		7255	\$10.56	9069	\$10.80	10883	\$11.04
14%	79352		6348	\$12.07	7935	\$12.34	9522	\$12.62
12%	68016		5441	\$14.08	6802	\$14.40	8162	\$14.72
10%	56680		4534	\$16.90	5668	\$17.28	6802	\$17.67

²⁸ R-2, page 3 under Settlement Approval. \$ 29,881,335.90 / 567,000 (members) = \$1.55 per member

5%	28340		2267	\$33.80	2834	\$34.55	3401	\$35.34
3%	17004		1360	\$56.34	1700	\$57.59	2040	\$58.90
2%	11336		907	\$84.51	1134	\$86.39	1360	\$88.35

[102] As shown in the table above, it is enough for 5% of members to claim their \$35 compensation to exhaust the Undocumented Fund. The assumption of 16%, whether accurate or not, is not decisive.

[103] However, as soon as the participation rate drops below 5%, as was the case in *Benabou and Zuckerman*, the individual cap of \$35 per member ensures that a significant sum returns to Nissan's coffers. If the participation rate is only 2%, \$516,316.70 will return to Nissan's coffers. In such a case, the Court struggles to convince itself that this amount is part of the result obtained.

[104] In the context of a collective recovery, the situation would be quite different, since the sums not claimed by the members would still be paid by the defendant, thus qualifying to establish the result obtained. It is the Court which would choose the charitable organization(s) likely to receive the remainder. A significant sum would be paid to the FAAC. Ultimately, the dissuasive aspect, if it were truly necessary, would be achieved. The parties have overcome all these difficulties

using an individual recovery method. No one suggested to the Court that doing so was contrary to public policy.

[105] Article 102 of *the Code of Ethics* adds several other criteria beyond the result obtained. That's what saves the day here. The weakness of the plaintiffs' case, the fact that without settlement the members were likely to be unable to claim anything, the time devoted by the lawyers to the case, the experience of the lawyers, all militate in favor of approving the requested fees.

FOR THESE REASONS, THE TRIBUNAL:	FOR THESE REASONS, THE COURT:
[106] DECLARES that for the purposes of this definitions set forth in this judgment, the definitions in the Settlement Agreement apply and are integrated into this judgment except integrated in the present judgment save	DECLARES that for the purposes of the judgment, the Settlement Agreement apply and are integrated into this judgment when otherwise indicated in this judgment; judgment;
[107] WELCOMED <small>there</small> <i>Request</i> <i>Band;</i>	GRANTS the <i>Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees;</i>

<p>[108] APPROVES the Settlement Agreement within the meaning of article 590 a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> of for the prior approval and payment of documented claim of the plaintiff Levy;</p>	<p>APPROVES the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i>; with the exception of <i>Code of Civil Procedure</i> save and except Applicant Levy's Documented Claim;</p>
<p>[109] ORDERS and DECLARES that Agreement (including its Annexes) is fair, interest of the Members of the reasonable and in the best interest of the Settlement Group, must be implemented according to its provisions, and constitutes a transaction within the meaning of article 2631 of the <i>Civil Code of Quebec</i>;</p>	<p>ORDERS AND DECLARES that the Settlement Agreement (including its preamble and its Recitals and its Schedules) is fair, reasonable and in the interest of the Settlement Class Members and constitute a transaction pursuant to Article 2631 of the <i>Civil Code of Quebec</i>;</p>
<p>[110] ORDERS the parties and Members of the Settlement Group, except those in accordance with the terms and conditions of the Settlement Agreement;</p>	<p>ORDERS the parties and the Settlement Class Members, except for those who have opted out in accordance with the terms and conditions of the Settlement Agreement; abide by the terms and conditions of the Settlement Agreement;</p>
<p>[111] ORDERS that the Class Counsel Fees in the total amount of \$816,522.79, plus Class Counsel Fees in the total amount of \$816,522.79, plus applicable taxes and plus disbursements, be paid to the Avocats du Québec Counsel, in accordance with the Settlement Agreement; Counsel, in accordance with the Settlement Agreement;</p>	<p>ORDERS that the Class Counsel Fees in the total amount of \$816,522.79, plus Class Counsel Fees in the total amount of \$816,522.79, plus applicable taxes and plus disbursements, be paid to the Avocats du Québec Counsel and Ontario Québec and to the Avocats de l'Ontario, Counsel, in accordance with the Settlement Agreement;</p>
<p>[112] ORDERS the defendant to pay defined Administration Expenses as defined in the Settlement Agreement;</p>	<p>ORDERS Defendant to pay all Administration Fees as Administration Expenses as defined in the Settlement Agreement;</p>
<p>[113] APPROVES the Notice Plan for the publication of Approval Notices in accordance with clause 6.3 of the Settlement Agreement;</p>	<p>APPROVES the Notice Plan for the Notice of approval in accordance with clause 6.3 of the Settlement Agreement;</p>

<p>[114] APPROVES the form and content of the Notice of approval, essentially under the form found at remains attached to these present, in their English and French versions;</p>	<p>APPROVES the form and content of the Approval Notices, substantially in the short and detailed and long forms set forth in Exhibit R-3, a copy of which releases;</p>
<p>[115] APPROVES Notice Plan provided for in provided for in Article 6.3 of the Settlement Agreement, Article 6.3 of the Settlement Agreement, which details the method of dissemination approval to members;</p>	<p>of the Approval Notices;</p>
<p>[116] ORDERS Class Counsel ORDERS Class Counsel and to disseminate the Approval to disseminate the Notices of Approval in accordance with clause 6.3 of the Claims Agreement. regulation;</p>	<p>the Claims and the Administrator's Claims Administrator Settlement Agreement;</p>
<p>[117] ORDERS the Administrator of personally identifiable information provided to it throughout the claims process for the sole purpose of facilitate the claims administration process in accordance with the Settlement Agreement and no other purpose;</p>	<p>ORDERS that the Claims Administrator shall use the the claims process for the sole purpose of the claim for Settlement in accordance with Agreement and for no other purpose;</p>
<p>[118] ORDERS AND DECLARES that this Judgment constitutes a judgment binding the information compelling the communication of personal personal information within the meaning of applicable personal information laws;</p>	<p>ORDERS AND DECLARES that this Judgment constitutes a Judgment communication of applicable privacy laws;</p>
<p>[119] DECLARES that it remains seized of the matter until a closing judgment is obtained;</p>	<p>DECLARES that the Court will remain seized with the file until the obtaining of a closing judgment;</p>

<p>[120] ORDERS the Administrator of Tribunal on publication of the Approval Notices and the distribution of dis Administration Expenses and Class Claims Period; Claims Period;</p>	<p>ORDERS the Claims Administrator to report to the report to the Court on the dissemination of the distribution of the Claims Funds Documented and Undocumented claims funds, monies returned to Nissan, payment of Counsels' Fees, within 60 days after the end of the</p>
<p>[121] ORDERS the parties to request a closing judgment within one year following the judgment within one year from the date on date where this judgment becomes final; enforceable;</p>	<p>ORDERS the parties to request a closing</p>
<p>ALL without legal costs.</p>	<p>THE WHOLE without legal costs.</p>

PIERRE NOLLET, JCS

Me David Assor

LEX GROUP INC. LAWYERS
Lawyers for the plaintiff

Ms. Erica Shadeed
Ms. Margaret Weltrowska
DENTONS CANADA LLP
Lawyers for Defendant Nissan

Me Nathalie Guilbert
COLLECTIVE ACTION SUPPORT FUND
Lawyer for the Collective Action Fund.

Hearing date: June 6, 2024

**NOTICE OF CLASS ACTION SETTLEMENT
CLASS ACTION AGAINST NISSAN CANADA INC.
REGARDING COMPUTER INTRUSION**

**THIS IS A FORMAL NOTICE OF AN ORDER MADE BY THE COURT APPROVING THE SETTLEMENT
AND CLASS COUNSEL FEES IN THE MATTER OF *LEVY V. NISSAN CANADA INC.* (court file
number: 500-06-000907-184)**

(ABRIDGED VERSION)

**PLEASE READ THIS NOTICE CAREFULLY AS
IT MAY IMPACT YOUR RIGHTS.**

This notice is addressed to all persons in **Quebec** whose (i) personal or financial information held by Nissan Canada inc. (“ Nissan ”) were compromised in a computer intrusion of which Nissan was informed by the extortionists by email on December 11, 2017 or (ii) who received a letter from Nissan on or around January 2018 informing them of this intrusion computer science (the “ Quebec **Group Members** ”).

A long (detailed) version of this notice can be consulted at [https://
www.reglementdonneesnissan.com/](https://www.reglementdonneesnissan.com/) .

WHAT IS THE PURPOSE OF THIS LAWSUIT?

On April 28, 2021, a class action was authorized against Nissan in *Levy v. Nissan. Nissan Canada Inc.*, in Quebec Superior Court file number 500-06-000907-184 (the “ Quebec **Action** ”). The lawsuit alleges that Nissan is liable for damages resulting from an incident that occurred on or about December 11, 2017, in which it received an anonymous email from an unknown individual who claimed to have information about Nissan's customers and who requested the payment of a ransom to return the data (the “ Computer **Intrusion** ”). The lawsuit alleges that the Computer Intrusion caused monetary damages to Class Members. Nissan denies any wrongdoing and no court has found any wrongdoing on the part of Nissan.

This notice is intended to inform you that the Superior Court of Quebec and the Superior Court of Justice of Ontario have approved the settlement that was reached in the

part of the Quebec Action as well as another class action brought in Ontario against Nissan, Nissan Canada Financial Services Inc./Services Financiers Nissan Canada inc. and Nissan North America, Inc. in *Grossman and Arntfield v. Nissan Canada Inc., doing business under the name Nissan Canada Finance and doing business under the names Infiniti Financial Services Canada, Nissan Canada Financial Services Inc., Services Financiers Canada inc. and Nissan North America, Inc.*, in Ontario Superior Court File Number CV-18-

00590402-00CP (the “ Ontario **Action** ”).

The settlement applies to Quebec Class Members as well as Ontario Action class members (collectively, the “ Settlement **Class** ” or the “ Settlement **Class Members** ”).

The Superior Court of Quebec approved the settlement of the Quebec Action on June 17, 2024.

WHAT DOES THE REGULATION PROVIDE?

Nissan has agreed to provide, without any admission of liability, a settlement fund of C\$1,820,000 (the “ Capped **Settlement Fund** ”) to pay the approved claims of Settlement Class Members.

Settlement Class Members may submit a “Documented Claim” or an “Undocumented Claim.”

1. Documented Claims: Settlement Class Members who suffered damages, losses, unreimbursed fees and/or costs as a result of the Cyber Intrusion (including as a result of receiving a letter on informing of the Computer Intrusion as part of the Quebec Action) and who submit a claim form proving (i) that they are part of the Settlement Class and (ii) that the documented damages suffered due to Computer Intrusion (including following receipt of a letter informing them of the Computer Intrusion as part of the Quebec action) are eligible for reimbursement of such damages up to **CA\$2,500** , less the levy payable to the Collective Action Fund, which corresponds to 2% on any claim less than \$2,000 or 5% on any claim greater than \$2,000.

2. Undocumented Claims: Settlement Class Members who do not have documentation or proof of damages and who submit a claim form demonstrating that they are part of the Settlement Class are entitled to a maximum amount of **CA\$35** for reimbursement of lost time, less 2% for the levy payable to the Collective Action Fund.

If the total amount of Settlement Class Members' claims exceeds the total amount allocated for Documented Claims or Undocumented Claims, individual payments to Settlement Class Members will be reduced pro rata (proportionately).

A copy of the settlement agreement (the “Settlement Agreement”) and other related documents are available online at the following address: <https://www.reglementdonneesnissan.com/>.

AM I A SETTLEMENT CLASS MEMBER?

You are a Class Member covered by the Settlement if you reside in Quebec and you fall into one of the following two categories:

1. you were a party to an ongoing lease or financed purchase agreement that you entered into with Nissan Canada Inc. or Services Financiers Nissan Canada Inc./Nissan

Canada Financial Services Inc. between December 22, 2016 and January 12, 2017;

OR

2. you received a letter from Nissan on or around January 2018 informing you of the Computer Intrusion.

HOW CAN I MAKE A SETTLEMENT CLAIM?

You can submit your claim during the period from [date] to [date] by doing **the following:**

1. complete the claim form;
2. attach the required supporting documents if you submit a Claim documented;

3. send the claim form and supporting documents to the Claims Administrator by mail (to the address indicated on the claim form) or completing the form available at the online than the (in address <https://www.reglementdonneesnissan.com/>) no later Claim Submission Deadline: [100 days from the date the Notice of Approval was first published].

HOW TO GET MORE INFORMATION?

The Settlement Agreement and other detailed information, including relevant judgments and the long (detailed) version of this notice, are available on the Settlement Website at the following address: <https://www.reglementdonneesnissan.com/>

For more information, please contact:

Claims Administrator

RicePoint Administration Inc.

Nissan class action relating to

computer intrusion

PO Box 3355

London, ON N6A 4K3

Telephone number (toll-free): 1-877-206-7028

<https://www.reglementdonneesnissan.com/>

Please note that in the event of a discrepancy between the terms of this notice and those of Settlement Agreement, the terms of the Settlement Agreement will govern. All the Terms not defined in this notice have the meaning given to them in the Settlement Agreement.

The publication of this notice has been authorized by the Superior Court of Quebec.

**NOTICE OF CLASS ACTION SETTLEMENT
CLASS ACTION AGAINST NISSAN CANADA INC.
REGARDING COMPUTER INTRUSION**

**THIS IS A FORMAL NOTICE OF AN ORDER MADE BY THE COURT
APPROVED THE SETTLEMENT AND FEES OF THE ATTORNEYS OF THE
GROUPS IN THE CASE**

LEVY C. NISSAN CANADA INC. (court file number: 500-06-000907-184)

(DETAILED VERSION)

**PLEASE READ THIS NOTICE CAREFULLY AS IT
MAY IMPACT YOUR RIGHTS.**

This notice is addressed to all persons in **Quebec** whose (i) personal or financial information held by Nissan Canada inc. (“ Nissan ”) were compromised in a computer intrusion of which Nissan was informed by the extortionists by email on December 11, 2017 or (ii) who received a letter from Nissan on or around January 2018 informing them of this intrusion computer science (the “ Quebec **Group Members** ”).

WHAT IS THE PURPOSE OF THIS LAWSUIT?

On April 28, 2021, a class action was authorized against Nissan in *Levy v. Nissan. Nissan Canada Inc.*, in Quebec Superior Court file number 500-06-000907-184 (the “ Quebec **Action** ”). The lawsuit alleges that Nissan is liable for damages resulting from an incident that occurred on or about December 11, 2017, in which it received an anonymous email from an unknown individual who claimed to have information about Nissan's customers and who requested the payment of a ransom to return the data (the “ Computer **Intrusion** ”). The lawsuit alleges that the Computer Intrusion caused monetary damages to Class Members. Nissan denies any wrongdoing and no court has found any wrongdoing on the part of Nissan.

This notice is intended to inform you that the Superior Court of Quebec and the Superior Court of Justice of Ontario have approved the settlement that was reached in the context of the Quebec Action as well as another class action brought in Ontario v. Nissan, Nissan Canada Financial Services Inc./Services Financiers Nissan Canada inc. and Nissan North America, Inc. in *Grossman and Arntfield v. Nissan*

Canada Inc., doing business under the name Nissan Canada Finance and doing business under the names Infiniti Financial Services Canada, Nissan Canada Financial Services Inc., Services Financiers Canada inc. and Nissan North America, Inc., in Ontario Superior Court File Number CV-18-

00590402-00CP (the “ Ontario **Action** ”).

The settlement applies to Quebec Class Members as well as Ontario Action class members (collectively, the “ Settlement **Class** ” or the “ Settlement **Class Members** ”).

The Superior Court of Quebec approved the settlement of the Quebec Action on June 17, 2024.



This notice provides important information on how Settlement Class Members can now submit their claims and obtain compensation. Please read it carefully.

WHAT DOES THE REGULATION PROVIDE?
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Nissan has agreed to provide, without any admission of liability, a settlement fund of C\$1,820,000 (the “ Capped **Settlement Fund** ”) to pay the approved claims of Settlement Class Members.

Settlement Class Members may submit a “Documented Claim” or an “Undocumented Claim.”

3. Documented Claims: Settlement Class Members who suffered damages, losses, unreimbursed fees and/or costs as a result of the Cyber Intrusion (including as a result of receiving a letter on informing of the Computer Intrusion as part of the Quebec Action) and who submit a claim form proving (i) that they are part of the Settlement Class and (ii) that the documented damages suffered due to Computer Intrusion (including following receipt of a letter informing them of the Computer Intrusion as part of the Quebec action) are eligible for reimbursement of such damages up to **CA\$2,500** , less the levy payable to the Collective Action Fund, which corresponds to 2% on any claim less than \$2,000 or 5% on any claim greater than \$2,000.

4. Undocumented Claims: Settlement Class Members who do not have documentation or proof of damages and who submit a claim form demonstrating that they are part of the Settlement Class are entitled to a maximum amount of **CA\$35** for reimbursement of lost time, less 2% for the levy payable to the Collective Action Fund.

If the total amount of Settlement Class Members' claims exceeds the total amount allocated for Documented Claims or Undocumented Claims, individual payments to Settlement Class Members will be reduced pro rata (proportionately).

A copy of the settlement agreement (the “Settlement Agreement”) and other related documents are available online at the following address: <https://www.reglementdonneesnissan.com/>.

AM I A SETTLEMENT CLASS MEMBER?

You are a Class Member covered by the Settlement if you reside in Quebec and you fall into one of the following two categories:

3. you were a party to an ongoing lease or financed purchase contract that you entered into with Nissan Canada Inc. or Services Financiers Nissan Canada Inc./Nissan Canada Financial Services Inc. between December 22, 2016 and January 12, 2017;

OR

4. you received a letter from Nissan on or around January 2018 informing you of the Computer Intrusion.

HOW CAN I MAKE A SETTLEMENT CLAIM?

Each Settlement Class Member may be eligible for one of two types of compensation. If you have documentation, you can receive reimbursement for a Documented Claim for damages and/or costs up to \$2,500 CAD. If you do not have documentation, you may be eligible for an Undocumented Claim not to exceed CA\$35. Actual payment amount will depend on the total value of claims received and approved

and may be reduced proportionately in the event of insufficient funds, in accordance with the terms of the Settlement Agreement.

You can submit your claim during the period from [date] to [date] by doing the following:

4. complete the claim form;
5. Attach the required supporting documents if you submit a Claim documented;
6. send the claim form and supporting documents to the Claims Administrator by post (to the address indicated on the claim form) or online completing the form available at <https://www.reglementdonneesnissan.com/> no later than the Claim Submission Deadline: [100 days from the date the Notice of Approval was first published].

Please keep a copy of your completed claim form and any supporting documents you submit for your records. If you do not submit a claim form and required supporting documentation by [100 days from the date the Notice of Approval was first published], you will not be entitled to any compensation (i.e. you will not receive any payment).

Submitting your claim form late will have the same effect as not sending it at all.

WHAT IS A "DOCUMENTED CLAIM"

All Settlement Class Members who suffered damages, losses, fees and/or unreimbursed costs caused by the Computer Intrusion (including as a result of receiving a letter informing them of the 'Computer intrusion within the framework of the Quebec Action) may, subject to providing reasonable documentary evidence as determined by the Claims Administrator, obtain reimbursement of these amounts up to a maximum of CA\$2,500. This documentary evidence may include invoices, receipts, financial documents or photos. These damages and/or costs may be related to the following:

- expenses incurred, for example for the purchase of additional insurance;

- credit-related fees (such as fees incurred to obtain credit reports, subscribe to a credit monitoring or identity theft protection service, freeze credit or activate an alert credit);
- other unreimbursed fees or costs resulting from the Computer Intrusion.

DO I HAVE A LAWYER IN THIS CASE?

Yes. The lawyers (i.e. Group Counsel) representing the Quebec Class Members are Lex Group Inc. This law firm will not charge you any fees in this matter. If you wish to be represented by your own lawyer, you can hire one at your own expense.

Group Counsel
Lex Group inc.
4101 Sherbrooke Street West
Montreal, QC H3Z 1A7
514-451-5500 (ext. 101)
info@lexgroup.ca
www.lexgroup.ca

HOW TO GET MORE INFORMATION?

The Settlement Agreement and other detailed information, including relevant judgments, are available on the Settlement Website at the following address: <https://www.reglementdonneesnissan.com/>

For more information, please contact:

Claims Administrator
RicePoint Administration Inc.
Nissan class action relating to
computer intrusion
PO Box 3355
London, ON N6A 4K3
Telephone number (toll-free): 1-877-206-7028
<https://www.reglementdonneesnissan.com/>

Please note that in the event of a discrepancy between the terms of this notice and those of Settlement Agreement, the terms of the Settlement Agreement will govern. All the

Terms not defined in this notice have the meaning given to them in the Settlement Agreement.

The publication of this notice has been authorized by the Superior Court of Quebec.

**NOTICE OF CLASS ACTION SETTLEMENT
NISSAN CANADA INC. DATA INCIDENT CLASS ACTION**

**THIS IS A FORMAL NOTICE OF A COURT ORDER APPROVING THE SETTLEMENT AND CLASS
COUNSEL FEES**

**IN THE CASE OF *LEVY v. NISSAN CANADA INC.*, (Court file no: 500-06-000907-184)
(SHORT FORM)**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

This notice is for all persons in **Quebec**: (i) whose personal or financial information held by Nissan Canada Inc. ("**Nissan**") was compromised in a data breach of which Nissan was advised by the perpetrators by email on December 11, 2017, or (ii) who received a letter from Nissan on or about January 2018 informing them of such data breach ("**Québec Class Members**").

A Long Form (detailed) version of this notice is available at <https://nissandatasettlement.com/>

WHAT IS THIS LAWSUIT ABOUT?

On April 28, 2021, a class action was authorized against Nissan in the matter of *Levy v. Nissan Canada Inc.*, Superior Court of Quebec Court File No.: 500-06-000907-184 (the "**Québec Action**"). The lawsuit alleges that Nissan is liable for damages resulting from an incident occurring on or about December 11, 2017 in which it received an anonymous email from an unknown individual claiming to have information about Nissan customers, and demanding a ransom be paid to return the data (the "**Data Incident**"). The lawsuit alleges the Data Incident caused Class Members to incur monetary damages. Nissan denies any wrongdoing, and no court has concluded to any wrongdoing by Nissan.

This notice is to inform you that the Superior Court of Québec and the Ontario Superior Court of Justice have approved the settlement reached in the Québec Action as well as another class action lawsuit commenced in Ontario against Nissan, Nissan Canada Financial Services Inc./Services Financiers Nissan Canada Inc. and Nissan North America, Inc. in the matter of *Grossman and Arntfield v Nissan Canada Inc., cob as Nissan Canada Finance and cob as Infiniti Financial Services Canada, Nissan Canada Financial Services Inc., Services Financiers Nissan Canada Inc. and Nissan North America, Inc.*, Ontario Superior Court of Justice Court File No. CV-18-00590402-00CP (the "**Ontario Action**").

The settlement applies to Québec Class Members as well as class members in the Ontario Action (together, the "**Settlement Class**" or "**Settlement Class Members**").

The settlement of the Quebec Action was approved by the Superior Court of Quebec on June 17, 2024.

WHAT IS AVAILABLE UNDER THE SETTLEMENT?

Nissan has agreed to provide, without any admission of liability, a settlement fund of CAD \$1,820,000.00 ("**Capped Settlement Fund**") to pay the successful claims of Settlement Class Members.

Settlement Class Members may submit either a "Documented Claim" or an "Undocumented Claim".

5. Documented Claims: Settlement Class Members who have suffered damages, losses, costs and/or unreimbursed expenses caused by the Data Incident (including as a result of having received a letter informing them of the Data Security Incident in the Québec Action) and who submit a claim form evidencing (i) their membership in the Settlement Class; and (ii) documented damages incurred as a result of the Data Incident (including as a result of having received a letter informing them of the Data Security Incident in the Québec Action), are eligible for the reimbursement of such damages up to **CAD \$2,500**, less the levy payable to the *Fonds d'aide aux actions collectives*, which is equal to 2% for any claim that is less than \$2,000 or 5% for any claim exceeding \$2,000.
6. Undocumented Claims: Settlement Class Members who do not have documentation or proof of damages and who submit a claim form establishing their membership in the Settlement Class are entitled to a maximum amount of **CAD \$35** for reimbursement of lost time, less 2% for the levy payable to the *Collective Action Fund*.

If the total amount of claims to Settlement Class Members exceeds the total amount allocated for either the Documented Claims or the Undocumented Claims, the individual payments to Settlement Class Members may be reduced on a pro rata basis (proportionally).

A copy of the settlement agreement (the "Settlement Agreement") and other related documentation are available online at www.nissandatasettlement.com.

AM I A SETTLEMENT CLASS MEMBER?

You are a Settlement Class Member if you are a Quebec resident and correspond to one of the two following categories:

5. You had an active lease or loan with Nissan Canada Inc. or Nissan Canada Financial Services / Nissan Financial Services Canada Inc. between December 22, 2016 and January 12, 2017.

GOLD

6. You received a letter from Nissan on or about January 2018 informing you of such Data Incident.

HOW TO MAKE A CLAIM UNDER THE SETTLEMENT

The period for submitting a claim begins on [date] and runs until [date]. During that period, you may make a claim by doing the following:

7. Fill out the claim form;
8. Include the required supporting documents/evidence, if you are making a Documented Claim; and,
9. Submit the claim form and supporting documents/evidence to the claims administrator by mail (at the address listed on the claim form) or online (by completing the form available at <https://nissandatasettlement.com/>) on or before the deadline to make a Claim: [100 days from the first dissemination of the Approval Notice].

HOW DO I GET MORE INFORMATION?

The Settlement Agreement and further detailed information, including relevant judgments and the Long Form (detailed) version of this notice, are available on the Settlement Website at <https://nissandatasettlement.com/>.
For more information, please contact:

Claims Administrator

RicePoint Administration Inc.

Nissan Data Incident Class Action

PO Box 3355

London, ON N6A 4K3

Phone (toll free): 1-877-206-7028

<https://nissandatasettlement.com/>

Please note that in case of any discrepancy between the terms of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail. Any term not defined in this Notice shall have the meaning ascribed in the Settlement Agreement.

The publication of this notice has been authorized by the Superior Court of Quebec.

NOTICE OF CLASS ACTION SETTLEMENT NISSAN CANADA INC. DATA INCIDENT CLASS ACTION

**THIS IS A FORMAL NOTICE OF A COURT ORDER APPROVING THE SETTLEMENT AND CLASS
COUNSEL FEES**

**IN THE CASE OF *LEVY v. NISSAN CANADA INC.*, (Court file no: 500-06-000907-184)
(LONG FORM)**

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS

This notice is for all persons in **Quebec**: (i) whose personal or financial information held by Nissan Canada Inc. ("**Nissan**") was compromised in a data breach of which Nissan was advised by the perpetrators by email on December 11, 2017, or (ii) who received a letter from Nissan on or about January 2018 informing them of such data breach ("**Québec Class Members**").

WHAT IS THIS LAWSUIT ABOUT?

On April 28, 2021, a class action was authorized against Nissan in the matter of *Levy v. Nissan Canada Inc.*, Superior Court of Quebec Court File No.: 500-06-000907-184 (the "**Québec Action**"). The lawsuit alleges that Nissan is liable for damages resulting from an incident occurring on or about December 11, 2017 in which it received an anonymous email from an unknown individual claiming to have information about Nissan customers, and demanding a ransom be paid to return the data (the "**Data Incident**"). The lawsuit alleges the Data Incident caused Class Members to incur monetary damages. Nissan denies any wrongdoing, and no court has concluded to any wrongdoing by Nissan.

This notice is to inform you that the Superior Court of Québec and the Ontario Superior Court of Justice have approved the settlement reached in the Québec Action as well as another class action lawsuit commenced in Ontario against Nissan, Nissan Canada Financial Services Inc./Services Financiers Nissan Canada Inc. and Nissan North America, Inc. in the matter of *Grossman and Arntfield v Nissan Canada Inc., cob as Nissan Canada Finance and cob as Infiniti Financial Services Canada, Nissan Canada Financial Services Inc., Services Financiers Nissan Canada Inc. and Nissan North America, Inc.*, Ontario Superior Court of Justice Court File No. CV-18-00590402-00CP (the "**Ontario Action**").

The settlement applies to Québec Class Members as well as class members in the Ontario Action (together, the "**Settlement Class**" or "**Settlement Class Members**").

The settlement of the Quebec Action was approved by the Superior Court of Quebec on June 17, 2024.

This notice provides important information concerning how Settlement Class Members can now submit their claims and receive compensation. Please read this notice carefully.

WHAT IS AVAILABLE UNDER THE SETTLEMENT?

Nissan has agreed to provide, without any admission of liability, a settlement fund of CAD \$1,820,000.00 ("**Capped Settlement Fund**") to pay the successful claims of Settlement Class Members.

Settlement Class Members may submit either a "Documented Claim" or an "Undocumented Claim".

7. Documented Claims: Settlement Class Members who have suffered damages, losses, costs and/or unreimbursed expenses caused by the Data Incident (including as a result of having received a letter informing them of the Data Security Incident in the Québec Action) and who submit a claim form evidencing (i) their membership in the Settlement Class; and (ii) documented damages incurred as a result of the Data Incident (including as a result of having received a letter informing them of the Data Security Incident in the Québec Action), are eligible for the reimbursement of such damages up to **CAD \$2,500**, less the levy payable to the *Fonds d'aide aux actions collectives*, which is equal to 2% for any claim that is less than \$2,000 or 5% for any claim exceeding \$2,000.
8. Undocumented Claims: Settlement Class Members who do not have documentation or proof of damages and who submit a claim form establishing their membership in the Settlement Class are entitled to a maximum amount of **CAD \$35** for reimbursement of lost time, less 2% for the levy payable to the *Collective Action Fund*.

If the total amount of claims to Settlement Class Members exceeds the total amount allocated for either the Documented Claims or the Undocumented Claims, the individual payments to Settlement Class Members may be reduced on a pro rata basis (proportionally).

A copy of the settlement agreement (the "Settlement Agreement") and other related documentation are available online at www.nissandatasettlement.com.

AM I A SETTLEMENT CLASS MEMBER?

You are a Settlement Class Member if you are a Quebec resident and correspond to one of the two following categories:

7. You had an active lease or loan with Nissan Canada Inc. or Nissan Canada Financial Services / Nissan Financial Services Canada Inc. between December 22, 2016 and January 12, 2017.

GOLD

8. You received a letter from Nissan on or about January 2018 informing you of such Data Incident.

HOW TO MAKE A CLAIM UNDER THE SETTLEMENT

Each Settlement Class Member may be eligible for one of two types of benefits. If you have documentation, you can receive reimbursement for a Documented Claim of losses and/or expenses up to CAD \$2,500. If you do not have documentation, you may be eligible for an Undocumented Claim not exceeding CAD \$35.

The amount of actual payments will depend on the total value of claims received and approved and may be proportionally reduced in case of insufficient funds, in accordance with the terms of the Settlement Agreement.

The period for submitting a claim begins on [date] and runs until [date]. During that period, you may make a claim by doing the following:

10. Fill out the claim form;
11. Include the required supporting documents/evidence, if you are making a Documented Claim; and,

12. Submit the claim form and supporting documents/evidence to the claims administrator by mail (at the address listed on the claim form) or online (by completing the form available at <https://nissandatasettlement.com/>) on or before the deadline to make a Claim: [100 days from the first dissemination of the Approval Notice].

Please keep a copy of your completed claim form and all of the supporting documents/evidence you submit for your own records. If you fail to submit a claim form and the required supporting documents/evidence on or before [date 100 days from the first dissemination of the Approval Notice], you will not be eligible for any compensation whatsoever (ie, you will not get paid) . Sending in a claim form late will be the same as doing nothing.

TELL ME MORE ABOUT WHAT A “DOCUMENTED CLAIM” MEANS

All Settlement Class Members who have suffered damages, losses, costs and/or unreimbursed expenses that were caused by the Data Incident (including as a result of having received a letter informing them of the Data Incident in the Québec Action) can, subject to providing reasonable documentary evidence as determined by the Claims Administrator, get reimbursed for these amounts up to CAD \$2,500. This documentary evidence may include invoices, receipts, financial records or photos. These losses and/or expenses could be related to:

- Disbursements incurred such as for purchasing extra insurance;
- Credit-related costs (such as buying credit reports, credit monitoring or identity theft protection, or costs to place a freeze or alert on your credit report);
- Other costs or unreimbursed expenses as a result of the Data Incident.

DO I HAVE A LAWYER IN THIS CASE?

Yes. The lawyers (Class Counsel) representing the Québec Class Members are the law firm Lex Group Inc. You will not be charged by this law firm for its work on the case. If you want to be represented by your own lawyer, you may hire one at your own expense.

Class Counsel

Lex Group Inc.

4101 Sherbrooke Street West

Montreal, QC H3Z 1A7

514-451-5500 (ext. 101)

info@lexgroup.ca

www.lexgroup.ca

HOW DO I GET MORE INFORMATION?

The Settlement Agreement and further detailed information, including relevant judgments, are on the Settlement Website at <https://nissandatasettlement.com/>.

For more information, please contact:

Claims Administrator

RicePoint Administration Inc.

Nissan Data Incident Class Action

PO Box 3355
London, ON N6A 4K3
Phone (toll-free): 1-877-206-7028
<https://nissandatasettlement.com/>

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