

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-001142-211

DOMINIQUE LAVOIE

Representative Plaintiff

v.

WAL-MART CANADA CORP.

Defendant

and

LPC AVOCATS

Representative Plaintiff's Attorneys

**APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR
APPROVAL OF CLASS COUNSEL FEES**

(Articles 590 and 593 C.C.P., article 58 of the *Regulation of the Superior Court of Québec in civil matters*, CQLR c C-25.01, r 0.2.1, and article 32 of the *Act Respecting the Fonds d'aide aux actions collectives*, ch. F- 3.2.0.1.1)

**TO THE HONOURABLE CATHERINE PICHÉ, J.S.C, DESIGNATED JUDGE IN THE
PRESENT CLASS ACTION, THE REPRESENTATIVE PLAINTIFF AND HIS COUNSEL
SUBMIT THE FOLLOWING:**

1. The purpose of this application is for the Court to approve the settlement reached by the Plaintiff and Wal-Mart Canada Corp. (hereinafter "**Walmart Canada**"), a copy of which is communicated as **Exhibit R-1**, including a French translation (the "**Settlement**");
2. The Settlement Amount is an all-inclusive fixed amount of **\$530,000.00** (Recital P and clause 1(w)), from which Class Members will automatically receive a Walmart Canada Gift Card (clauses 1(aa) and 29), which is as close to cash as possible and appropriate in the circumstances for the reasons detailed below;
3. Preliminary evaluations indicate that the Walmart Canada Gift Cards could be worth up to approximately \$266.00, or \$400.00 for Class Members who placed more than

one order during the pricing error incident of April 4 and 5, 2021 (as detailed at Schedules A and B to the Settlement);

4. Plaintiff submits that, in the circumstances, the Settlement is fair, reasonable and worthy of Court approval for the reasons that follow;

I. PROCEDURAL BACKGROUND

5. On April 7, 2021, the Plaintiff filed his *Application to Authorize the Bringing of a Class Action and Appoint the Status of Representative Plaintiff* against Walmart Canada, as amended on April 8, 2021 (the “**Authorization Application**”);
6. The Plaintiff alleged that Walmart Canada acted in violation of the *Consumer Protection Act* (“**CPA**”), by cancelling orders for items affected by a pricing error on www.walmart.ca, contrary to sections 16, 54.1, 224(c) and 231 of the CPA. The Plaintiff sought compensatory and punitive damages;
7. Although the Plaintiff was unaware at the time of his purchases and filing, it turns out that there were approximately 10,000 items in the “Home Department” erroneously priced by Walmart Canada at \$3.49 on April 4 and 5, 2021 (Recital A);
8. Walmart Canada always denied any wrongdoing and contested authorization and the merits of this class action;
9. By judgment rendered on November 5, 2021, the Court authorized Walmart Canada to file certain preliminary evidence, but dismissed its request to examine the Plaintiff;
10. Following a contested authorization hearing held on February 10, 2022, the Honourable Christian Immer, J.S.C., authorized this class action and granted the status of Representative Plaintiff to Mr. Lavoie for the benefit of the following class:¹

All consumers domiciled or residing in Québec who, on April 4 th or 5 th , 2021, placed an order for an item priced at \$3.49 from the www.walmart.ca website and who, after receiving a purchase confirmation from Wal-Mart at the price initially advertised, subsequently had their purchase cancelled by Wal-Mart. (the “ Class ”)	Tout consommateur, domicilié ou résidant au Québec, qui le 4 ou 5 avril 2021, a placé une commande sur le site internet www.walmart.ca pour un item affiché au prix de 3,49 \$ et qui, après avoir reçu une confirmation de Wal-Mart au prix initialement annoncé, a ensuite vu son achat annulé par Wal-Mart. (le « Groupe »)
--	--

¹ *Lavoie c. Wal-Mart Canada Corp.*, [2022 QCCS 1060](#), para. 87.

11. On June 13, 2022, the Plaintiff filed his *Originating Application*;
12. On June 16, 2022, the Court ordered the dissemination of notices of authorization of the Class Action by email and set the opt-out deadline to September 2, 2022, which notices were sent on July 13, 2022 by the designated third-party (Velvet Payments, now doing business as Concilia Services Inc. ("**Concilia**")), as it appears from the report communicated as **Exhibit R-2** (sent to the Court by Counsel for Walmart Canada on July 29, 2022);
13. No opt-outs have been received by Class Counsel, nor have any opt-outs been received by the Court as it appears from the *Plumitif*;
14. The case protocol was signed on August 5 and 11, 2022 and then filed in Court;
15. On October 28, 2022, Walmart Canada notified its Defence, denying liability for the claims and contesting the class action;
16. On November 23, 2022, Walmart Canada examined Mr. Lavoie (who travelled from Quebec City to Montreal to be examined in-person);
17. On November 7, 2023, Mr. Lavoie's attorneys travelled to Toronto, Ontario, to examine Walmart Canada's representative in-person;
18. By judgment rendered on November 7, 2023, the Court granted in part Walmart Canada's *Application for Leave to examine Additional Class Members*;
19. Following this last judgment, as well as the examinations, including the exchange of information between the parties as part of the pre-trial discovery, the Plaintiff and Walmart Canada engaged in extensive arm's-length settlement discussions and negotiations which led to the Settlement executed on September 5 and 10, 2024;

II. PRE-APPROVAL NOTICE TO CLASS MEMBERS

20. By judgment rendered on September 25, 2024, the Court notably: **(i)** approved and ordered the publication of the Pre-Approval Notice; **(ii)** appointed Concilia as the Settlement Administrator; **(iii)** fixed the date for Class Members to object to the Settlement to November 20, 2024; and **(iv)** scheduled the Settlement approval hearing for November 26, 2024;
21. The notices and relevant settlement documents were disseminated and published according to the pre-approval judgment and the notice plan (clauses 5 to 12 of the Settlement), as it notably appears from Concilia's report titled "Direct Email Notice Campaign" dated October 7, 2024, communicated as **Exhibit R-3**;
22. The Pre-Approval Notices, the Settlement Agreement, and the relevant judgments were also published on Class Counsel's bilingual website dedicated to this class action and its settlement (www.lpclex.com/walmart/), as well as on the Class Action Registry of the Superior Court of Quebec;

23. To date, and following the dissemination of the Pre-Approval Notice, no Class Members have objected to the Settlement. Several Class Members have contacted Class Counsel in support of the Settlement;

III. APPROVAL OF THE SETTLEMENT

24. Article 590 C.C.P. provides that a transaction is valid only if approved by the Court. The criteria which the case law has established for approval of a class action settlement are the following:
- i) the likelihood of success of the action;
 - ii) the importance and nature of the evidence adduced;
 - iii) the terms and conditions of the settlement;
 - iv) the recommendation of counsel and their experience;
 - v) the cost of future expenses and the probable duration of the litigation;
 - vi) the recommendation of a neutral third party, if any;
 - vii) the number and nature of objections to the settlement agreement; and
 - viii) the good faith of the parties and the absence of collusion.
25. Plaintiff submits that an analysis of these criteria should lead this Court to conclude that the Settlement is fair, reasonable and in the interest of Class Members;

i. The Likelihood of Success

26. While the Plaintiff maintains that his action is valid and well-founded, Walmart Canada denies any liability or wrongdoing of any kind (Recitals H and J, and section III of the Settlement);
27. The parties would have entered into costly, contradictory debates and protracted litigation as to whether Walmart Canada committed the alleged faults and whether its liability is triggered. The issue of damages would have been heavily debated by all sides. The parties recognize that this would give rise to considerable costs and delays, including the possibility of appeals, and acknowledge the significant challenges, expenses and risks associated with protracted litigation (Recitals K, L);
28. It goes without saying that these debates would have extended to at least one of the parties hiring experts and bringing in Class Members to testify at trial in order to counter each other's claims;
29. Even if the case was successful on the merits, Class Members may have had to prove their eligibility in a more complicated manner than the simple method provided for in the Settlement, as explained below at paragraphs 35 to 42;

30. There were always the risks that: (i) the case would not be successful on the merits; (ii) damages would have been difficult to prove in the event that the Court does not accept the Plaintiff's "Lost Value" method; and (iii) it would be difficult to recover damages even if the case were successful on the merits after many years of litigation (for example, difficulties in identifying Class Members who have changed emails, were deceased, etc.), and this risk is abated through the Settlement, which provides for compensation to all Class Members, whereas nobody is compensated if the case were dismissed;
31. These real risks have been confirmed by recent judgments dismissing class actions on the merits for CPA claims when the Class failed to prove damages, even when a CPA violation was established;
32. Lastly, the Plaintiff and Class Counsel are aware that even if they are successful on the merits of this class action, Walmart Canada could very well have filed appeals in respect of multiple issues, thus resulting in increased risk and considerable delays;

ii. The Amount and Nature of Discovery

33. As alleged above, the parties were in the discovery process when they entered into confidential settlement negotiations, prior to and during which Walmart Canada provided information to the Plaintiff and his counsel on a confidential basis. Therefore, during the settlement negotiations, the Plaintiff and his attorneys exchanged relevant information with Walmart Canada related to the class action and the settlement thereof;
34. In reaching the terms of the Settlement, the following was also considered:
 - a) The Settlement Amount of \$530,000.00 is a fair resolution in the circumstances, taking into consideration the total amount of the "Lost Value";
 - b) According to the information provided by Walmart Canada, 1,158 unique email addresses placed at least one order, out of which 769 email addresses were used to place one order and 389 email addresses were used to place two or more orders. Class Members who placed two or more orders will receive a Walmart Canada Gift Card in an amount of 1.5 times the maximum Walmart Gift Canada Card amount of a Class Member who placed only one order;
 - c) Preliminary evaluations indicate that the Walmart Canada Gift Cards could be worth up to approximately \$266.00, or \$400.00 for those who placed more than one order;
 - d) No Class member will receive a Walmart Canada Gift Card for an amount greater than the value of their order(s) less \$3.49 since the maximum value of each Gift Card for each Class Member will be the amount of their Lost Value;

- e) Class Members will receive the lesser of the value for each Gift Card or their Lost Value;
- f) Given the quantity and variety of items sold by Walmart Canada (both in its stores and online), the Gift Cards have real monetary value to Class Members who are likely to use them and which are as close to cash as possible in the circumstances (see paragraph 41 below);
- g) The parties would have spent important resources and would have required experts on both sides (Walmart Canada announced 2 expert opinions in the Case Protocol, and the Plaintiff may have been required hire his own experts to reply), to determine whether there was a fault, and then determine the aggregate amount of the damages;
- h) The parties would have tendered a great deal of evidence countering each other's claims;
- i) Walmart Canada has always contended that it did not commit a fault and is not liable to any of the Class Members; and
- j) Proportionality.

iii. **The Terms of the Settlement**

- 35. The Settlement provides for an all-inclusive Settlement Amount of **\$530,000.00** (Recital P and clause 1(w)). The Settlement Amount is a favorable result in proportion to the released claims (see affidavit of Walmart Canada's representative to be filed as **Exhibit R-4**);
- 36. The Settlement provides that Class Members will automatically receive electronic Walmart Canada Gift Cards by email, without having to take any action whatsoever;
- 37. Class Members who placed two or more orders will receive a Walmart Canada Gift Card in an amount of 1.5 times the maximum Walmart Canada Gift Card amount of a Class Member who only placed one order;
- 38. Preliminary evaluations indicate that the Walmart Canada Gift Cards could be worth up to approximately \$266.00, or \$400.00 for those who placed more than one order. No Class member will receive a Walmart Canada Gift Card for an amount greater than the value of their order(s) less \$3.49;
- 39. The electronic Walmart Canada Gift Cards are easy to use and are as "*close to cash as possible*" in the circumstances. As indicated at clause 29 of the Settlement, they have the following benefits (see complete list at clause 29 for other terms and conditions):
 - a) Walmart Canada Gift Cards do not expire;

- b) Walmart Canada Gift Cards are valid only for purchases at Walmart Canada stores (excluding licensees), online on the www.walmart.ca website, and on the Walmart Canada Marketplace;
 - c) Walmart Canada Gift Cards are transferable in that Class Members can forward or print the email containing the Walmart Canada Gift Card, which can then be used by anyone the Class Members selects; and
 - d) although not expressly stipulated in the Settlement, Walmart Canada confirms that its gift cards, including the Walmart Canada Gift Cards that will be issued to Class Members, can be used for multiple transactions until the balance is depleted.
40. It goes without saying that cash payments will almost always be more favourable for Class Members. However, the Court has approved Gift Card settlements when they are “as close to cash as possible in the circumstances” (see, for example, *Bitton c. Home Dépôt of Canada Inc.*, 2023 QCCS 5170, par. 13.8) and it is respectfully submitted that the Walmart Canada Gift Card satisfies this criterion;
41. Indeed, the Walmart Canada Gift Card can be used for the purchase of basic household staples at Walmart Canada (online or in-store), as it appears from examples of essential goods sold by Walmart Canada from the October 21, 2024 to November 6, 2024 Flyer, communicated herewith *en liasse* as **Exhibit R-5**, such as:
- a) Grocery items, including:** i) Salad - \$3.97; ii) Ground Beef- \$3.97/lb; iii) Juice - \$2.97; iv) Cheese - \$11; v) Cereal- \$ 5.97; vi) Yogurt- \$5.46; vii) Broccoli- \$2.47; viii) Celery- \$2.47; ix) Avocadoes- \$1.27; x) Clementines- \$3.97; xi) Bread; xii) Milk - \$7.98; xiii) Butter- \$6.98; xiv) Mixed Nuts- \$19.97;
 - b) Household items, including:** i) Laundry Detergent- \$12.97; ii) Paper towels- \$21.98; iii) Dryer Sheets - \$9.97; iv) Tissues- \$7.97; v) Garbage Bags - \$10.97; vi) Dog Food- \$19.97; vii) Cat Food - \$17.97; viii) Computer Monitors - \$153.73; ix) Blenders- \$29.97; x) Glass Kettles- \$29.97; xi) Vacuums- \$99.98; xii) Carpets- \$12.88;
 - c) Personal Hygiene items, including:** i) Toilet Paper - \$14.97; ii) Deodorant- \$4.97; iii) Body Wash- \$4.88; iv) Toothpaste- \$0.84; and v) Shampoo- \$4.77 vi) Sanitary Pads \$13.47; vii) Mouthwash \$8.98;
 - d) Pharmaceutical items, including:** i) Tylenol - \$11.97; ii) Advil - \$13.77; iii) Melatonin - \$8.77;
 - e) Childcare items, including:** i) Diapers - \$19.97; ii) Car Seats - \$299.97; iii) Child Toys between \$14.97 and \$129.97; iv) Children’s clothing - \$8; v) Infant Formula – \$43.47;
 - f) Clothing items, including:** i) T-shirts - \$8.00; ii) Pants or Shirts - \$18.00; iii) Slippers - \$15.00; iv) Shirts - \$18.00; v) Prescription Glasses - \$119.00;

42. We reiterate that no proof of purchase or documentation whatsoever is required. As such, Class Members will not have to submit a claim or take any action given that the Settlement provides that, within 65 days of the Effective Date of the Settlement, the Settlement Administrator will send Class Members an email informing them of the issuance of the electronic Walmart Canada Gift Cards, a copy of which email, subject to clerical changes, is communicated herewith as **Exhibit R-6**;
43. In light of all of the above, it is respectfully submitted that the Walmart Canada Gift Cards satisfy the tests established by the jurisprudence for such form of payments (see *Holcman c. Restaurant Brands International Inc.*, [2022 QCCS 3428](#), paras. 50-53 and *Bitton c. Home Depot of Canada Inc.*, [2023 QCCS 5170](#), par. 13.8);
44. The Plaintiff and Class Counsel – following several hearings and the exchange of relevant information (some of which was provided confidentially) – have concluded that these terms are fair and reasonable and that their benefits significantly outweigh their disadvantages;

iv. The Attorneys' Recommendations and their Experience

45. Class Counsel, whose practice is focused almost entirely in the area of class actions, have negotiated and recommended the terms and conditions of the Settlement;
46. Class Counsel recommends this Settlement which is beneficial to the Class in terms of monetary compensation and respects the rule of proportionality, which clearly outweigh the risks that would arise from continuing the litigation;
47. The Plaintiff provided his instructions to enter into the Settlement on his own behalf and on behalf of the Class Members and signed the Settlement, as it appears from Exhibit R-1 and his affidavit filed as **Exhibit R-7**;

v. The Future Expenses and Probable Length of the Litigation

48. If the case were to proceed in an adversarial fashion, there is no doubt that there would be protracted litigation and further important costs;
49. Experts would be hired on both sides and each party would counter the other's claims concerning the alleged fault. The Plaintiff would have the burden to prove fault and damages on a collective basis and damages were contested, including the Plaintiff's "Lost Value" claim;
50. It is therefore safe to say that the present action would take several years to be decided on the merits and there would have been a possibility that a successful judgment could be brought into appeal, causing further delays;
51. Conversely, obtaining a settlement for Class Members is a favorable result that is also in the interests of judicial economy and proportionality;

vi. **The Number and Nature of any Objection**

- 52. To date, no Class Members have objected to the Settlement;
- 53. On the other hand, several Class Members have contacted Class Counsel in support of the settlement and are eager to receive their Walmart Canada Gift Cards;

vii. **Good Faith of the Parties and the Absence of Collusion**

- 54. The Settlement was negotiated at arm's-length, in utmost good faith and without collusion between the parties;
- 55. The negotiations that led to the Settlement were adversarial and occurred after several contested motions, hearings and judgments. The parties met and spoke several times until an agreement was eventually concluded. Some of the notable steps leading up to the Settlement are listed at paragraph 67 below;
- 56. By all accounts, the lead up to the Settlement, the negotiations concerning the disclosure of information and the negotiations of the details of the Settlement were all done in an adversarial manner and fought hard up until the end;

IV. **APPROVAL OF CLASS COUNSEL FEES**

- 57. Class Counsel is requesting the Court's approval of its extrajudicial fees and disbursements pursuant clauses 1(e) and 40 of the Settlement, which provide for Class Counsel Fees of \$159,000.00, and \$8,500 in expenses, in both cases plus GST and QST thereon, as well as the Fonds' Disbursements of \$3,500.00, which Walmart has agreed to pay as part of the negotiated Settlement;
- 58. From those amounts, Class Counsel undertakes to diligently reimburse the advances received from the FAAC of \$11,500.00²;
- 59. Class Counsel's extrajudicial fees in the total amount of \$159,000.00 (plus GST & QST) represents **30%** of the total settlement value of 530,000.00³. This percentage is within the range of what the jurisprudence has approved for percentage-based mandates – especially when the settlement has a real value as in the present case;
- 60. It is respectfully submitted that the negotiated and requested amount is fair, reasonable and justified in the circumstances – notably in light of the result achieved and other factors detailed below. Class Counsel is requesting that this Honourable Court approve the amount agreed to in the Settlement, which is consistent with the jurisprudence and the mandate agreement signed by the Representative Plaintiff which benefits from a presumption of validity, a copy of which is filed as **Exhibit R-8**;

² \$8,000 advanced as fees and \$3,500 for disbursements.

³ See clause 1(w) of the Settlement confirming the total global settlement value is \$530,000.00.

61. The following criteria have been developed by the jurisprudence in order to determine whether Class Counsel's fees are fair and reasonable:

- i) Time and effort expended by the attorneys on the litigation;
- ii) The importance of the class action;
- iii) The degree of difficulty of the class action;
- iv) Class counsel's experience and expertise in a specific field;
- v) The risks and responsibilities assumed by class counsel;
- vi) The result obtained; and
- vii) Fees not contested.

i. Time and effort expended by the attorneys on the litigation

62. To avoid repetition, we refer to paragraphs 5 to 23 above, beginning under the heading "Procedural Background";

63. Class Counsel committed to and invested considerable time before and after reaching the Settlement, and this since the initial filing of this action (including the investigation, settlement negotiations, notice/settlement approvals, etc.). The time expended by Class Counsel in this file as of November 12, 2024, is approximately **300 hours** (all attorneys combined);

64. The time expended and money invested by Class Counsel in the present file, as detailed herein, was all and entirely without any guarantee of payment. During this period, Class Counsel assumed all of the costs and virtually all of the financial risks associated to the present class action (with the exception of a modest amount advanced by the FAAC);

65. It should be noted that the mandate agreement with the Representative Plaintiff provides for the calculation of Class Counsel fees as 30% plus taxes of the recovery (Exhibit R-8) or a multiplier of the time expended (which works out to well under 3.5 in the present case). The amount negotiated and ultimately agreed to is a compromise for the purposes of settlement;

66. The process of finalizing the Settlement, along with the related exhibits and other documents, continued for several months following the achievement of a settlement in principle. The work is ongoing, including preparation for the November 26, 2024, Settlement approval hearing and coordinating with the Defendant and the Class Members during the imminent distribution process;

67. Some of the notable steps and time expended by Class Counsel in this litigation include:

- a) On April 7, 2021, the Authorization Application was filed against Walmart Canada, as amended on April 8, 2021;
- b) On November 3, 2021, a contested hearing was held on Walmart Canada's "*Application of Defendant Wal-Mart Canada Corp. to Adduce Relevant Evidence and to Examine the Proposed Representative Plaintiff*". On November 5, 2021, Justice Immer, J.S.C., granted in part Walmart Canada's application;
- c) A contested authorization hearing was held on February 10, 2022;
- d) On March 30, 2022, as rectified on May 30, 2022, the Court granted the status of Representative Plaintiff to Mr. Lavoie and authorized this class action against Walmart Canada for the benefit of Class Members;
- e) On June 13, 2022, the Plaintiff filed his Originating Application;
- f) On June 16, 2022, the Court ordered the publication of notices of authorization of the Class Action by email and fixed the opt-out deadline to September 2, 2022, which notices were sent on July 13, 2022. During this time, Class Counsel responded to and communicated with a number of Class Members;
- g) The case protocol was signed on August 5 and 11, 2022 and then filed in Court;
- h) On October 28, 2022, Walmart Canada notified its *Défense*, denying liability for the claims and contesting the class action;
- i) On November 23, 2022, Walmart Canada examined Mr. Lavoie (who travelled from Quebec City to Montreal to be examined in-person);
- j) On July 7, 2023, Walmart Canada filed its *Application for Leave to Examine Additional Class Members*;
- k) On July 27, 2023, Class Counsel cross-examined a representative of Walmart Canada regarding said application to examine class members;
- l) On October 26, 2023, a contested hearing was held on Walmart Canada's *Application for Leave to examine Additional Class Members*;
- m) On November 7, 2023, Mr. Lavoie's attorneys travelled to Toronto, Ontario, to examine Walmart Canada's representative in-person;
- n) By judgment rendered on November 7, 2023, the Court allowed in part Walmart Canada's *Application for Leave to examine Additional Class Members*;

- o) Following that judgment, the Representative Plaintiff and Walmart Canada engaged in extensive arm's-length settlement discussions and negotiations which led to a settlement that was executed by the Plaintiff and his counsel on September 5, 2024, and by the Defendant on September 10, 2024;
 - p) On September 13, 2024, the Representative Plaintiff filed an *Application for Approval of Notices to Class Members of a Settlement Approval Hearing*;
 - q) By judgment rendered on September 25, 2024, the Court approved and ordered the publication of the short and long form Pre-Approval Notices sent to Class Members, appointed the Settlement Administrator, fixed the date for Class Members to object to the Settlement to November 20, 2024, and scheduled the Settlement approval hearing for November 26, 2024;
 - r) On October 3, 2024, the Pre-Approval Notices were sent to Class Members by the Settlement Administrator. Following the dissemination of notices, Class Counsel received phone calls and emails from Class Members; and
 - s) In November of 2024, Class Counsel will spend additional time drafting the present application and then preparing an argument plan prior to presenting it at the settlement approval hearing of November 26, 2024 (all of which is contemplated by the present fee request).
68. At all times, this litigation was complex and high-risk. Class Counsel conducted extensive legal and factual research in support of this claim, and conducted important settlement negotiations;

ii. The importance of the class action

69. The issues – as alleged by the Plaintiff against Walmart Canada in his Application – are directly related to the access to justice for the 1,158 Class Members who may benefit from the monetary compensation provided for in the Settlement;
70. Often, claims of this nature are claims involving complicated legal, evidentiary and technical issues, but yet relatively small sums of money. They can only be pursued through class actions because individually, a person would not have the means – or the motivation – to obtain justice against large corporations, who have considerable financial resources at their disposal;
71. If it were not for this class action, Class Members would not have been likely to institute individual actions to obtain compensation. As such, this class action has allowed Class Members to achieve justice with a limited impact on judicial resources;

iii. The degree of difficulty of the class action

72. Walmart Canada would have produced numerous witnesses and expert evidence to counter the Plaintiff's assertions and to back up their claims that they committed no

fault and are not liable for any damages. Walmart Canada always argued that they complied with the CPA, as well as all applicable laws and regulations;

- 73. A very significant amount of time, energy, and financial resources (such as mandating experts and damage quantification experts) would have been necessary to counter Walmart Canada's factual and expert evidence, as well as their legal arguments;
- 74. In sum, Class Members would have faced complex evidence issues, in order to establish Walmart Canada's fault and liability;
- 75. A significant risk was therefore taken on by Class Counsel at the time they accepted this mandate;

iv. Class counsel's experience and expertise in a specific field

- 76. The Plaintiff is represented by LPC Avocats whose practice is focused almost entirely on consumer protection-related class actions, as appears from the firm's biography communicated herewith as **Exhibit R-9**;
- 77. The firm primarily represents plaintiffs, but previously defended 4 private schools named as Defendants in a class action concerning tuition fees paid during Covid and is actively representing a corporation named as a Defendant in a class action alleging CPA violations;
- 78. Given that Class Counsel focuses on class action litigation, the vast majority of its work is done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed, which in some cases is quite significant;
- 79. The professional services offered by Class Counsel are unusual and require specific expertise and professionalism;
- 80. Often, in this type of work, communication with the public is also necessary, (e.g. by communicating with class members and with the media, maintaining and updating a website, etc.). This requires the firm to be more proactive to protect the interests of the class members whom they represent;
- 81. There are only a small number of attorneys who take on class action matters in Quebec and in Canada;

v. The risk assumed by Class Counsel

- 82. As is oftentimes the case in class actions, the risk of success or failure is borne entirely by Class Counsel. In the present case, Class Counsel took on the case entirely on a contingency basis without any guarantee of success;
- 83. This meant that neither the Plaintiff nor any Class Members were asked to contribute any fees for the time spent on the file, nor for any of the disbursements made on their

behalf by Class Counsel. Class Counsel assumed most of the costs and financial risks associated to the present class action (a modest amount was advance by the FAAC as mentioned at paragraph 58 above);

84. Given that in the case of failure, Class Counsel receives nothing – and often loses significant amounts of money – the Courts have recognized that in the case of success, they should be properly compensated for their efforts and for the financial risk (both in time and money) that they have assumed;
85. Class Counsel have worked diligently to advance this litigation against Walmart Canada to the point of settlement, without any guarantee of payment;
86. To conserve and to safeguard the important societal benefits preserved by class actions, especially in the area of consumer protection, the Courts have held that it is important that Class Counsel receive a fair payment based on the result achieved to provide the appropriate incentive to future counsel;

vi. The result obtained

87. To avoid repetition, we refer to paragraphs 35 to 44 above under the heading “The Terms of the Settlement”;
88. It is respectfully submitted that obtaining a Walmart Gift Card in a maximum amount of the Lost Value for some Class Members and in amounts of up to approximately \$266, or \$400 for those who placed more than one order, is a favorable end-result to this case;
89. The Class Counsel fees being requested have been considered acceptable by the Courts in similar circumstances and are within the range of reasonableness (see *A.B. c. Clercs de Saint-Viateur du Canada*, [2023 QCCA 527](#), par. 34 and 58; *Majestic Asset Management c. Banque Toronto-Dominion*, [2024 QCCS 225](#), par. 118);

vii. Fees not contested:

90. No Class Member has indicated their intention to contest the request for Class Counsel Fees which were expressly mentioned in the Pre-Approval Notices communicated to Class Members (See Exhibit R-3 at pages 8 and 11). On the other hand, a number of Class Members contacted Class Counsel to support the Settlement;
91. Lastly, Plaintiff seeks approval of his personal claim in the amount of \$2,000, pursuant to clauses 1(p) and 31 of the Settlement, which is supported by his affidavit filed as Exhibit R-7 (see paragraph 8 thereof);
92. For all of these reasons, the Plaintiff and his counsel submit that the Settlement is fair, reasonable, and worthy of the Court’s approval;

PAR CES MOTIFS, PLAISE AU TRIBUNAL :	FOR THESE REASONS, MAY IT PLEASE THE COURT TO:
[1] ACCUEILLIR la présente <i>Demande d'approbation du règlement d'une action collective et des honoraires des avocats du groupe</i> ;	GRANT the present <i>Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees</i> ;
[2] ORDONNER que les définitions apparaissant dans l'Entente de Règlement (pièce R-1) s'appliquent au jugement à intervenir;	ORDER that the definitions found in the Settlement Agreement (Exhibit R-1) find application in the judgment to be rendered;
[3] APPROUVER l'Entente de Règlement en tant que transaction au sens de l'article 590 du <i>Code de procédure civile</i> et ORDONNER aux Parties de s'y conformer;	APPROVE the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> and ORDER the Parties to abide by it;
[4] DÉCLARER l'Entente de Règlement (y compris son préambule et ses Annexes) juste, raisonnable et dans l'intérêt véritable des Membres du Groupe, constituant une transaction au sens de l'article 2631 du <i>Code civil du Québec</i> , qui lie toutes les parties et tous les Membres du Groupe;	DECLARE that the Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i> , binding upon all parties and upon all Class Members;
[5] ORDONNER et DÉCLARER que le jugement à intervenir, incluant l'Entente de Règlement, lie chaque Membre du Groupe;	ORDER and DECLARE that the judgment to be rendered, including the Settlement, shall be binding on every Class Member;
[6] DÉCLARER que le paiement par Walmart Canada Corp. des montants détaillés dans l'Entente de Règlement, sera versé en règlement intégral des Réclamations faisant l'objet d'une quittance contre les Renonciataires au sens attribué à ces termes dans l'Entente de Règlement;	DECLARE that Walmart Canada Corp.'s payment of the amounts as detailed in the Settlement Agreement will be in full satisfaction of the Released Claims against the Releasees as defined in the Settlement Agreement;
[7] APPROUVER le paiement des honoraires et débours des avocats du groupe prévus aux paragraphes 1(e) et 40 de l'Entente de Règlement;	APPROVE the payment of Class Counsel Fees and disbursements provided for at clauses 1(e) and 40 of the Settlement Agreement;
[8] PRENDRE ACTE de l'engagement et l'obligation des Avocats du groupe à rembourser au Fonds d'aide aux actions collectives la somme de 11 500 \$ à même	PRAY ACT of Class Counsel's undertaking and obligation to reimburse the Fonds d'aide aux actions collectives the sum of \$11,500.00 from the amounts provided for

les montants prévus au paragraphe 40 de l'Entente de Règlement dans les 30 jours de la date d'entrée en vigueur du jugement à intervenir;	at clause 40 of the Settlement Agreement within 30 days of the effective date of the judgment to be rendered;
[9] APPROUVER le paiement de la Réclamation personnelle du Demandeur comme prévu aux paragraphes 1(p) and 31 de l'Entente de Règlement;	APPROVE the payment of the Plaintiff's Personal Claim as provided for at clauses 1(p) and 31 of the Settlement Agreement;
[10] APPROUVER l'Avis d'approbation de l'Entente de Règlement substantiellement dans la forme de la pièce R-6;	APPROVE the Notice of Settlement Approval, substantially in the form of Exhibit R-6;
[11] ORDONNER aux parties de demander un jugement de clôture lorsque l'administration du règlement sera complétée;	ORDER the parties to ask for a closing judgment once the administration of the Settlement is completed;
[12] LE TOUT , sans frais de justice.	[12] THE WHOLE , without legal costs.

Montreal, November 12, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran

For the Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

AFFIDAVIT OF JOEY ZUKRAN

I, Joey Zukran, attorney, practicing my profession at 276, rue Saint-Jacques, Suite 801, Montreal, Quebec, H2Y 1N3, solemnly affirm:

1. That I am one of the attorneys for the Representative Plaintiff in the present action;
2. That I have taken cognizance of the Application attached and the facts alleged therein are accurate to the best of my knowledge;
3. That said Application is made in good faith.

AND I HAVE SIGNED



Joey Zukran

Solemnly affirmed before me at Montreal
this 12th day of November 2024 (by technological means)



Jessica Cohen
Commissioner for Oaths for Quebec #245304

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

**(Class Actions)
SUPERIOR COURT**

NO: 500-06-001142-211

DOMINIQUE LAVOIE

Representative Plaintiff

v.

WAL-MART CANADA CORP.

Defendant

and

LPC AVOCATS

Representative Plaintiff's Attorneys

LIST OF EXHIBITS

- | | |
|---------------------|--|
| Exhibit R-1: | Copy of the Settlement Agreement, including a French translation; |
| Exhibit R-2: | Report prepared by Velvet Payments dated July 19, 2022; |
| Exhibit R-3: | Settlement Administrator's report titled <i>Direct Email Campaign Results</i> , dated October 7, 2024; |
| Exhibit R-4: | Affidavit of Walmart Canada's representative to be filed before the hearing; |
| Exhibit R-5: | Walmart's flyer for October-November 2024; |
| Exhibit R-6: | Final approval notice; |
| Exhibit R-7: | Affidavit of Dominique Lavoie; |
| Exhibit R-8: | Mandate agreement signed by the Representative Plaintiff; |
| Exhibit R-9: | Biography of LPC Avocats. |

Montreal, November 12, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran

For the Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

NOTICE OF PRESENTATION

TO: Mtre Christopher Richter

Mtre Matthew Angelus

Mtre Karl Boulanger

Torys Law Firm LLP

1, Place Ville-Marie, Suite 2880

Montréal, Québec H3B 4R4

crichter@torys.com

mangelus@torys.com

kboulanger@torys.com

Attorneys for the Defendant Wal-Mart Canada Corp.

Mtre Jennifer Lemarquis

Mtre Nathalie Guilbert / Mtre Ryan Mayele

Fonds d'aide aux actions collectives

1, rue Notre-Dame Est, bureau 10.30

Montréal (Québec) H2Y 1B6

jennifer.lemarquis@justice.gouv.qc.ca

nathalie.guilbert@justice.gouv.qc.ca / ryan.mayele@justice.gouv.qc.ca

Attorneys for the Fonds d'aide aux actions collectives

faac.notifications@justice.gouv.qc.ca

TAKE NOTICE that the present *Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees* shall be presented for adjudication before the Honourable Catherine Piché, J.S.C., on **November 26, 2024, at 9:15 a.m. in room 17.09**, at the Montreal Courthouse or via a TEAMS link.

Montreal, November 12, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran

For the Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com

500-06-001142-211

(Class Actions)
SUPERIOR COURT
DISTRICT OF MONTREAL

DOMINIQUE LAVOIE
Representative Plaintiff

v.

WAL-MART CANADA CORP.
Defendant

and

LPC AVOCATS
Representative Plaintiff's Attorneys

**APPLICATION TO APPROVE A CLASS ACTION
SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES**
(Articles 590 and 593 C.C.P., article 58 of the *Regulation of the Superior Court of Québec
in civil matters*, CQLR c C-25.01, r 0.2.1, and article 32 of the *Act Respecting the
Fonds d'aide aux actions collectives*, ch. F- 3.2.0.1.1)

ORIGINAL

Me Joey Zukran
LPC AVOCATS
276, rue Saint-Jacques, Suite 801
Montréal, Québec, H2Y 1N3
T: (514) 379-1572 F: (514) 221-4441 E: jzukran@lpclex.com

BL 6059

N/D: JZ-226