

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Actions)

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No.: 500-06-001142-211

DOMINIQUE LAVOIE

Plaintiff

v.

WAL-MART CANADA CORP.

Defendant

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**APPLICATION OF DEFENDANT WAL-MART CANADA CORP.  
TO ADDUCE RELEVANT EVIDENCE AND TO EXAMINE THE PROPOSED  
REPRESENTATIVE PLAINTIFF  
(Art. 574, para. 3 CCP)**

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**TO THE HONOURABLE CHRISTIAN IMMER, J.S.C., THE DEFENDANT WAL-MART  
CANADA CORP. RESPECTFULLY SUBMITS AS FOLLOWS:**

**I. INTRODUCTION**

1. On April 7, 2021, the Plaintiff Dominique Lavoie filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the “First Application for Authorization”) against Wal-Mart Canada Corp. (“Walmart”), which he amended on April 8, 2021 (collectively with the First Application for Authorization, the “**Application for Authorization**”).
2. Walmart seeks the authorization of this Court to file relevant evidence, namely a short affidavit accompanied by copies of the Terms of Sale which appear on Walmart’s website, as allowed by article 574 at para 3 of the *Code of Civil Procedure* (“CCP”), and this, for the reasons hereinafter exposed.

**II. ALLEGATIONS OF THE APPLICATION FOR AUTHORIZATION**

3. The Plaintiff seeks authorization to institute a class action against Walmart on behalf of consumers who, between April 4 and 5, 2021, purchased items from the Walmart.ca website, and subsequently had their orders “cancelled.”
4. At paragraph 1 of the Application for Authorization, the Plaintiff describes the proposed class as follows:

All consumers who, from April 4<sup>th</sup> -5<sup>th</sup>, 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**”)

5. Plaintiff alleges that Walmart “cancelled” orders of consumers, and claims that this was in violation of the Québec *Consumer Protection Act* (“CPA”), namely sections 16, 54.1, 215, 219, 224 c), 231 and 272 CPA.
6. The Plaintiff therefore seeks on behalf of each class member, (i) compensatory damages representing the difference between the price shown for an item on April 4 or 5, 2021, and the price for the same item which appeared several days later; and (ii) punitive damages of \$500.00 per class member.

### III. RELEVANT EVIDENCE

7. In support of the Application for Authorization, Plaintiff filed a large number of exhibits including the terms which govern the use of Walmart’s website (Exhibit P-2).
8. However, the Plaintiff failed to file the Terms of Sale which governed sales transactions which were concluded on Walmart’s website at the relevant time.
9. Walmart seeks authorization to complete the contractual framework currently in the Court record, by filing the said Terms of Sale as Exhibit D-1 by means of an affidavit substantially in the form of the draft affidavit attached to the present Application as **Annex A**.
10. This evidence is directly relevant to the Court in its evaluation of whether the authorization criteria of article 575 CCP are met.
11. It would be contrary to the interests of justice to refuse the filing of evidence which is directly relevant to the assessment of the class action authorization criteria.

### IV. EXAMINATION OF PROPOSED REPRESENTATIVE

12. At the hearing regarding the authorization of the class action, Walmart intends to argue, *inter alia*, that (i) the claims of members do not raise identical, similar or related issues of law or fact; and (ii) that the Plaintiff is not in a position to properly represent the class members, and, therefore, that the conditions of criteria (1) and (4) of article 575 CCP are not met.

13. Walmart therefore seeks the authorization of this Court to conduct a circumscribed examination of Plaintiff on the following subjects:
  - a) The circumstances and details regarding the Plaintiff's alleged orders, made on April 4, 2021, on the Walmart website, being six (6) separate orders for a total of twenty-two (22) household goods, including fourteen (14) carpets, rugs and mats (as described at paragraphs 9 and 35.4 of the Application for Authorization);
  - b) The cancellation of the said orders;
  - c) Plaintiff's status as a consumer and his ability to properly represent a group in a consumer class action;
  - d) The circumstances leading to Plaintiff's filing of the Application for Authorization on April 7, 2021, only three days after he attempted to place the orders; and
  - e) The existence of a class, including the steps taken by Plaintiff to identify other class members.
14. These subjects are directly related to the Court's appreciation of whether the conditions of criteria (1) and (4) of article 575 CCP are met, and are therefore directly relevant to the authorization of a class action.
15. An examination regarding these subjects will also allow the Court to define the group and to identify the questions to be dealt with collectively.
16. It is in the interest of justice that Walmart may examine the Plaintiff out of court on these subjects for a maximum of 60 minutes.

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

**GRANT** the present *Application of Defendant Wal-Mart Canada Corp. to Adduce Relevant Evidence and to Examine the Proposed Representative Plaintiff*.

**AUTHORIZE** Wal-Mart Canada Corp. to file an affidavit substantially similar to the draft affidavit annexed to the present Application as Annex A, as well as Exhibit D-1, attached thereto.

**AUTHORIZE** Wal-Mart Canada Corp. to examine Plaintiff Dominique Lavoie outside of court for a maximum of 60 minutes regarding the following subjects:

- a) The circumstances and details regarding the Plaintiff's alleged orders, made on April 4, 2021, on the Walmart website, being six (6) separate orders for a total of twenty-two (22) household goods, including fourteen

- (14) carpets, rugs and mats (as described at paragraphs 9 and 35.4 of the Application for Authorization);
- b) The cancellation of the said orders;
  - c) Plaintiff's status as a consumer and his ability to properly represent a group in a consumer class action;
  - d) The circumstances leading to Plaintiff's filing of the Application for Authorization on April 7, 2021, only three days after he attempted to place the orders; and
  - e) The existence of a class, including the steps taken by Plaintiff to identify other class members.

**THE WHOLE** without costs, unless contested.

**MONTRÉAL**, September 17, 2021

**(s) Torys Law Firm LLP**

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Permanent Code: BS-2554  
Our reference: 33924-2133

**TRUE COPY**

*Torys Law Firm LLP*

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**Torys Law Firm LLP**

**NOTICE OF PRESENTATION**

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**RECIPIENT:**

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**LPC AVOCAT INC.**

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**TAKE NOTICE** that the *Application of Defendant Wal-Mart Canada Corp. to Adduce Relevant Evidence and to Examine the Proposed Representative Plaintiff* will be presented before the Honourable Justice Christian Immer of the Superior Court, sitting in and for the District of Montréal, as case management judge, at a date and time to be determined by the Court, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec H2Y 1B6.

**GOVERN YOURSELVES ACCORDINGLY.**

**MONTRÉAL**, September 17, 2021

**(s) Torys Law Firm LLP**

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**TORYS LAW FIRM LLP**

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EVIDENCE AND TO EXAMINE THE PROPOSED  
REPRESENTATIVE PLAINTIFF (Art. 574, para. 3 CCP)  
AND ANNEX A**

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