

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action Chamber)
SUPERIOR COURT

No.: **500-06-000913-182**

RICKY TENZER

Plaintiff

v.

HUAWEI TECHNOLOGIES CANADA CO., LTD

Defendant/Plaintiff in warranty

v.

GOOGLE LLC (formerly GOOGLE INC.)

and

GOOGLE CANADA CORPORATION

Defendants in warranty

SETTLEMENT AGREEMENT

WHEREAS, on March 21, 2018, the representative plaintiff filed an application for authorization to institute a class action against Huawei Technologies Canada Co., Ltd (hereinafter "**Huawei Canada**"), alleging the premature draining of the battery of Nexus 6P cell phones (hereinafter the "**Nexus 6P Phone**");

WHEREAS, on May 11, 2020, the Court of Appeal of Quebec granted an appeal by the representative plaintiff and appointed him to act as the representative plaintiff for the purposes of instituting the class action on behalf of the members of the designated class as follows:

All persons who own, or have owned, a Nexus 6P Phone originally purchased in Quebec.

(hereinafter the "**Class**");

WHEREAS, on June 26, 2020, the representative plaintiff filed an originating application of a class action before the Superior Court of Quebec, judicial district of Montreal, bearing the number 500-06-000913-182 (hereinafter the “**Class Action**”);

WHEREAS, on February 12, 2021, Huawei Canada filed a declaration of forced intervention against Google LLC (formerly Google Inc.) and Google Canada Corporation (hereinafter jointly “**Google**”) (hereinafter “**Recourse in Warranty**”);

WHEREAS it is in the interest of the parties, the public, and the administration of justice to avoid a resource-intensive trial considering the relative significance of the amounts in dispute;

WHEREAS the parties wish to avoid costs and mitigate the risks associated with a trial to determine the outcome of the Class Action and the Recourse in Warranty;

WHEREAS the parties have reached an agreement in principle;

WHEREAS the parties believe that this settlement agreement (hereinafter the “**Agreement**”) contains mutual concessions and wish to resolve the dispute between them without admission of liability;

WHEREAS the representative plaintiff and his counsel believe that this Agreement is fair, reasonable and in the best interest of Class members;

WHEREAS the parties to the Agreement wish to implement a simple and effective claims process;

SUBJECT TO COURT APPROVAL, THE PARTIES AGREE AS FOLLOWS:

1. The preamble forms an integral part of this Agreement.
2. The defendant and the defendants in warranty will make a lump sum payment of **\$550,000**. This sum covers, in addition to the compensation of Class members, the legal costs, the costs of publication and distribution of notices, the costs of administration and distribution of compensation, taxes and the fees of the lawyers of the representative plaintiff (hereinafter the “**Fees**”).
3. In addition, Huawei Canada agrees to replace any defective batteries in a Nexus 6P Phone free of charge for a period of six months following the Court’s approval of the Agreement, provided that the claimant of the replacement has not claimed compensation as a Class member under this Agreement.

4. The defendant and the defendants in warranty will pay the lump sum of \$550,000 into the trust account of Trudel Johnston & Lespérance S.E.N.C. (“TJL”) within 90 days of the latest of the following dates: i) the date on which the judgment approving this Agreement becomes final and ii) the date on which TJL accomplishes the requirements set out in the next sentence. In order to process and issue the lump sum or a part thereof, TJL must, at the request of a defendant or a defendant in warranty, provide to such defendant or defendant in warranty: (i) a duly completed and signed W-8BEN-E form containing the required information pertaining to TJL, such form being available on the following website of the Internal Revenue Service of the United States : <https://www.irs.gov/forms-instructions>; and (ii) the following banking information in order to make a wire transfer to TJL:
 - a. the name of the bank account;
 - b. the number of the bank account;
 - c. the routing number;
 - d. the Swift code; and
 - e. the name of the bank and the complete postal address of the branch (including the street, city and postal code).
5. This Agreement is entered into without any admission of fault or liability.
6. This Agreement is conditional upon the Court approving it in its entirety, failing which it shall be deemed null and void and shall not give rise to any rights or obligations in favour of or against the parties and the Class members.
7. However, the validity of this Agreement does not depend on the Court’s acceptance of the representative plaintiff’s application for approval of lawyers’ fees and disbursements.
8. Once the judgment approving the present Agreement becomes final, the defendant and the defendants in warranty will file a notice of settlement out of court in respect of the Recourse in Warranty.

I. RELEASE

9. Once the judgment approving this Agreement becomes final, the representative plaintiff on behalf of the Class members and on behalf of their mandataries, representatives and successors, if any, gives a full,

general and final release in favour of the defendant and the defendants in warranty, their mandataries, representatives, insurers, affiliated companies, employees, professionals, subordinates and successors for any claims, applications or causes of action of any kind whatsoever, including expert fees and lawyer's fees, that the representative plaintiff and Class members may have, directly or indirectly, in connection with the alleged facts of the proceedings in the Class Action and the Recourse in Warranty and the exhibits in support thereof.

10. Similarly, the defendant and the defendants in warranty, as well as their mandataries, representatives, insurers, affiliated companies, employees, professionals, subordinates and successors grant each other a full, general and final release for any claims, applications or causes of action of any kind whatsoever, including expert fees and lawyer's fees, that they may have, directly or indirectly, in connection with the alleged facts of the proceedings in Class Action and the Recourse in Warranty and the exhibits in support thereof.

II. COMPENSATION OF CLASS MEMBERS

11. The parties have agreed to a claims administration protocol (hereinafter the "**Protocol**"), which forms an integral part of this Agreement in **Annex A**.
12. The representative plaintiff's counsel shall solicit a minimum of two submissions from firms that can perform the administration of claims and the distribution of compensation. The representative plaintiff's counsel shall present to the Court the administrator they wish to be appointed on the basis of the submissions received (hereinafter the "**Administrator**").
13. The representative plaintiff's counsel will submit an application to the Court for approval of the payment of their fees, disbursements, and applicable taxes. For a dispute settled after the authorization but before the trial on merits, the fee agreement signed by the representative plaintiff provides for a payment to counsel representing 25% of the sum recovered for the Class members, in addition to applicable taxes and the reimbursement of disbursements incurred. If this application is approved by the Court, the representative plaintiff's counsel shall deduct the authorized sum of their disbursements and lawyers' fees, plus taxes, from the lump sum.
14. The balance of the lump sum, after deduction of the Fees described in paragraph 2 of this Agreement (hereinafter the "**Balance**"), shall be distributed among the eligible claimants.
15. Eligible claimants shall receive different compensation depending on whether they have proven the premature draining of their Nexus 6P Phone battery (Subgroup A) or not (Subgroup B).

16. In order to qualify for a claim, the Class member shall:
 - a. Complete and submit the online claim form, provided in **Annex 2 of the Protocol**, on the administrator's website within two months after the date of the last publication of the notice of judgment (hereinafter the "**Claim Period**");
 - b. Attach a proof of purchase of a Nexus 6P Phone in Quebec, showing the claimant's name, or a photo of the phone showing its International Mobile Equipment Identity (**IMEI**) to the claim form;
 - c. If the claimant is in Subgroup A, attach documentary evidence of the Nexus 6P Phone's premature battery draining or a detailed description of the premature battery draining to the claim form;
 - d. Declare, under penalty of perjury, that all of the information submitted in the claim form is true.

17. The distribution of the Balance shall be as follows:
 - a. If the Balance is sufficient:
 - i. Each eligible claimant who experienced a premature Nexus 6P Phone battery draining problem (Subgroup A) will receive \$260;
 - ii. Each eligible claimant who did not experience a premature Nexus 6P Phone battery draining problem (Subgroup B) will receive \$10;
 - iii. If there is a remaining balance after this distribution, the compensation paid to each eligible Subgroup A claimant shall be increased to a total maximum of \$500 per claimant.
 - b. If the Balance is insufficient to pay the compensation set out in the previous paragraph, only eligible claimants in Subgroup A shall be paid. They shall each receive an equal share of the Balance, up to a maximum of \$500. If there is a remaining balance after this distribution, it shall be treated as a remaining balance in accordance with paragraph 19 of this Agreement.

18. In the event that the Balance was sufficient to compensate all eligible claimants and that over 50% of the Balance remained after this distribution, a second claim period shall be held for a period of 60 days. New notices will be issued, in a manner to be determined in consideration of the results of

the first distribution. The second distribution will be conducted in accordance with paragraph 17 of this Agreement.

19. Any remaining balance will be distributed in accordance with article 596 paragraph 3 of the *Code of Civil Procedure* and article 42 of the *Act respecting the Fonds d'aide aux actions collectives*.

III. PRE-APPROVAL AND APPROVAL PROCEDURES OF THE AGREEMENT

20. Within 15 days after the signing of the Agreement or any other time period mutually determined by the parties, the lawyers of the representative plaintiff shall file with the Court an application for the approval of a notice to Class members informing them that an out-of-court settlement has been reached (hereinafter the "**Pre-Approval Notice**") in the form provided in **Annex B** of the Agreement.
21. The Pre-Approval Notices will be disseminated in the following manner :
 - a. The notice to the Class members will be sent by email to all persons who signed up to the email distribution list of the representative plaintiff's lawyers (approximately 500 people);
 - b. The notice to the Class members will be posted on the Facebook page of the representative plaintiff's lawyers;
 - c. The notice to the Class members will be posted in the Registry of class actions.
22. The parties acknowledge that the Court may modify the text and the manner of dissemination and publication of the Pre-Approval Notices and provide for the dissemination of additional notices, which shall not constitute grounds for invalidity or termination of the Agreement.
23. The representative plaintiff's lawyers will file with the Court an application for approval of the Agreement in order to present it at an approval hearing at a date determined by the Court (hereinafter the "**Approval Hearing**").
24. Class members who wish to raise an objection at the Approval Hearing must notify the representative plaintiff's lawyers in writing and the representative's lawyers will then forward a copy of the objection to the lawyers of Huawei Canada and Google within five (5) days of receiving it.

IV. Final Provisions

25. The Agreement and its Annexes constitute the complete and entire Agreement between the parties.
26. The parties acknowledge that this document constitutes a transaction pursuant to article 2631 of the *Civil Code of Quebec*, to which the signatory parties freely consent after having had the opportunity to consult with their counsel.
27. This Agreement is indivisible.
28. Upon the final judgment approving this Agreement, this Agreement shall be binding on all Class members.
29. The parties shall continue to collaborate for the implementation of this Agreement.
30. The Superior Court shall retain all of its powers to resolve any disputes or difficulties that may arise in the implementation of this Agreement.
31. The parties agree that this document may be signed electronically and that each signed page may be added to the document, forming a whole, which shall then be deemed the original;
32. The parties agree and acknowledge that the Agreement is signed in English and French. Both versions have equal legal weight, but in case of inconsistency or ambiguity, the French text shall prevail/*Les parties conviennent et reconnaissent que l'Entente est signée en anglais et en français. Les deux versions ont une valeur juridique équivalente, mais en cas d'incohérence ou d'ambiguïté, le texte français aura préséance.*