

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

RÉAL MARCOTTE
AND
BERNARD LAPARÉ

N° 500-06-000197-034

Plaintiffs

c.

CITIBANK CANADA
et. als.

Defendants

SETTLEMENT AGREEMENT

I. PREAMBLE

1. WHEREAS on April 17, 2003, Plaintiffs Réal Marcotte and Bernard Laparé filed the present class action (as amended, the "Class Action") against Citibank Canada ("Citibank") and eight other federally chartered banks;
2. WHEREAS the class action sought the reimbursement of the foreign currency conversion fees ("Fx") charged by Citibank on foreign currency transactions made by Quebec consumer residents with their personal Citibank credit card and an award of punitive damages;
3. WHEREAS on June 11th, 2009, the Honourable Clément Gascon, J.S.C. rendered judgment maintaining the Class Action;
4. WHEREAS on August 2nd, 2012, the Court of Appeal partially granted the appeal of Citibank;
5. WHEREAS both parties appealed the Court of Appeal judgment and on September 19th, 2014, the Supreme Court of Canada rendered its judgment.
6. WHEREAS according to these judgments ("Judgment on the Merits"), Citibank was ordered to pay the sum of \$383,132 as compensatory damages representing the Fx collected by Citibank during a short period that it was a Visa credit card issuer and the Fx were found to not be disclosed pursuant to section 12 of the CPA in their contracts extending variable credit (i.e. the

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cardholder contracts) namely, the period from April 17, 2000 to March 31, 2001 (the "Class Period"), plus interest at the legal rate and the additional indemnity provided for by the *Civil Code of Quebec*, calculated from April 17th, 2003, plus costs;

7. WHEREAS the Judgment on the Merits also ordered Citibank to pay an award of \$25 per Class Member for punitive damages, plus interest at the legal rate and the additional indemnity provided for by the *Civil Code of Quebec*, calculated from April 17th, 2003;
8. WHEREAS the Judgment on the Merits ordered collective recovery of the compensatory damages and individual recovery of the punitive damages;
9. WHEREAS the Judgment on the Merits ordered Citibank to pay all the costs and fees related to the modalities of the execution of the said judgment including the cost of the notices;
10. WHEREAS in July 2000, Citibank became a MasterCard credit card issuer and on or before April 1, 2001, Citibank converted all of its Visa credit cards to MasterCard credit cards;
11. WHEREAS Citibank determined after review of its available data that there were 27,799 Class Members to whom Fx were charged during the Class Period;
12. WHEREAS however Citibank cannot reasonably determine which of the Class Members actually paid Fx during the Class Period;
13. WHEREAS Citibank is able to identify the names of the Class Members and can provide to the Claims Administrator their last known address as it appeared on their statements issued during the Class Period;
14. WHEREAS Citibank sold its Canadian MasterCard credit card portfolio to CIBC in September 2010 and accordingly, the direct reimbursement of the compensatory and punitive damages to the Class Members by Citibank is impossible;
15. WHEREAS, considering the available data and the impossibility to directly credit the Class Members' accounts, it is in the Class Members' interest and in the interest of justice to determine a collective amount for both compensatory and punitive damages, to be distributed equally between the Class Members;

THE PARTIES AGREE ON THE FOLLOWING:

II. DEFINITIONS

The following terms are defined for the purposes of this Settlement Agreement, including the Preamble:

- i. "Approval Judgment" means the judgment of the Superior Court of Quebec approving the present Settlement and the distribution and claims process set forth herein;
- ii. "Approval Notice" means the notice informing the Class Members of the Judgment on the Merits, of the *Requête en approbation de la transaction concernant le processus de distribution et de liquidation* and on the *Requête en approbation des honoraires extrajudiciaires des procureurs du groupe*;
- iii. "Claims Administrator" means the entity responsible for implementing and managing the individual claims process described herein. Subject to the Court's approval, the Claims Administrator proposed by the Parties is Collectiva Class Action Services Inc.;
- iv. "Claims Deadline" means the sixtieth day after the date of publication of the Claims Notice;
- v. "Claims Notice" means the notice mailed to the Class Members' last known address and published by the Claims Administrator in accordance herewith, to inform them of the present claims process;
- vi. "Claims Period" means the period during which the Class Members must submit a claim in order to receive the Members Compensation. The period begins on the day of publication of the Claims Notice and ends on the Claims Deadline;
- vii. "Class Member" means a consumer who was resident in Quebec and held a Citibank Visa personal credit card and paid Fx during the Eligible Period;
- viii. "Court" means the Superior Court of Quebec;
- ix. "Defendant" means Citibank;
- x. "Distribution Amount" means the Global Amount less the class counsels' legal fees, disbursements and financing costs related to the present Class Action as awarded in the Approval Judgment, including applicable taxes, judicial and extra-judicial fees and costs, all costs of notices, and the

Claims Administrator fees and costs, including all costs related to the administration and execution of the present Settlement Agreement;

- x. "Eligible Class Member" means a Class Member that was qualified as eligible by the Claims Administrator to receive the Members Compensation;
- xii. "Eligible Period" means the period from April 17th, 2000 to March 31st, 2001;
- xiii. "Fx" means foreign currency conversion fees;
- xiv. "Global Amount" means the total amount to be paid by the Defendant, as set forth below at Section 16 of this Settlement Agreement;
- xv. "Judgement on the Merits" means the judgments of the Superior Court of Québec, the Québec Court of Appeal and the Supreme Court of Canada rendered herein;
- xvi. "Members' Compensation" means the Distribution Amount divided by the number of Eligible Class Members, to a maximum of \$ 200 per Eligible Class Member;
- xvii. "Parties" means the Plaintiffs and the Defendant;
- xviii. "Plaintiffs" means Réal Marcotte and Bernard Laparé;

III. THE GLOBAL AMOUNT

- 16. The parties agree on a total amount of ONE MILLION FOUR HUNDRED AND SEVENTY THREE THOUSAND NINETY FOUR DOLLARS AND SIXTY SIX CENTS (\$1,473,094.66) as the restitution of the Fx and the punitive damages ordered by the Judgment on the Merits for the Eligible Period and constituting the "Global Amount". This Global Amount is inclusive of judicial and extra-judicial costs, legal fees and disbursements, legal interest and the additional indemnity and all costs related to the administration and execution of this Settlement Agreement.
- 17. For greater clarity, it is agreed that the Global Amount includes all costs, judicial and extra-judicial fees and costs and disbursements of Plaintiffs' counsel, financing costs related to the Class Action, as well as all costs of notices and all costs related to the claims administration process described herein and the execution of this Settlement Agreement, which amounts shall be paid from the Global Amount.

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18. For greater clarity, the payment by Citibank of the Global Amount represents the total amount payable by Citibank pursuant to this Settlement Agreement and upon payment of same, Citibank shall be completely and forever released and discharged from any claim, obligation and/or debt related to or that arises from this Settlement Agreement, the Judgment on the Merits, the Approval Judgment and/or the Class Action.
19. The class counsel fees and expenses are provided in the *Convention d'honoraires extrajudiciaires des procureurs du groupe* and include the portion of the financing costs attributable to the financing of the Class Action against Citibank, the amount to be determined by the Court in the Approval Judgment.
20. Citibank will deposit, within 15 business days of the issuance of the Approval Judgment, the Global Amount in a trust account agreed to by the parties, and administered by the Claims Administrator bearing interest for the benefit of the Class Members.

IV. THE DISTRIBUTION AND CLAIMS PROCESS

21. This distribution and claims process will only become effective once it is approved by the Court pursuant to the Approval Judgment. If it is not approved, it will become null and void and will not provide any rights or obligations either to the Parties or to the Class Members.
22. Citibank will provide the Claims Administrator with a list of all Class Members and their last known address as it appeared on their statements issued during the Eligible Period, in an electronic form.
23. The Claims Administrator will send to each Class Member by mail, the Claims Notice informing them of their right to receive a pro-rata based amount of the Distribution Amount and the claims procedure that the Class Members will be required to follow to receive same. The content of this Claims Notice will be determined by and agreed to by the Parties
24. Class Members who desire to receive their pro-rata based amount of the Distribution Amount will have to submit a claims form before the end of the Claims Deadline
25. The claims form will be available on the Claims Administrator's and class counsel's websites, as well as on the website created for this class action, www.classactionwebsite.com, and can be completed either directly online or printed and mailed to the Claims Administrator.
26. Class Members will have to provide the following information on the claims form

- a) their full name;
- b) their current address;
- c) their address during the Eligible Period

27. The Claims Administrator will determine the eligibility of the submitted claims with the data provided by Citibank and will send a report to the class counsel and Citibank's counsel with the list of Eligible Class Members, before sending the cheques to the Eligible Class Members.

V. PAYMENT

28. Within thirty (30) days of the Claims Deadline, the Claims Administrator will determine the pro-rated share amount of the Distribution Amount to be distributed to each Eligible Class Member up to a maximum of \$200 per Eligible Class Member (i.e. the Members' Compensation).

29. Within sixty (60) days of the Claims Deadline, the Claims Administrator will send a cheque to each Eligible Class Member for his/her Members' Compensation.

VI. BALANCE

30. Should there remain a balance ("reliquat") 90 days after the cheques have been sent to the Eligible Class Members and the existence of reparatory measures decided upon, if applicable, the Parties will deal with such balance in accordance with the rules set out in the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs*, CQLR c R-2.1.

VII. NOTICES

31. The class counsels will arrange to publish the Approval Notice and will be reimbursed the publication costs thereof by the Claims Administrator from the Global Amount. The Parties agree that the Approval Notice will be published once in the following newspapers: *La Presse*, *The Gazette* and *Le Soleil* as well as on the class counsel websites.

32. The Approval Notice will inform the Class Members of the date and place where the *Requête en approbation de la transaction concernant le processus de distribution et de liquidation* and the *Requête en approbation des honoraires extrajudiciaires des procureurs du groupe* will be heard, and the procedure for the Class Members who wish to oppose it. The Approval Notice will indicate that no further notices will be published to inform the Class Members on the claims process and how to submit a claim, except the Claims Notice provided in Section 23 above.

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33. A website will be created specifically by the Claims Administrator for this class action on which will be posted all notices and information about the claims process, including the Claims Notice and the claims form.

VIII. CLAIMS ADMINISTRATOR

34. The Claims Administrator will be responsible for implementing and managing the claims process for all the Class Members, the publication of all notices to the Class Members, the production of the Final Report as well as creating a specific website for this Class Action.
35. The Parties agree on proposing Collectiva Class Action Services Inc. as the Claims Administrator whose fees will be approved by the Court and will be paid from the Global Amount.

IX. FINAL REPORT

36. The Claims Administrator will provide a final accounting and report to the Court within 90 days after the end of the claims process, with a copy provided to the Parties' respective counsel.
37. This report will include the list of Eligible Class Members, the number of all claims submitted, the number claims that were accepted, the number of cheques cashed, the existence of reparatory measures, if any, and the disposal of the balance.
38. The approval of this final accounting and report will release the Claims Administrator and will be equivalent to a declaration of satisfaction of the Judgment.

X. GENERAL PROVISIONS

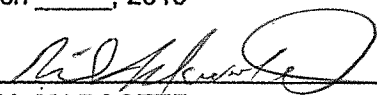
39. This Settlement Agreement constitutes a complete, full and final transaction and settlement of all litigation and/or disputes between the Parties and between the Class Members and Citibank relating to the Class Action and/or the Judgment on the Merits.
40. The Plaintiffs and their attorneys, personally and in the name of the Class Members (as well as in the name of their respective heirs, representatives, mandatories, successors, agents and assigns) hereby grant to Citibank and its representatives, administrators, directors, officers, insurers, employees, mandatories, successors, agents and assigns, unconditional, full, complete and final release and discharge from any and all agreements, claims, debts, complaints, disputes, actions and/or causes of action of any nature or kind

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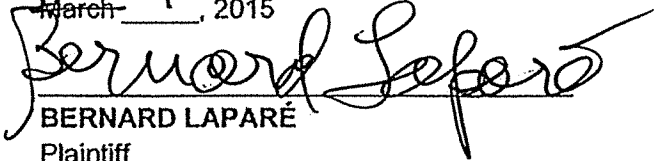
whatsoever including, without limitation, all judicial or extra-judicial costs and fees, expert costs, disbursements and/or legal fees, without exception or reserve, past, present or future, whether known or unknown at the present time, which they had, have, or may have, directly or indirectly, relating to or arising from the Class Action and/or the Judgment on the Merits.

WHEREFORE, the Parties and their counsel have executed this Settlement Agreement on the date(s) hereinafter set forth.

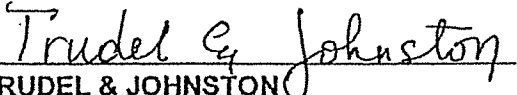
March _____, 2015


RÉAL MARCOTTE
Plaintiff

~~March~~ ^{April} 1, 2015


BERNARD LAPARÉ
Plaintiff

March 31, 2015


TRUDEL & JOHNSTON
Plaintiffs' counsel

March 31, 2015


LAUZON, BÉLANGER, LESPÉRANCE
Plaintiffs' counsel

March 31st, 2015

CITIBANK CANADA

By: 

March 31, 2015

Blake Cassels & Graydon LLP
BLAKE, CASSELS & GRAYDON LLP
Defendant's counsel