

SETTLEMENT AGREEMENT

BETWEEN:

PATRICE ST. ARNAUD

Plaintiff

AND

FACEBOOK INC.

Defendant

WHEREAS Plaintiff has filed an Amended Motion to authorize a class action in Superior Court in the court file bearing No.: 500-06-000511-101 ("Motion");

WHEREAS a statement of claim has been filed by Donald J. Woligroski before the Court of Queen's Bench against Defendant in Manitoba with substantially similar allegations to the Motion ("Manitoba Motion");

WHEREAS Plaintiff's Motion was dismissed on April 1, 2011 for, *inter alia*, lack of jurisdiction ("Dismissal Judgment") and Plaintiff has filed an appeal of the Dismissal Judgment;

WHEREAS Plaintiff and Defendant have agreed, without admission or prejudice whatsoever, to settle the appeal, the Motion and the Manitoba Motion;

WHEREAS for the purposes of settlement only, Defendant has renounced to the benefit of the Dismissal Judgment and Plaintiff has discontinued the appeal of the Dismissal Judgment and will ensure that the Manitoba Motion is dismissed with prejudice against Plaintiff;

WHEREAS for the purposes of settlement only, Defendant submits to the jurisdiction of this Court in order to allow for the authorization of the Class Action and the approval of the Settlement Agreement, the whole without prejudice or admission whatsoever. In particular, and without limiting the generality of the foregoing, the whole without prejudice to the Defendant's position as to the validity of the forum selection clause contained in the Defendant's Statement of Rights and Responsibilities;

WHEREAS Plaintiff will amend the class to include all Facebook members across Canada ("National Class") as follows:

All physical persons in Canada (including their estates, executors, or personal representatives), corporations, and other entities, who are or were, at any time, members of the facebook.com website and / or who:

- a. Were subject to alleged misrepresentation and other wrongful practices by the Respondent in regards to their personal information as described herein;*
- b. Were subject to alleged breach of privacy and in the addition or alternative, an invasion of privacy and in the addition or alternative, a breach of confidence in regards to their personal information, as described herein; or*
- c. Were subject to alleged conversion of said personal information for unauthorized use (hereinafter collectively referred to as "Petitioners", "Group Members", the "Group", or "Users");*

WHEREAS for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Plaintiff and the Defendant have agreed to settle the Class Action out of court, in accordance with the terms and conditions set forth below, the whole without prejudice or any admission whatsoever.

NOW, THEREFORE, SUBJECT TO APPROVAL BY THE COURT, THE PARTIES AGREE AS FOLLOWS:

1. definitions

1.1 Preamble

The foregoing preamble is an integral part of this Settlement Agreement.

1.2 Definitions

The following words and phrases shall have the following meaning throughout this Settlement Agreement, including the Schedules hereto:

1.2.1 "Class" means the amended class referred to in the preamble hereto;

1.2.2 "Class Action" means the class action instituted by the Plaintiff against the Defendant in the Superior Court of Québec in the court file bearing No.: 500-06-000511-101 and all proceedings, exhibits and depositions filed or exchanged therein;

1.2.3 "Court" means the Superior Court of Québec;

1.2.4 "Date of the Settlement Agreement" means the latest date indicated on the signature page;

1.2.5 "Effective Date of the Settlement Agreement" means the date on which the period for any appeal of the Settlement Judgment has expired;

- 1.2.6 **"Manitoba Motion"** means a statement of claim, filed on July 2, 2010 by Donald J. Woligroski before the Court of Queen's Bench for Manitoba, seeking certification of a class action under Court Number CI-01-67161
- 1.2.7 **"Member"** or **"Members"** means a member of the Class. "Members" designates more than one Member;
- 1.2.8 **"Notice of Settlement"** means Schedule C to the present agreement;
- 1.2.9 **"Opt Out Period"** means the forty five (45) day period commencing from the date of the publication of the Notice of Settlement as provided in Section 4 herein;
- 1.2.10 **"Parties"** means the Defendant and the Plaintiff, on behalf of himself and on behalf of the Members;
- 1.2.11 **"Plaintiff's Attorneys"** means the law firm of Merchant Law Group;
- 1.2.12 **"Released Claims"** means the claims released by or on behalf of Plaintiff and all Members as set forth in Section 5 herein;
- 1.2.13 **"Released Parties"** means the Defendant and any of its predecessors, successors and assigns, subsidiaries or other related companies, directors, officers, shareholders, employees, attorneys, insurers and representatives;
- 1.2.14 **"Schedule"** or **"Schedules"** means the schedules attached to the present agreement;
- 1.2.15 **"Settlement"** means the terms and conditions set forth in the present Settlement Agreement;
- 1.2.16 **"Settlement Agreement"** means the present agreement and all Schedules attached hereto;
- 1.2.17 **"Settlement Approval Hearing"** means the hearing before the Court for the approval of this Settlement Agreement, as contemplated by Section 3 herein and pursuant to Art. 1025 of the *Code of Civil Procedure*;
- 1.2.18 **"Settlement Judgment"** means the judgment that approves this Settlement Agreement;
- 1.2.19 **"Updated Privacy Policy"** means the privacy policy updated in accordance with Schedule A.

1.3 Schedules Included in this Settlement Agreement

For ease of reference, certain texts appear only in the Schedules to this Settlement Agreement. It is the intent of the Parties that the Schedules are to be given full force and effect as though they were recited at length in this Settlement Agreement. The following are Schedules to this Settlement Agreement:

- A Updated Privacy Policy**
- B Notice of Proposed Settlement of the Class Action**
- C Notice of Settlement of the Class Action**

1.4 Section Headings

The division of this Settlement Agreement into sections, sub-sections and Schedules, and the use of section and sub-section headings and Schedule titles, is for convenience and ease of reference only and shall not affect the construction or interpretation of this Settlement Agreement.

1.5 Extended Meanings

In this Settlement Agreement, unless something in the subject matter or context is inconsistent therewith, words importing gender include both genders.

2. INTRODUCTION

2.1 The Parties

This Settlement Agreement is made and entered into on the Date of the Settlement Agreement by and between the Plaintiff, on the one hand, and the Defendant, on the other hand.

2.2 Transaction

This Settlement Agreement constitutes a transaction under Article 2631 of the *Civil Code of Quebec* and Article 1025 of the *Civil Code of Procedure* with effect as of the date of the Settlement Judgment in the manner described herein, with respect to all Members who do not opt out of the National Class.

2.3 No Admissions

This Settlement Agreement is concluded without any admission of liability whatsoever by the Parties.

Without limiting the generality of the foregoing, this Settlement Agreement is concluded without admission or prejudice to the Defendant's position that the Court does not have jurisdiction over the subject matter of the dispute. Defendant hereby submits to the jurisdiction of the Court for settlement purposes only and agrees not to contest authorization of the Class Action conditional upon the approval of this Settlement Agreement.

2.4 Just and Equitable Terms

The Plaintiff has determined that, after lengthy and serious negotiations between counsel for the Parties, that the terms of the present Settlement Agreement are just and equitable and has considered, *inter alia*, the following factors:

- i) the expense of protracted class action litigation;
- ii) the risks, difficulties and delays inherent to any litigation;
- iii) the fact that a judgment has already been rendered by the Court dismissing the Motion for want of jurisdiction; and
- vi) the possible defences that could be asserted in the Class Action.

3. SETTLEMENT

3.1 Settlement Benefit

In consideration of the Release and other terms of this Settlement Agreement, Defendant has adopted the Updated Privacy Policy in substantially the same form as set forth in Schedule A, and agrees to maintain the said Policy in substantially the same form or manner for at least three (3) years following the date of implementation.

The Updated Privacy Policy takes into account the allegations contained in the Class Action and the Manitoba Motion.

In addition, within 30 days of the Effective Date of Settlement Agreement, Defendant shall pay to Plaintiff the amount of \$1,000.00 for his time and effort in his capacity as class action representative.

Finally, Defendant will also pay for the reasonable costs of publishing and translating of the Notices herein, as well as translating this Settlement Agreement.

3.2 Settlement Process

Within a reasonable period after signature of this Settlement Agreement, the Parties will request that the Court issue an order approving the form, content and date and mode of publication of the Notice of Proposed Settlement contemplated by Art. 1025 of the *Code of Civil Procedure*.

The proposed French and English texts of the Notice of Proposed Settlement are found at Schedule B.

The Parties propose that the Notice of Proposed Settlement be published once in each of *La Presse* and *The Globe and Mail*, or by another method approved by the Court.

The Notice of Proposed Settlement will also be placed as a link to the website of Plaintiff's Attorneys: www.merchantlaw.com;

Plaintiff's Attorneys will also send a copy of the Notice of Proposed Settlement to all persons who have provided their contact information to Plaintiff's Attorneys in connection with this class action;

The reasonable costs of publishing the Notice of Proposed Settlement shall be borne by the Defendant.

3.3 Settlement Approval Hearing

The Parties will file and present to the Court a Motion that will ask the Court to, *inter alia*,

- i) authorize a class action motion as a class action for purposes of settlement;
- ii) approve this Settlement Agreement;
- iii) approve payment of legal fees and expenses of Plaintiff's Attorneys; and
- iv) approve payment of a compensatory amount of \$1000.00 to Petitioner Patrice St-Arnaud.

The Parties will request that the Court issue an order approving the form, content, date and mode of publication of the Notice of Settlement.

The proposed French and English texts of the Notice of Settlement are found at Schedule C.

The Parties propose that the Notice of Settlement be published once in each of *La Presse* and *The Globe and Mail*, or by another method approved by the Court.

The Notice of Settlement will also be placed as a link to the website of Plaintiff's Attorneys: www.merchantlaw.com;

Plaintiff's Attorneys will also send a copy of the Notice of Settlement to all persons who have provided their contact information to Plaintiff's Attorneys in connection with this class action;

The reasonable costs of publishing the Notice of Settlement shall be borne by the Defendant.

In the event that the Court refuses to approve this Settlement Agreement or if this Settlement Agreement is subsequently declared unenforceable by any judgment of any Court, this Settlement Agreement will become null and void and of no effect.

4. OPT OUT PROCEDURE

A Member has the right to opt out from the Class any time within forty five (45) days of the date of publication of the Notice of Settlement.

Any Member who wishes to opt out must do so by sending an opt-out form, in writing, solemnly affirmed before a commissioner of oaths to this effect to the Plaintiff's Attorneys and by filing same with the clerk of the Superior Court before the end of the Opt Out Period.

No Member may opt out except during the Opt Out Period.

Any opt-out form that is postmarked outside of the Opt Out Period will be null and void and without effect.

Members who have not opted out before the end of the Opt Out Period shall be bound by the terms of this Settlement Agreement.

Should more than 20,000 Members validly opt out from this Settlement Agreement, the Settlement Agreement shall, at the Defendant's sole option, be declared null and void and of no effect.

5. RELEASE

Upon approval of the Settlement, the Plaintiff, the Members (other than those who have validly opted out pursuant to Section 4 hereto) and their respective heirs, successors and assigns (hereinafter the "Releasers"), shall be deemed to have accepted the terms of this Settlement Agreement and to have fully, finally and forever released and discharged the Released Parties from any and all claims, actions, causes of action, recourses, demands, debts, liabilities, rights or duties of whatever kind or character, whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, actual or contingent, that the Releasers may have had, have or will have, either individually or collectively, resulting from or in connection with, directly or indirectly, the facts alleged in the Class Action and the Manitoba Motion, as well as, the proceedings or exhibits cited or filed therein, including, without limitation, any changes made by Facebook to privacy settings or its application programming interfaces (APIs) on the Facebook social networking site on or about November 19, 2009, December 9, 2009 and January 20, 2010 and any alleged resulting access to User information by third-parties.

6. PLAINTIFF'S ATTORNEYS' FEES

At the Settlement Approval Hearing, the Plaintiff's Attorneys will apply to the Court, and the Defendant agrees not to object, for approval of the payment of their legal fees and costs and expenses in the amount of \$75,000.00 inclusive of all applicable taxes (hereinafter "Plaintiff's Attorneys' Fees").

Plaintiff's Attorneys' Fees will be paid by Defendant to Plaintiff's Attorneys 30 days after the later of (a) the Effective Date of the Settlement Agreement, and (b) the expiry of the Opt-Out Period.

7. MISCELLANEOUS

7.1 Conditions of Settlement

The Settlement is conditional upon: i) the discontinuance, with prejudice as against Donald Woligroski, of the Manitoba Motion, on a without costs basis; ii) the approval by the Court of Plaintiff's amendment to the Class defined in Plaintiff's Motion; and iii) the authorization of the Motion and approval of the

Settlement Agreement without material modification by the Court. In the event that any of the above conditions are not met, the Settlement Agreement will be null and void and of no effect and Defendant's consent to authorization of the class action will be withdrawn.

7.2 Entire Agreement

This Settlement Agreement constitutes the entire agreement between the Parties and replaces or supersedes any prior agreements between the Parties. The Parties represent and confirm that there are no verbal or other representations that have been made that are not contained in this Settlement Agreement. The Parties also agree that this Settlement Agreement can only be amended by way of a writing signed by both Parties and submitted to the Court for approval, and will only be effective if the Court issues a final judgment approving the said amendment.

7.3 General Superintending Powers of the Court

The Court maintains an exclusive jurisdiction over the Settlement Agreement, including any dispute with respect to the interpretation of this Settlement Agreement.

7.4 Currency

All dollar amounts set forth in this Settlement Agreement are expressed in Canadian dollars.

7.5 Copies

This Settlement Agreement may be signed in one or multiple copies, by fax and in counterpart, and each copy will constitute an original.

7.6 Notice

Any notice or delivery of a document to a Party required under this Settlement Agreement may be made by any usually accepted means other than e-mail and will only be effective upon the date and time of actual delivery to that party at the following addresses:

For the Plaintiff:

Merchant Law Group
Attn: Mtre Owen Falquero
10 Notre-Dame Est, Suite 200
Montréal, Québec
Canada H2Y-1B7

For the Defendant:

Osler, Hoskin & Harcourt LLP
Attn: Mtre Silvana Conte / Mtre Carine Bouzaglou

1000 de la Gauchetière St. West, 21st floor
Montréal, Quebec
Canada H3B 4W5

A notice or document will be deemed delivered for the purpose of the present if it is received in hand by any person duly authorized to accept receipt of documents at the addresses listed above.

7.7 No Strict Interpretation

The Settlement and the Settlement Agreement are the products of arm's-length negotiations between the Parties, who acknowledge having been represented by independent counsel throughout said negotiations. Both Parties have contributed to the drafting and preparation of the Settlement Agreement. It is the intention of the Parties that the Settlement Agreement be interpreted contextually and as a whole, and that no rule of strict interpretation, including but not limited to the rule of *contra proferentem*, shall be applied against either of them.

7.8 Consideration

The Parties acknowledge and represent that the benefits they are to receive pursuant to the Settlement are adequate consideration for the obligations they have incurred, including but not limited to the granting of the Release as described in Section 5 hereof and the payment described in Section 3.1 hereof.

7.9 Language

This Settlement Agreement and its Schedules have been translated into French. In the event of any ambiguity or discrepancy between the French and English texts of this Settlement Agreement, the Parties agree that the English text shall prevail.

La présente convention de règlement et ses annexes ont également été rédigées en français. Les parties sont d'accord pour que la version anglaise ait préséance en cas d'ambiguïté ou de divergence entre les versions anglaise et française.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have caused the Settlement Agreement to be executed as of the last date set forth below.

NOVEMBER 11 2011



DATE

PATRICE ST. ARNAUD

Digitally signed by St-Arnaud Pat
DN: cn=St-Arnaud Pat, c=US, email=zlrkon@mteqc.com
Date: 2011.11.10 19:29:27 -05'00'

FACEBOOK INC.

By: 

DATE

NAME:

TITLE: