

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-06-000549-101

DATE: December 7, 2015

42

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

9085-4886 QUEBEC INC.
Petitioner

v.

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

ROYAL BANK OF CANADA
and
TORONTO-DOMINION BANK
Respondents

JUDGMENT

[1] The Petitioner is seeking to approve three separate settlement agreements in the present file reached between the Petitioner and three Respondents, namely, Bank of America Corporation and BofA Canada Bank, formerly MBNA Canada Bank, an affiliate of Bank of America Corporation (collectively, "BofA") (the "BofA Settlement Agreement"),¹ Capital One Financial Corporation and Capital One Bank (Canada Branch) (collectively, "Capital One") (the "Capital One Settlement Agreement"),² and Citigroup Inc., Citi Cards Canada Inc., Citibank Canada and Citibank N.A. (collectively, Citigroup") (the "Citigroup Settlement Agreement")³ (collectively, the "Settlement Agreements") (collectively, the "Settling Respondents", each a "Settling Respondent").⁴

INTRODUCTION

[2] The facts of this case were set out in detail in this Court's Judgment approving the notice program relating to the BofA Settlement Agreement dated November 4, 2014, the rectified Judgment dated February 16, 2015, and further reiterated in this Court's Judgment dated August 27, 2015 approving the updated notice program relating to the Settlement Agreements.

[3] For the purposes of cohesiveness, the particulars have been reiterated below.

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

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

¹ Exhibit R-1

² Exhibit R-2

³ Exhibit R-3.

⁴ Note: The terms Plaintiff(s) and Defendant(s) have been replaced for the purposes of the Quebec Class Action with the terms Petitioner(s) and Respondent(s).

“all residents in Quebec who, during some or all of the period commencing March 28, 2001 and continuing through to the present (the “Class Period”), accepted as a method of payment for the sale of a good or service Visa (the “Visa Class Members”) or MasterCard (the “MasterCard Class Members”) credit cards pursuant to the terms of merchant agreements, or any other group to be determined by the Court;”

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

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

[8] The three out-of-court settlements that have been reached in this file are the following:

- I. On August 16, 2013, the BofA Settlement Agreement was reached between the Petitioner and Respondent BofA and was amended on July 7, 2014 and July 8, 2014;
- II. On April 1, 2015, the Capital One Settlement Agreement was reached between the Petitioner and Respondent Capital One;
- III. On April 22, 2015, the Citigroup Settlement Agreement was reached between the Petitioner and Respondent Citigroup.

[9] This Court has authorized the bringing of a class action against the Settling Respondents and approved the notices of authorization and settlement hearing on November 4, 2014⁵ and on August 27, 2015, respectively – as did the Courts of British Columbia, Ontario, Alberta and Saskatchewan.

[10] The Settlement Agreements apply to persons who are members of the following class:

Quebec MasterCard Settlement Class

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

⁵ On February 16, 2015, this Court rectified the Judgment.

[11] The BofA Settlement Agreement and the Citigroup Settlement Agreement additionally apply to persons who are members of the following class:

Quebec Visa Settlement Class

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

[12] Similar class proceedings were commenced against the same Respondents, which charge substantially the same allegations in the Canadian provinces of British Columbia, Ontario, Alberta, and Saskatchewan (collectively, the “Canadian Proceedings”)⁶ such that that all residents in Canada who, during the Class Period, accepted payments for the supply of goods or services by way of MasterCard Credit Cards or Visa Credit Cards pursuant to the terms of Merchant Agreements, are covered by the Settlement Agreements.

[13] The Petitioner and the Plaintiffs in the Canadian Proceedings are represented by CLG, Camp Fiorante Matthews Mogerman, and Branch MacMaster LLP (“Class Counsel”); a consortium of lawyers who are working together in the prosecution of the Canadian Proceedings on a pan-Canadian basis.

[14] The action is continuing against the following nine (9) Respondents: Visa Canada Corporation, MasterCard International Incorporated, Bank of Montreal, Bank of Nova Scotia, Canadian Imperial Bank of Commerce, Fédération des caisses Desjardins du Québec, National Bank of Canada Inc., Royal Bank of Canada, and Toronto-Dominion Bank (collectively, the “Non-Settling Respondents”, each a “Non-Settling Respondent”).

SETTLEMENT

[15] The Petitioner and the Settling Respondents have agreed to the terms of the Settlement Agreements, the whole subject to the approval of this Court, and without any admission of liability whatsoever by the Settling Respondents and for the sole purpose of resolving the dispute between the Parties.

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

[16] The following is a chart summarizing the breakdown per Settling Respondent of the monetary benefits that are being held in trust for the benefit of the Settlement Class from the Settlement Agreements:

Settling Respondent	Settlement Amount
BofA	\$7,750,000
Capital One	\$4,250,000
Citigroup	\$1,630,000
Total Settlement Amount	\$13,630,000

(each a "Settlement Amount", collectively, the "Settlement Amounts").

[17] The following is a summary of the key terms of the respective Settlement Agreements:

I. The BofA Settlement Agreement⁷

- A) On September 6, 2013, BofA paid \$7,750,000 to Class Counsel for deposit into an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class members, and
- B) BofA has also agreed to provide cooperation with the Petitioner and with Class Counsel, by providing the following within one hundred and twenty (120) days of the Effective Date (i.e. the date when Settlement Approval Orders have been approved by the Courts) or at a time that is mutually agreed upon:
- a) Providing any BofA documents that it has produced in the US Proceeding, and making reasonable efforts to produce documents that BofA has produced in the US Proceeding that are subject to confidentiality obligations, court orders or third party consent rights;
 - b) Providing BofA documents in its possession, and providing third party documents in its possession or control, relevant to the issues raised in the Canadian Proceedings, excluding such documents that are subject to confidentiality obligations, court orders or third party consent rights;
 - c) Reasonably considering making any requests necessary to obtain consent or authorization for the release of documents produced by third parties that are subject to confidentiality obligations, court orders or third party consent rights, and, where such consent or authorization is withheld, reasonably considering

⁷ Exhibit R-1.

allowing the Petitioner/Plaintiffs, at their own expense, to assert its rights to permit the production of such documents, and

- d) Facilitating access to Rubina Havlin, former CEO of BofA Canada Bank, for a meeting to speak to Class Counsel (which has already been completed).

II. The Capital One Settlement Agreement⁸

- A) On May 25, 2015, Capital One paid \$4,250,000 to Class Counsel for deposit into an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class members, and
- B) Capital One has also agreed to provide cooperation with the Petitioner and with Class Counsel by performing the following within thirty (30) days of the Effective Date (i.e. the date when Settlement Approval Orders have been received by the Courts) or at a time that is mutually agreed upon:
 - a) Providing a written statement that it has no objection to Class Counsel obtaining any documents that it has produced in the US Proceeding,
 - b) Agreeing not to oppose an application by Class Counsel in the US Proceedings to permit disclosure of documents that Capital One has produced in the US Proceeding,
 - c) Providing for the authentication of any Capital One business records produced in the US Proceeding,
 - d) Providing documents in its possession relevant to the issues raised in the Canadian Proceedings,
 - e) Providing third party documents in its possession or control relevant to the issues raised in the Canadian Proceedings,
 - f) With regard to b) to e) hereinabove, they are satisfied upon Capital One providing to Class Counsel those Documents already produced by Capital One in *The Commissioner of Competition v. Visa Canada Corporation and MasterCard et al*, Case No. CT-2010-010, as well as the following:
 - i) a document showing the total interchange fees earned in relation to Canadian transactions during the Class Period, and
 - ii) a document showing the total volume (in dollars) of credit card transactions during the Class Period,

⁸ Exhibit R-2.

- g) Reasonably considering making any requests necessary to obtain consent for the release of documents produced by third parties relevant to the issues raised in the Canadian Proceedings that cannot be disclosed pursuant to confidentiality obligations and if such consent is withheld, it will reasonably consider allowing the Petitioner/Plaintiffs to assert its rights, and
- h) Making reasonable efforts to facilitate access to a person having knowledge of the issues raised in the Canadian Proceedings for a meeting to speak to Class Counsel for a period of 6 hours or less.

III. The Citigroup Settlement Agreement⁹

- A) Within twenty (20) days of the Execution Date (i.e. the date when the Parties executed the Citigroup Settlement Agreement), namely, by May 12, 2015, Citigroup began accruing interest on the Citigroup Settlement Amount of \$1,630,000, which is currently being held by counsel for Citigroup. The Citigroup Settlement Amount will be paid out to Class Counsel within thirty (30) days of the Effective Date (i.e. the date when Settlement Approval Orders have been received by the Courts) for deposit into an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class members, and
- B) Citigroup has also agreed to provide cooperation with the Petitioner and with Class Counsel by performing the following within thirty (30) days of the Effective Date or at a time that is mutually agreed upon, in accordance with the terms of the Citigroup Settlement Agreement:
 - a) Providing a written statement that it has no objection to Class Counsel obtaining any documents that it has produced in the US Proceeding,
 - b) Agreeing to not oppose an application by Class Counsel in the US Proceedings to permit disclosure of documents that Citigroup has produced in the US Proceeding,
 - c) Providing for the authentication of any Citigroup business records produced in the US Proceeding,
 - d) providing Class Counsel with a letter stating that Citibank Canada has no objection to Class Counsel obtaining a copy of the asset purchase agreement dated June 14, 2010 between Citi Cards Canada Inc., Citibank Canada and Canadian Imperial Bank of Canada, and

⁹ Exhibit R-3.

- e) Making reasonable efforts to facilitate access to a person having knowledge of the issues raised in the Canadian Proceedings for a meeting to speak to Class Counsel for a period of 6 hours or less.

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

- (i) All Administration Expenses, including notice and publication costs and claims administration costs;
- (ii) Class Counsel Fees, including fees, disbursements, costs, interest and all applicable taxes and charges of Class Counsel; and
- (iii) Any amount owing to the *Fonds d'aide aux recours collectifs* with regard to the Quebec Class at the time of distribution;

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

[20] The release for the Settling Respondents includes and encompasses any and all claims related to the allegations of the Amended Motion for Authorization and excludes any benefits that may accrue as a result of injunctive or declaratory relief that may be issued as a result of the Canadian Proceedings.

[21] As a result of certain concerns raised by Wal-Mart Canada Corp., the parties have agreed to clarify that the Settlement Agreements do not restrict the ability of any U.S. or other non-Canadian affiliates or related entities or businesses of the Releasers (as defined in the Settlement Agreements) from pursuing any claims relating to non-Canadian interchange in other jurisdictions outside Canada, including the U.S. Wal-Mart Canada Corp. in turn has confirmed its understanding that the release does bar the Releasers from litigating in respect of Canadian interchange elsewhere.

[22] The Opt-Out Deadline expired on November 4, 2015 and the deadline to provide written comment or objections expired on November 2, 2015. There was only one (1) opt out request and one (1) objection to the Settlement Agreements from Wal-Mart Canada Corp.¹⁰ The concerns raised by Wal-Mart Canada Corp. have been addressed as outlined above, and Wal-Mart now agrees to allow the Settlement Agreements to proceed without further objection.

¹⁰ Wal-Mart Canada Corp. has agreed to allow the Motions for Settlement Approval to proceed without objection on conditions which have been taken into account in the conclusions of this Judgment.

CLASS NOTICE

[23] In accordance with the Settlement Agreements and this Court's Judgments dated November 4, 2014 and August 27, 2015 approving the Notice as well as the Method of Dissemination, notice was effected in the following manner:

- a) English language notices in two (2) high-circulation national daily newspapers – The Globe and Mail, national edition (English), and the National Post, national edition (English) – as well as in the Calgary Herald and the Edmonton Journal;
- b) English and French notices in two (2) high-circulation daily newspapers in the province of Quebec: La Presse (French) and The Gazette (English);
- c) English and French language notices, as appropriate, in five (5) mass market national industry magazines – the Retail Council of Canada's Canadian Retailer Magazine, the Canadian Convenience Stores Association's C-Store Life, the Canadian Restaurant and Foodservices News, the Grocery Business Magazine, and the Canadian Business / PROFIT;
- d) English and French language notices, as appropriate, were sent out to twenty (20) industry associations whose members accept Visa or MasterCard credit cards as a means of payment for goods or services for voluntary distribution to their membership requesting voluntary distribution to their membership by email or by posting on their websites– the Retail Council of Canada, the Canadian Federation of Independent Businesses (CFIB), the Retail Merchants Association of Canada (Ontario) Inc., the Canadian Restaurant and Foodservices Association, the Canadian Convenience Stores Association, the Canadian Federation of Independent Grocers (CFIG), the Food and Consumer Products of Canada, the Canadian Association of Chain Drug Stores, the Tourism Industry Association of Canada, the Canadian Independent Petroleum Marketers Association, the Canadian Jewellers Association, Small Business Matters, the Canadian Wireless Telecommunications Association (CWTA), the Canadian Association of Home and Property Inspectors, the Canadian Parking Association, the Association of Universities and Colleges of Canada, the Automotive Retailers Association, the Canadian Deals and Coupons Association, the Canadian Cosmetic, Toiletry and Fragrance Association, and the Canadian Franchise Association;
- e) E-mail communication to all persons who signed up to receive information on Class Counsels' websites;
- f) Posting in English and in French on Class Counsels' websites;

- g) A Request to the CBA National Class Action Registry to post the notice online; and
- h) Posting in English and in French on the dedicated settlement websites:
- <http://www.creditcardclassaction.com>, and
 - <https://www.creditcardsettlements.ca/>

APPROVAL OF THE SETTLEMENT AGREEMENTS

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

- «
- les probabilités de succès du recours;
 - l'importance et la nature de la preuve administrée;
 - les termes et les conditions de la transaction;
 - la recommandation des procureurs et leur expérience;
 - le coût des dépenses futures et la durée probable du litige;
 - la recommandation d'une tierce personne neutre, le cas échéant;
 - le nombre et la nature des objections à la transaction;
 - la bonne foi des parties;
 - l'absence de collusion. »¹¹

[25] In particular, this Court finds that:

- i. Only one Settlement Class member has opted out of the Settlement Agreements;

¹¹ *Tremblay c. Lavoie*, 2014 QCCS 4955, *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Option Consommateurs c. Union canadienne (L'), compagnie d'assurances*, 2013 QCCS 5505; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Conseil pour la protection des malades c. CHSLD Manoir Trinité*, 2014 QCCS 2280; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *Bouchard c. Abitibi-Consolidated Inc.*, (C.S.) Chicoutimi, dossier 150-06-000001-966, 15 juin 2004.

- ii. Only one Settlement Class member has objected to the Settlement Agreements and it has agreed to the present Judgment without objection on conditions which have been taken into account in the conclusions of this Judgment;
- iii. The negotiations occurred at arm's-length;
- iv. The risk, expense, complexity and duration of further litigation weighs in favour of approval;
- v. The amount offered in settlement is fair and adequate and worthy of approval;
- vi. Class Counsel has extensive expertise in the area of class actions and is recommending the settlements.

FEES

[26] The Court is called upon to approve Class Counsel fees and disbursements as fair and reasonable based on its analysis of the following factors as set out in sections 3.08.01 to 3.08.03 of the Code of ethics of advocates,¹² particularly with a view to the objectives of class proceedings (i.e. access to justice, judicial economy, behaviour modification) and the risks assumed by Class Counsel.¹³

[27] Section 3.08.02 of the Code of ethics of advocates states:

“3.08.02. The fees are fair and reasonable if they are warranted by the circumstances and correspond to the professional services rendered. In determining his fees, the advocate must in particular take the following factors into account:

- (a) experience;
- (b) the time devoted to the matter;
- (c) the difficulty of the question involved;
- (d) the importance of the matter;
- (e) the responsibility assumed;
- (f) the performance of unusual professional services or professional services requiring exceptional competence or celerity;
- (g) the result obtained;
- (h) the judicial and extrajudicial fees fixed in the tariffs.”

¹² RRQ, c. B-1, r. 1.

¹³ *Lavoie c. Régie de l'assurance maladie du Québec*, 2013 QCCS 866.

[28] In particular, the Court finds that:

- i) The Settling Respondents are not objecting to Class Counsel's fees in the amount requested, as appears from the Settlement Agreements;
- ii) No Settlement Class member has objected to Class Counsel's fees. The Notice disseminated to Settlement Class members stated that Class Counsel would be requesting Class Counsel fees in the amount of up to 25% of the Settlement Amount;
- iii) Class Counsel in the other Courts have separately sought approval from their respective Courts of a collective, national contingent legal fee of \$3,407,500.00, which amounts to 25% of the Settlement Amount, plus disbursements and applicable taxes;
- iv) The Mandate Agreement with the Petitioner provides that Quebec Class Counsel will receive the higher of 30% of the total value of the settlement or a multiplier of 3.5 times the total number of hours worked, plus disbursements and taxes. Quebec Class Counsel would have received higher fees through the multiplier route, nevertheless, the fees and disbursements sought are significantly less than those under the multiplier option;
- v) This action involves complex legal issues, which, in the absence of settlement, would involve lengthier proceedings with an uncertain resolution with respect to the Settling Respondents and possible appeals;
- vi) Class Counsel assumed all of the financial risks associated with initiating, financing, and maintaining the litigation;
- vii) Class Counsel fees, at present, represent a 0.835 multiplier on the actual time incurred, which is quite unusually low in the circumstances;¹⁴

[29] The Court has taken cognizance of Justice Paul Perrell's November 23, 2015 decision rendered in the Ontario case involving a similar class action.¹⁵

[30] Justice Perrell approves the proposed settlement as being fair and reasonable but reduces the fees as requested by class counsel by 10%.

[31] As part of the proposed settlement, class counsel are seeking an amount equivalent to 25% of the settlement amount, whereas the retainer agreement, which is

¹⁴ *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

¹⁵ *Bancroft Shell and al. v. Visa Corp.*, 2015 ONSC 7275 and supplementary reasons, released on November 26, 2015.

in addition to the amount paid to the class, would have entitled them to receive 30% of the settlement amount.

[32] The Court does not approve of agreements reached between competing groups of plaintiffs' counsel that are intended to disinterest some of them.

[33] In the present case, the Court is called upon to approve a first partial settlement. The moneys will be paid by the settling defendants to the attorneys who will then distribute the amounts among them.

[34] In this instance, considering the applicable criteria, class counsel fees are reasonable.

[35] The fees do not cover all the time invested by class counsel who are actively working in the file.

[36] Therefore, for the purpose of this partial settlement, the Court approves class counsel fees.

POUR CES MOTIFS, LE TRIBUNAL :

WHEREFORE, THE COURT:

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

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

Pour La Convention de règlement BofA

For BofA Settlement Agreement

[38] **ORDONNE** que, pour l'application du jugement, les définitions énoncées à la Convention de règlement BofA, R-1, s'appliquent et y sont incorporées par renvoi;

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

[39] **DÉCLARE** que la Convention de règlement BofA constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, liant toutes les parties et tous les Membres du groupe de règlement qui ne se sont pas exclus en temps acceptable;

[39] **DECLARES** that the BofA Settlement Agreement constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Settlement Class Members who have not excluded themselves in a timely manner;

[40] **DÉCLARE** que l'ensemble de la Convention de règlement BofA fait partie intégrante du présent jugement;

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

[41] **DÉCLARE** que la Convention de règlement BofA est valide, équitable et raisonnable, et dans le meilleur intérêt des Membres du Groupe de règlement;

[41] **DECLARES** that the BofA Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;

[42] **APPROUVE** la Convention de règlement BofA en conformité avec l'article 1025 du Code de procédure civile;

[42] **APPROVES** the BofA Settlement Agreement in accordance with article 1025 of the *Code of Civil Procedure*;

[43] **ORDONNE** aux parties et aux Membres du Groupe de règlement, sauf ceux exclus conformément à la Convention de règlement BofA et au présent jugement, de se conformer aux termes et conditions de la Convention de règlement BofA;

[43] **ORDERS** the parties and the Settlement Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the BofA Settlement Agreement and with this Judgment, are to abide by the terms and conditions of the BofA Settlement Agreement;

[44] **ORDONNE** et **DÉCLARE** que chaque Membre du groupe de règlement qui ne s'est pas valablement exclu du groupe sera considéré comme ayant donné une quittance complète, générale et finale aux Renonciataires eu égard aux Réclamations quittancées;

[44] **ORDERS** and **DECLARES** that each Settlement Class Member that did not opt-out of the class will be deemed to have given discharge and to have given a complete, comprehensive and final release to the Releasees with respect to the Released Claims;

[45] **ORDONNE** et **DÉCLARE** que, par la Convention de règlement BofA, la Requérente et les Membres du groupe de règlement renoncent expressément au bénéfice de la solidarité envers les Intimées non-participant à la Convention de règlement BofA, en ce qui a trait aux faits et actes des Renonciataires;

[45] **ORDERS AND DECLARES** that, by the BofA Settlement Agreement, the Petitioner and Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Respondents with respect to the facts and deeds of the Releasees;

[46] **ORDONNE** et **DÉCLARE** que la Requérente et les Membres du groupe de règlement ne pourront dorénavant réclamer et récupérer que les dommages, y compris les dommages punitifs, attribuables à la conduite et/ou aux ventes des Intimées non-participant à la Convention de règlement BofA;

[46] **ORDERS AND DECLARES** that the Petitioner and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, if any, attributable to the conduct of and/or sales by the Non-Settling Respondents;

[47] **DÉCLARE** que chaque recours en garantie ou autre mise en cause pour obtenir une forme ou une autre de contribution ou d'indemnité de la part des Renonciataires ou ayant trait aux Réclamations quittancées est inadmissible et nulle dans le cadre du présent dossier, étant entendu toutefois que ce qui précède ne fera pas obstacle aux:

[47] **DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees, or relating to the Released Claims shall be inadmissible and void in the context of this case, provided that

- (a) réclamations ou causes d'action directes et indépendantes entre BofA à titre d'Intimée participant aux Conventions de règlement et la TD à titre d'Intimée non-participant aux Conventions de règlement, incluant des réclamations ou causes d'action indépendantes et directes que TD pourrait avoir à l'encontre de BofA en vertu de la Convention d'achat d'actifs de 2011 et/ou la Convention d'achat d'actifs de 2013 (telles que définies à la Convention de règlement BofA); et
- (a) independent and direct claims and causes of action between BofA as a Settling Respondent and TD as a Non-Settling Respondent are not precluded, including independent and direct claims and causes of action that TD may have against BofA under the 2011 APA and/or the 2013 APA (as defined in the BofA Settlement Agreement); and
- (b) les réclamations ou causes d'action directes et indépendantes entre BofA à titre d'Intimée participant aux Conventions de règlement et Visa, à titre d'Intimée non-participant aux Conventions de règlement, ou entre BofA à titre d'Intimée participant aux Conventions de règlement et Mastercard à titre d'Intimée non-participant aux Conventions de règlement, incluant des réclamations ou causes d'action indépendantes et directes que Visa pourrait avoir à l'encontre de BofA en vertu des Règles du réseau Visa ou que Mastercard pourrait avoir à l'encontre de BofA en vertu des Règles du réseau MasterCard (telles que définies à la Convention de règlement BofA);
- (b) independent and direct claims and causes of action between BofA as a Settling Respondent and Visa as a Non-Settling Respondent or between BofA as a Settling Respondent and MasterCard as a Non-Settling Respondent are not precluded, including independent and direct claims and causes of action that Visa may have against BofA under the Visa Network Rules or that MasterCard may have against BofA under the MasterCard Network Rules (as they are defined in the BofA Settlement Agreement)

Pour La Convention de règlement Capital One

For the Capital One Settlement Agreement

[48] **ORDONNE** que, pour l'application du jugement, les définitions énoncées à la Convention de règlement Capital One, R-2 s'appliquent et y sont incorporées par renvoi;

[48] **ORDERS** that for the purposes of this Judgment, the definitions contained in the Capital One Settlement Agreement, R-2 shall apply and are incorporated by reference;

[49] **DÉCLARE** que la Convention de règlement Capital One constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, liant toutes les parties et tous les Membres du Groupe du

[49] **DECLARES** that the Capital One Settlement Agreement constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Settlement Class

Règlement qui ne se sont pas exclus en temps acceptable;

Members who have not excluded themselves in a timely manner;

[50] **DÉCLARE** que la Convention de règlement Capital One fait partie intégrale du présent jugement;

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

[51] **DÉCLARE** que la Convention de règlement Capital One est valide, équitable et raisonnable, et dans le meilleur intérêt des Membres du Groupe de règlement;

[51] **DECLARES** that the Capital One Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;

[52] **APPROUVE** la Convention de règlement Capital One en conformité avec l'article 1025 du Code de procédure civile;

[52] **APPROVES** the Capital One Settlement Agreement in accordance with article 1025 of the *Code of Civil Procedure*;

[53] **ORDONNE** aux parties et aux Membres du Groupe de règlement, sauf ceux exclus conformément à la Convention de règlement Capital One et au présent jugement, de se conformer aux termes et conditions de la Convention de règlement Capital One;

[53] **ORDERS** the parties and the Settlement Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the Capital One Settlement Agreement and with this Judgment, to abide by the terms and conditions of the Capital One Settlement Agreement;

[54] **ORDONNE** et **DÉCLARE** que chaque Membre du groupe de règlement qui ne s'est pas valablement exclu du groupe sera considéré comme ayant donné une quittance complète, générale et finale aux Renonciataires eu égard aux Réclamations quittancées;

[54] **ORDERS** and **DECLARES** that each Settlement Class Member that did not opt-out of the class will be deemed to have given discharge and to have given a complete, comprehensive and final release to the Releasees with respect to the Released Claims;

[55] **ORDONNE** et **DÉCLARE** que, par la Convention de règlement Capital One, la requérante et les Membres du Groupe de Règlement renoncent expressément au bénéfice de la solidarité contre les Défendeurs Non Parties aux Règlements en ce qui a trait aux faits et gestes des Renonciataires, et les Défendeurs Non Parties aux Règlements sont ainsi libérés relativement à la Responsabilité Proportionnelle des Renonciataires prouvée au procès ou autrement, le cas échéant;

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

[56] **ORDONNE** et **DÉCLARE** que la Requête et les Membres du groupe de règlement pourront seulement réclamer et recouvrer à l'avenir des dommages-intérêts, y

[56] **ORDERS** and **DECLARES** that the Petitioner and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages,

compris des dommages-intérêts punitifs, attribuables à la conduite des Défendeurs Non Parties aux Règlements ou aux ventes réalisées par ces derniers et, pour plus de certitude, ne pourront réclamer d'elles aucun dommage compensatoire, punitif ou autre causé par ou attribuable aux ventes des Intimées participant aux Conventions de règlement, et ce, de quelque façon que ce soit;

[57] **ORDONNE et DÉCLARE** que la Cour aura pleinement le pouvoir de déterminer la Responsabilité Proportionnelle des Renonciataires au procès ou dans une autre instance dans laquelle le Recours au Québec sera tranché, que les Renonciataires comparaissent ou non au procès ou à cette autre instance, et la Responsabilité Proportionnelle des Renonciataires sera déterminée comme si les Renonciataires étaient parties au Recours au Québec, et toute décision du Tribunal concernant la Responsabilité Proportionnelle des Renonciataires s'appliquera seulement dans le cadre du présent recours et ne liera les Renonciataires dans aucune autre instance;

[58] **ORDONNE et DÉCLARE** que chaque recours en garantie ou autre mise en cause pour obtenir une forme ou une autre de contribution ou indemnité des Renonciataires ou qui est reliée aux Réclamations Objets de Renonciations sera irrecevable et nulle dans le contexte du Recours au Québec, étant entendu toutefois que ce qui précède ne fera pas obstacle aux réclamations ou causes d'action indépendantes et directes bien fondées entre Capital One en qualité de défenderesse partie au Règlement et Visa en qualité de Défenderesse Non Partie aux Règlements ou entre Capital One en qualité de défenderesse partie au Règlement et MasterCard en qualité de Défenderesse Non Partie aux Règlements, y compris les réclamations et causes d'action indépendantes et directes bien fondées que MasterCard peut avoir contre Capital One en

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

[57] **ORDERS and DECLARES** that the Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Quebec Proceeding, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Quebec Proceeding, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the present proceeding and shall not be binding on the Releasees in any other proceedings ;

[58] **ORDERS and DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the present proceeding; provided that *bona fide* independent and direct claims and causes of action between Capital One as a Settling Defendant and Visa or MasterCard as a Non-Settling Respondent are not precluded, including *bona fide* independent and direct claims and causes of action that Visa or MasterCard may have against Capital One under the MasterCard Network Rules;

vertu des Règles du Réseau MasterCard;

Pour La Convention de règlement Citigroup **For the Citigroup Settlement Agreement**

[59] **ORDONNE** que, pour l'application du jugement, les définitions énoncées à la Convention de règlement Citigroup, R-3 s'appliquent et y sont incorporées par renvoi;

[59] **ORDERS** that for the purposes of this Judgment, the definitions contained in the Citigroup Settlement Agreement, R-3 shall apply and are incorporated by reference;

[60] **DÉCLARE** que la Convention de règlement Citigroup constitue une transaction au sens des articles 2631 et suivant du *Code civil du Québec*, liant toutes les parties et tous les Membres du groupe de règlement qui ne se sont pas exclus en temps acceptable;

[60] **DECLARES** that the Citigroup Settlement Agreement constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Quebec*, binding all parties and all Settlement Class Members who have not excluded themselves in a timely manner;

[61] **DÉCLARE** que la Convention de règlement Citigroup fait partie intégrale du présent jugement;

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

[62] **DÉCLARE** que la Convention de règlement Citigroup est valide, équitable et raisonnable, et dans le meilleur intérêt des Membres du groupe de règlement;

[62] **DECLARES** that the Citigroup Settlement Agreement is valid, fair, reasonable and in the best interest of the Settlement Class Members;

[63] **APPROUVE** la Convention de règlement Citigroup en conformité avec l'article 1025 du Code de procédure civile;

[63] **APPROVES** the Citigroup Settlement Agreement in accordance with article 1025 of the *Code of Civil Procedure*;

[64] **ORDONNE** aux parties et aux Membres du groupe de règlement, sauf ceux exclus conformément à la Convention de règlement Citigroup et au présent jugement, de se conformer aux termes et conditions de la Convention de règlement Citigroup;

[64] **ORDERS** the parties and the Settlement Class Members, with the exception of those who are excluded in accordance with the terms and conditions of the Citigroup Settlement Agreement and with this Judgment, to abide by the terms and conditions of the Citigroup Settlement Agreement;

[65] **ORDONNE** et **DÉCLARE** que chaque Membre du groupe de règlement qui ne s'est pas valablement exclu du groupe sera considéré comme ayant donné une quittance complète, générale et finale aux Renoncataires eu égard aux Réclamations quittancées en conformité avec les termes énoncées dans la Convention de règlement Citigroup;

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

[66] **ORDONNE** et **DÉCLARE** que, par la Convention de règlement Citigroup, la requérante et les Membres du groupe de règlement renoncent expressément au bénéfice de la solidarité contre les Défendeurs non visés par le règlement en ce qui a trait aux faits et gestes des Renonciataires, et les Défendeurs non visés par le règlement sont ainsi libérés relativement à la Responsabilité proportionnelle des Renonciataires prouvée au procès ou autrement, le cas échéant;

[67] **ORDONNE** et **DÉCLARE** que la Requirante et les Membres du groupe de règlement pourront seulement réclamer et recouvrer à l'avenir des dommages-intérêts, y compris des dommages-intérêts punitifs, attribuables à la conduite des Défendeurs non visés par le règlement ou aux ventes réalisées par ces derniers et, pour plus de certitude, ne pourront réclamer d'elles aucun dommage compensatoire, punitif ou autre causé par ou attribuable aux ventes des Intimées participant aux Conventions de règlement, et ce, de quelque façon que ce soit;

[68] **ORDONNE** et **DÉCLARE** que chaque recours en garantie ou autre mise en cause pour obtenir une forme ou une autre de contribution ou indemnité des Renonciataires ou qui est reliée aux Réclamations quittancées sera irrecevable et nulle dans le contexte du présent recours, étant entendu toutefois que ce qui précède ne fera pas obstacle aux réclamations ou causes d'action indépendantes et directes bien fondées entre Citigroup en qualité de défenderesse partie au règlement et MasterCard en qualité de Défenderesse non visée par le règlement, y compris les réclamations et causes d'action indépendantes et directes bien fondées que MasterCard peut avoir contre Citigroup en vertu des Règles du réseau MasterCard;

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

[67] **ORDERS** and **DECLARES** that the Petitioner and the Settlement Class Members shall henceforth only be able to claim and recover damages, including punitive damages, if any, attributable to the conduct of and/or sales by the Non-Settling Respondents, and, for greater certainty, they cannot claim any compensatory, punitive or other damages caused by or attributable to the sales of the Settling Respondents in any way whatsoever;

[68] **ORDERS** and **DECLARES** that any action in warranty or other joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the present proceeding; provided that *bona fide* independent and direct claims and causes of action between Citigroup as a Settling Defendant and MasterCard as a Non-Settling Respondent are not precluded, including *bona fide* independent and direct claims and causes of action that MasterCard may have against Citigroup under the MasterCard Network Rules;

Pour toutes Les Conventions de règlement

[69] **DÉCLARE** que les droits des Intimées non-participant aux Conventions de règlement de procéder aux interrogatoires au préalable d'un représentant des Intimées participant aux Conventions de règlement seront déterminés selon les dispositions du *Code de procédure civile*, et les Intimées participant aux Conventions de règlement se réservent le droit de s'opposer à de tels interrogatoires en vertu du *Code de procédure civile*;

[70] **APPROUVER** le versement aux Avocats du groupe de règlement des honoraires légaux d'un montant de 3,407,500.00\$ plus les taxes applicables et débours d'un montant de 384,571.95\$;

[71] **ORDONNE** que les Montants du règlement, après déduction des montants à payer aux Avocats du groupe de règlement pour les honoraires légaux, les débours et les taxes applicables, soient détenus en fidéicommiss par les Avocats du groupe de règlement (tels que définis dans chacune des Conventions de règlement), au bénéfice du groupe jusqu'à ce qu'un jugement soit rendu par cette cour à la suite de la présentation d'une requête à cet effet;

[72] **DÉCLARE** que les Renonciataires (tels que définis dans chacune des Conventions de règlement) n'ont aucune responsabilité ni implication quant à l'administration des Conventions de règlement, du Protocole de distribution, ou de l'administration, de l'investissement, ou de la distribution du Compte en fiducie;

For all of the Settlement Agreements

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

[70] **APPROVES** the payment to Class Counsel of its legal fees in the amount of \$3,407,500.00 plus applicable taxes and disbursements in the amount of \$384,571.95;

[71] **ORDERS** that the Settlement Amounts, less amounts payable for Class Counsel fees, disbursements and applicable taxes, be held in trust by Class Counsel for the benefit of the Settlement Class (as defined in each of the Settlement Agreements) until a judgment is rendered by the Court after the presentation of a motion to that effect;

[72] **DECLARES** that the Releasees (as defined in each of the Settlement Agreements) have no responsibility or involvement in the administration of the Settlement Agreements, the Distribution Protocol, or the administration, investment, or distribution of the Trust Account;

[73] **ORDONNE** que lorsque le montant en fiducie sera distribué conformément au Protocole de distribution, les prélèvements du Fonds d'aide aux recours collectifs seront effectués seulement sur chaque réclamation faite par les membres résidant au Québec et seront remis conformément à la *Loi sur le recours collectif*, et le *Règlement sur le pourcentage prélevé par le Fonds d'aide aux Recours collectifs*;

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

[75] **ORDONNE** que ce recours collectif soit et est par la présente réglé contre les Intimées participant aux Conventions de règlement, sans frais et avec force de chose jugée;

[76] **ORDONNE** que, sous réserve de ce qui est prévu dans le présent jugement, le présent jugement n'affecte pas les réclamations ou causes d'action qu'un Membre du groupe de règlement (tels que définis dans chacune des Conventions de règlement) a ou pourrait avoir à l'encontre des Intimées non-participant aux Conventions de règlement;

[77] **ORDONNE** que le présent jugement est sans préjudice aux droits et aux défenses des Intimées non-participant aux Conventions de règlement dans ce recours collectif;

[78] **ORDONNE** sans limiter ce qui précède, que rien dans ce jugement ne sera interprété comme un aveu par les Intimées non-participant aux Conventions de règlement de toutes les allégations de fait ou de droit invoquées par la Requérente dans ce recours collectif;

[79] **ORDONNE** qu'un exemplaire du présent jugement soit affiché sur les sites web des Avocats du groupe de règlement;

[73] **ORDERS** that at such a time when the trust amount is distributed pursuant to the Distribution Protocol, the levies by the *Fonds d'aide aux recours collectifs* will be collected only on each claim made by Quebec residents and be remitted according to the *Loi sur le recours collectif*, and the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*;

[74] **RESERVES** the right of parties to ask the Court to settle any dispute arising from the Settlement Agreements;

[75] **ORDERS** that this class action be and is hereby settled as against the Settling Respondents without costs and with prejudice;

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

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

[78] **ORDERS**, without limitation to the foregoing, that nothing in this Judgment shall be construed as an admission by the Non-Settling Respondents of any allegations of fact or law asserted by the Petitioner in this class action;

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

[80] **DÉCLARE** que les versions anglaises des Conventions de règlement constituent les ententes entre les parties et que dans l'éventualité d'un conflit quant à leur interprétation ou application, les versions anglaises auront préséance sur les traductions françaises;

[80] **DECLARES** that the English versions of the Settlement Agreements are the true agreements between the parties and shall prevail over the French translations in the event of any contradiction;

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

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

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

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



CHANTAL CORRIVEAU, J.S.C.

Me Wand Branch
BRANCH, MACMASTER
Me Jeff Orenstein
Me Andrea Grass
CONSUMER LAW GROUP INC.
Attorneys for the Petitioner

Me Robert Torralbo
BLAKE, CASSELS & GRAYDON
Attorney for the Respondent VISA CANADA CORPORATION

Me Sidney Elbaz
MCMILLAN
Attorney for Respondent MASTERCARD INTERNATIONAL INCORPORATED

Me Pascale Dionne-Bourassa
BDBL
Me Michael Eizenga et Me Chris McKenna
BENNETT JONES LLP - TORONTO
Attorneys for Respondent BANK OF AMERICA CORPORATION

Me Éric Préfontaine
OSLER, HOSKIN & HARCOURT
Attorney for Respondent BANK OF MONTREAL

Me Christopher Maughan
BORDEN LADNER GERVAIS
Attorney for Respondent BANK OF NOVA SCOTIA

Me Yves Martineau
STIKEMAN ELLIOT
Attorney for Respondent CANADIAN IMPERIAL BANK OF COMMERCE

Me Christopher Richter
WOODS
Attorney for Respondent CAPITAL ONE FINANCIAL CORPORATION

Me Paule Hamelin et Me Mike Adlem
GOWLING LAFLEUR HENDERSON
Attorneys for Respondent CITIGROUP INC.

Me Vincent de l'Étoile
LANGLOIS KRONSTRÖM DESJARDINS
Attorney for Respondent FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC

Me William McNamara et Me Geneviève Bertrand
TORYS
Attorneys for Respondent NATIONAL BANK OF CANADA INC.

Me Christine Provencher
FASKEN MARTINEAU
Attorney for Respondent ROYAL BANK OF CANADA

Me Kristian Brabander
MCCARTHY TÉTRAULT
Attorney for Respondent TORONTO-DOMINION BANK

Date of hearing: November 23, 2015