

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001243-233

SUPERIOR COURT  
(Class Actions)

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DAPHNA 

Applicant

v.

**DOLLARAMA S.E.C.**, legal person having its head office at 5805 Royalmount Avenue, Mont-Royal, Quebec, H4P 0A1

and

**DOLLARAMA INC.**, legal person having its head office at 5805 Royalmount Avenue, Mont-Royal, Quebec, H4P 0A1

and

**DOLLARAMA GP INC.**, legal person having its head office at 5805 Royalmount Avenue, Mont-Royal, Quebec, H4P 0A1

and

**SHOPPERS DRUG MART INC.** (a.d.b.a. Pharmaprix), legal person having an elected domicile at 10-400 Sainte-Croix Avenue, Montreal, Quebec, H4N 3L4

and

**LOBLAW COMPANIES LIMITED**, legal person having its head office at 800-22 St. Clair Avenue East, Toronto, Ontario, M4T 2S5

and

**AMAZON.COM.CA, INC.**, legal person having

its head office at 410 Terry Avenue North,  
Seattle, Washington, 98109, U.S.A.

and

[...]

and

[...]

and

[...]

Defendants

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**2<sup>ND</sup> RE-AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
(ARTICLES 571 AND FOLLOWING C.C.P.)**

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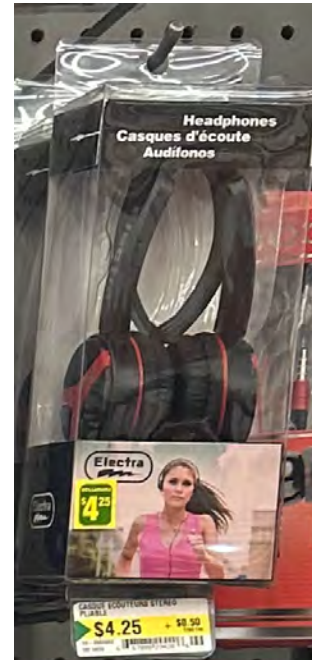
**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. Applicant wishes to institute a class action on behalf of the following class:

All natural and legal persons in Canada who purchased a product subject to the Environmental Handling Fee (“ <b>EHF</b> ”) from Dollarama, Pharmaprix or Amazon and who paid a price higher than the price advertised (excluding sales tax) because the EHF was not included in the price prominently advertised. (hereinafter referred to as the “ <b>Class</b> ”)	Toutes les personnes physiques et morales au Canada qui ont acheté un produit soumis aux <b>écofrais</b> chez Dollarama, Pharmaprix ou Amazon et qui ont payé un prix supérieur au prix annoncé (excluant la taxe de vente) parce que les écofrais n'étaient pas inclus dans le prix annoncé de façon évidente. (ci-après le « <b>Groupe</b> »)
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2. This class action concerns the illegal manner in which only Dollarama and Pharmaprix display and charge the EHF or écofrais (the French term “écofrais” will be used herein for consistency) to the public (it also concerns Amazon’s misleading advertising which is addressed in detail at paragraphs 87.2 to 87.7 below). Below are just some examples of how the Defendants Dollarama and Pharmaprix illegally display and charge the écofrais in their stores:

**Dollarama (Exhibit P-1):**



**Pharmaprix (Exhibit P-2):**



3. The pictures above are classic examples of fragmented pricing, which is illegal pursuant to section 224(c) of the *Consumer Protection Act* (the “CPA”) reproduced below. In the Dollarama pictures (Exhibit P-1), Dollarama prominently displays the price for the batteries as \$1.25, but, in much smaller font, indicates that there is an additional (mandatory) charge of \$0.10 or \$0.20 per pack for “frais éco”. The other picture shows that Dollarama displays the headphones for \$4.25, but indicates in small

font that there is an additional (mandatory) charge of \$0.50 for “frais éco”. The big problem at Dollarama is that many of their items contain the price already printed on (or stuck to) the product’s packaging, meaning that there would be no way for the customer to know that there is an additional écofrais until they arrive at the cash. This also constitutes drip-pricing which is illegal under section 54 of the *Competition Act* and s. 224(c) CPA:

<p><b>224.</b> No merchant, manufacturer or advertiser may, by any means whatever,</p> <p>...</p> <p><b>(c)</b> charge, for goods or services, a higher price than that advertised.</p> <p>...</p> <p>For the purposes of subparagraph c of the first paragraph, <b>the price advertised must include the total amount the consumer must pay for the goods or services.</b> However, the price advertised need not include the Québec sales tax or the Goods and Services Tax. <b>More emphasis must be put on the price advertised than on the amounts of which the price is made up.</b></p>	<p><b>224.</b> Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit:</p> <p>...</p> <p>c) exiger pour un bien ou un service un prix supérieur à celui qui est annoncé.</p> <p>...</p> <p>Aux fins du paragraphe c du premier alinéa, <b>le prix annoncé doit comprendre le total des sommes que le consommateur devra déboursier pour l’obtention du bien ou du service.</b> Toutefois, ce prix peut ne pas comprendre la taxe de vente du Québec, ni la taxe sur les produits et services du Canada. <b>Le prix annoncé doit ressortir de façon plus évidente que les sommes dont il est composé.</b></p>
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4. The Electronic Products Recycling Association (the “EPRA”) is an industry-led, not-for-profit organization that operates regulated recycling programs across Canada. Its mission is to ensure that end-of-life electronics are handled in a safe, secure and environmentally-sound manner (<https://epra.ca/who-we-are>). On its website, the EPRA describes the écofrais as follows, Applicant communicating Exhibit **P-3**:

<p><b>Environmental Handling Fee (EHF)</b></p> <p>EPRA-Québec is funded through Environmental Handling Fees (EHF) that are applied on the cost of all new electronic products. <b>It’s not a tax, nor is it a refundable deposit.</b> The EHF on each item in the program is based on the actual cost to recycle the materials contained in the product. All program revenue is used for the collection, transportation and responsible recycling of end-of-life electronics as well as program administration.</p> <p>...</p>	<p><b>Écofrais</b></p> <p>L’ARPE-Québec est financée par l’application d’écofrais au coût de tous les produits électroniques neufs. <b>Les écofrais ne sont ni une taxe, ni un dépôt remboursable.</b> Les écofrais afférents à chaque produit visé par le programme sont établis en fonction du coût réel du recyclage des matériaux contenus dans le produit. Tous les revenus du programme servent à la collecte, au transport et au recyclage responsable des produits électroniques en fin de vie utile ainsi qu’à l’administration du programme.</p>
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<b>*All EHF's are subject to applicable sales tax.</b>	... <b>*Tous les écofrais sont taxables.</b>
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5. Given that the écofrais is **not a tax** nor a refundable deposit, they must be included in the total price prominently displayed by merchants when selling goods to the public pursuant to section 224(c) CPA and sections 36 and 54 of the *Competition Act*;
6. Indeed, this is specifically provided for in article 7 of the *Regulation respecting the recovery and reclamation of products by enterprises*, Q-2, r. 40.1 (the "**Regulation**"):

<b>7.</b> The costs related to the recovery and reclamation of a product, as determined under paragraph 10 of section 5, may be attributed only to that product and must be internalized in the price asked for the product as soon as it is put on the market. Those internalized costs may be rendered visible only on the initiative of the enterprise referred to in section 2 or 3 that markets the product; in such case that information must be disclosed as soon as it puts the product on the market.	<b>7.</b> Les coûts afférents à la récupération et à la valorisation d'un produit déterminés conformément au paragraphe 10 de l'article 5 ne peuvent être imputés qu'à ce produit et doivent être internalisés dans le prix demandé pour celui-ci dès qu'il est mis sur le marché. Ces coûts internalisés ne peuvent être rendus visibles qu'à l'initiative de l'entreprise visée à l'article 2 ou 3 mettant le produit sur le marché, cette information devant alors être dévoilée dès qu'elle met le produit sur le marché.
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7. Chapter 10 of the Regulation lists the categories of products covered, including desktop or laptop computers, screens, headphones, printers, scanners, cameras, phones and batteries to name a few;
8. It is worth noting that the *Guide d'application du Règlement sur la récupération et la valorisation de produits par les entreprises* (Q-2, r. 40.1), prepared by the government, specifies as follows concerning article 7 of the Regulation, Applicant communicating **Exhibit P-4** (see pages 53 and 54-PDF):

De plus, cette obligation d'internalisation des coûts s'applique également à toute entreprise qui choisit de se prévaloir de l'exemption prévue à l'article 4 pour la mise en oeuvre d'un programme de récupération et de valorisation.

Par ailleurs, cet article fait écho à **l'article 224 de la Loi sur la protection du consommateur**, qui se lit comme suit...

**Toute visibilité doit cependant respecter la Loi sur la protection du consommateur et être indiquée de façon moins évidente que le prix total, avant taxes ou non...**

9. It is trite law that displaying fragments of the total price – and placing the onus on consumers to add them up – is an illegal practice pursuant to sections 223, 223.1 and 224(c) CPA;
10. In Quebec, retail stores, including Dollarama and Pharmaprix, are bound by their undertaking to comply with the *Order in Council respecting the Policy on accurate pricing for merchants who use optical scanner technology* (the “**Accurate Pricing Policy**”), and as such, owe Class members statutory damages of up to \$10.00 per item purchased, or for items under \$10.00 the product should have been given to the consumers free of charge given that it scanned at checkout at a higher price than that advertised in the store (which is the case for almost all of the Dollarama items subject to the écofraîs, because the wrong price is preprinted on the packaging) pursuant to section 1(1)(b) of the *Accurate Pricing Policy*, which stipulates:

<p>1. For each establishment in which the merchant intends to use the exemption prescribed in section 91.4 of the <i>Regulation respecting the application of the Consumer Protection Act</i> (chapter P-40.1, r. 3), the merchant shall adopt and apply an accurate pricing policy offering consumers compensation in the case of an unfavourable error corresponding to the following minimum standards:</p> <p>(1) where the price of the good rung in at the check-out is higher than the price advertised, the lower price shall be honoured and:</p> <p>(a) the merchant <b>shall give the good to the consumer free of charge</b>, if the accurate price of the good is \$10 or less; or</p> <p>(b) the merchant shall correct the price and grant the consumer a discount of \$10 on the corrected price, if the accurate price of the good is higher than \$10;</p> <p>...</p> <p>(3) the accurate pricing policy shall apply even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good;</p>	<p>1. Le commerçant doit adopter et appliquer, pour chacun des établissements dans lequel il entend se prévaloir de l'exemption prévue à l'article 91.4 du <i>Règlement d'application de la Loi sur la protection du consommateur</i> (chapitre P-40.1, r. 3), une politique d'exactitude des prix offrant aux consommateurs une <b>indemnisation correspondant aux normes minimales suivantes en cas d'erreur défavorable au consommateur</b> :</p> <p>1° lorsque le prix d'un bien enregistré à la caisse est <b>supérieur au prix annoncé</b>, le prix le plus bas prévaut et:</p> <p>a) le commerçant <b>remet gratuitement ce bien au consommateur</b> si le prix exact du bien est de 10 \$ ou moins;</p> <p>b) le commerçant corrige le prix et <b>accorde au consommateur un rabais de 10 \$ sur le prix</b> ainsi corrigé, si le prix exact du bien est supérieur à 10 \$;</p> <p>...</p> <p>3° la politique d'exactitude des prix s'applique même si l'erreur est constatée avant que la transaction ne soit complétée, à la condition toutefois que le consommateur achète le bien;</p>
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11. Complying with section 224(c) and section 54 of the *Competition Act* is not rocket science. The Quebec Consumer Protection Office (OPC) even published a guide containing illustrations which addresses the specific situation of écofrais, Applicant communicating **Exhibit P-5** (pages 3 and 4-PDF):

*Publicité conforme à la loi*



**531,99 \$**  
Ce prix inclut des frais  
de récupération de 42,50 \$

*Publicité non conforme à la loi*



**489,49 \$**  
+ 42,50 \$ de frais de récupération  
**531,99 \$**

12. Prior to filing this action, Applicant confirmed that virtually every major retailer – other than Dollarama and Pharmaprix – display and charge the écofrais in their stores in conformity with the law. Applicant communicates herewith *en liasse* as **Exhibit P-6** the pictures taken on May 28, 2023, at the following stores:

- The Source
- Canadian Tire
- Walmart
- Bureau en Gros
- Rona
- Best Buy
- Maxi
- Home Depot
- Costco
- Giant Tiger
- Jean Coutu
- Super C
- Couche-Tard
- Ultramar
- Provigo

13. Below are some examples (included in Exhibit P-6) on how stores other than Dollarama and Pharmaprix respect the law when charging écofrais:

**Jean Coutu:**



14. In the picture above, Jean Coutu shows a total price of \$8.41, while mentioning that this price includes \$0.12 of écofrais, which is precisely what section 224(c) provides for and what the OPC shows in the picture produced above (Exhibit P-5 and page 4);

**Costco:**





**Canadian Tire:**



15. In the pictures above, Canadian Tire mentions that the total price of \$22.70 for the pack of 24 AA Energizer batteries includes the “env” fee of \$0.72. The LG 4k 55” TV advertised at \$763.74 also mentions that the “env” fee of \$13.75 is included in the displayed price. The situation is the same for Costco who emphasizes the total price for the Duracell batteries and Samsung TV, as opposed to smaller amounts that the total is comprised of;
16. To give an idea of the amount of écofrais per product, Applicant communicates the *Frais de Gestion Environnementale (Écofrais) Guide de classification des produits* as **Exhibit P-7**;
17. When displaying products in their stores, the Defendants must prominently display and emphasize the total price of the product – including the mandatory écofrais, which they clearly fail to do;
18. The Defendants’ conduct is reprehensible – especially in the case of Dollarama who is headquartered in Montreal, Quebec and who should be setting the example on how to comply with the CPA, not be the outlier;
19. This unacceptable situation has been going on for years, as it appears from the article titled “*Des frais-surprises chez Dollarama - Une consommatrice de Rouyn-Noranda reproche à Dollarama de percevoir les frais environnementaux sans les inclure dans le prix annoncé*”, disclosed as **Exhibit P-8** (along with the video file of the reporting on the story showing that it was filmed on October 12, 2018 – see minute 1:00 of the video at the bottom right of the screen);
20. In the pictures above (Exhibits P-1 and P-2) there can be no debate that the prices

advertised (“*annoncé*” in the French version of the law) within the meaning of s. 224c) CPA are \$1.25, \$4.25, \$16.49 and \$599.99, respectively. Yet, a person who purchases any of these products will be charged an additional amount ranging from \$0.10 to \$13.75 **plus taxes** on account of the écofrais at the cash (see small font on bottom right of the labels). Since the écofrais is mandatory, the actual purchase price for each of the items in Exhibits P-1 and P-2 are, respectively, \$1.35, \$1.45, \$17.13 and \$613.74 (plus applicable taxes) and should be advertised/*annoncé*/emphasized as such (but nowhere does Dollarama or Pharmaprix show these true prices);

21. Therefore, using the example of the first battery pack from Dollarama in Exhibit P-1 above, every Class member who purchased this item from Dollarama is entitled to statutory damages equivalent to the value of the item, i.e. \$1.35 (plus taxes thereon), given that section 1(1)(a) of the Accurate Pricing Policy stipulates that the merchant must give the item to the consumer free of charge when said item scans at the cash for a price higher than advertised and is less than \$10.00;
22. For items that are above \$10.00, using the example of the first battery pack from Pharmaprix in Exhibit P-2 above, every Class member who purchased this item from Pharmaprix is entitled to statutory damages of \$10.00 plus the écofrais of \$0.64 (plus taxes thereon), pursuant to section 1(1)(b) of the Accurate Pricing Policy;
23. The damages are the same for every Class member who purchased any items subject to écofrais from Dollarama or Pharmaprix;
24. Given that Dollarama and Pharmaprix also operate in the rest of Canada, they are bound by the *Scanner Price Accuracy Voluntary Code* (the “**Code**”) which they adhere to and which provides for the same free item at its section 1.1(a) and \$10.00 compensation at its section 1.1(b), as it appears from a copy of the Code communicated as **Exhibit P-9**;
25. They are also bound by section 54 of the *Competition Act* which stipulates:
  - 54 (1)** No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,
    - (a) on the product, its wrapper or container;
    - (b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or
    - (c) on an in-store or other point-of-purchase display or advertisement.
26. In its Bulletin titled “*The Deceptive Marketing Practices Digest*”, the Competition Bureau refers to a common deceitful practice to which consumers fall prey, known as “*drip-pricing*”, and how this practice has a fraudulent effect on a consumer’s decision-

making process, Applicant communicating **Exhibit P-10**:

There is a significant body of research that shows **that hiding or obscuring costs significantly affects consumers' ability to make well informed decisions**, and has a negative impact on the proper functioning of the marketplace. The international consumer protection community, through the Committee on Consumer Policy of the Organization for Economic Cooperation and Development (OECD), has identified similar concerns.

27. This class action seeks: **(i)** compensatory damages pursuant to the CPA, the Civil Code of Quebec and the *Competition Act*; **(ii)** statutory damages pursuant to the Accurate Pricing Policy or the Code; **(iii)** an aggregate amount of punitive damages; and **(iv)** an injunction forcing the Defendants to cease perpetuating the illegal practice;

**I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 CCP):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

***(i) Applicant's claim against Dollarama for violations of ss. 223 and 224c) CPA, the Accurate Pricing Policy and s. 54 of the Competition Act:***

28. On May 27, 2023, Applicant went to the Dollarama situated at 6900 Decarie (in Decarie Square) to purchase a 4-pack of AA batteries. Applicant often shops at this Dollarama as she works in Decarie Square;
29. Applicant purchased a 4-pack of Panasonic AA batteries advertised by Dollarama at \$1.25 (including on its packaging which shows no price other than \$1.25), as it appears from her receipt communicated as **Exhibit P-11** and a picture of the actual battery pack she purchased communicated as **Exhibit P-12**;
30. Her receipt confirms that Dollarama charged her an additional \$0.12 (plus GST/QST) on account of "Frais Eco". Her receipt also falsely states that "*Les prix peuvent inclure des écofrais*". This is false because the écofrais are always added on top and never included in the price;
31. Applicant communicates herewith a picture of the display where she purchased the batteries as **Exhibit P-13**;
32. Based on the way the price is advertised/*annoncé* on the battery pack, Applicant understood (just like the consumer in video communicated as Exhibit P-8) that the batteries cost \$1.25 plus taxes;
33. As it appears from Exhibits P-12 and P-13, the price of \$1.25 is prominently advertised on the packaging and on the price label. If one has good enough eyesight or looks very closely, they may also see that the additional and **mandatory** écofrais of \$0.12 (plus taxes) is indicated at the complete opposite extremity of the price label – it is not even close to the lower emphasized price and is in much smaller font than the \$1.25

advertised/emphasized price (or the *prix annoncé*);

34. When she got to the cash, Applicant was surprised that the clerk charged her \$1.37 plus taxes (instead of the \$1.25 prominently displayed), but nonetheless purchased the batteries;
35. Applicant later discovered that these cents add up quickly in Dollarama's coffers. According to the "2021 Rapport ESG de Dollarama", Dollarama collected \$11.8 million in écofraîs in 2018 and \$13.6 million in 2021. It is therefore more than likely that these 12 cent écofraîs added up to **more than \$40 million** over the past 3 years alone, Applicant communicating the report as **Exhibit P-14**;
36. Applicant notes that – for all of the products it sells subject to the écofraîs – nowhere does Dollarama (or Pharmaprix) ever display the real price (they only display two fragmented prices in two different font sizes). As such, Dollarama violates ss. 223 and 224c) CPA and section 54 of the *Competition Act* (as does Pharmaprix);
37. Dollarama is also bound by the Accurate Pricing Policy and the Code (as is Pharmaprix);
38. Given that the price charged at the cash (\$1.37 before taxes) is less than \$10.00, Dollarama must compensate the Applicant statutory damages of \$1.37 plus taxes (i.e. give her the product free of charge) pursuant to section 1(1)(a) of the Accurate Pricing Policy (alternately pursuant to ss. 223, 224c) and 272 CPA);
39. Applicant notes that the Consumer Protection Office's website specifies that the request for compensation does not have to be made on the spot, Applicant communicating **Exhibit P-15**:

**32. Un consommateur qui constate chez lui qu'une erreur a été commise peut-il retourner chez le commerçant et demander l'application de la Politique d'exactitude des prix?**

Oui, il n'y a pas de délai particulier pour faire la demande. Cependant, il faut tenir compte des règles générales de prescription, c'est-à-dire des règles légales déterminant le délai pendant lequel une personne peut faire valoir ses droits.

40. Applicant has decided to exercise her rights by way of a class action given that there are likely millions of people entitled to compensation and because she wants to hold the Defendants accountable for selling products subject to the écofraîs in this deceitful manner. She hereby requests the application of the Accurate Pricing Policy and the Code on her behalf and on behalf of all Class members similarly situated;
- 40.1 Nevertheless, on June 11, 2023, Applicant visited the Dollarama situated in the Cavendish Mall, in Côte St-Luc, and purchased: **(i)** the exact same AA battery pack displayed in Dollarama for \$1.25 (plus **\$0.12** displayed separately, in smaller font, just like in the display in Exhibit P-13); and **(ii)** foldable headphones displayed for \$4.25

(plus **\$0.50**, displayed separately, in smaller font), as it appears from the picture taken at Dollarama Cavendish Mall on June 11, 2023, communicated as **Exhibit P-21**;

- 40.2 Applicant brought these two (2) items to the cash and was then charged **\$1.37** for the AA battery pack and **\$4.85** for the headphones (even though the addition of the two fragmented amounts displayed by Dollarama in Exhibit P-21 for these headphones – i.e. \$4.25 + \$0.50 – totals \$4.75), as it appears from her receipt communicated as **Exhibit P-22**;
- 40.3 After paying the total amount indicated on her receipt (Exhibit P-22), Applicant showed the price discrepancies for both items to the cashier and asked the cashier to apply the Accurate Pricing Policy. The cashier refused and called her manager who arrived after a few minutes. The Applicant again pointed out the price discrepancies and asked the manager to apply the Accurate Pricing Policy, but the manager refused and falsely told the Applicant that the écofrais charge “**is a tax**”, which is a violation of section 227.1 CPA;
- 40.4 There can no debate that the headphones should have been given to the Applicant free of charge pursuant to section 1(1)(a) of the Accurate Pricing Policy because Dollarama charged her \$4.85, despite the total of the two amounts it displays is equal to \$4.75 (this issue occurs on other items at Dollarama as well). Yet, the Dollarama manager was clearly trained to systemically refuse any écofrais requests and to falsely tell the customers that the écofrais “**is a tax**”. There should also be no debate as to section 1(1)(a) of the Accurate Pricing Policy applying to the battery pack for which the Applicant was charged \$1.37, but the price on the packaging indicates only \$1.25, as it appears from a picture of said battery pack communicated herewith as **Exhibit P-23**;
- 40.5 The initial Authorization Application in the present case was filed on **May 29, 2023**, and by June 11, 2023, Dollarama still had not taken any steps to inform and educate its employees that the écofrais is not a tax. Indeed, both Dollarama and Pharmaprix failed to adequately train their staff on: **(i)** how to comply with the Accurate Pricing Policy, despite displaying the required regulatory signage regarding same in their stores; and **(ii)** the nature of the écofrais (i.e. that it is **not** a tax);
- 40.6 Dollarama and Pharmaprix systemically refuse requests made by Class members to honour the Accurate Pricing Policy in their stores;
41. Applicant also specifies that section 1(3) of the Accurate Pricing Policy provides:
  - (3) the accurate pricing policy shall apply even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good.
42. Therefore, whether the Applicant or Class members had knowledge of the additional and fragment écofrais fee is irrelevant, as the statutory provisions raised in this application must be analyzed objectively as to whether or not the real price is prominently displayed; if not, Defendants are liable for damages to Class members and cannot raise any defense to exonerate themselves in the circumstances;

43. Indeed, given that the CPA creates a prohibition on advertising an incomplete or fragmented price, the issue of whether there was a violation of 223 or 224c) must be addressed objectively, and there is no reason to assess whether the Applicant and Class members understood the various elements of the actual price or even whether they were misled. It is thus irrelevant to consider whether a consumer, even a credulous and inexperienced one, would have understood that the real price to pay at the cash was the sum of the price advertised on the packaging plus another price printed discretely in small font on the label;
44. Applicant benefits from the legal presumption of fraud committed by Dollarama (and Pharmaprix), as provided for by section 253 CCP and the Supreme Court's decision analyzing this provision;
45. Moreover, the Defendants cannot argue that the Applicant accepted (or confirmed), given that the Court of Appeal has held that in the situation of violations of Title II CPA (which includes sections 223 and 224) a contract that violates a public order of direction statute cannot be confirmed;
46. In light of the above, Applicant has suffered ascertainable loss as a result of Dollarama's fraudulent practice and failures to comply with the law, notably the amount of \$1.37 plus taxes (since she is entitled to statutory damages equivalent to the value of the product in question);
  - 46.1 Applicant is also entitled to claim the amounts of \$4.85 plus taxes for the headphones and \$1.37 for the batteries, both purchased on June 11, 2023 (Exhibit P-22), pursuant to section 1(1)(a) of the Accurate Pricing Policy;
  - 46.2 After the initial filing of the present application on May 29, 2023, it appears that Dollarama and Pharmaprix modified their business practices in some – but not all – of their stores to display the “all-in” price, which constitutes an admission of their heretofore illegal conduct. Applicant hereby maintains her claim for injunctive relief on her behalf and on behalf of all Class members until such time that all Defendants are fully compliant with the law, as alleged herein;
47. Applicant's damages are a direct and proximate result of the Dollarama's misconduct;
  - (ii) Applicant's claim for punitive damages (s. 272 CPA)**
48. There is no doubt that Dollarama and Pharmaprix intentionally put more emphasis on the lower price than on the real price that consumers are charged at the cash, as both could easily advertise the “all-in” price prominently and legally, just like all of their other competitors do (see Exhibit P-6); it is egregious that they do not and that it took the filing of the present class action for them to respect the law;
49. The Defendants are sophisticated merchants with legal departments who know or ought to know that the CPA, the Civil Code and the *Competition Act* apply, especially given their undertakings to comply with the Accurate Pricing Policy and the Code;

50. Dollarama must be aware of the news story reporting on this exact situation at its stores in October of 2018 (Exhibit P-8) and intentionally chose to ignore this report, as well as its obligations under the law and the many guidelines publicly available free of charge;
51. A layman perusing the OPC's website or even calling the OPC would have been able to figure out that a merchant cannot advertise fragmented prices this way; Dollarama is certainly no layman, it is a publicly traded company with a \$23.5 billion market cap;
52. As for Pharmaprix, it is now owned by Defendant Shoppers Drug Mart Inc., a wholly owned subsidiary of Defendant Loblaws Companies Limited (publicly traded with a \$38.7 billion market cap);
53. According to its website, "*Shoppers Drug Mart is Canada's leading pharmacy retailer with more than 1,300 pharmacist-owned locations across the country*" and "*is the licensor of full-service retail drug stores operating under the name Shoppers Drug Mart (Pharmaprix in Québec)*". There is no doubt that Pharmaprix and Jean Coutu closely monitor each other's pricing in such a tight-knit and competitive market. Pharmaprix must be aware of how Jean Coutu advertises the batteries and other products subject to the écofraîs (they are always located at the front of the stores near the cash registers) and has deliberately chosen to ignore the law to the detriment of Class members and for its financial gain (for example, the television in Exhibit P-2 advertised for \$599.99 is much more attractive to a consumer than if it were advertised at its true price of \$613.74);
54. The Defendants' overall conduct before and during the violation is lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations. Their conduct also constitutes bad faith;
55. The Defendants' disregard for consumers' rights and to their own obligations under the CPA and the *Competition Act* is in and of itself an important reason for the Court to enforce measures that will punish Defendants, as well as deter and dissuade others – both local and foreign – from engaging in similar reprehensible conduct to the detriment of consumers;
56. Even if the Defendants modify their practice after the filing of the present application, Applicant is still justified in claiming a meaningful amount in punitive damages for a flagrant breach of the CPA;
57. The punitive damages provided for in section 272 CPA have a preventive objective, that is to discourage the repetition of such undesirable conduct (and not to give a free pass to merchants who comply with the law only once they get caught off-side);
58. In these circumstances, Applicant's claim for \$40 million in aggregate punitive damages, subject to adjustment, against Dollarama is justified (this represents the amount collected by Dollarama on account of écofraîs assuming the trend indicated in Exhibit P-14 remained stable). The Applicant claims the same amount in punitive damages from Pharmaprix, subject to adjustment, once she obtains their écofraîs

figures (which may be higher than Dollarama's given that Pharmaprix sells higher ticketed items such as large-screen televisions which have more expensive écofrais);

59. The patrimonial situations of Dollarama and Pharmaprix are significant enough that the foregoing amount of punitive damages are appropriate in the circumstances;

**B) THE CLAIMS OF THE CLASS MEMBERS RAISE SIMILAR ISSUES:**

60. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:

- a) Do the Defendants violate ss. 223 or 224c) of the CPA, or its *Regulations*?
- b) For items under \$10.00, must Defendants compensate all Class members the total cost of the item (including écofrais) plus taxes, pursuant to section 1(1)(a) of the Accurate Pricing Policy or section 1.1(a) of the *Scanner Price Accuracy Code*?
- c) For items over \$10.00, must Defendants compensate all Class members \$10.00 plus the amount of the écofrais (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy or section 1.1(b) of the *Scanner Price Accuracy Code*?
- d) Do the Defendants violate s. 54 of the *Competition Act*? If so, are Class members entitled to damages and in what amounts?
- e) Are Class members entitled to punitive damages and in what amount?
- f) Does Dollarama overcharge Class members for certain products subject to écofrais (such as the foldable headphones) and, if so, are Class members entitled to compensatory and punitive damages?
- g) Does Amazon mislead and/or fail to adequately inform Class members concerning the écofrais and, if so, are Class members entitled to compensatory and punitive damages?
- h) Do the Defendants violate articles 6, 7, 1375 or 1458 CCQ?

61. Applicant submits that all Class members have a common interest both in proving the commission of a prohibited business practice (the violations of ss. 223 and 224c) CPA and its *Regulations*, as well as articles 6, 7, 1375 or 1458 CCQ, and s. 54 of the *Competition Act*) by the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants;

62. In this case, the legal and factual backgrounds at issue are common to all the Class members, namely whether the Defendants advertised a lower price and then charged a higher price at the cash for the purchase of products subject to the écofrais;



63. Every Class member purchased a product that prominently announced one price, but were charged a higher price by the Defendants on account of the écofrais when they got to the cash. At no time was the real total price for these products displayed to the Class members, until they arrived at the cash and received their receipts;
64. By reason of the Defendants' unlawful conduct, the Applicant and Class members have suffered a prejudice, that are claimed collectively, every time they purchased a product subject to écofrais from one of the Defendants' stores and online on their websites (the situation was the same on the Defendants' websites);
65. Applicant and Class members are entitled to statutory damages that they may collectively claim from the Defendants, as well as punitive damages pursuant to section 272 CPA;
66. All Class members benefit from the presumption of fraud provided for at section 253 CPA;
67. Each Class member has objectively suffered damages equivalent to the amount of the écofrais that was not included in the advertised price, as well as the sum of \$10.00 as provided for at s. 1(1)(b) of the Accurate Pricing Policy or the Code (for items over \$10.00), and the full value of the product for items less than \$10.00;
68. All of the damages to the Class members are a direct and proximate result of the Defendants' faults;
69. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants' charging of a higher price than the one advertised (by fragmenting the "écofrais" from the real price);
70. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
71. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources and could result in conflicting judgments;
72. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each of the Defendants;

### **C) THE COMPOSITION OF THE CLASS**

73. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
74. Dollarama has its head office in Quebec, and has more than 1400 stores across Canada that collected more than \$13 million in écofrais in 2021 (Exhibit P-12).

Dollarama recently opened its 1500<sup>th</sup> store in the Rockland shopping mall in Montreal. The figures are likely similar for Pharmaprix;

75. In the province of Quebec alone, the size of the class is conservatively estimated in the hundreds of thousands of members, if not more. Class members are very numerous and are dispersed across the province and across Canada;
76. The names of all persons included in the Class are not known to Applicant (some are known to the Defendants for Class members who purchased these items from the Defendants' websites where the situation is the same and for which damages are also claimed herein);
77. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
78. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

#### **D) THE REPRESENTATIVE PLAINTIFF**

79. Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
  - a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
  - b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) her interests are not antagonistic to those of other Class members;
80. Additionally, Applicant respectfully adds that:
  - a) she mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' faults and so that the Defendants can be held accountable;
  - b) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
  - c) she understands the nature of this action;

**II. Demonstration of a cause of action against Shoppers Drug Mart Inc. (a.d.b.a. Pharmaprix Inc.)**

81. In Quebec, Shoppers Drug Mart Inc. (a wholly owned subsidiary of Loblaw Companies Limited) operates under the name *Pharmaprix*. Applicant communicates an extract of the CIDREQ for Shoppers Drug Mart Inc. as **Exhibit P-16**;
82. Pharmaprix supplies its franchise stores with consumer goods, such as batteries and other electronic products subject to the écofraîs. The franchisees have no control over how the prices for these products are displayed;
83. The individual franchise stores cannot change the descriptions of these items or display their prices differently (i.e. “all-in”); the way to display the prices are imposed by Pharmaprix (Shoppers Drug Mart Inc.) who generates a revenue from each sale;
84. The products subject to the écofraîs are sold in the hundreds of Pharmaprix locations across Canada;
85. Pharmaprix is liable as supplier of these items (and because it imposes the manner in which to display them) to its franchise stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
86. On May 21, 2023, another Class member purchased a 24-pack of AA batteries from the Pharmaprix in Ville St-Laurent. Pharmaprix advertises only a partial price (\$16.99) and never expressly indicates the total real price (in this case \$17.71 plus taxes because of the écofraîs of \$0.72) it ultimately charges its customers at the cash for these products, as it appears from the pictures communicated *en liasse* as **Exhibit P-17**;
87. For items over \$10.00, Applicant is entitled to claim from Pharmaprix, on behalf of Class members, statutory damages of \$10.00 plus the amount of écofraîs pursuant to s. 1(1)(b) of the Accurate Pricing Policy; for items less than \$10.00 she claims the value of the item pursuant to s. 1(1)(a) (alternately pursuant to ss. 223 and 224(c) CPA);
- 87.1 Pharmaprix systemically refuses requests made by Class members to honour the Accurate Pricing Policy in their stores;

**III. Demonstration of a cause of action against the Amazon Defendants**

- 87.2 Amazon misleads Class members by stating that the “eco fee might apply” (“peuvent s’appliquer”) on products where the eco fee is mandatory and will certainly apply, as it appears *en liasse* from Exhibit P-18 (English and French versions), a portion of which is reproduced below:



HP OfficeJet 250 All-in-One Portable Printer with Wireless & Mobile Printing, Works with Alexa (CZ992A)

★★★★☆ ~ 2,835

\$599<sup>99</sup>

\$5.50 eco fee might apply

✓prime

FREE delivery Wed, May 31

Choix d'Amazon



HP OfficeJet 250 Imprimante portable tout-en-un fil et mobile, fonctionne avec Alexa (CZ992A)

★★★★☆ ~ 2 835

599<sup>99</sup> \$

Des écofrais de 5,50 \$ peuvent s'appliquer

✓prime

Livraison GRATUITE mer. 31 mai

87.3 This issue (i.e. Amazon stating that the eco fee *might* apply when it in fact always does apply) is systemic across the Amazon.ca website and mobile application for products subject to the eco fee. This is a misleading practice within the meaning of section 219. The effective result is that the practice also always violates section 224(c) CPA since Amazon ends up always charging a higher price than that advertised and never displays the real price (Applicant notes that on the last page of Exhibit P-18, Amazon acknowledges that the eco fee “**is not a tax or deposit**”);

87.4 Worse, once a Class member chooses to bundle his/her product, for example by accepting Amazon’s offer to add an ink cartridge to the purchase of the printer, then even the misleading reference that the “eco fee might apply” disappears entirely and the eco fees are just added on by Amazon at the very last step, as it appears from **Exhibit P-19**:

HP OfficeJet 250 All-in-One Mobile Printer with HP 62 Black Ink Cartridge (C2P04AN)



Visit the HP Store

4.5 ★★★★★ ~ 2,835 ratings

Bundle Price: \$625.97 ✓prime

Style: Printer + Black Ink

Printer

\$599.99

✓prime

Printer + Black Ink

\$625.97

✓prime

Printer + Tri-color Ink

\$625.97

✓prime

Delivery Wednesday, May 31.

Order within 6 hrs 29 mins.

Details

Deliver to Anaelle - Saint-Laurent H4M 1M

In Stock.

Quantity: 1

Add to Cart

Buy Now

Secure transaction

- 87.5 Additional proof of Amazon's illegal practice is that when they send promotional emails to their customers (generally containing an item that the customer previously searched for on Amazon), the items subject to the écofrais advertise/display only the lower price, without ever mentioning that an additional – mandatory – écofrais will be added onto the final price, as it appears from the emails communicated *en liasse* as **Exhibit P-24**;
- 87.6 Further evidence of Amazon's misleading and fraudulent practice is that once a Class member places the item in his/her shopping cart, Amazon will no longer include any mention that an eco fee will – or even “might” – apply until the very last stage of the purchase process. For example, if a Class member places the product subject to the eco fee in his/her cart and returns a few days later to complete the purchase, then he/she has no way to know that the eco fee will be added on (an example of this reality is in the third step of Exhibit P-18);
- 87.7 Amazon commits the same violation when selling batteries on its website and mobile application, but also seems to charge Class members the wrong amount on account of the eco fee for batteries, as it appears from **Exhibit P-20**;
- 87.8 Applicant seeks compensatory damages on behalf of the Class members equivalent to the amount charged by Amazon for the écofrais and which was not displayed in the price prominently advertised by Amazon, as well as punitive damages in an amount to be determined;

#### **IV. DAMAGES**

88. Applicant estimates that the Defendants have generated aggregate amounts in the hundreds of millions of dollars while intentionally choosing to ignore the laws in Quebec and Canada, including the Accurate Pricing Policy and the Code;
89. The Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec and Canada, including:
- a) Quebec's *Consumer Protection Act*, notably section 223 and paragraph c of section 224 CPA;
  - b) Section 1(1)(a) of the *Accurate Pricing Policy* (and the Code);
  - c) Section 1(1)(b) of the *Accurate Pricing Policy* (and the Code);
  - d) The *Competition Act*, sections 36 and 54; and
  - e) The Civil Code of Quebec, articles 6, 7, 1375 and 1458,
- 89.2 Class members who are consumers also benefit from the presumption of prejudice provided for by section 253 CPA;
90. In light of the foregoing, the following aggregate damages may be claimed by Class members against the Defendants:

- a) compensatory damages of \$10.00 plus the amount of the écofrais (plus taxes thereon), or the value of the product for items less than \$10.00; and
- b) punitive damages in the amount \$40 million per each group of Defendants (Dollarama and Pharmaprix), subject to adjustment, for the intentional breach of obligations imposed on Defendants pursuant to section 272 CPA and the common law;
- c) As it concerns the Amazon Defendants, compensatory damages equivalent to the amount overcharged on account of écofrais (that was not prominently displayed in the advertised price) and punitive damages in an amount to be determined.

## **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

91. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, with injunctive relief;
92. The conclusions that the Applicant wishes to introduce by way of an originating application are:
  1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  2. **ORDER** the Defendants to prominently advertise the real price that they charge consumers for the purchase of products that are subject to the écofrais;
  3. **CONDEMN** each of the Dollarama and Pharmaprix group of Defendants, solidarily within their group, to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the écofrais, or the value of the product for items less than \$10.00;
  4. **CONDEMN** each of the Dollarama and Pharmaprix group of Defendants, solidarily within their group, to pay \$40 million each on account of punitive damages, subject to adjustment;
  5. **CONDEMN** the Amazon Defendants to pay the Plaintiff and each Class member compensatory damages equivalent to the amount overcharged on account of écofrais (that was not prominently displayed in the advertised price) and to pay punitive damages in an amount to be determined;
  6. **CONDEMN** each Defendant, solidarily with their group, to pay interest and the additional indemnity on the above sums according to law from May 29, 2023;
  7. **ORDER** that all of the above condemnations be subject to collective recovery;
  8. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

9. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
10. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, bailiffs, court stamps, stenographers, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
11. **RENDER** any other order that this Honourable Court shall determine;

## **VI. JURISDICTION AND NATIONAL CLASS**

93. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district;
94. Article 3148(1) CCQ allows the Court to authorize a national class action for the Defendants who have their head offices in the province of Quebec, namely the Dollarama Defendants;
95. The other retail Defendants have a principal establishment in Quebec and the dispute relates to their activities in Quebec. Therefore, the jurisdiction of the Superior Court of Quebec to authorize a national class action is anchored through a valid connecting factor under article 3148 CCQ;

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

<p>All natural and legal persons in Canada who purchased a product subject to the Environmental Handling Fee (“EHF”) from Dollarama, Pharmaprix or Amazon and who paid a price higher than the price advertised (excluding sales tax) because the EHF was not included in the price prominently advertised.</p> <p>(hereinafter referred to as the “<b>Class</b>”)</p>	<p>Toutes les personnes physiques et morales au Canada qui ont acheté un produit soumis aux <b>écofrais</b> chez Dollarama, Pharmaprix ou Amazon et qui ont payé un prix supérieur au prix annoncé (excluant la taxe de vente) parce que les écofrais n'étaient pas inclus dans le prix annoncé de façon évidente.</p> <p>(ci-après le « <b>Groupe</b> »)</p>
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3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) Do the Defendants violate ss. 223 or 224c) of the CPA, or its *Regulations*?

- b) For items under \$10.00, must Defendants compensate all Class members the total cost of the item (including écofrais) plus taxes, pursuant to section 1(1)(a) of the Accurate Pricing Policy or section 1.1(a) of the *Scanner Price Accuracy Code*?
  - c) For items over \$10.00, must Defendants compensate all Class members \$10.00 plus the amount of the écofrais (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy or section 1.1(b) of the *Scanner Price Accuracy Code*?
  - d) Do the Defendants violate s. 54 of the *Competition Act*? If so, are Class members entitled to damages and in what amounts?
  - e) Are Class members entitled to punitive damages and in what amount?
  - f) Does Dollarama overcharge Class members for certain products subject to écofrais (such as the foldable headphones) and, if so, are Class members entitled to compensatory and punitive damages?
  - g) Does Amazon mislead and/or fail to adequately inform Class members concerning the écofrais and, if so, are Class members entitled to compensatory and punitive damages?
  - h) Do the Defendants violate articles 6, 7, 1375 or 1458 CCQ?
4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
- 1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  - 2. **ORDER** the Defendants to prominently advertise the real price that they charge consumers for the purchase of products that are subject to the écofrais;
  - 3. **CONDEMN** each of the Dollarama and Pharmaprix group of Defendants, solidarily within their group, to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the écofrais, or the value of the product for items less than \$10.00;
  - 4. **CONDEMN** each of the Dollarama and Pharmaprix group of Defendants, solidarily within their group, to pay \$40 million each on account of punitive damages, subject to adjustment;
  - 5. **CONDEMN** the Amazon Defendants to pay the Plaintiff and each Class member compensatory damages equivalent to the amount overcharged on account of écofrais (that was not prominently displayed in the advertised price) and to pay punitive damages in an amount to be determined;



6. **CONDEMN** each Defendant, solidarily with their group, to pay interest and the additional indemnity on the above sums according to law from May 29, 2023;
  7. **ORDER** that all of the above condemnations be subject to collective recovery;
  8. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  9. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  10. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, bailiffs, court stamps, stenographers, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
  11. **RENDER** any other order that this Honourable Court shall determine;
5. **ORDER** the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
  6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
  7. **DECLARE** that all Class members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by law;
  8. **RENDER** any other order that this Honourable Court shall determine;
  9. **THE WHOLE** with costs including publication fees, bailiff fees, court stamps and stenographer fees.

Montreal, November 21, 2023

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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