

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001142-211

DOMINIQUE LAVOIE, domiciled at [REDACTED]
[REDACTED]

Applicant

-VS-

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

**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**
(ARTICLES 571 AND FOLLOWING C.C.P.)

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

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

All consumers who, from April 4th-5th, 2021, purchased an item 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.

or any other class to be determined by the Court.

(hereinafter referred to as the “**Class**”)

2. The Applicant is a consumer within the meaning of Quebec’s *Consumer Protection Act* (“**CPA**”);

3. 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 disclosed as **Exhibit P-1**;
4. 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 disclosed as **Exhibit P-2**;
5. Wal-Mart is a merchant within the meaning of the CPA and its activities are governed by this legislation, among others;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

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

6. On April 4, 2021, the Applicant visited the Walmart.ca website because he was shopping for rugs, carpets, pillows and other household items;
7. The Applicant 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**;
8. 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.



9. On April 4, 2021, while browsing the Walmart.ca website, the Applicant 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**);
10. The Applicant 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;
11. The Applicant 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)***”, Applicant disclosing **Exhibit P-11**;
12. 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)
13. 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 Applicant purchased;
14. On the day after each of his purchases, Wal-Mart debited the Applicant’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

15. On April 5, 2021, Wal-Mart sent an email to the Applicant with the subject line “Update for your order — #6592163000794”, further confirming its intention to be bound by the contracts of sale with the Applicant, 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.”

16. On April 6, 2021, Wal-Mart sent another email to the Applicant 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 Applicant, 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.”

17. However, on April 6, 2021, Wal-Mart started unilaterally cancelling the Applicant’s orders;
18. For instance, on April 6, 2021, Wal-Mart sent three (3) emails to the Applicant 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**;
19. The Applicant 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).

- 20. Wal-Mart refused to sell the items that the Applicant purchased at the priced Wal-Mart advertised on its website and failed to honour its contracts with the Applicant and all Class members;
- 21. First, Wal-Mart cannot unilaterally cancel the Applicant’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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- 22. Second, given the number of “pricing errors” (**22 items** in the case of the Applicant 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;
- 23. Third, as of April 6, 2021, Wal-Mart removed all of the SKU items purchased by the Applicant 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</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</p>
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<p>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>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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24. The Applicant 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;
25. As mentioned at paragraph 23 above, Wal-Mart has since removed all but one of the 22 items from its website. However, the Applicant was able to retrieve the Google "cached" version of Wal-Mart's website for the majority of the items he purchased and discloses them herewith *en liasse* as **Exhibit P-17**;
26. The only remaining "live" item on Wal-Mart's website is the "Safavieh Natural Fiber Geraldine Geometric Area Rug", SKU 6000202420320 (which is the second item listed on the Applicant'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 is now 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:



27. By selling SKU 6000202420320 to the Applicant 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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28. 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;
29. By refusing to honour its advertised prices Wal-Mart violated several sections of the CPA, including sections 16, 54.1, 224 c) and 231;
30. The Applicant 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 declares) and the prices advertised by Wal-Mart at the time of his purchase (Wal-Mart is in possession of these prices which the Applicant cannot access since the items were removed from Wal-Mart's website);
31. The Applicant 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 currently advertising the same item for \$497.97 plus taxes (\$572.54);
 - Lost Value formula: $\$572.54 - \$4.01 = \mathbf{\$568.53}$
32. The Applicant is also entitled to claim punitive damages pursuant to section 272 CPA in the amount of \$500 per class member;
33. Indeed, Wal-Mart's conduct warrants such a condemnation because it refused to honour the advertised price despite the Applicant's multiple requests and then simply removed all of the items in question from its website as if they never existed;
34. 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, Applicant disclosing 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**;

35. The Applicant’s damages are a direct and proximate result of Wal-Mart’s conduct and, in these circumstances, the Applicant’s claims for both compensatory and punitive damages are justified;

NEW UPDATE AS OF THE EVENING OF APRIL 7, 2021

- 35.1 Around 9:00 p.m. in the evening of April 7, 2021, i.e. several hours after the Applicant filed his initial Application to Authorize a Class Action, the Applicant 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), disclosed herewith *en liasse* as **Exhibit P-21**;
- 35.2 Exhibit P-21 leaves no doubt that Wal-Mart violated section 224 c) CPA, since if the Applicant wants to purchase any of these 22 items, Wal-Mart would charge him a higher price than that advertised on April 4, 2021, causing the Lost Value;
- 35.3 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, disclosed as **Exhibit P-22**;
- 35.4 The “Lost Value” chart below shows the complete list of items purchased by the Applicant 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 HANDPAINTED CERAMIC KNOBS (12-Pack) KI1224	\$3.49	\$49.97	\$46.48
6000200691215	KNOB-IT VINTAGE HANDPAINTED CERAMIC KNOBS (12-Pack) KI1199	\$3.49	\$49.97	\$46.48
6000200695341	KNOB-IT VINTAGE HANDPAINTED 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

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

36. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:
- a) By cancelling consumers' orders of April 4 and 5, 2021, did Wal-Mart violate Quebec's *Consumer Protection Act*?
 - b) If so, are Class members entitled to compensation and in what amount?
 - c) Are the Class members entitled to punitive damages and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

37. 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;
38. The Applicant presumes that Wal-Mart has a very important number of customers across Quebec. While he is unaware of the total number of Wal-Mart's clients who are included in the Class, he estimates that it is likely in the hundreds or thousands;
39. Indeed, the Wal-Mart "chat" representative wrote to him that "**plusieurs articles** sur le site au mauvais prix donc **tous les commande** (*sic*)" were cancelled (see Exhibit P-16);
40. The names and addresses of all the other consumers included in the Class are not known to the Applicant, however, are all in the possession of Wal-Mart since the orders must be placed online and delivered;
41. Class members are numerous and are dispersed across the province;
42. 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;
43. 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 CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

44. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
- a) He is a member of the Class and has a personal interest in seeking the

conclusions that he proposes herein;

- b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) His interests are not antagonistic to those of other Class members;
45. The Applicant adds that he participated in the drafting of the present application and has reviewed the exhibits;
46. He is taking this action so that he and all Class members can be compensated and to hold Wal-Mart accountable;

III. DAMAGES

47. Wal-Mart has breached several obligations imposed on it by consumer protection legislation in Quebec, notably:
- a) Quebec's *CPA*, including sections 16, 54.1, 215, 219, 224 c) and 231, thus rendering section 272 applicable;
48. In light of the foregoing, the following damages may be claimed against Wal-Mart:
- a) compensatory damages in the aggregate of the Lost Value; and
 - b) punitive damages of \$500 per Class member for the breach of obligations imposed on Wal-Mart pursuant to s. 272 CPA;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

49. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
50. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Plaintiff's action against Defendant;

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;

CONDEMN the Defendant to pay to the members of the Class \$500 each in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of*

Representative Plaintiff;

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;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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;

V. JURISDICTION

51. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal, notably because Wal-Mart has its principal establishment in the district of Montreal and because it is likely that many of the Class Members reside in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All consumers who, from April 4th-5th, 2021, purchased an item 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.

or any other class to be determined by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) By cancelling consumers' orders of April 4 and 5, 2021, did Wal-Mart violate Quebec's *Consumer Protection Act*?
- b) If so, are Class members entitled to compensation and in what amount?
- c) Are the Class members entitled to punitive damages and, if so, in

what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Plaintiff's action against Defendant;

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;

CONDEMN the Defendant to pay to the members of the Class \$500 each in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*;

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;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notices to Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

THE WHOLE with costs including publication fees.

Montreal, April 8, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran, attorney for Applicant
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Exhibits supporting the Amended application

In support of the Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant 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.

These exhibits are available on request.

Montreal, April 8, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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500-06-001142-211

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

DOMINIQUE LAVOIE

Applicant

v.

WAL-MART CANADA CORP.

Defendant

**AMENDED APPLICATION TO AUTHORIZE THE
BRINGING OF A CLASS ACTION AND TO APPOINT THE
STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

ORIGINAL

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