

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001142-211

DOMINIQUE LAVOIE, domiciled at [REDACTED]

Representative Plaintiff

v.

WAL-MART CANADA CORP., legal person
having a principal establishment at 17000
Trans-Canada Highway, Kirkland, district of
Montreal, Province of Quebec, H9J 2M5

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. This class action seeks compensation from Wal-Mart for violating sections 16, 224c) and 231 of Québec's *Consumer Protection Act* ("CPA"), by cancelling certain purchases made by Class Members on the Walmart.ca website on April 4 and 5, 2021;
2. By judgment rendered on March 30, 2022, as rectified on May 30, 2022, the Superior Court of Quebec granted the status of Representative Plaintiff to Mr. Dominique Lavoie and authorized him to bring a class action on behalf of the following class:

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.	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.
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3. The Court authorized Mr. Lavoie to institute a class action in damages and identified the principal questions of fact or law to be dealt with collectively in this class action as follows:

<p>a) By cancelling consumers' orders of April 4 and 5, 2021, did Wal-Mart violate s. 16, 231 and 224c) of Québec's <i>Consumer Protection Act</i>?</p> <p>b) If so, are Class members entitled to compensation and in what amount?</p> <p>c) Are the Class members entitled to punitive damages and, if so, in what amount?</p>	<p>a) En annulant les commandes de consommateurs les 4 et 5 avril 2021, Wal-Mart viole-t-elle les articles 16, 231 et 224c) de la <i>Loi sur la protection du consommateur</i>?</p> <p>b) Si oui, les membres du groupe ont-ils droit à des dommages compensatoires et, le cas échéant, à la hauteur de quel montant?</p> <p>c) Les membres du groupe ont-ils droit à des dommages punitifs et si oui, à la hauteur de quel montant?</p>
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II. THE PARTIES

4. The Plaintiff is a consumer within the meaning of the CPA;
5. The Defendant (hereinafter "**Wal-Mart**") is a corporation that owns and operates Wal-Mart department stores. An extract of the enterprise's information statement from the Quebec enterprise register is communicated as **Exhibit P-1**;
6. Wal-Mart does business in the province of Quebec under the name "Wal-Mart" and runs the www.walmart.ca website where consumers can purchase their products online, as it appears from the Terms of Use communicated as **Exhibit P-2**;
7. Wal-Mart is a merchant within the meaning of the CPA and its activities are governed by this legislation, among others;

III. THE PERSONAL EXPERIENCE OF THE REPRESENTATIVE PLAINTIFF

8. On April 4, 2021, the Plaintiff visited the Walmart.ca website because he was shopping for rugs, carpets, pillows and other household items;
9. The Plaintiff visited the Wal-Mart website because he was looking for the best possible prices and Wal-Mart gives this impression to consumers as some of its mottos are "*Everyday Low Prices*" (see top of Exhibit P-2) and "*Save Money. Live Better*", the latter which appears under Wal-Mart's logo almost everywhere on its website, **Exhibit P-3**;
10. There is no doubt that Wal-Mart's strategy – and its stated mission – is to attract

consumers to its department stores and website by advertising over and over that it offers the lowest prices. For instance, in the “About Us” section of its website (<https://www.walmartcanada.ca/about-us>), Wal-Mart declares this, **Exhibit P-4**:

Our Commitment

Quality products at everyday low prices – that’s the promise Sam Walton made when he started Walmart, and it’s as true today more than 50 years later. We consider it both our mission and our privilege to give Canadians access to the products they need at the prices they can afford, both in stores and online at [Walmart.ca](https://www.walmart.ca).



11. On April 4, 2021, while browsing the Walmart.ca website, the Plaintiff noticed that several items were on sale and proceeded to make six (6) purchases, as it appears from the following “Order Confirmation” emails he received from Wal-Mart that day:
 - a) Order #6592169000379 at 8:01 p.m. (disclosed as **Exhibit P-5**);
 - b) Order #6602148000305 at 8:15 p.m. (disclosed as **Exhibit P-6**);
 - c) Order #2932144000540 at 8:51 p.m. (disclosed as **Exhibit P-7**);
 - d) Order #6592166001549 at 9:04 p.m. (disclosed as **Exhibit P-8**);
 - e) Order #2932147000541 at 9:36 p.m. (disclosed as **Exhibit P-9**);
 - f) Order #6592163000794 at 10:00 p.m. (disclosed as **Exhibit P-10**);
12. The Plaintiff confirms that the items which he purchased and which were advertised on Wal-Mart’s website contained all the essential elements of the intended contract, including the product description and price;
13. The Plaintiff adds that one of the reasons why he purchased multiple items was in order to benefit from Wal-Mart’s “Free Home Delivery” option. On its website Wal-Mart notably states that: “*We offer **free shipping** on items sold and shipped by Walmart, excluding grocery orders, to select locations in Canada **on orders over \$35** (before taxes)*”, Plaintiff communicating **Exhibit P-11**;
14. In each of the abovementioned “Order Confirmation” emails (Exhibits P-5 to P-10), Wal-Mart declared and confirmed that a purchase was made (see the bottom section

in blue of each email):

“You are receiving this email **because you have made a purchase** of a product or service offered by or on behalf of Walmart .ca or by a third-party seller on Walmart.ca.”

(our emphasis in bold)

15. Additionally, each of the “Order Confirmation” emails (Exhibits P-5 to P-10) contain an “**Estimated delivery date**” and Wal-Mart provided delivery dates ranging from April 6, 2021 to April 19, 2021, depending on the product that the Plaintiff purchased;
16. On the day after each of his purchases, Wal-Mart debited the Plaintiff’s Visa debit card, as it appears from his statement showing 7 debits made by Wal-Mart on April 5, 2021 disclosed as **Exhibit P-12**:

05 avr. 2021	WAL*MART CANADA _V	52,17
05 avr. 2021	WAL*MART CANADA _V	52,17
05 avr. 2021	WAL*MART CANADA _V	44,14
05 avr. 2021	WAL*MART CANADA _V	0,02
05 avr. 2021	WAL*MART CANADA _V	38,95
05 avr. 2021	WAL*MART CANADA _V	48,15
05 avr. 2021	WAL*MART CANADA _V	48,15

17. On April 5, 2021, Wal-Mart sent an email to the Plaintiff with the subject line “Update for your order — #6592163000794”, further confirming its intention to be bound by the contracts of sale with the Plaintiff, the whole as appears from **Exhibit P-13**:

“The following items are **currently on backorder** and the shipment has been delayed. We’re trying our best to get your items to you as soon as possible.”

18. On April 6, 2021, Wal-Mart sent another email to the Plaintiff with the subject line “We’re sorry, your recent order # 2932147000541 may be delayed | Nous sommes désolés, votre commande 2932147000541 pourrait être retardée”, further confirming its intention to be bound by the contracts of sale with the Plaintiff, the whole as appears from **Exhibit P-14**:

“Thank you for shopping with us!

Due to increased order volume, it may take longer than estimated to ship your order.

Our team is working to get your order to you as quickly as possible. We will email you as soon as your order is shipped.”

19. However, on April 6, 2021, Wal-Mart started unilaterally cancelling the Plaintiff's orders;
20. For instance, on April 6, 2021, Wal-Mart sent three (3) emails to the Plaintiff cancelling several of his orders (#6592163000794, #6592166001549, and #6602148000305) without providing any reason for the cancellation, as it appears from the emails communicated *en liasse* as **Exhibit P-15**;
21. The Plaintiff then immediately contacted Wal-Mart via its online chat customer service and was told the following, as it appears from **Exhibit P-16**:

“En faite M. Dominic on avez reçu une mise a jour quoi il avais plusieurs articles sur le site au mauvais prix donc tous les commande comme cela ont été annulé de plus d'un mail de confirmation ont ete envoyer au clients pour mentioner ce qui s'est passé” (spelling errors in text).

22. Wal-Mart refused to sell the items that the Plaintiff purchased at the price Wal-Mart advertised on its website and failed to honour its contracts with the Plaintiff and all Class members;
23. First, Wal-Mart cannot unilaterally cancel the Plaintiff's distance contracts – even if its Terms of Use (Exhibit P-2) provide for otherwise – notably because section 54.1 CPA is of public order and stipulates the following:

<p>54.1 Un contrat conclu à distance est un contrat conclu alors que le commerçant et le consommateur ne sont pas en présence l'un de l'autre et qui est précédé d'une offre du commerçant de conclure un tel contrat.</p> <p>Le commerçant est réputé faire une offre de conclure le contrat dès lors que sa proposition comporte tous les éléments essentiels du contrat envisagé, qu'il y ait ou non indication de sa volonté d'être lié en cas d'acceptation et même en présence d'une indication contraire.</p>	<p>54.1 A distance contract is a contract entered into without the merchant and the consumer being in one another's presence and preceded by an offer by the merchant to enter into such a contract.</p> <p>A merchant is deemed to have made an offer to enter into a distance contract if the merchant's proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant's willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary.</p>
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- 24. Second, given the number of “pricing errors” (**22 items** in the case of the Plaintiff alone), these “errors” can only be qualified as inexcusable, especially by a multinational such as Wal-Mart who should have systems in place to ensure that the prices it advertises on its website to the public are correct;
- 25. Third, as of April 6, 2021, Wal-Mart removed all of the SKU items purchased by the Plaintiff from its website, except for one discussed below (SKU 6000202420320 from Exhibit P-10) which demonstrates that Wal-Mart also violated section 231 CPA by having an insufficient quantity of the goods its advertised:

<p>231. Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit, faire de la publicité concernant un bien ou un service qu’il possède en quantité insuffisante pour répondre à la demande du public, à moins de mentionner dans son message publicitaire qu’il ne dispose que d’une quantité limitée du bien ou du service et d’indiquer cette quantité.</p> <p>Ne commet pas d’infraction au présent article le commerçant, le fabricant ou le publicitaire qui établit à la satisfaction du tribunal qu’il avait des motifs raisonnables de croire être en mesure de répondre à la demande du public, ou qui a offert au consommateur, au même prix, un autre bien de même nature et d’un prix coûtant égal ou supérieur.</p>	<p>231. No merchant, manufacturer or advertiser may, by any means whatever, advertise goods or services of which he has an insufficient quantity to meet public demand unless mention is made in his advertisement that only a limited quantity of the goods or services is available and such quantity is indicated.</p> <p>The merchant, manufacturer or advertiser who establishes to the satisfaction of the court that he had reasonable cause to believe that he could meet public demand or who offered the consumer, for the same price, other goods of the same nature and of an equal or greater cost price is not guilty of any infraction of this section..</p>
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- 26. The Plaintiff declares that at the time he purchased the 22 items listed in Exhibits P-5 to P-10, Wal-Mart’s website displayed the items as available and contained an option showing that there was sufficient quantity available for purchase. In each case, Wal-Mart also indicated a description of the item, a picture of the item, the price and that it was available for purchase at the advertised price;
- 27. As mentioned at paragraph 23 above, Wal-Mart had initially removed all but one of the 22 items from its website. However, the Plaintiff was able to retrieve the Google “cached” version of Wal-Mart’s website for the majority of the items he purchased and communicated them herewith *en liasse* as **Exhibit P-17**;
- 28. As of April 6, 2021, the only remaining item “live” on Wal-Mart’s website was the “Safavieh Natural Fiber Geraldine Geometric Area Rug”, SKU 6000202420320 (which is the second item listed on the Plaintiff’s Exhibit P-10 for a price of \$3.49 plus tax per unit). The URL for this item is: <https://www.walmart.ca/en/ip/safavieh-natural-fiber->

[geraldine-geometric-area-rug-rust-natural-23-x-8-runner-pink-multi/6000202419393](#)) and was advertised on walmart.ca for \$497.97 plus tax, as appears from **Exhibit P-18**:



Safavieh Natural Fiber Geraldine Geometric Area Rug

Safavieh

Durable Geometric Area Rug

☆☆☆☆☆ (No Reviews)

\$497.97

Out of stock online

Sold & shipped by Walmart | [Free returns](#)

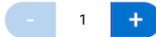
Colour: Pink / Multi



Size: 8 ft. x 10 ft.

~~2'3" X 8' Runner~~ ~~5 ft. X 8 ft.~~ ~~6 ft. X 9 ft.~~ **8 ft. X 10 ft.**

Quantity:



29. By selling SKU 6000202420320 to the Plaintiff for \$3.49 and then advertising it the next day on its website for \$497.97, Wal-Mart has also violated section 224 c) CPA that stipulates as follows:

<p>224. 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>224. No merchant, manufacturer or advertiser may, by any means whatever,</p> <p>...</p> <p>(c) charge, for goods or services, a higher price than that advertised.</p>
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30. Despite his attempts to have Wal-Mart honour the price it advertised on its website from April 4-5, 2021, Wal-Mart refused and simply removed all but one of the items from its website;

31. By refusing to honour its advertised prices Wal-Mart violated several sections of the CPA, including sections 16, 54.1, 224 c) and 231;

32. The Plaintiff is therefore entitled to claim on his behalf and on behalf of all class members damages equivalent the “**Lost Value**”, calculated as the difference between the actual costs to purchase the items on his April 4, 2021 orders (either from Wal-Mart or from another merchant if Wal-Mart does not have any more stock as it declared on April 6, 2021) and the prices advertised by Wal-Mart at the time of his purchase (Wal-Mart is in possession of these prices);

33. The Plaintiff provides the following example of the Lost Value calculation based on the limited data that he does have, until such time that Wal-Mart provides the remaining

information:

- “Safavieh Natural Fiber Geraldine Geometric Area Rug”, sku 6000202420320 (Exhibit P-10) for which Wal-Mart charged \$3.49 plus taxes each (\$4.01), whereas Exhibit P-18 shows Wal-Mart advertised the same item for \$497.97 plus taxes (\$572.54);
 - **Lost Value formula:** $\$572.54 - \$4.01 = \$568.53$
34. The Plaintiff is also entitled to claim punitive damages pursuant to section 272 CPA in the amount of \$500 per class member;
 35. Indeed, Wal-Mart’s conduct warrants such a condemnation because it refused to honour the advertised price despite the Plaintiff’s multiple requests and then simply removed all of the items in question from its website as if they never existed;
 36. Moreover, Wal-Mart is a repeat offender, as it has already been sanctioned by Quebec’s Consumer Protection Office for its failure to respect the CPA, in particular with respect to pricing violations, Plaintiff communicating the Office’s press release titled “*Indication et exactitude des prix - Walmart plaide coupable pour des infractions commises à Montréal*” (2017) as **Exhibit P-19** and another article titled “*Amende record pour un magasin Walmart*” (2010) as **Exhibit P-20**;
 37. Even after the present class action was debated and authorized, Wal-Mart continued unilaterally cancelling purchases made by Quebec consumers on its website, such as certain patio sets from March to May 2022;
 38. Wal-Mart’s conduct can only be qualified as intentional and warrants the requested condemnation in punitive damages;
 39. Wal-Mart’s patrimonial situation is significant enough that the foregoing quantum of punitive damages is appropriate in the circumstance;

UPDATES AS OF THE EVENING OF APRIL 7, 2021

40. Around 9:00 p.m. in the evening of April 7, 2021, i.e. several hours after the Plaintiff filed his initial Application to Authorize a Class Action, the Plaintiff noticed that Wal-Mart had updated its website and that all 22 items he purchased were now being advertised at a higher price, as it appears from screen captures of the 22 items he purchased (i.e. the products listed in Exhibits P-5 to P-10), communicated herewith *en liasse* as **Exhibit P-21**;
41. Exhibit P-21 leaves no doubt that Wal-Mart violated section 224 c) CPA, since if the Plaintiff wanted to purchase any of these 22 items, Wal-Mart would have charged him a higher price than that advertised on April 4, 2021, causing the Lost Value;
42. Quebec case law has already applied the Lost Value formula (“*valeur perdue*”) in similar circumstances, as it appears from the judgment in *Charest-Corriveau c. Sears*

Canada inc., 2015 QCCQ 6417, communicated as **Exhibit P-22**;

43. The "Lost Value" chart below shows the complete list of items purchased by the Plaintiff on April 4, 2021 (as listed in Exhibits P-5 to P-10) and the difference between the price advertised by Wal-Mart for the exact same items as of April 7, 2021 (as shown in Exhibit P-21) on a per unit basis:

Item #	Description	Price Paid (April 4)	Price Advertised (April 7)	Lost Value
6000201723542	AllGreen Landscape Large Artificial Grass	\$3.49	\$279.97	\$276.48
6000202196291	UltraHedge Privet Artificial Hedge 20" x 20" Panel	\$3.49	\$199.97	\$196.48
6000200802909	ECARPETGALLERY Silk Touch Wool/Silk Rug 5'7" x 8'8"	\$3.49	\$759.00	\$755.51
6000201694392	ECARPETGALLERY Gaia dhurrie Dhurrie 5'4" x 8'1"	\$3.49	\$279.97	\$276.48
6000202984937	ECARPETGALLERY Finest Khal Mohammadi Copper Rug 3'2" x 4'8"	\$3.49	\$439.97	\$436.48
6000202986851	ECARPETGALLERY Teimani Red Rug 3'5" x 6'2"	\$3.49	\$387.97	\$386.48
6000198998469	Guns N Roses 4X6 Plush Rug-23 oz on latex-GUN-ROSE RUG	\$3.49	\$199.97	\$196.48
6000202611381	ECARPETGALLERY Qashqai Teal Rug 5'3" x 7'3"	\$3.49	\$253.75	\$250.26
6000202825272	ECARPETGALLERY La Seda Dark Brown Rug 3'11" x 5'11"	\$3.49	\$359.97	\$356.48
6000202986248	ECARPETGALLERY Finest Peshawar Ziegler Purple Rug 5'4" x 7'11"	\$3.49	\$969.97	\$966.48
6000202986644	ECARPETGALLERY Teimani Red Rug 3'10" x 6'3"	\$3.49	\$439.97	\$436.48
6000202986653	ECARPETGALLERY Finest Khal Mohammadi Red Rug 3'2" x 4'10"	\$3.49	\$459.97	\$456.48
6000202988998	ECARPETGALLERY Finest Kargahi Red Rug 2'8" x 9'9"	\$3.49	\$639.97	\$636.48
6000200182910	Solo Waffle Oven Mitt (7"x12") Set of 2 & Pot Holder Set (8"x8") Set of 2	\$3.49	\$14.97	\$11.48

6000200690303	KNOB-IT VINTAGE HAND-PAINTED CERAMIC KNOBS (12-Pack) KI1224	\$3.49	\$49.97	\$46.48
6000200691215	KNOB-IT VINTAGE HAND-PAINTED CERAMIC KNOBS (12-Pack) KI1199	\$3.49	\$49.97	\$46.48
6000200695341	KNOB-IT VINTAGE HAND-PAINTED CERAMIC KNOBS (12-Pack) KI1220	\$3.49	\$49.97	\$46.48
6000202521100	Sabar Aqua Luxury Feather Filled Cushion	\$3.49	\$39.97	\$36.48
6000202336540	Homeport Woven Harbour Stripe Decorative Pillow	\$3.49	\$24.97	\$21.48
6000202420320	Safavieh Natural Fiber Geraldine Geometric Area Rug	\$3.49	\$497.97	\$494.48
6000202523524	Franklin Brass Luxury Cushion Cover (no insert included)	\$3.49	\$29.97	\$26.48
6000202524001	Aura Wine Luxury Cushion	\$3.49	\$39.97	\$36.48

44. The Plaintiff's damages are a direct and proximate result of Wal-Mart's misconduct and, in these circumstances, the Plaintiff's claims for both compensatory and punitive damages are justified;

IV. THE DEFENDANT'S LIABILITY

45. As a result of the Wal-Mart's breaches of the CPA and unjustified refusal to honour its contracts with the Plaintiff and all Class Members, the Plaintiff is justified in asking that Wal-Mart be condemned to pay the Plaintiff and the Class members: (i) compensation equal to the aggregate Lost Value; and (ii) punitive damages of \$500 each;
46. Wal-Mart must be held accountable for its breaches of the legal obligations which were imposed upon it by law including, but not limited to:

a) The *Consumer Protection Act*, ss. 16, 231, 224c) and 272.

V. THE PERSONAL CLAIMS OF EACH OF THE CLASS MEMBERS

47. The claims of the Plaintiff and the approximate one thousand (1,000) Class Members (the precise number to be confirmed by Wal-Mart following the dissemination of notices) are founded upon similar facts;
48. Indeed, the Wal-Mart "chat" representative wrote to the Plaintiff that "**plusieurs articles** sur le site au mauvais prix donc **tous les commande** (*sic*)" were cancelled (see Exhibit P-16);
49. As such, the situation is similar for all Class Members, regardless of how many items

or which specific item(s) they purchased and then unilaterally cancelled by Wal-Mart;

50. The Lost Value formula applies the same to all Class Members, as would the compensation based on the aggregate of the Lost Value;
51. The Plaintiff is accordingly entitled to claim and does hereby claim from Wal-Mart the following as damages on behalf of each Class Member:
- a) The Lost Value for each Class Members; and
 - b) \$500 per Class Member, on account of punitive damages.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. ACCUEILLIR l'action collective contre la défenderesse pour tous les membres du groupe;	1. GRANT the Plaintiff's action against Defendant for all class members;
2. CONDAMNER la défenderesse à verser aux membres du groupe un montant à être déterminé à titre de dommages compensatoire et ORDONNER le recouvrement collectif de ceux-ci;	2. CONDEMN the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and ORDER collective recovery of these sums;
3. CONDAMNER la défenderesse à payer à chaque membre du groupe la somme de 500\$ à titre de dommages punitifs et ORDONNER le recouvrement collectif de ces montants;	3. CONDEMN the Defendant to pay to the members of the Class \$500 each in punitive damages, and ORDER collective recovery of these sums;
4. CONDAMNER la défenderesse à verser aux membres du groupe des intérêts au taux légal plus l'indemnité additionnelle prévue à l'article 1619 C.c.Q. à partir de la date du « <i>Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</i> »;	4. CONDEMN the Defendant to pay interest at the legal rate and the additional indemnity provided for in art. 1619 C.C.Q. on the above sums from the date of service of the <i>Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</i> ;
5. ORDONNER à la défenderesse de déposer auprès de la Cour le montant intégral des sommes au titre du recouvrement collectif, avec intérêts et frais;	5. ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
6. ORDONNER que les réclamations des membres soient liquidées au stade collectif si la preuve le permet ou alternativement, par voie de liquidation individuelle;	6. ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

<p>7. LE TOUT avec frais de justice incluant les frais liés aux avis, les frais de gestion des réclamations, le cas échéant, incluant les frais d'expert requis pour établir les sommes à verser pour les fins du recouvrement collectif;</p>	<p>7. CONDEMN the Defendant to bear the costs of the present action including the cost of 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;</p>
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Montreal, June 13, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

M^e Joey Zukran

Attorney for Representative Plaintiff

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P.)

Filing of a judicial application

Take notice that the Representative Plaintiff has filed this Originating Application in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Representative Plaintiff's lawyer or, if the Representative Plaintiff is not represented, to the Representative Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Representative Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Representative Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the Representative Plaintiff intends to use the following exhibits:

- Exhibit P-1:** Extract of Quebec business register;
- Exhibit P-2:** Copy of the Terms of Use for the Walmart.ca website;
- Exhibit P-3:** Screen capture of the Walmart.ca website;
- Exhibit P-4:** Screen capture of the "About Us" section of the Walmart.ca website;
- Exhibit P-5:** Copy of the email containing the Order Confirmation #6592169000379, sent by Wal-Mart on April 4, 2021 at 8:01 p.m.;
- Exhibit P-6:** Copy of the email containing the Order Confirmation #6602148000305, sent by Wal-Mart on April 4, 2021 at 8:15 p.m.;
- Exhibit P-7:** Copy of the email containing the Order Confirmation Order #2932144000540, sent by Wal-Mart on April 4, 2021 at 8:51 p.m.;
- Exhibit P-8:** Copy of the email containing the Order Confirmation Order #6592166001549, sent by Wal-Mart on April 4, 2021 at 9:04 p.m.;

- Exhibit P-9:** Copy of the email containing the Order Confirmation #2932147000541, sent by Wal-Mart on April 4, 2021 at 9:36 p.m.;
- Exhibit P-10:** Copy of the email containing the Order Confirmation #6592163000794, sent by Wal-Mart on April 4, 2021 at 10:00 p.m.;
- Exhibit P-11:** Screen capture of the “Free Shipping Options” section of the Walmart.ca website;
- Exhibit P-12:** Copy of the Applicant’s Visa debit card statement;
- Exhibit P-13:** Copy of the email sent from Wal-Mart on April 5, 2021 at 10:08 a.m., concerning order #6592163000794;
- Exhibit P-14:** Copy of the email sent from Wal-Mart on April 6, 2021 at 2:35 p.m., concerning order #2932147000541;
- Exhibit P-15:** Copy of 3 emails from Wal-Mart sent on April 6, 2021 cancelling orders #6592163000794, #6592166001549, and #6602148000305;
- Exhibit P-16:** Copy of the Applicant’s Visa debit card statement;
- Exhibit P-17:** *En liasse*, screen captures of the cached items purchased by the Applicant and since removed from the Walmart.ca website;
- Exhibit P-18:** Screen capture of Wal-Mart’s website taken on April 7, 2021, showing the “Safavieh Natural Fiber Geraldine Geometric Area Rug”, SKU 6000202420320 as a “live” listing;
- Exhibit P-19:** Copy of the OPC press release dated April 18, 2017 titled “*Indication et exactitude des prix – Walmart plaide coupable pour des infractions commises à Montréal*”;
- Exhibit P-20:** Copy of the August 26, 2010 article titled “*Amende record pour un magasin Walmart*”;
- Exhibit P-21:** *En liasse*, screen captures of the Walmart.ca website taken on April 8, 2021, of the 22 items purchased by the Applicant on April 4, 2021;
- Exhibit P-22:** Copy of the judgment of *Charest-Corriveau c. Sears Canada inc.*, 2015 QCCQ 6417.

The exhibits in support of the application are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 13, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

M^e Joey Zukran

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500-06-001142-211

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

DOMINIQUE LAVOIE, domiciled at 

Representative Plaintiff

v.

WAL-MART CANADA CORP., legal person having a principal establishment at 17000 Trans-Canada Highway, Kirkland, district of Montreal, Province of Quebec, H9J 2M5

Defendant

ORIGINATING APPLICATION

(Articles 141 and 583 C.C.P.)

Nature of Suit: Damages

ORIGINAL

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BL 6059

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