

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

**SUPERIOR COURT
(Class Action)**

No: 500-06-001195-227

EVA BITTON

Plaintiff

v.

AMAZON.COM.CA, INC.

-and-

**AMAZON CANADA FULFILLMENT
SERVICES INC.**

-and-

AMAZON.COM, INC.

-and-

AMAZON.COM, LLC

-and-

WAYFAIR LLC

-and-

HOME DEPOT OF CANADA INC.

Defendants

<p>SETTLEMENT AGREEMENT – AMAZON DEFENDANTS</p>
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I. PREAMBLE

WHEREAS on July 26, 2022, the plaintiff Eva Bitton (the “**Plaintiff**”) filed an Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff against the Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC (collectively, the “**Amazon Defendants**”), Wayfair LLC (“**Wayfair**”) and Home Depot of Canada Inc. (“**Home Depot**”, and all defendants collectively, the “**Defendants**”), seeking permission to institute a class action on behalf of the following class:

Class:

All consumers who, since July 26, 2019, purchased an extended warranty on goods from the Amazon, Wayfair or Home Depot website(s).

WHEREAS on August 18, 2022, the Amazon Defendants filed an Answer to Summons stating their intention to defend against the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*,

WHEREAS on November 7, 2022, the Plaintiff filed an *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* against the Defendants before the Court, seeking permission to institute a class action on behalf of the following classes:

Amazon Class:

All consumers who, since February 7, 2019, purchased an extended warranty on goods from the Amazon mobile application(s) and/or website(s).

Home Depot Class:

All consumers who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).

Wayfair Class:

All consumers who purchased an extended warranty on goods from the Wayfair mobile application(s) and/or website(s) until October 31, 2022.

WHEREAS on June 2, 2023, the Plaintiff filed a Re-Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff against the Defendants before the Court, seeking permission to institute a class action on behalf of the following classes:

Amazon Class:

All consumers who purchased an extended warranty on goods from the Amazon mobile application(s) and/or website(s) until April 17, 2023.

Home Depot Class:

All consumers who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).

Wayfair Class:

All consumers who, from February 7, 2019 to October 31, 2022, purchased an extended warranty on goods from the Wayfair mobile application(s) and/or website(s) until October 31, 2022.

WHEREAS the Plaintiff alleges that the Amazon Defendants failed to provide Quebec consumers with the notice required pursuant to section 91.12 of the *Regulation respecting the application of the Consumer Protection Act*, R.L.R.Q., c. P-40.1, r. 3 (the “**Legal Warranty Notice**”) before selling them Extended Warranties;

WHEREAS by July 3, 2023 Amazon.com.ca, Inc. declares that it completed the implementation of modifications to Amazon.ca whereby the Legal Warranty Notice is provided prior to the sale of Extended Warranties, and Amazon.com, Inc. declares that it completed the implementation of modifications to Amazon.com to restrict the sale Extended Warranties where the delivery address is located in the province of Quebec;

WHEREAS on August 10, 2023, the Court authorized the Plaintiff to bring a class action on behalf of all persons in the following classes:

All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Amazon mobile application(s) and/or website(s) between February 7, 2019 and April 17, 2023.

(the “**Amazon Class**”)

All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s)

and/or website(s) between February 7, 2019 and October 31, 2022.

(hereinafter the “**Wayfair Class**”)

WHEREAS the Amazon Defendants deny any wrongdoing of any kind and all liability for monetary compensation or reparation in kind to the Amazon Class Members;

WHEREAS Parties consider that the continuation of the Class Action against the Amazon Defendants would give rise to substantial costs and delays, including the possibility of appeals, and they acknowledge the significant challenges, expenses and risks associated with protracted litigation;

WHEREAS the Plaintiff representing all Amazon Class Members and the Amazon Defendants have agreed to enter into a binding settlement in order to achieve a full and final resolution of the Class Action and all claims or causes of action against the Amazon Defendants arising out of the failure to provide the Legal Warranty Notice on Amazon.ca and Amazon.com as set forth below, taking into account the uncertainty, risk, delay and costs inherent to litigation;

WHEREAS the Parties have conducted negotiations aimed at reaching a settlement of the Class Action and all claims or causes of action arising out of the failure to provide the Legal Warranty Notice during the Class Period, and anticipate that the contemplated settlement will afford significant benefits to the Amazon Class Members, that it will be just, reasonable and appropriate, and that it will be in the Amazon Class Members’ best interest;

WHEREAS this settlement and Court approval thereof does not constitute any admission of liability on the part of the Amazon Defendants or an acknowledgement by the Amazon Defendants that any damages were caused to the Amazon Class Members;

IN CONSIDERATION OF THE FOREGOING, THE PARTIES AGREE AS FOLLOWS:

II. DEFINITIONS

Unless a different meaning is indicated by the context, the following definitions shall apply to the Settlement Agreement, including the Preamble, and its Schedules. Words or phrases importing a number shall be construed such that the singular includes the plural and vice-versa. Similarly, words or phrases importing the masculine gender shall be construed as including the feminine gender and vice-versa, where appropriate;

- (a) “**Account**” means the Amazon.ca or Amazon.com account of an Amazon Class Member, which is linked to such Amazon Class Member’s email address or mailing address;
- (b) “**Amazon.ca**” means the www.amazon.ca website and mobile application;

- (c) “**Amazon.com**” means the www.amazon.com website and mobile application;
- (d) “**Amazon Class**” means the modified group defined as follows:

All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Amazon mobile application(s) and/or website(s) between February 7, 2019 and July 3, 2023.
- (e) “**Amazon Class Member**” means a member of the Amazon Class that did not exclude himself, herself or itself in accordance with the provisions of article 580 of the *Code of Civil Procedure* (collectively, the “**Amazon Class Members**”);
- (f) “**Amazon Defendants**” has the meaning ascribed thereto in the Preamble;
- (g) “**Authorization Judgment**” means the judgment of the Court dated August 10, 2023, which authorized the Class Action;
- (h) “**Bounce Back**” means an email that is returned to the sender because it cannot be delivered for some reason;
- (i) “**Claims Administrator**” means Concilia Inc., (previously doing business as Velvet Payments), who the Parties have agreed will administer the Claims process in accordance with the terms of this Settlement Agreement, subject to the approval of the Court;
- (j) “**Claims Administrator Expenses**” means all Claims Administrator fees, costs incurred and disbursements paid by the Claims Administrator in the carriage of its mandate, including costs incurred and disbursements paid in processing all Claims for Refund in accordance with the terms of this Settlement Agreement, subject to the approval of the Court;
- (k) “**Claims Administrator Website**” means the dedicated website to be set up by the Claims Administrator to administer the Claims process, which shall include the contact information of Class Counsel;
- (l) “**Claims for Refund**” means any and all claims for a Refund submitted by an Amazon Class Member to the Claims Administrator pursuant to this Settlement Agreement;
- (m) “**Class Action**” means the legal proceedings in *Eva Bitton v. Amazon.com.ca, Inc., et als.* (Court File: 500-06-001195-227), pending before the Court;
- (n) “**Class Counsel**” means the law firm LPC Avocat Inc.;
- (o) “**Class Counsel Fees**” means the amounts representing all fees, expenses and disbursements payable to Class Counsel in accordance with

paragraphs 34 to 37 of the Settlement Agreement, which the Parties agree represents a fair and reasonable amount in the circumstances;

- (p) “**Class Period**” means the period from February 7, 2019, to July 3, 2023;
- (q) “**Counsel for Amazon Defendants**” means Osler, Hoskin & Harcourt LLP;
- (r) “**Court**” means the Superior Court of Quebec sitting in the District of Montréal;
- (s) “**Deadline for Submitting a Claim**” means March 12, 2024 and is the date on which all Claims for Refund must be received by the Claims Administrator to be considered valid. The Deadline for Submitting a Claim will be clearly stated on the Pre-Approval Notice;
- (t) “**Effective Date**” means the date on which the Settlement Approval Order becomes final. Solely for the purposes hereof, the Parties agree that the Settlement Approval Order will become final upon expiry of a period of thirty (30) Days after the date of the notice of judgment of the Settlement Approval Order or after the date of the Settlement Approval Order if it was rendered at the hearing or, if an appeal is filed, sixty (60) days after such appeal is dismissed by the Québec Court of Appeal (the month of July not being included in the computation of this delay) or, if an application for leave to the Supreme Court of Canada is filed, that date on which the Supreme Court of Canada dismisses the appeal;
- (u) “**Exclusion Period**” means a period during which time the Amazon Class Members may exclude themselves from the Amazon Class and the Settlement Agreement, which period will end on February 12, 2024;
- (v) “**Exclusion Procedure**” means the procedure for exercising the Right of Exclusion pursuant to the terms and conditions set out in Section VII of the Settlement Agreement;
- (w) “**Extended Warranty**” means an extended warranty on goods bought by an Amazon Class Member on Amazon.ca or Amazon.com during the Class Period;
- (x) “**Final**” means, when used in relation to a judgment or order, the time at which said judgment or order has been entered and all rights of appeal therefrom have been exhausted, such that the judgment or order has acquired the status of *res judicata*;
- (y) “**Fonds d’aide**” means the *Fonds d’aide aux actions collectives* created pursuant to the *Act respecting the Fonds d’aide aux actions collectives* (CQLR c F-3.2.0.1.1);

- (z) **“Hearing on the Approval of the Settlement Agreement”** means the hearing to be held before the Court to seek approval of this Settlement Agreement and of Class Counsel Fees;
- (aa) **“Legal Warranty Notice”** has the meaning ascribed thereto in the Preamble;
- (bb) **“List of Refund Claimed Members”** means a list prepared by the Claims Administrator, using the List of Refund Eligible Members, of all Refund Claimed Members and that includes each Refund Claimed Member’s email address associated with the Refund Claimed Member’s Account, or, if no such email address is associated with the Refund Claimed Member’s Account, the email address provided by the Refund Claimed Member when making a Claim for Refund on the Claims Administrator’s Website;
- (cc) **“List of Refund Eligible Members”** means a list prepared by the Amazon Defendants and that includes each Refund Eligible Member’s email address associated with the Refund Eligible Member’s Account, or, if no such email address is associated with the Refund Eligible Member’s Account, the mailing address associated with the Refund Eligible Member’s Account;
- (dd) **“Mail Delivery Failure”** means mail that could not be delivered to the recipient for some reason and for which the Claims Administrator has received a notification of delivery failure;
- (ee) **“Parties”** means, collectively, the Plaintiff and the Amazon Defendants, who are parties to the present Settlement Agreement;
- (ff) **“Plaintiff”** has the meaning ascribed thereto in the Preamble;
- (gg) **“Pre-Approval Notice”** as defined in paragraph 14 of this Settlement Agreement;
- (hh) **“Quebec Resident”** means a person who, when making a purchase on Amazon.ca or Amazon.com, provided a billing address located in the Province of Quebec, or, if no billing address is available in the records of the Amazon Defendants, provided a shipping address located in the Province of Quebec;
- (ii) **“Re-Amended Application for Authorization”** means the *Re-Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* filed by the Plaintiff on June 2, 2023, against the Amazon Defendants in Court file 500-06-001195-227;
- (jj) **“Refund”** means the cash amount to be remitted to Refund Eligible Members in accordance with paragraph 9 of the Settlement Agreement and of a value in Canadian dollars to be determined in accordance with paragraph 38 of the Settlement Agreement;

- (kk) **“Refund Claimed Member”** means a Refund Eligible Member that submitted a Claim for Refund on or before the Deadline for Submitting a Claim;
- (ll) **“Refund Eligible Member”** means an Amazon Class Member that satisfies the following criteria:
1. He/she purchased an Extended Warranty on Amazon.ca or Amazon.com during the Class Period;
 2. He/she was, at the time of purchase, a Quebec Resident, as defined herein; and
 3. He/she has not exercised a Right of Exclusion as communicated to Counsel for the Amazon Defendants by Class Counsel pursuant to the Settlement Agreement.
- (mm) **“Released Claims”** means any and all claims, demands, rights, liabilities, and causes of action of any nature whatsoever, known or unknown, matured or un-matured, at law, whether in delict, contract or under any other right at law, existing under federal or provincial law, that either of the Plaintiff, or any Amazon Class Member, has or may have against the Released Persons arising out of or in any way related to the facts, claims, or causes of action asserted, alleged, or otherwise at issue in the Class Action, including, for greater certainty any and all claims in respect of any and all prices paid by the Amazon Class Members to the Amazon Defendants during the Class Period for Extended Warranties insofar as they relate to the claims asserted in the Class Action and the Authorization Judgment;
- (nn) **“Released Persons”** means Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC and their past and present partners, affiliates and predecessors, successors, assigns, parents, subsidiaries, insurers, officers, directors and employees;
- (oo) **“Right of Exclusion”** means the right of an Amazon Class Member to exclude himself or herself from the Settlement Agreement pursuant to the terms and conditions set out in Section VII of the Settlement Agreement;
- (pp) **“Schedules”** means all of the documents that the Parties have attached to the Settlement Agreement and that are identified at paragraph 58 together with any other document that the Parties may attach hereto with the Court’s approval. The Parties may, without the Court’s authorization, make amendments to the form and the content of the Schedules, provided such amendments comply with the provisions of the Settlement Agreement and the terms of any order of the Court;
- (qq) **“Settlement Agreement”** means this settlement agreement, including the Schedules and subsequent amendments thereto, together with any other

subsequent agreement that the Parties may see fit to add hereto and subject to the Court's approval;

- (rr) **"Settlement Approval Order"** means the order of the Court approving this Settlement Agreement and the Class Counsel Fees payable under this Settlement Agreement.

III. SCOPE AND EXTENT OF THE TRANSACTION

1. The Preamble and Definitions form an integral part of this Settlement Agreement.
2. Unless otherwise specified, all references in the Settlement Agreement to Sections or paragraphs are references to Sections or paragraphs of the Settlement Agreement.
3. The Settlement is conditional upon the Court approving it in its entirety, with the exception of paragraphs 15 and 33 to 36, failing which the Settlement Agreement will be null and void and will not give rise to any right or obligation in favour of the Parties and/or the Amazon Class Members; the Parties will be restored to their respective positions in the Class Action before the Settlement Agreement was executed, unless all Parties agree to waive this provision in respect of a variation of the Settlement Agreement that might be imposed by the Court.
4. The Parties undertake to cooperate and make and deploy all efforts and means necessary or useful to justify the Settlement Agreement and to support and demonstrate its fairness and reasonableness with a view to obtaining Court approval of the Settlement Agreement and to make joint representations to the Court in the Hearing on the Approval of the Settlement Agreement for the purposes of obtaining the Approval Order.
5. Whether or not this Settlement Agreement is terminated or approved, the Amazon Defendants deny the material factual allegations and legal claims asserted in the Re-Amended Application for Authorization, including any and all allegations of wrongdoing or liability arising out of any of the conduct, statements, acts or omissions alleged in the Re-Amended Application for Authorization.
6. Nonetheless, the Amazon Defendants have concluded that it is desirable that the Class Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Settlement Agreement.
7. Neither the Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out the Settlement Agreement shall be interpreted as a concession or admission of wrongdoing or liability by the Amazon Defendants nor be referred to, offered as evidence or received in evidence in any action or proceeding, except in a proceeding to approve or enforce this Settlement Agreement or to defend against the assertion of Released Claims, or as otherwise required by law.

IV. REFUNDS OFFERED BY THE AMAZON DEFENDANTS

8. On or before January 31, 2024, the Amazon Defendants will place \$ 2,750,000.00 CDN in trust with Counsel for Amazon Defendants, to constitute the settlement fund for distribution to Refund Claimed Members as provided at paragraph 38 of the Settlement Agreement (the “**Settlement Fund**”). This Settlement Fund constitutes the guaranteed value of the Settlement Agreement as there will be no reversion paid back to the Amazon Defendants should there remain a balance (*reliquat*) following the distribution of Refunds to Refund Claimed Members and includes all sales taxes that may be payable by the Amazon Defendants in connections with the Settlement Agreement.
9. The Amazon Defendants shall compensate Amazon Class Members by offering Refunds to be paid out of the Settlement Fund (conditions described further below).
10. The Refunds constitute full and final compensation to Amazon Class Members for this settlement and the Released Claims.
11. The following fees and costs shall be paid by the Amazon Defendants and will be deducted from the Settlement Fund in accordance with article 598 of the *Code of Civil Procedure*:
 - (a) Claims Administrator Expenses, including the cost of publication and mailing of the Pre-Approval Notice and any notices to the Amazon Class Members that the Court may require, including sales taxes, for which the Claims Administrator shall provide to Counsel for Amazon Defendants an invoice in the name of Amazon.com.ca, Inc., which invoice shall include valid GST and QST registration numbers for the Claims Administrator; and
 - (b) Class Counsel Fees, including sales taxes, as provided at paragraphs 34 to 35 of the Settlement Agreement;(collectively, the “**Deductible Fees and Costs**”).
12. The Amazon Defendants shall not be required to pay any amount over and above the value of the Settlement Fund to the Plaintiff, to Amazon Class Members or to Class Counsel, and the Parties shall use their best efforts so that the implementation of the Settlement Agreement does not impact the Amazon Defendants’ operations, nor cause them any additional expense.
13. The value of each Refund to be distributed to Refund Claimed Members pursuant to this Settlement Agreement shall be determined at the expiry of the Deadline for Submitting a Claim in accordance with paragraph 38, but shall not exceed the amount paid by that Refund Claimed Member to Amazon Defendants during the Class Period for Extended Warranties, exclusive of sales taxes.

V. PROCEDURE FOR PRE-APPROVAL OF THE SETTLEMENT AGREEMENT

14. Within five (5) days of the execution of the Settlement Agreement by the Parties, Class Counsel will apply to the Court for approval of a notice substantially in the form of the notice attached hereto as Schedule “A” (English) and Schedule “B” (French), advising the Amazon Class members of the authorization of the Class Action, the individual Claims process (as described in Section VIII) and the Hearing on the Approval of the Settlement Agreement (the “**Pre-Approval Notice**”), and request that the Court issue an order (the “**Pre-Approval Order**”), *inter alia*:
- (a) approving the form, content and mode of dissemination of the Pre-Approval Notice to Amazon Class Members, in its French and English Version;
 - (b) appointing Concilia Inc. as the Claims Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement Agreement;
 - (c) declaring that Amazon Class Members may submit objections to the Settlement Agreement by providing a written objection to Class Counsel and Counsel for the Amazon Defendants on or before February 12, 2024;
 - (d) declaring that Amazon Class Members who wish to opt out from the Class Action and the Settlement Agreement thereof may do so by delivering a written notice confirming their intention to opt out of the Class Action, in the manner provided for in the Notice, on or before February 12, 2024;
 - (e) declaring that all Amazon Class Members that have not requested their exclusion be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law; and
 - (f) scheduling the presentation of the application for approval of the Settlement and for approval of Class Counsel Fees on February 20, 2024 at 9:30 AM at the Montréal courthouse.
15. Should the Court (i) refuse to issue the Pre-Approval Order, or (ii) refuse to authorize the publication of the Pre-Approval Notice unless substantive changes to the terms and conditions of the Settlement Agreement are made, or (iii) make changes to the Pre-Approval Notice that substantially increase costs, or (iv) require any other changes that have an impact on the implementation and execution of the Settlement Agreement, each of the Parties, in their sole discretion, shall have the option of declaring the Settlement Agreement null and void, in which case it will not give rise to any right or obligation in favour of or against the Parties.

VI. COMMUNICATION AND DISTRIBUTION OF THE PRE-APPROVAL NOTICE

16. If approved by way of the Pre-Approval Order, the Pre-Approval Notice will be disseminated by January 12, 2024, in substantially the same form as set forth in

Schedule “A” (English) and Schedule “B” (French) to this Settlement Agreement, as follows:

- (a) the Claims Administrator will send a bilingual copy (in French and English) of the Pre-Approval Notice with a unique hyperlink to each Amazon Class Member by email, to the email address associated with his/her Account, no attempt of subsequent notice being required in the event of a Bounce Back;
- (b) the Claims Administrator will send by regular mail a bilingual copy (in French and English) of the Pre-Approval Notice with a unique identification number and the address of the Claims Administrator Website to each Amazon Class Member for which the Amazon Defendants have no email address associated with his/her Account, no attempt of subsequent notice being required in the event of a Mail Delivery Failure;
- (c) Class Counsel will post the Settlement Agreement, together with the French and English versions of Pre-Approval Notice, on the www.lpclex.com/fr/garantiesprolongees/ and www.lpclex.com/extendedwarranties/ web pages (the “**Class Action Webpages**”) at least until the Effective Date;
- (d) Class Counsel will publish the Settlement Agreement (including the French translation of the Settlement Agreement), as well as the French and English versions of the Pre-Approval Notice in the Class Action Registry of the Superior Court of Quebec; and
- (e) the Claims Administrator Website will provide email contact information of the Claims Administrator, and the Claims Administrator will respond to Amazon Class Member queries emailed to the Claims Administrator in the language in which the query is formulated, limited to English or French. Queries formulated in a language other than English or French will be responded to in French.

17. Amazon Class Members shall have until February 12, 2024 to:

- (a) opt out (in the manner described in Section VII);
- (b) provide comments or objections regarding the Settlement Agreement to Class Counsel;

and until March 12, 2024 to:

- (c) claim a Refund through the Claims Administrator Website (in the manner described in Section VIII);

the whole in accordance with the modalities set forth in Schedule “A” and Schedule “B” hereto.

VII. EXCLUSION FROM THE SETTLEMENT AGREEMENT

18. Amazon Class Members have the right to exclude themselves from the Settlement Agreement.
19. Exercise of the Right of Exclusion by an Amazon Class Member entails the loss of the right to benefit from the Settlement Agreement and the loss of the status of Amazon Class Member.
20. An Amazon Class Member wishing to exercise his or her Right of Exclusion must, before the expiry of the Exclusion Period, send by mail to or file with the clerk of the Court a written Request for Exclusion duly signed and containing the following information:
 - (a) The Court docket number of the Class Action (500-06-001195-227);
 - (b) The name and contact information of the Amazon Class Member who is exercising his or her Right of Exclusion;
 - (c) The Amazon Class Member's email or postal address that is associated with his/her Account;
 - (d) Unless filed in person at this address, the Request for Exclusion must be sent to the following address and received by the Court before the expiry of the Exclusion Period:

Greffes de la Cour supérieure du Québec
PALAIS DE JUSTICE DE MONTRÉAL
1 Notre-Dame Street East
Room 1.120
Montreal, Quebec, H2Y 1B5

Reference:

Bitton v Amazon.com.ca, Inc. et als.
500-06-001195-227

- (e) The Request for Exclusion may also be transmitted to Class Counsel by electronic mail at (jzukran@lpclex.com) or by regular mail at this address:

LPC Avocats
Mtre Joey Zukran
276 Saint-Jacques Street, Suite 801
Montréal, Quebec H2Y 1N3
21. Amazon Class Members who have not exercised the Right of Exclusion according to the Exclusion Procedure before the expiry of the Exclusion Period will be irrevocably deemed to have chosen to participate in the Settlement Agreement and will be bound by the terms of the Settlement Agreement following its approval by the Court and by all judgments or orders subsequently issued by the Court, if any.

22. Within five (5) days following the expiry of the Exclusion Period, Class Counsel shall provide to the Counsel of the Amazon Defendants a copy of all Requests for Exclusion received during the Exclusion Period.
23. If more than two hundred (200) Amazon Class Members exercise their Right of Exclusion, the Amazon Defendants shall have, in their sole discretion, the option of declaring the Settlement Agreement null and void and it shall have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

VIII. CLAIMS PROCESS

24. This Settlement Agreement provides for collective recovery in the amount of the Settlement Fund and Refund Eligible Members will be subject to an individual claims process. The electronic Pre-Approval Notice will provide Refund Eligible Members with a customized hyperlink to click on if they wish to claim a Refund, and the paper mail Pre-Approval Notice will provide Refund Eligible Members a unique identification number for use on the Claims Administrator Website to claim a Refund. The online claims process shall allow the Claims Administrator to immediately identify each Refund Eligible Member who clicks on said customized hyperlink or, for Refund Eligible Members who received the paper mail Pre-Approval Notice, enters the unique identifier as a Refund Claimed Member (without, in either case, any further action or steps required to be identified). Payment will be provided by an Interac e-transfer. Once identified through the Claims Administrator Website, Refund Eligible Members who received the paper mail Pre-Approval Notice will also be required to provide an email address. Refund Eligible Members having received a customized hyperlink by email and having clicked on said customized hyperlink will not have to provide any further information to process payment, given that the Claims Administrator will process the payment by Interac e-transfer by using the same email address used to provide this Refund Eligible Member with a customized hyperlink.
25. If the Claims Administrator receives a Bounce Back using an email address associated with an Account or, in the event that an Amazon Class Member has no email address associated with its Account, a Mail Delivery Failure using the mailing address associated with its Account, no further action will be required on the part of the Claims Administrator or the Parties to communicate with such member.
26. Refund Eligible Members will have until March 12, 2024 to click on the hyperlink to claim a Refund or to enter their unique identification number on the Claims Administrator Website, to provide an email address (for the Refund Eligible Members who received the paper mail Pre-Approval Notice) and be considered a Refund Claimed Member.
27. All Claims for Refunds from Amazon Class Members must be submitted and received by the Claims Administrator by the Deadline for Submitting a Claim. The Deadline for Submitting a Claim will be clearly stated in the Pre-Approval Notice and on the Class Action Webpage. Amazon Class Members who do not Claim a Refund by the Deadline for Submitting a Claim will no longer be eligible to receive

a Refund under this Settlement Agreement but will be bound by the remaining terms and conditions as provided for by law and the Settlement Approval Order.

IX. PROCEDURE FOR APPROVAL OF THE SETTLEMENT AGREEMENT

28. By February 13, 2024, Class Counsel will file with the Court an application for approval of the Settlement Agreement and for approval of Class Counsel Fees.
29. By its application for approval of the Settlement Agreement, Class Counsel will apply to the Court for the Settlement Approval Order and request that the Court:
 - (a) declare that this Settlement Agreement is fair, reasonable and in the best interests of the Amazon Class Members;
 - (b) approve this Settlement Agreement and order the Parties and the Amazon Class Members to comply with it;
 - (c) declare that the Class Action against the Amazon Defendants is settled out of Court;
 - (d) approve the Class Counsel Fees; and,
 - (e) order any other measure it should deem required to facilitate the approval, implementation or administration of this Settlement Agreement.
30. The application for approval of the Settlement Agreement will be served by Class Counsel on the *Fonds d'aide* pursuant to the provisions of the *Code of Civil Procedure*, the *Act respecting the Fonds d'aide aux actions collectives* and the *Regulation of the Superior Court in Civil Matters*.
31. At the Hearing on the Approval of the Settlement Agreement, Class Counsel and Counsel for the Amazon Defendants will make joint representations to the Court with a view to obtaining the Approval Order.
32. Should the Court refuse to grant the Approval Order or refuse to approve the Settlement Agreement in whole or in part, save and except with regards to the amount of Class Counsel Fees, each of the Parties, in their sole discretion, shall have the option of declaring the Settlement Agreement null and void, in which case it will not give rise to any right or obligation in favour of or against the Parties.

X. CLASS COUNSEL FEES

33. The Defendants agree to pay up to 30% of the guaranteed Settlement Fund, plus GST and QST for Class Counsel Fees, namely an amount of \$825,000.00 CDN plus GST and QST, subject to the terms of the Approval Order. Following the Approval Order, and prior to the Effective Date, Class Counsel shall deliver to Counsel for Amazon Defendants an invoice for the Class Counsel Fees stipulated in the Approval Order, which shall not exceed \$825,000.00 CDN plus GST and QST, in the name of Amazon.com.ca, Inc., which invoice shall include valid GST and QST registration numbers for Class Counsel. The Defendants will pay to

Class Counsel within ten (10) days of the Effective Date the amount of Class Counsel Fees stipulated in the Approval Order, which shall not exceed \$825,000.00 CDN plus GST and QST.

34. The Class Counsel Fees are to be deducted from the Settlement Fund pursuant to article 598 of the *Code of Civil Procedure*.
35. The Class Counsel Fees represent any and all claimable Class Counsel judicial fees and are inclusive of all extra-judicial fees, expert fees, costs and disbursements and are to be approved by the Court following the Hearing for Approval of the Settlement Agreement. The Amazon Defendants shall take no position on the request for approval of Class Counsel Fees, other than to confirm that they have agreed to pay them. The Amazon Defendants shall pay the Class Counsel Fees by check or wire transfer; if the Class Counsel Fees are paid by wire transfer, Class Counsel will provide all necessary banking information to complete said wire transfer upon request.
36. In consideration of payment of the Class Counsel Fees, Class Counsel will not, directly or indirectly, claim from the Amazon Defendants or the Amazon Class Members any other fees, costs or disbursements of any kind or based on any source, nor will Class Counsel participate or be involved, directly or indirectly, in any class action arising from any of the facts or causes of action alleged in the Class Action.
37. This Settlement Agreement is in no way conditional upon the approval by the Court of the amount of Class Counsel Fees requested by Class Counsel. Any order or proceeding relating to Class Counsel Fees, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Settlement Agreement.

XI. DISTRIBUTION TO REFUND CLAIMED MEMBERS AND BALANCE AFTER IMPLEMENTATION

38. Within ten (10) days from the Effective Date, each Refund Claimed Member will receive a Refund from the Claims Administrator of a value in Canadian Dollars equivalent to:
 - (a) the full amount paid by the Refund Claimed Member to buy the Extended Warranty for which it has claimed a Refund, exclusive of sales taxes, if the Settlement Fund remaining after the deduction from the Settlement Fund of the Deductible Fees and Costs, as described in paragraph 11, is sufficient to satisfy full payment of all Refunds claimed by the Refund Claimed Members; or
 - (b) a *pro rata* share of the amount of the Settlement Fund remaining after the deduction from the Settlement Fund of the Deductible Fees and Costs, as described in paragraph 11, if the Settlement Fund is insufficient to satisfy full payment of all Refunds claimed by the Refund Claimed Members.

39. Any Refund provided to a Refund Claimed Member who purchased an Extended Warranty in USD shall be converted to CAD using the MasterCard exchange rate in effect on March 12, 2024.
40. If a portion of the Settlement Fund remains undistributed to Amazon Class Members after the Settlement Agreement has been implemented and executed, the Parties agree that this remaining balance be paid within thirty (30) days of the distribution provided for in paragraph 38, in the manner provided in paragraph 41.
41. Counsel for Amazon Defendants will pay the Fonds levy pursuant to section 1(1°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, r.2. to the Fonds d'aide from the balance of the Settlement Fund, if any, and will subsequently pay the remainder of the Settlement Fund, on a *cy près* basis, to an organization agreed on by the Parties and approved by the Court. The Fonds d'aide shall not be entitled to any other payment whatsoever under the terms of this Settlement Agreement.
42. Within thirty (30) days from the Effective Date, the Claims Administrator will prepare a report for the Parties and the Court on the dissemination of the Pre-Approval Notice and on the number of Refund Eligible Members who claimed Refunds, as well as the dollar value of the Refunds claimed (the "**Claims Administrator Report**").
43. Within forty-five (45) days from the Effective Date, Counsel for the Amazon Defendants will file with the Court an application for a closing judgment, which shall include the Claims Administrator Report.

XII. CLAIMS ADMINISTRATION

44. The Parties agree that information provided by the Amazon Defendants shall be kept confidential, shall be used only for purposes of reviewing or administering the Settlement Agreement, and shall not be used for marketing or any other commercial purposes. Nothing herein shall be interpreted to mean that the Amazon Defendants are prohibited from marketing to Amazon Class Members outside this Settlement Agreement.
45. The Claims Administrator will be an agent of the Court and will be subject to the Court's supervision and direction as circumstances may require. The Claims Administrator will administer the Notice program and Claims process, in accordance with the terms of the Settlement Agreement and the Settlement Approval Order. The Claims Administrator shall administer the terms of this Settlement Agreement by resolving Claims for Refund in a cost-effective and timely manner.
46. The Claims Administrator shall maintain records of all Claims for Refund submitted. The Claims Administrator shall maintain all such records until 180 Days after the Effective Date, and such records will be made available upon request to the Parties' counsel. The Claims Administrator shall also provide such reports and such other information to the Court as it or the Parties may require.

47. The Claims Administrator will review and validate all Claims for Refund submitted by Refund Eligible Members and determine the validity of the Claims for Refund using the List of Refund Eligible Members.
48. The Claims Administrator shall cause a website to be created in both English and French containing instructions on how to submit a Claim for Refund, being the Claims Administrator Website. All content on the website must have been approved by the Parties. The cost of creating and maintaining the Claims Administrator Website is included in the Claims Administrator Expenses.

XIII. RELEASE, DISCHARGE AND CONSIDERATION OF THE PLAINTIFF

49. Upon the Effective Date, the Plaintiff and each of the Amazon Class Members will be deemed to have, and by operation of the Approval Order will have, fully, finally, and forever released, relinquished, and discharged the Released Persons from all Released Claims.
50. No provision of the Settlement Agreement will constitute or be deemed to constitute or be construed as constituting a waiver by the Amazon Defendants of any right or defence against any claim, suit or cause of action of an Amazon Class Member who has exercised the Right of Exclusion or a waiver by the Amazon Defendants of any right or defence in contesting the Class Action should the Settlement Agreement not be approved by the Court or otherwise become null and void owing to the application of any of the provisions of the Settlement Agreement.
51. No provision of the Settlement Agreement will constitute or be deemed to constitute or be construed as constituting a waiver by the Plaintiff and the Amazon Class Members of any right, claim, suit or cause of action against the Amazon Defendants should the Settlement Agreement not be approved by the Court or otherwise become null and void owing to the application of any of the provisions of the Settlement Agreement.
52. None of the obligations, of whatever kind, assumed by the Amazon Defendants and Counsel for the Amazon Defendants in executing the Settlement Agreement nor the consent of the Amazon Defendants to the Settlement Agreement taking place or to the Court issuing the Approval Order, shall constitute in any manner an admission of liability by the Amazon Defendants.
53. Class Counsel undertakes not to institute proceedings, whether class proceedings or otherwise, against the Amazon Defendants or any of the Released Persons, or act as counsel to any plaintiff, or act as an advisor to any other firm, for any claim or demand relating to the Released Claims.
54. In the event that Class Counsel should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding against the Amazon Defendants or any of the Released Persons in connection with the Released Claims, this Settlement Agreement may be raised as a complete bar to any such demand, action, claim or proceeding.

XIV. TERMINATION

55. In the event that the Court declines to approve this Settlement Agreement or any material part hereof or approves this Settlement Agreement in a materially modified form, this Settlement Agreement shall be terminated and it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.
56. If this Settlement Agreement is terminated:
- (a) the Parties shall return to their state prior to the execution of this Settlement Agreement; and
 - (b) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials relating to the Settlement Agreement provided by the Amazon Defendants or containing or reflecting information derived from such documents or other materials received from the Amazon Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Amazon Defendants to any other person, shall recover and destroy such documents or information. Class Counsel shall provide the Amazon Defendants with a written confirmation of such destruction.

XV. FINAL PROVISIONS

57. The plural of any defined term in this Settlement Agreement includes the singular, and the singular of any defined term in this Settlement Agreement includes the plural, as the case may be.
58. The following Schedules of this Settlement Agreement are material and integral parts hereof and are fully incorporated therein as they were recited at length therein:
- (a) Schedule "A": Notice of Authorization of a Class Action in Quebec against Amazon.com.ca, Inc. et al., Hearing to Approve the Settlement Agreement and Claims Process
 - (b) Schedule "B": Avis relatif à l'autorisation d'une action collective au Québec contre Amazon.com.ca, Inc. et al., à l'audience d'approbation de l'Entente de règlement et la Procédure de réclamation
59. This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties.
60. This Settlement Agreement and the Schedules attached hereto constitute the entire agreement among the Parties, and supersedes prior exchanges, oral or in writing, between Counsel for the Amazon Defendants and Class Counsel.
61. The Parties intend the Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Class Action. The Parties agree

that the consideration provided to the Amazon Class Members and the other terms of the Settlement Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

62. The Parties agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Settlement Agreement and to exercise best efforts to fulfil the foregoing terms and conditions of this Settlement Agreement.
63. This Settlement Agreement will not be considered to constitute any admission or acknowledgment by any of the Parties of the validity of any right, claim or defence.
64. Each counsel or other person executing this Settlement Agreement or any of its Appendices on behalf of any Party hereby warrants that such person has the full authority to do so.
65. The Court will retain jurisdiction with respect to implementation and enforcement of the terms of this Settlement Agreement and the Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement Agreement.
66. This Settlement Agreement is a transaction pursuant to sections 2631 and following of the *Civil Code of Quebec* and will be construed and enforced in accordance with, and governed by the laws of the Province of Quebec.
67. In the event of a discrepancy between the wording of the Pre-Approval Notice to Amazon Class Members and the Settlement Agreement, the wording of the Settlement Agreement will take precedence.
68. All costs associated with the implementation and execution of the Settlement Agreement that have not been specifically provided for by the Settlement Agreement, if any, will be borne by the party that has incurred them and their reimbursement may not be claimed from any other party.
69. All amounts set forth in this Settlement Agreement are in Canadian dollars.
70. The Parties have expressly agreed that this Settlement Agreement and documents ancillary thereto be drafted in the English language. *Les Parties ont expressément convenu que la présente Entente de Règlement et les documents y afférents soient rédigés en langue anglaise.*
71. Notwithstanding the foregoing provision, the Amazon Defendants will prepare, at their expense, a French translation of the Settlement Agreement.
72. Any notification, request, instruction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

If to the Plaintiff: Mtre Joey Zukran
LPC Avocats
276 Saint-Jacques Street, Suite 801
Montréal, Quebec H2Y 1N3
jzukran@lpclex.com

If to the Defendants: Mtre Alexandre Fallon
Mtre Sophie Courville-Le Bouyonnec
OSLER, HOSKIN & HARCOURT LLP
1000 de La Gauchetière Street West, Suite 2100
Montréal, Quebec H3B 4W5
afallon@osler.com
scourville@osler.com

73. This Settlement Agreement may be executed in one or more counterparts, including via electronic signature. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.

IN WITNESS WHEREOF, THE PARTIES AND THEIR RESPECTIVE COUNSEL HAVE SIGNED:

Signed in Montréal on December 18,
2023

Signed in Montréal on December 18,
2023

Eva Bitton

LPC Avocats
Class Counsel and Counsel for Plaintiff

Signed in _____
on December ____, 2023

Signed in Montréal on December _____,
2023

Amazon.com.ca, Inc.

Osler, Hoskin & Harcourt LLP
Counsel for the Amazon Defendants

By: Name:
Title:

Signed in _____ on
December ____, 2023

**Amazon Canada Fulfillment
Services Inc.**

By: Name:
 Title:

Signed in _____ on
December ____, 2023

**Amazon.com, Inc. and
Amazon.com, LLC**

By: Name:
 Title: