

Court file no. 500-06-001195-227 – *Bitton v. Home Depot of Canada Inc. et al.*

# SETTLEMENT AGREEMENT

Made as of October 27, 2023

**Between:**

**Eva Bitton**

(Plaintiff)

-and-

**Home Depot of Canada Inc.**

(Defendant)

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## **RECITALS**

- A. WHEREAS the Plaintiff Eva Bitton (the “**Plaintiff**”) commenced a proposed class action in the Quebec Superior Court on July 26, 2022, bearing Court file no. 500-06-001195-227 against Amazon.com.ca Inc., Amazon Canada fulfillment services Inc., Amazon.com Inc., Amazon.com LLC, Wayfair LLC and Home Depot of Canada Inc. (the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendants on behalf of the Class in relation to extended warranties on goods sold on the Defendants’ websites without informing consumers of Québec’s legal warranty;
- C. WHEREAS the Plaintiff maintains that the claims in the Class Action are valid; the Defendant Home Depot of Canada Inc. (the “**Defendant**”) denies all of the allegations asserted by the Plaintiff in the Class Action, and maintains that it has good and valid defences to the claims asserted therein;
- D. WHEREAS by judgment rendered on August 10, 2023, the Superior Court of Quebec authorized the Class Action against all of the Defendants, with the exception of Home Depot of Canada Inc., given that the Parties hereto advised the Court that an agreement in principle had been reached prior to the authorization hearing;
- E. WHEREAS the Parties estimate that a further three years or more could be required to litigate this matter through trial (excluding appeals);
- F. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expense, inconvenience and burdens of protracted litigation, subject to approval by the Superior Court of Québec;
- G. WHEREAS the Parties and their respective counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their respective analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, and taking into account the maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Parties and their respective counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class;
- H. WHEREAS the Plaintiff and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendant, or evidence of the truth of any of the Plaintiff’s allegations against the Defendant; and the Defendant and Defence Counsel agree that neither this Settlement Agreement nor

any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiff or the Class, or evidence of the truth or validity of any of the Defendant's defences or arguments against the Plaintiff's claims; and

- I. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Superior Court of Québec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Class Action shall be settled on the following terms and conditions:

## **ARTICLE I - DEFINITIONS**

### **1.1 Definitions**

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred by, payable by, or chargeable by the Settlement Administrator, for the approval, implementation and operation of this Settlement Agreement including the costs of claims administration, notices and the costs of translating the relevant Settlement documents, but excluding: (i) internal fees, costs or expenses of the Defendant to provide information to the Settlement Administrator in order to provide notices to the Class as provided in the Notice Plan; (ii) fees, costs and disbursements payable to Defence Counsel; (iii) fees, costs and disbursements payable to CashStar; and (iv) Class Counsel Fees and Disbursements. For clarity, the Administration Expenses are to be paid by the Defendant, and are not included in the Settlement Amount.
- (b) **CashStar** means CashStar Inc, being Home Depot of Canada Inc.'s third-party service provider for the issuance of gift cards, to be approved and appointed as such by the Court for the purposes of distributing the Direct Credit Reimbursements to the Class Members under this Settlement Agreement. CashStar's fees, costs and disbursements related to this settlement will be paid by Defendant.
- (c) **Class Action** means the class proceeding commenced by the Plaintiff in the Superior Court of Quebec bearing Court File No. 500-06-001195-227.
- (d) **Class Counsel** means LPC Avocat Inc.
- (e) **Class Counsel Fees and Disbursements** means the amount payable to Class Counsel in fees, disbursements, costs, interest, GST, QST, and other

applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action, as approved by the Court.

- (f) **Court** means the Superior Court of Québec.
- (g) **Defence Counsel** means McCarthy Tétrault LLP.
- (h) **Defendant or Home Depot** means Home Depot of Canada Inc.
- (i) **Direct Credit Reimbursements** means the credit payments to Class Members in the form of digital gift cards, to be used in any Home Depot store or on its website or mobile application which will not expire and will be transferable, and representing 50% of the price paid by each Class Member for their HDPP, excluding taxes, pursuant to the terms of the Distribution Protocol (**Schedule D**).
- (j) **Distribution Protocol** means the plan for distributing the Settlement Amount, as defined herein, to the Class as approved by the Court, in the form of **Schedule D** hereto.
- (k) **Effective Date** means (i) the date upon which the ability to appeal from the last-rendered anticipated Second Order expires; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.
- (l) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (m) **First Order** means the proposed order of the Court: (1) providing the Court's approval of the Notice of Hearing; and (2) the appointment of the Settlement Administrator, which will be substantially in the form of **Schedule A** hereto or as modified by the Court.
- (n) **Fonds d'aide** means the *Fonds d'aide aux actions collective* created pursuant to the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c F-3.2.0.1.1).

- (o) **HDPP** means Home Depot Protection Plan, being the extended warranties sold to Class Members by Home Depot.
- (p) **Home Depot Class** means all consumers in Quebec who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Defendant's mobile application(s) and/or website(s), and **Class Member** means any one thereof.
- (q) **Notice of Court Order** means (as applicable) the various iterations of the notices of the order approving the settlement and Class Counsel Fees and Disbursements, as approved by the Court, to inform the Class Members of *inter alia*: (1) the approval of this Settlement Agreement and (2) the process by which Class Members will be compensated, which shall be agreed upon by the Parties and submitted to the Court in draft form.
- (r) **Notice of Hearing and Opt-Out** means (as applicable) the French and English short and long form notices of the hearing for settlement approval, approved by the Court, to inform the Class of *inter alia*: (1) the date of the hearing to approve this Settlement Agreement; (2) the key terms of this Settlement Agreement; and (3) the Opt-Out Procedure and Opt-Out Deadline, as well the manner in which Class Members may object, which will be substantially in the form of **Schedule B** hereto, or as modified by the Court.
- (s) **Opt-Out Deadline** means the date which is thirty (30) days from the date that the Notice of Hearing and Opt-Out is emailed to Class Members by the Settlement Administrator.
- (t) **Opt-Out Procedure** means the procedure by which any Class Member(s) who wish(es) to do so may opt out of the Class Action as described in Section 3.1 herein, subject to Court approval.
- (u) **Parties**, when capitalized, means the Plaintiff and Defendant, and **Party** means any one thereof.
- (v) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration costs (including Administration Expenses), and lawyers' fees (excluding Class Counsel Fees and Disbursements, which are addressed at Article 11.1 of the present Settlement Agreement), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasers, or any of them ever had, could have had, or now have related

to the subject matter of allegations in the Class Action, or related to the facts alleged in the Class Action.

- (w) **Releasees** means the Defendant and each of its respective predecessors, assigns, parents, subsidiaries, affiliates, divisions, partners, agents, mandataries, insurers and each of their past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind including their respective successors.
- (x) **Releasers** means, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees, agents, mandataries or representatives of any kind (excluding Class Counsel, whose release is addressed at Article 11.1 of the present Settlement Agreement).
- (y) **Second Order** means the anticipated order of the Court approving the terms of this Settlement Agreement and approving Class Counsel Fees and Disbursements, which will be substantially in the form of **Schedule E** hereto or as modified by the Court.
- (z) **Settlement Administrator** means Velvet Payments Inc., to be approved and appointed by the Court, to administer this Settlement Agreement, and any of their employees.
- (aa) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (bb) **Settlement Amount** means the CAD \$370,437.50 (representing 50% of the price paid by each Class Member for their HDPP, excluding taxes) available to satisfy the Direct Credit Reimbursements to Class Members under the Distribution Protocol (in the form of **Schedule D** hereto), which excludes the payment of Class Counsel Fees and Disbursements. Class Counsel Fees and Disbursements will be paid separately and on top of the Settlement Amount.

## **ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL**

### **2.1 Best Efforts**

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

If Defendant intends to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the applications contemplated under this Settlement Agreement, they will notify Class Counsel in advance. The Plaintiff will not object to any such Application for a sealing order.



Defendant will cooperate to provide information to the Settlement Administrator and the Court that is reasonable and necessary to obtain Court approval of this Settlement Agreement, including the total number of HDPP purchases in the Class and the total value of those purchases.

## **2.2 Court Approval Required for Enforceable Agreement**

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless approved by the Court.

## **ARTICLE III – OPT-OUT PROCEDURE**

### **3.1 Court Approval of Opt-Out Process and Deadlines**

- (a) Class Counsel shall seek the Court's approval of the following opt-out procedure as part of the Applications for Approval of Notice of Hearing and Opt-Out outlined in Article 4.1 below:
- (i) Class Members seeking to opt out of the Class Action must do so within thirty (30) days from the date that the Notice of Hearing and Opt-Out is sent to Class Members via email by the Settlement Administrator, by sending a complete and validly executed notice of opt out to Class Counsel on or before the Opt-Out Deadline, at the following email address: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

The notice of opt out must be sent by the Class Member or the Class Member's designee and must include the following information:

- A heading referring to this proceeding (Bitton v. Home Depot of Canada Inc., case no. 500-06-001195-227).
- The Class Member's full name, current address, telephone number and email address and, if represented by counsel, the name and contact information of their counsel;
- A statement that the Class Member purchased an extended warranty on goods from the Home Depot website or mobile application between February 7, 2019 and September 30, 2022;
- A statement to the effect that the Class Member wishes to be excluded from the Class Action; and
- The Class Member's signature.

Class Counsel will file into the Court record, by December 6, 2023, all opt-out notices received.

- (b) Class Members who opt out of the Class Action shall not be members of the Home Depot Class, and shall have no further right to participate in the Class Action or to share in the distribution of funds as a result of the Settlement Agreement.
- (c) Upon expiry of the Opt-Out Deadline, the Settlement Administrator shall provide a report to the Class Counsel and the Defendant containing the names of each person who has validly and timely opted out of the Class Action.
- (d) The Defendant shall not be required to pay any part of the Settlement Amount in respect of any Class Member who validly opted out of the Class Action.
- (e) Under article 580 of the *Code of Civil Procedure* of Québec, a Class Member eligible to opt out pursuant to this section who does not discontinue an originating application having the same subject matter as the Class Action before the Opt-Out Deadline has expired, is deemed to have opted out.

#### **ARTICLE IV – SETTLEMENT APPROVAL**

Subject to the discretion of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the applications contemplated in this article may be conducted in-person, by videoconference, or by teleconference, as directed by the Court.

##### **4.1 Applications for Approval of Notice of Hearing and Opt-Out**

- (a) As soon as practicable after this Settlement Agreement is executed, Plaintiff shall bring an application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** (being the draft order approving the Notice of Hearing and Opt-Out and the appointment of Settlement Administrator). Defendant will consent to this application, subject to their prior approval of the draft application.
- (b) Until the application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without prior written consent of the Parties, except as required for the purposes of mandating the Settlement Administrator, financial reporting, communications with insurers and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

## 4.2 Application for Approval of Settlement Agreement and Class Counsel Fees and Disbursements

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing is published as detailed in the Notice Plan (**Schedule C**), the Plaintiff shall bring an application for the Court's issuance of the Second Order. Subject to what is stated in the next sentence, Defendant will support this application, and the Fonds d'aide will be served with the application. Defendant will defer to the Court on the aspects of such application that concern Class Counsel Fees and Disbursements, other than that Defendant has agreed to pay up to \$126,062.50 in fees (plus GST & QST), and \$3,500 (plus GST & QST) in disbursements and expenses, as part of the negotiated Settlement.
- (b) Defendant will have the opportunity to review and approve all application materials before they are filed.
- (c) If the Plaintiff, Class Counsel, the Defendant, or Defence Counsel become aware that a Class Member or other person intends to object to those applications, they will advise the Parties (through their counsel) in writing as soon as practicable and in any event no later than two (2) business days before the hearing of the application in Article 4.2 (a).
- (d) Within thirty (30) days of the Second Order, the Defendant shall transfer, to Defence Counsel's trust account, payment in the amount of the Class Counsel Fees and Disbursements approved by the Court. The name and address of Defence Counsel's trust account where these funds must be deposited are as follows:

**McCarthy Tétrault LLP "In Trust"**  
**1000, De La Gauchetière Street West**  
**Suite MZ400**  
**Montréal, Québec H3B 0A2**
- (e) Within five (5) business days of such deposit, Defence Counsel will confirm to Class Counsel that it is holding this amount in trust.
- (f) Within thirty (30) days of the Effective Date, Defence Counsel shall transfer to Class Counsel payment in the amount of the Class Counsel Fees and Disbursements approved by the Court, in full satisfaction of any claims for fees, costs and disbursements related to the Class Action (as described more fully at Article 11.1 of the present Settlement Agreement).

## **ARTICLE V - SETTLEMENT CLAIMS**

### **5.1 Composition of the Settlement Funds**

- (a) This Settlement Agreement provides for a process by which the Defendant will issue a Direct Credit Reimbursement, in the form of digital gift cards to all Class Members who purchased an HDPP on the Defendant's mobile application and/or website. All amounts expressed in this Settlement Agreement are in Canadian Dollars (CAD). In no event shall the total value of the Direct Credit Reimbursements exceed CAD \$370,437.50, and in no event shall the Class Counsel Fees and Disbursements payable by the Defendant exceed \$126,062.50 in fees (plus GST & QST), and \$3,500 in disbursements (plus GST & QST).
- (b) Within thirty (30) days of the Effective Date, the Defendant shall transfer to CashStar the Settlement Amount and any Class Member information required for the issuance the Direct Credit Reimbursements.
- (c) The Settlement Amount will be used to pay Class Members pursuant to the Distribution Protocol (**Schedule D**).
- (d) The issuance of the Direct Credit Reimbursements will be in full satisfaction of the Released Claims against the Releasees.
- (e) The Settlement Administrator will issue monthly invoices to Defendant (copies of which to be sent to Class Counsel) for payment of the Administration Expenses beginning after the appointment of the Settlement Administrator by the Court.
- (f) Defendant shall not have any obligation to pay to the Class any amount in addition to the Direct Credit Reimbursements, unless otherwise expressly provided for in this Agreement.
- (g) Defendant shall not have any obligation to pay to the Settlement Administrator any amount in addition to or exceeding the Administration Expenses, and never more than what is actually invoiced, unless otherwise expressly provided for in this Agreement.

### **5.2 Taxes and Interest**

- (a) The Parties agree that the Plaintiff, Defendant, Class Counsel, and Defence Counsel are in no way liable for any taxes any Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Class Member is given or will be given by the Parties or their respective counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Class Member. Each Class Member is

responsible for their tax reporting and other obligations respecting this Settlement Agreement, if any.

## **ARTICLE VI - DISTRIBUTION OF FUNDS**

### **6.1 Distribution Protocol**

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval by the Court, as part of the application seeking Court approval of this Settlement Agreement (the Second Order). The Distribution Protocol is set out at **Schedule D** hereto.

### **6.2 No responsibility for External Administration Fees**

Defendant acknowledges that it may incur internal costs to provide information to the Settlement Administrator in order to provide notices to Class Members pursuant to the Notice Plan. However, Defendant will not be required to incur any external administration fees (separate from the Administration Expenses and the costs, fees and disbursements payable to CashStar) in connection with the Distribution Protocol.

## **ARTICLE VII - TERMINATION OF SETTLEMENT AGREEMENT**

### **7.1 Right of Termination**

- (a) Defendant shall have the option to terminate this Settlement Agreement in the event that:
  - (i) The Plaintiff or Class Counsel breach any material term of this Settlement Agreement;
  - (ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve any material part of the Settlement Agreement (which does not include Class Counsel Fees and Disbursements), or requires a material change to the Settlement Agreement as a pre-condition to approval; or
  - (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (b) The Plaintiff shall have the option to terminate the Settlement Agreement in the event that:
  - (i) Defendant or Defence Counsel breach any payment terms of this Settlement Agreement;
  - (ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement (which does not include Class Counsel Fees and

Disbursements) or requires a material change to the Settlement Agreement as a pre-condition to approval; or

- (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If Defendant elects to terminate the Settlement Agreement pursuant to Article 7.1(a), or the Plaintiff elects to terminate the Settlement Agreement pursuant to Article 7.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than ten (10) business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Article 7.2, and the related Definitions in Article I, 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 Released Claims, including but not limited to any trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by the Court with respect to the Class Counsel Fees and Disbursements shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

## **7.2 If Settlement Agreement is Terminated**

If this Settlement Agreement is terminated:

- (a) The Parties will be restored to their respective positions prior to the execution of this Settlement Agreement, except as expressly provided for herein;
- (b) Any step taken by Defendant or the Plaintiff in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action;
- (c) Any order or judgment rendered by the Court pursuant to this Settlement Agreement shall be set aside or vacated. The Parties consent and will cooperate in seeking to have all prior orders or judgments sought from and rendered by the Court, in accordance with this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (d) All documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are, or become publicly available or properly obtained in the course of discovery. Within thirty (30) days of

such termination having occurred, Class Counsel shall, upon written request, destroy all documents and other materials provided by Defendant or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide Defence Counsel with a written certification by Class Counsel of such destruction upon request.

## **ARTICLE VIII - RELEASES AND DISMISSALS**

### **8.1 Release of Releasees**

Except in the case of the termination of this Settlement Agreement, and conditional upon the approval of this Settlement Agreement by the Court, as at the Effective Date, the Releasors immediately, forever and absolutely release the Releasees from the Released Claims. The Plaintiff acknowledges that she may thereafter discover facts in addition to, or different from, the facts which she knows or believes to be true regarding the Released Claims, and it is her intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release by all of the Releasors shall be and shall remain in effect notwithstanding the discovery or existence of new or different facts.

### **8.2 No Further Claims**

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

## **ARTICLE IX - EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any fault, wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, they will defend the Class Action at the authorization stage and at trial.

The Defendant reserves their rights and defences with respect to anyone who validly opted out of the Class Action, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Defendant.



## 9.2 This Agreement Not Evidence

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, in this or any other jurisdiction, except in a proceeding to approve or enforce this Settlement Agreement or in connection with the other applications contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

## **ARTICLE X - NOTICE TO CLASS**

### 10.1 Notice Required

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notices of Hearing and Opt-Out (**Schedule B**);
- (b) Notices of Court Order, in a form to be agreed upon by the parties and approved by the Court;
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court, in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

### 10.2 Costs of Disseminating Notice

The costs of disseminating each Notice shall be paid by Defendant from the Administration Expenses, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated. The Plaintiff, the Class and the Class Counsel are not liable to pay for such costs.

### 10.3 Method of Disseminating Notices

The Notices required under Article 9.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule C** as approved by the Court or in a manner otherwise ordered by the Court.



## **ARTICLE XI - CLASS COUNSEL FEES AND DISBURSEMENTS**

### **11.1 Class Counsel Fees and Disbursements and Release**

- (a) As part of the application for approval detailed at Article 4.2(a), Class Counsel will seek the Court's approval of Class Counsel Fees and Disbursements in the amount of \$126,062.50 in fees (plus GST & QST), and \$3,500 (plus GST & QST) in disbursements, and an order that the Class Counsel Fees and Disbursements shall be paid as outlined in Articles 5.1(b).
- (b) Upon full payment to Class Counsel of the Class Counsel Fees and Disbursements approved by the Court pursuant to the order to be rendered by the Court, Class Counsel forever releases the Releasees of and from any and all claims or demands for fees, costs, expenses and/or disbursements, known or unknown, that Class Counsel ever had, could have had, or now has, related to the Class Action.
- (c) For clarity, Plaintiff and Class Counsel cannot seek to terminate the Settlement Agreement if the Court approves the Settlement Agreement, but decreases or does not approve Class Counsel Fees and Disbursements.

## **ARTICLE XII - MISCELLANEOUS**

### **12.1 Applications for Directions**

- (a) The Plaintiff, Defendant, or the Settlement Administrator may bring applications to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All applications contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

### **12.2 Headings, etc.**

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

### **12.3 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday (including Canadian and US holidays) or a weekend, the act may be done on the next day that is a business day.

### **12.4 Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec and Canada.

### **12.5 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

### **12.6 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and Defendant, subject to approval by the Court where required.

### **12.7 No Waiver**

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

### **12.8 Binding Effect**

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Defendant, the Releasors, and the Releasees once it is approved by a Final order of the Court, except to the extent that the Parties have obligations under this Settlement Agreement prior to its approval, the Parties are required to perform those obligations under this Settlement Agreement prior to settlement approval.

Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final order of the Court.

### **12.9 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

### **12.10 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

### **12.11 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention de règlement et tous les documents connexes soient rédigés en anglais*. Nevertheless, a French translation of this Settlement Agreement, the Distribution Protocol and the Notices shall be prepared, the cost of which shall be paid by the Defendant.

### **12.12 Transaction**

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

### **12.13 Recitals**

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

### **12.14 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Draft First Order (the draft order approving the Notice of Hearing, and appointing the Settlement Administrator).

- (b) **Schedule B** – Notice of Hearing and Opt-Out.
- (c) **Schedule C** - Notice Plan.
- (d) **Schedule D** – Distribution Protocol.

### **12.15 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any inducement of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

### **12.16 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

### **12.17 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

**Mtre Joey Zukran**  
**LPC Avocat Inc.**  
276 Saint-Jacques Street, Suite 801  
Montreal, QC, H2Y 1N3

Telephone: 514-379-1572  
Fax: 514-221-4441  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

For the Defendant and Defence Counsel:

**McCarthy Tétrault LLP**

1000 Gauchetière Street West, suite  
MZ400  
Montreal, QC H3B 0A2

**Mtre Jean Lortie**

Telephone: 514-397-4146  
Fax: 514-875-6246  
Email: [jlortie@mccarthy.ca](mailto:jlortie@mccarthy.ca)


**Mtre Catherine Martin**

Telephone: 514-397-7094  
Fax: 514-875-6246  
Email: [cmartin@mccarthy.ca](mailto:cmartin@mccarthy.ca)

**Date of Execution**

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Montreal, Quebec, Canada, this 5 day of November, 2023



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**EVA BITTON**

Plaintiff

Dated at Montreal, Quebec, Canada, this 5 day of November, 2023



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**LPC AVOCAT INC.**

Per: Joey Zukran

Lawyers for the Plaintiff and the Class,

Dated at Montreal, Québec, Canada, this 27 day of October, 2023

Home Depot of Canada Inc.

HOME DEPOT OF CANADA INC.

Per:

(Defendant)



Andre Vogl

General Counsel, Home Depot of Canada Inc. •

**COUR SUPÉRIEURE**  
(Action collective)

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

No. : **500-06-001195-227**

DATE:

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**SOUS LA PRÉSIDENTE DE L'HONORABLE PIERRE NOLLET, J.C.S.**

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**EVA BITTON**

Demanderesse

c.

**HOME DEPOT OF CANADA INC. ET AL.**

Défenderesses

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**JUGEMENT APPROUVANT LES AVIS D'UNE AUDIENCE  
D'APPROBATION DE LA TRANSACTION AVEC HOME DEPOT OF  
CANADA INC. ET DÉSIGNANT UN ADMINISTRATEUR**

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[1] **CONSIDÉRANT** la Demande de la demanderesse du 27 octobre 2023 intitulée « *Application for Approval of Notices to Class Members of a Settlement Approval Hearing and to Appoint a Settlement Administrator* » (la « **Demande** »);

[2] **CONSIDÉRANT** le jugement dans le présent dossier autorisant l'action collective contre les défenderesses Amazon.com.ca, Amazon Canada Fulfillment Services inc., Amazon.com inc., Amazon.com LLC, et Wayfair LLC rendu le 10 août 2023, qui ne concernait pas Home Depot of Canada inc. (« **Home Depot** ») car cette dernière a conclu une entente de principe avec la demanderesse avant l'audience sur l'autorisation; <sup>1</sup>

[3] **CONSIDÉRANT** la transaction proposée entre Home Depot et la demanderesse déposée comme pièce R-1 au soutien de la Demande (la « **Transaction** »);

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<sup>1</sup> *Bitton c. Amazon.com.ca inc.*, [2023 QCCS 3058](#).



[4] **CONSIDÉRANT** que, conformément à la Demande, la demanderesse demande au Tribunal d'approuver :

- (a) des avis informant les membres de l'action collective que la Transaction sera soumise à l'approbation de la Cour, y compris les dates limites auxquelles les membres de l'action collective peuvent s'y opposer ou s'en exclure, ainsi que le plan de notification de la Transaction; et
- (b) Paiements Velvet inc. en tant qu'Administrateur de la Transaction;

[5] **CONSIDÉRANT** les versions française et anglaise proposées des avis déposés comme pièce R-2 et du plan de notification déposé comme pièce R-3 au soutien de la Demande;

[6] **CONSIDÉRANT** les représentations des avocats de la demanderesse et des avocats de la défenderesse qui consentent à la Demande;

[7] **CONSIDÉRANT** les articles 25, 49, 579, 580, 581 et 590 du *Code de procédure civile*;

<b>PAR CES MOTIFS, LE TRIBUNAL :</b>	<b>FOR THESE REASONS, THE COURT:</b>
[8] <b>APPROUVE</b> la forme et le contenu de l'avis d'audience et d'exclusion aux membres du groupe, dans sa version française et anglaise (pièce R-2);	<b>APPROVES</b> the form and content of the Notice of Hearing and Opt-Out to Class Members in its French and English version (Exhibit R-2);
[9] <b>DÉSIGNE</b> Paiements Velvet inc. à titre d'Administrateur de la Transaction afin de s'acquitter des tâches qui lui incombent en vertu de la Transaction;	<b>APPOINTS</b> Velvet Payments Inc. as the Settlement Administrator for the purposes of accomplishing the tasks that devolve to it pursuant to the Settlement;
[10] <b>ORDONNE</b> aux parties et à l'Administrateur de la Transaction de diffuser l'avis d'audience et d'exclusion conformément au plan de publication des avis (pièce R-3), dans les 10 jours suivant le présent jugement;	<b>ORDERS</b> the parties and the Settlement Administrator to disseminate the Notice of Hearing and Opt-Out pursuant to the Notice Plan (Exhibit R-3), within 10 days of this judgment;
[11] <b>ORDONNE</b> que dans les 5 jours ouvrables qui suivent le présent jugement, la défenderesse divulguent à l'Administrateur de la Transaction les noms complets des individus associés avec l'achat des garanties supplémentaires et le courriel utilisé pour l'achat des garanties supplémentaires, afin de :	<b>ORDERS</b> that within 5 business days following the present judgment, the Defendant disclose to the Settlement Administrator the full names of individuals associated to the extended warranty purchase and the email address used for the additional warranty purchase, in order to:  (a) facilitate the distribution of Court-approved notices to Class Members

<p>(a) faciliter la distribution des avis approuvés par le Tribunal aux membres du groupe les informant du présent jugement ainsi que de la date et des informations relatives à l'audience d'approbation de la Transaction; et</p> <p>(b) faciliter le processus d'administration éventuelle de la Transaction découlant de tout jugement ultérieur approuvant la Transaction.</p>	<p>advising them of this judgment and the date and information relating to the Settlement approval hearing; and</p> <p>(b) facilitate the process for the eventual administration of the Settlement arising from any later judgment approving the Settlement Agreement.</p>
<p>[12] <b>ORDONNE</b> à l'Administrateur de la Transaction de maintenir la confidentialité des informations fournies conformément au présent jugement et qu'il ne les partage pas avec toute autre personne autre que les avocats du groupe tel que requis, sauf si cela est strictement nécessaire pour exécuter le plan de notification et/ou faciliter le processus d'administration de la Transaction, conformément à la Transaction;</p>	<p><b>ORDERS</b> that the Settlement Administrator shall maintain confidentiality over and shall not share the information provided pursuant to this judgment with any other person other than Class Counsel as required, unless doing so is strictly necessary for executing the Notice Plan and/or facilitating the Settlement administration process in accordance with the Settlement Agreement;</p>
<p>[13] <b>ORDONNE</b> que l'Administrateur de la Transaction utilisera les informations qui leur sont fournies en vertu du présent jugement dans le seul but d'exécuter le plan de notification et de faciliter le processus d'administration de la Transaction conformément à la Transaction, et à aucune autre fin;</p>	<p><b>ORDERS</b> that the Settlement Administrator shall use the information provided to them pursuant to this judgment for the sole purpose of executing the Notice Plan and facilitating the Settlement administration process in accordance with the Settlement Agreement, and for no other purpose;</p>
<p>[14] <b>ORDONNE ET DÉCLARE</b> que le présent jugement constitue un jugement contraignant la production des informations par la défenderesse au sens des lois applicables en matière de vie privée, et que ce jugement satisfait aux exigences de toutes les lois applicables en matière de la protection de la vie privée;</p>	<p><b>ORDERS AND DECLARES</b> that this judgment constitutes a judgment compelling the production of the information by the Defendant within the meaning of applicable privacy laws, and that this judgment satisfies the requirements of all applicable privacy laws;</p>
<p>[15] <b>DÉCLARE</b> que les membres du groupe qui souhaitent s'objecter à</p>	<p><b>DECLARES</b> that Class Members who wish to object to Court approval of the Settlement must do</p>

<p>l'approbation par le tribunal de la Transaction doivent le faire de la manière prévue dans l'avis d'audience et d'exclusion (pièce R-2), au plus tard le <b>5 décembre 2023</b>;</p>	<p>so in the manner provided for in the Notice of Hearing and Opt-Out (Exhibit R-2) by <b>December 5, 2023</b>;</p>
<p>[16] <b>DÉCLARE</b> que les membres du groupe qui souhaitent s'exclure de l'action collective et de son règlement peuvent le faire en remettant un avis écrit confirmant leur intention de s'exclure de la présente action collective, de la manière prévue dans l'avis d'audience et d'exclusion (pièce R-2), au plus tard le <b>5 décembre 2023</b>;</p>	<p><b>DECLARES</b> that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the Notice of Hearing and Opt-Out (Exhibit R-2) by <b>December 5, 2023</b>;</p>
<p>[17] <b>DÉCLARE</b> que tous les membres du groupe qui n'ont pas demandé leur exclusion seront liés par tout jugement à rendre sur l'action collective de la manière prévue par la loi;</p>	<p><b>DECLARES</b> that all Class Members that have not requested their exclusion be bound by any judgment to be rendered on the class action in the manner provided for by the law;</p>
<p>[18] <b>FIXE</b> la date d'audience pour l'approbation de la Transaction déposée comme pièce R-1 au <b>6 décembre 2023 à 9h30</b> en la salle <b>2.08</b> du palais de justice de Montréal;</p>	<p><b>SCHEDULES</b> the hearing date for approval of the Settlement filed as Exhibit R-1 on <b>December 6, 2023, at 9:30 a.m.</b>, in a room <b>2.08</b> of the Montreal courthouse;</p>
<p>[19] <b>ORDONNE</b> que la date et l'heure pour la tenue de l'audience d'approbation de la Transaction puissent être reportées par le Tribunal sans autre avis aux membres du groupe autre que l'avis qui sera affiché sur le site web des procureurs du groupe <a href="http://www.lpclex.com/fr/garantiesprolongees">www.lpclex.com/fr/garantiesprolongees</a> et le site web du règlement mis en place par l'Administrateur de la Transaction;</p>	<p><b>ORDERS</b> that the date and time of the settlement approval hearing may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website <a href="http://www.lpclex.com/extendedwarranties">www.lpclex.com/extendedwarranties</a> and the Settlement website setup by the Settlement Administrator;</p>
<p>[20] <b>LE TOUT</b>, sans frais de justice.</p>	<p><b>THE WHOLE</b>, without legal costs.</p>

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PIERRE NOLLET J.C.S.

Me Joey Zukran  
Léa Bruyère, stagiaire

LPC Avocat inc.  
Avocat de la demanderesse

Me Jean Lortie  
Me Catherine Martin  
McCarthy Tétrault LLP  
Avocats de la défenderesse Home Depot of Canada inc.

## SCHEDULE B-1

### QUEBEC EXTENDED WARRANTY CLASS ACTION SETTLEMENT

#### LONG-FORM NOTICE OF HEARING FOR SETTLEMENT APPROVAL AND OPT-OUT

***BITTON V. HOME DEPOT OF CANADA CLASS ACTION***  
(Court File N° 500-06-001195-227)

This notice is to all consumers in Quebec who purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s) between February 7, 2019 and September 30, 2022

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

**THIS CLASS ACTION HAS BEEN SETTLED, SUBJECT TO COURT APPROVAL.**

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On July 26, 2022, a class action was commenced in Quebec against Home Depot of Canada Inc. (“**Home Depot**”) and other defendants alleging, among other things that Home Depot sold extended warranties on goods without informing consumers of Quebec’s legal warranty (the “**Class Action**”). The Plaintiff was asking the Court to determine whether this alleged conduct infringed the Quebec *Consumer Protection Act*.

The class is defined as follows:

*All consumers in Quebec 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).*

(“**Class**” or “**Class Members**”)

#### PROPOSED SETTLEMENT OF THE CLASS ACTION

The parties to this class action have reached a proposed settlement (the “**Settlement Agreement**”), subject to obtaining the approval of the Superior Court of Quebec. The Settlement Agreement provides for an amount of \$370,437.50 to Class Members, and the payment of Class Counsel fees and disbursements up to the amount of \$126,062.50 in fees and \$3,500 in disbursements (plus GST & QST) which are paid on top and separately from the compensation to Class Members.

The Settlement Agreement, if approved by the Court, provides that Home Depot will offer Direct Credit Reimbursements in the form of digital gift cards, representing 50% of the price paid for the extended warranty (also known as the Home Depot Protection Plan (“**HDPP**”)), excluding taxes, to each Class Member. These digital gift cards will be transferable and will not expire. If a Class Member purchased several extended warranties within the Class Period, the amount of their Direct Credit Reimbursement will reflect this.

In return for providing the Direct Credit Reimbursements, Home Depot will receive a release from all Settlement Class Members and a declaration of a settlement out of court of the Class Action. The settlement is a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of the Defendant.

## SETTLEMENT APPROVAL HEARING

A hearing before the Superior Court of Québec will be held on **December 6, 2023, at 9:30 a.m.**, at the Montreal courthouse located at 1, Notre-Dame East Street, Montreal, Quebec, in room **2.08**, or via a TEAMS link. This date may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website [www.lpclex.com/extendedwarranties](http://www.lpclex.com/extendedwarranties) or on the claim's administrator's website:

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## OPTING OUT OF THE CLASS ACTION

### If you do not wish to participate in this class action:

If you are a member and you wish to exclude yourself from the Class Action, you will not be entitled to participate further in the Class Action, or to share in the distribution of funds received as a result of the Settlement Agreement. To exclude yourself, you must complete and send a notice of opt out which must be sent to Class Counsel by email ([jzukran@lpclex.com](mailto:jzukran@lpclex.com)) **by December 5, 2023**, at the following address: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

The notice of opt out must be sent by the Class Member or the Class Member's designee and must include the following information:

- A heading referring to this proceeding (*Bitton v. Home Depot of Canada Inc.*, case no. 500-06-001195-227).
- Your name, current address, telephone number, and email address, and, if represented by counsel, the name and contact information of your counsel.
- A statement that you purchased an extended warranty on goods from the Home Depot website or mobile application between February 7, 2019 and September 30, 2022.
- You must state that you wish to exclude yourself from the class action *Bitton v. Home Depot of Canada Inc.* (case number N° 500-06-001195-227).
- Your signature.

## CLASS MEMBERS MAY OBJECT TO OR COMMENT ON THE SETTLEMENT

Class Members who do **not** oppose the proposed Settlement Agreement **do not** need to appear at any hearing or take any other action to indicate their desire to support the proposed Settlement Agreement.

If you wish to **object** to the terms of the proposed Settlement Agreement:

If you disagree with the Settlement Agreement, you can object to the Settlement Agreement by delivering a written submission to Class Counsel or filed with the Court on or before **December 5, 2023** in accordance with the proposed Settlement Agreement and containing the following information:

- A heading referring to this proceeding (*Bitton v. Home Depot of Canada Inc.*, case no. 500-06-001195-227).
- Your name, current address, telephone number, and email address, and, if represented by counsel, the name and contact information of your counsel.
- A statement that you purchased an extended warranty on goods from the Home Depot website or mobile application between February 7, 2019 and September 30, 2022.
- A statement confirming whether you intend to appear at the settlement approval hearing, either in person or through counsel.
- A statement of the objection and the grounds supporting the objection.
- Copies of any papers, briefs, or other documents upon which the objection is based.
- Your signature.

You must send your letter to Class Counsel by email at [jukran@lpclex.com](mailto:jzukran@lpclex.com), or to the Court at the following address:

Clerk of the Superior Court of Québec  
File: 500-06-001195-227  
Montreal Courthouse  
1, Notre-Dame East Street, Suite 1.120, Montréal (Québec), H2Y 1B6

Please note that the Court cannot change the terms of the Settlement Agreement. Any objections will be used by the Court to consider whether to approve the Settlement Agreement or not.

If the Settlement Agreement is approved, another notice to Class Members will be sent explaining the disbursement protocol.

As a Class Member, you have the right to intervene in the present Class Action, in the manner provided for by law. No Class Member other than the representative plaintiff or an intervenor may be required to pay legal costs arising from the class action.

#### **MORE INFORMATION**

For further information or details about the proposed Settlement Agreement, you may contact class counsel identified below. Your name and any information provided will be kept confidential. Please do not contact Home Depot, or the judges of the Superior Court.

#### **Mtre Joey Zukran**

#### **LPC Avocat Inc.**

276 rue Saint-Jacques, Suite 801

Montréal, Québec, H2Y 1N3

Email: [jukran@lpclex.com](mailto:jzukran@lpclex.com)

Website: [www.lpclex.com](http://www.lpclex.com)

You may also visit the Settlement Website at ● or contact the Settlement Administrator:

**Velvet Payments Inc.**  
5900 Andover ave., Suite 1  
Montreal, Quebec, H4T 1H5  
Tel: 1-888-770-6892  
Email: ●

**THE PUBLICATION OF THIS NOTICE TO CLASS MEMBERS  
HAS BEEN APPROVED AND ORDERED BY THE SUPERIOR COURT OF QUEBEC.**



## SCHEDULE B-2

### QUEBEC EXTENDED WARRANTY CLASS ACTION SETTLEMENT

#### SHORT-FORM NOTICE OF HEARING FOR SETTLEMENT APPROVAL AND OPT-OUT

***BITTON V. HOME DEPOT OF CANADA CLASS ACTION***  
(Court File N° 500-06-001195-227)

This notice is to all consumers in Quebec who purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s) between February 7, 2019 and September 30, 2022

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.**

**THIS CLASS ACTION HAS BEEN SETTLED, SUBJECT TO COURT APPROVAL.**

---

#### SUMMARY OF THE PROPOSED CLASS ACTION

On July 26, 2022, a class action was commenced in Quebec against Home Depot of Canada Inc. (“**Home Depot**”) and other defendants alleging, among other things that Home Depot sold extended warranties on goods without informing consumers of Quebec’s legal warranty (the “**Class Action**”). The class is defined as follows:

*All consumers in Quebec 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).*

(“**Class**” or “**Class Members**”)

#### PROPOSED SETTLEMENT

The proposed settlement, if approved by the Superior Court of Quebec, requires Home Depot to compensate affected Class Members. The settlement is not an admission of liability, wrongdoing or fault.

If the proposed settlement is approved, Home Depot will offer Direct Credit Reimbursements in the form of digital gift cards, representing 50% of the price paid for the extended warranty (also known as the Home Depot Protection Plan (“**HDPP**”)), excluding taxes, to each Class Member in a total amount not to exceed \$370,437.50. These digital gift cards will be transferable and will not expire.

In addition to these amounts, Home Depot would pay up to \$126,062.50 in Class Counsel fees and \$3,500 in disbursements (plus GST & QST) to Class Counsel. Class Counsel fees and disbursements are paid on top and separately from the compensation to Class Members.

For full details and conditions, please consult the Long Form Notice, available here: [\[ADD LINK\]](#)

#### SETTLEMENT APPROVAL HEARING

A hearing before the Superior Court of Quebec will be held on **December 6, 2023, at 9:30 a.m.**, at the Montreal courthouse located at 1, Notre-Dame East Street, Montreal, Quebec, in room [2.08](#), or via a TEAMS link. This date may be subject to adjournment by the Court without further publication notice to the Class Members, other than such notice which will be posted on Class Counsel's website [www.lpclex.com/extendedwarranties](http://www.lpclex.com/extendedwarranties) or on the claim's administrator's website: ●.

## HOW TO EXCLUDE YOURSELF?

**If you wish to remain a class member, you have nothing to do and nothing to pay.**

If you wish to opt-out, you have until **December 5, 2023**, to Class Counsel in writing at [jzukran@lpclex.com](mailto:jzukran@lpclex.com) that you wish to opt out. Please make sure to mention file no. 500-06-001195-227 in your correspondence. For the requirements to validly opt out, see the Long Form Notice available here: **[ADD LINK]**.

## HOW TO OBJECT?

If you wish, you have the right to comment on or object to the settlement by **December 5, 2023**. For more details and requirements, please see the Court-approved Long Form Notice available here: **[ADD LINK]**.

**Class Members who do not oppose the proposed Settlement Agreement have nothing to pay and do not need to appear at any hearing or take any other action to indicate their desire to support the proposed Settlement Agreement.**

If the settlement is approved, another notice to Class Members will be sent explaining the method of distributing the Direct Credit Reimbursements.

## MORE INFORMATION

For more information about the proposed settlement or to read the Long Form Notice, the Settlement Agreement and/or the other relevant judgments or proceedings, visit the Settlement Website at **[Insert Settlement Website]** or contact the Settlement Administrator:

**Velvet Payments Inc.**  
5900 Andover ave., Suite 1  
Montreal, Quebec, H4T 1H5  
Tel: 1-888-770-6892  
Email: ●

The attorneys representing the Class ("**Class Counsel**") are the firm of LPC Avocat Inc. (c/o Mtre. Joey Zukran), which can be contacted at [jzukran@lpclex.com](mailto:jzukran@lpclex.com).

**THE PUBLICATION OF THIS NOTICE TO CLASS MEMBERS  
HAS BEEN APPROVED AND ORDERED BY THE SUPERIOR COURT OF QUEBEC.**

## SCHEDULE C

### NOTICE PLAN – PART 1

#### A. NOTICE OF HEARING FOR SETTLEMENT APPROVAL AND OPT-OUT (“NOTICE OF HEARING AND OPT-OUT”)

(1) For the purposes of this Notice Plan, the definitions found in the Settlement Agreement apply.

(2) Reference is made in this Notice Plan to the *Notice of Hearing for Settlement Approval and Opt-Out (Long Form)* in English and in French (the “**Long-Form Notice of Hearing and Opt-Out**”, **Schedule B-1** to the Settlement Agreement), and the *Notice of Hearing for Settlement Approval and Opt-Out (Short Form)* in English and in French (the “**Short Form Notice of Hearing and Opt-Out**”, **Schedule B-2** to the Settlement Agreement).

(3) The Notice of Hearing and Opt-Out shall be disseminated as follows:

- (a) Within five (5) business days of the First Order, the Defendant will provide the Settlement Administrator with a list of Class Members’ email addresses that they have on file, as per the Distribution Protocol.
- (b) Within ten (10) days of the First Order, the Settlement Administrator will send the Short-Form Notice of Hearing and Opt-Out (**Schedule B-2**) to Class Members by email, using the email addresses for Class Members provided by the Defendant, except where Class Counsel has provided the Settlement Administrator with updated email addresses received from Class Members who contacted Class Counsel directly, in which case the Settlement Administrator shall use such updated email addresses. The Short-Form Notice of Hearing and Opt-Out sent to Class Members by email will contain a hyperlink to the Long-Form Notice of Hearing and Opt-Out (**Schedule B-1**) on the Settlement Website (as defined in the Distribution Protocol, **Schedule D** to the Settlement Agreement).

- (c) In the event an email containing a notice is undeliverable or bounces back, the Settlement Administrator will verify that the email used matches the identifying information provided by the Defendant (as updated, if applicable). The Settlement Administrator will then re-issue the email containing the notice to the Class Member(s) in question.
  - (d) No further attempts to deliver the notice will be made if the email is undeliverable or bounces back. The Settlement Administrator will provide the Defendant with a list of all emails that were undeliverable or bounced back.
  - (e) The Defendant will conduct a reasonable search of its internal records to identify whether an updated email address for the Class Members in question is available.
  - (f) If updated email addresses are found for the Class Members whose notice email bounced back, the Defendant will communicate these to the Settlement Administrator when reasonably possible.
- (4) Once the settlement is made public by the filing of materials before the Court in connection therewith, Class Counsel will, at their expense, post the Long Form Notice of Hearing and Opt-Out (**Schedule B-1**), and Short Form Notice of Hearing and Opt-Out (**Schedule B-2**), the Settlement Agreement with its schedules and any relevant proceedings and judgments on their firm's webpage dedicated to the present Class Action and on the Quebec Class Action Registry.
- (5) Class Counsel will also have the option, at their expense, to send the Notice of Hearing and Opt-Out (**Schedule B-2**) by email solely to those individuals who have previously contacted Class Counsel in this file.
- (6) Within ten (10) days of the First Order, the Settlement Administrator shall cause a Settlement Website to be created in both English and French, as detailed in the

Distribution Protocol, at URLs to be approved by the Defendant. The Settlement Website will provide addresses to contact the Settlement Administrator by email and mail.

(7) Within ten (10) days of the First Order, the Settlement Administrator will set up and maintain a toll-free telephone system with live bilingual support for Class Members.

**SCHEDULE D**  
**DISTRIBUTION PROTOCOL**  
**PART I – DEFINITIONS**

1. For the purposes of this Distribution Protocol, the definitions found in the Settlement Agreement apply.

**PART II – GENERAL PRINCIPLES OF DISTRIBUTION**

2. This Distribution Protocol is intended to govern the distribution of the Settlement Amount pursuant to (and as defined in) the Settlement Agreement.

3. All amounts expressed in this Distribution Protocol are in Canadian Dollars (CAD).

**PART III – ADMINISTRATION AND NOTIFICATION COSTS AND ORDER OF DISTRIBUTION**

4. The intention of the Parties is that the Settlement Amount of \$370,437.50 shall be paid directly to the Class Members in the form of Direct Credit Reimbursements.

5. The Administration Fees will be paid by the Defendant, but separately from and in addition to the Settlement Amount.

6. The Settlement Administrator will issue monthly invoices to the Defendant (copies of which to be sent to Class Counsel) for payment of the Administration Fees beginning after the appointment of the Settlement Administrator by the Court.

7. The Settlement Amount will be used to pay the Direct Credit Reimbursements to Class Members, as provided for below.

**PART IV – SETTLEMENT ADMINISTRATOR WEBSITE**

8. Within ten (10) days of the First Order, the Settlement Administrator will set up and post a website to inform Class Members about the Settlement (“**Settlement Website**”). The Settlement Website will include:

- (a) A brief description of the Class Action;
- (b) The copies of the Settlement Agreement with its schedules and of the First Order;
- (c) The copies of the Notice of Hearing and Opt-Out, both long and short form (**Schedules B-1 and B-2**), in English and French;
- (d) The Settlement Administrator's contact information and the Class Counsel's contact information;

9. In addition to this, within ten (10) days of the Effective Date, the Settlement Administrator will add the following to the Settlement Website:

- (a) The copies of the eventual Notice of Court Order, both long and short form, in English and French; and
- (b) The copy of the Second Order;

10. The Defendant must approve the French and English domain name (URL) used for the Settlement Website.

11. The documents available on the Settlement Website will also be made available on Class Counsel's firm website.

12. The Settlement Administrator will create an email address specifically for this settlement where Class Members can contact them via email. This email service will be available as of the publication of the Notice of Hearing and Opt-Out. The Defendant must approve the email address.

## **PART V – INFORMATION ABOUT CLASS MEMBERS**

13. Within five (5) business days following the First Order, Defendant will provide the Settlement Administrator with a full list of Class Members. This list will include, for each Class Member:

- (a) The full name of the individual associated to the HDPP purchase;
- (b) The email address used for the HDPP purchase;

14. The Settlement Administrator will cross-reference the above list with the Class Member information that Class Counsel will provide directly to the Settlement Administrator, including the information of potential Class Members that “signed up” on Class Counsel’s website dedicated to this class action. The Settlement Administrator will update the information found in this list accordingly and on an ongoing basis as required, and will communicate this updated contact information to the Defendant’s counsel.

#### **PART VI – DISTRIBUTION OF THE CONSUMER CREDIT PAYMENTS TO CLASS MEMBERS**

15. The following describes the distribution of the Direct Credit Reimbursements to Class Members.

16. Within thirty (30) days of the Effective Date, the Defendant will issue a payment of \$370,437.50 to CashStar corresponding to the Settlement Amount, as well as the following information required for the issuance of the Direct Credit Reimbursements:

- (a) The email address used for the HDPP purchase;
- (b) The value of the Direct Credit Reimbursement that must be sent to each above-mentioned email address.

17. CashStar will then use the Settlement Amount to load the various digital gift cards representing the Direct Credit Reimbursements.

18. Within thirty (30) days of receipt from the Defendant of the payment corresponding to the Settlement Amount, CashStar will issue a digital gift card, representing the Direct Credit Reimbursements, to each Class Member.



19. In order to issue the above Direct Credit Reimbursements to the Class Members, CashStar will use the identifying information provided by the Defendant (which would include any updated email addresses, if applicable).

20. A single Class Member may be entitled to receive multiple Direct Credit Reimbursements if they are associated to multiple purchases of HDPPs from the Defendant's mobile application or website.

21. The Direct Credit Reimbursements will have no expiration date and can be used in any Home Depot store, the Home Depot mobile application, and/or the Home Depot website.

#### **PART VII – REMAINING BALANCE**

22. In the event there remain emails containing Direct Credit Reimbursements that bounce back and are unable to be paid to Class Members, these remaining amounts will be subject to the Fonds d'aide levy and the remaining balance will be paid to a charity to be agreed upon by the Parties and approved by the Court.

23. To do so, CashStar will return the remaining balance to the Defendant, who will then send this amount to the Settlement Administrator in a trust account created for these purposes.

24. Upon approval by the Court, the Settlement Administrator will then send the applicable amounts to the Fonds d'aide for their levy, as per the applicable regulation, and will send the remaining balance to the agreed upon charity.

25. The Settlement Administrator will prepare a report outlining the amounts successfully distributed to Class Members as well as the remaining funds. Said report will be filed in Court upon conclusion of this settlement.

## **PART VIII – RESOLUTION OF DISPUTES**

26. Determinations by CashStar or the Settlement Administrator regarding the issuance of a Direct Credit Reimbursement to any individual who does not appear on the list of Class Members provided by the Defendant are final and non-appealable. Prior to making a determination, CashStar and the Settlement Administrator may consult with Class Counsel and Defence Counsel to resolve any questions or uncertainties relating to such determinations.

## **PART IX – CONFIDENTIALITY**

27. All information received from Defendant or the Class Members is collected, used, and retained by CashStar, the Settlement Administrator and/or Class Counsel pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 for the purposes of administering their Claims.

28. All such information is also to be treated confidentially in accordance with any Confidentiality Order rendered by the Court.

29. All Class Member data provided by Defendant to the Settlement Administrator and/or CashStar shall remain confidential and shall not be shared with Class Counsel or anyone else, other than as required by this agreement and with a copy to Defendant's counsel.