

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°:

SUPERIOR COURT
(Class Action)

PIERRE FORTIN-SIMARD, [REDACTED]
[REDACTED]

Plaintiff

vs.

UBER CANADA INC. is a corporation with a place of business at 1534-1155 Metcalfe Street, Montreal, Quebec, H3B2V6;

and

UBER PORTIER CANADA INC., a corporation having its head office at 5300-66 Wellington Street West Toronto, Ontario, M5K1E6 and having an agent at MZ400-1000 rue De La Gauchetière O Montréal, Québec H3B0A2;

and

UBER TECHNOLOGIES, INC., a corporation having its principal place of business at 1513 3rd Street, San Francisco, California, 94158, United States.

Defendants

**APPLICATION FOR AUTHORISATION TO BRING
A CLASS ACTION
(Art. 574 et seq. C.p.c.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC,
SITTING IN THE CLASS ACTIONS DIVISION IN THE DISTRICT OF MONTREAL, THE
PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

I. GENERAL PRESENTATION

1. The Plaintiff wishes to bring a class action against the Defendants on behalf of the persons forming part of the group hereinafter defined:

"All persons in Quebec who have made a transaction on the Uber or Uber Eats mobile application or on the www.ubereats.com website and who have overpaid taxes on zero-rated products;

Hereinafter referred to as "Group A

"All persons in Quebec who have made a transaction on the Uber or Uber Eats mobile application, or on the www.ubereats.com website, and who have paid an amount in excess of the maximum allowed for drinking milk.";

Hereinafter referred to as "Group B

Group A and Group B are jointly referred to as "the Group".

2. The purpose of this class action is to claim from the Defendants compensatory damages equivalent to the amounts overpaid by the members of the Class in connection with transactions on their web platform (website) or on their mobile applications, as well as punitive damages;
3. Since the launch in Canada of their web platform and mobile applications, the Defendants have made false or misleading representations to Group A members regarding the payment of taxes due under tax laws relating to zero-rated basic groceries, as well as overcharging amounts in a manner contrary to the maximum price regulation applicable to dairy products for Group B members;
4. This class action is based on articles 1425, 1426, 1432, 1434, 1457 and 1458 of the *Civil Code of Québec* (hereinafter the "C.C.Q.") and on articles 12, 17, 219, 227.1, 232 and 272 of the *Consumer Protection Act* (hereinafter the "C.P.A.");
5. It is also based on sections 177 and 177.1 of the *Act respecting the Québec sales tax*, sections 165 and 165(3) and Part III of Schedule VI of the *Excise Tax Act*, and the *Regulation respecting fluid milk prices*;

II. THE PARTIES

6. The Plaintiff is a consumer within the meaning of the C.C.Q. and the C.P.A. ;
7. The Defendant Uber Canada Inc. is a corporation governed by the *Canada Business Corporations Act* (R.S.C. (1985) c. C-44), registered in Québec, and is responsible for the marketing and administrative support of the Defendants' web platforms and mobile applications, as appears from a statement of information of a legal person in the enterprise register, invoked as exhibit P-1;
8. The Defendant Uber Portier Canada inc. is a corporation governed by the *Canada Business Corporations Act* (R.S.C. (1985) c. C-44), registered in Québec, and providing technological services, as appears from a statement of information of a legal person in the enterprise register, invoked as exhibit P-2;
9. Defendant Uber Technologies, Inc. is a legal person duly incorporated under the laws of the United States, and develops and operates web platforms and mobile applications that allow users to obtain services and/or goods from third-party suppliers, who are merchants, as appears from a search of the *Secretary of State of California*, filed as Exhibit P-3;
10. The Defendants are merchants within the meaning of the C.C.P.A. in the context of orders made on the Uber Eats web platform and mobile application or in the context of the transportation service on the Uber mobile application;
11. The contract binding the parties is a contract of adhesion and a consumer contract within the meaning of the C.C.Q. and the C.P.A.;
12. We also find a document setting out the *Applicable Conditions* on the Defendants' website, which is referred to as Exhibit P-4;

III. CONDITIONS REQUIRED FOR THE AUTHORISATION OF THIS COLLECTIVE ACTION AND THE DESIGNATION OF THE STATUS OF REPRESENTATIVE

A. THE FACTS ALLEGED JUSTIFY THE CONCLUSIONS SOUGHT (ART. 575(2) C.P.C.)

Group A: Taxes on zero-rated basic foodstuffs

13. On February 26th, 2023, the Plaintiff placed an order, in the form of a pick-up, with the Defendants and paid them to obtain two basic food products from the third-party supplier Pétro-Canada/Bonisoir, located at 950 Taschereau Blvd. Taschereau, La Prairie, Québec, namely a dozen eggs and a 4L bag of Québon 2% milk, as appears from this invoice, which was submitted as Exhibit P-5;

14. Although both purchases were zero-rated basic groceries under sections 177 and 177.1 of the *Act respecting the Québec sales tax*, excerpt cited as Exhibit P-6, and Part III of Schedule VI to the *Excise Tax Act*, excerpt cited as Exhibit P-7, an amount of \$1.77 in taxes was billed by the Defendants and paid by the Plaintiff;
 15. Zero-rated basic foodstuffs include, among others, eggs and dairy products, as appears from an excerpt from the Revenu Québec website cited as Exhibit P-8;
 16. It is the Defendants who charge and collect the Goods and Services Tax ("GST") and Quebec Sales Tax ("QST") on their web platform and applications;
 17. The Defendants are registered in the Revenu Québec file for the QST and in the Canada Revenue Agency file for the GST, as appears from the results of searches of the Revenu Québec and Canada Revenue Agency websites, filed as exhibits P-9 and P-10;
 18. Thus, no amount equivalent to the taxes on zero-rated basic foodstuffs was to be billed by the Defendants to the Plaintiff and the members of Group A;
 19. On November 7th, 2023, the Plaintiff placed a new order with and paid the Defendants to obtain four basic food products from the third-party supplier Costco, located at 635 chemin de Touraine, Boucherville, Quebec, namely:
 - a) 1 bag of 4 L Québon homogenized 3.25% milk, for \$9.97, whereas the regulations provide for a maximum retail price of \$8.61 ;
 - b) 1 bag of 4 L Québon 2% milk, for \$9.51, whereas the regulations stipulate a maximum retail price of \$8.24;
 - c) 1 bag of 4% Québon 1% milk, for \$9.04, whereas the regulations stipulate a maximum retail price of \$7.87;
 - d) 1 container of 18 Nutri eggs, for \$6.90
- for a subtotal of \$35.42, even though the Defendants applied GST and QST ("VAT") to it, without indicating on which item these taxes were applied, making it impossible for the Plaintiff to verify the accuracy of this invoice, which was invoked as Exhibit P-11.
20. The invoicing methods chosen by the Defendants, which make it difficult, if not impossible, to verify the GST and QST taxes collected, constitute misleading practices on the part of the Defendants;
 21. An article in *La Presse* dated February 25, 2023 reported on the Defendants' practices with respect to basic food products that were nonetheless taxed and billed to consumers, as appears from this article, cited as Exhibit P-12;
 22. Under section 227.1 of the *Consumer Protection Act* :

"227.1 No person shall, by any means whatsoever, make a false or misleading representation as to the existence, chargeability, amount or rate of any duty payable under an Act of Parliament or of the legislature of a province."

23. Thus, the Defendants violated the *Consumer Protection Act*, as well as tax laws, by applying and collecting taxes on zero-rated basic food products, thereby causing significant harm to the members of Group A;
24. The Plaintiff and the members of Group A are entitled to claim damages from the Defendants equivalent to the amount of the taxes wrongfully collected by the Defendants;

Group B: Fluid milk price higher than the maximum price allowed

25. The Plaintiff paid the Defendants \$11.79 before taxes for the purchase of Québon 2% fluid milk in 4L format, as appears from the invoice, P-5, dated February 26th, 2023;
26. As established by the *Regulation respecting fluid milk prices, M-35.1, r. 206* :

" 3. No person may sell milk to a consumer at a price lower than those set out in Annex A for the regions indicated therein.

as appears from a copy of the by-law in effect on October 1st 2022, filed as Exhibit P-13;

27. Under Schedule A of this regulation, the maximum retail price established for a 4 L container of 2% milk for Region I, where the third-party supplier is located, is \$8.13;
28. Although this regulation is of public order, the Defendants billed the Plaintiff \$11.79, an amount \$3.66 higher than the regulation, representing a 45% overrun;
29. On the same day, February 26th, 2023, the Plaintiff was able to list on the Uber Eats web platform a large number of dairy products with a price higher than the regulatory price, as appears from excerpts from this platform, filed jointly as Exhibit P-14, thus making it possible to infer that the Defendants' fault extends to all fluid milk products offered on their platform and applications;
30. In the *La Presse* newspaper article of February 25th 2023, P-12, investigative journalist Charles-Éric Blais-Poulin mentions that, with regard to the prices of dairy products on the Uber Eats web platform :

"We consulted the offers of 40 retailers who sell ordinary milk on Uber Eats in the "Convenience store" section of the application. Only one of them complied with the minimum and maximum prices set by the Régie des marchés agricoles et alimentaires du Québec."

31. In this article (P-11) in La Presse, the Defendants defend themselves by arguing that they are not responsible for the situation, stating that *"retailers are exclusively responsible for any regulatory obligations relating to the selling prices of their items"*.
32. In accordance with sections 3 and 58 of the *Act respecting the marketing of agricultural, food and fish products*, the Defendants are considered to be companies engaged in the marketing of dairy products, as illustrated in Exhibit P-15 :
 - " 58. Any person or company engaged in the production or marketing of a product covered by a plan is, as soon as the plan comes into force, bound by the obligations set out in this Act.
 - " 3. Marketing" means the classification, processing, labelling, storage, offering for sale, dispatch for sale, transport, parking, sale, purchase, advertising and financing of operations relating to the sale of a product, as well as bee pollination services for agricultural products."
33. At the time of the order made by the plaintiff on November 7th, 2023, Exhibit P-11, it was noted that the Defendants were still in violation of the Fluid Milk Price Regulation, up to date as at November¹, 2023 and invoked as Exhibit P-16;
34. Thus, by contravening sections of the *Act respecting the marketing of agricultural, food and fish products and its Regulation respecting fluid milk prices*, the Defendants caused prejudice to the members of Group B;
35. The Plaintiff and the members of Group B are entitled to claim damages from the Defendants equivalent to the amount paid in excess of what is permitted by the regulations;

Punitive damages

36. Despite the presence of three other items on the invoice, P-14, namely "Service Fee", "Delivery Fee" and gratuity, the amounts indicated lead to the definite conclusion that the Defendants charged and collected taxes on the four zero-rated products;

37. The Defendants are well aware of the regulations governing zero-rated products in force in Québec, as well as the regulations governing the maximum price of dairy products that may be sold via their web platform and mobile applications;
38. Having been contacted by the investigative team of the newspaper *La Presse* several weeks before the publication of their article P-11 denouncing the Defendants' actions with respect to their treatment of taxes on basic food products that should be zero-rated, as well as on the prices of dairy products that exceed the regulations, it is clear that the practice remains common to this day;
39. Moreover, the Defendants do not indicate their GST-QST numbers anywhere on the invoices sent to Class members, making it very difficult for them to validate the identity of the collector of Québec excise and sales taxes, as appears from the invoices, P-5 and P-14;
40. The Defendants have known for a long time that their invoicing of zero-rated basic food products and fluid milk did not comply with tax laws and regulations, and they have still not corrected the situation;
41. Moreover, by deliberately omitting to include details of the amounts of taxable and zero-rated items in their invoices, the Defendants knowingly misled the Plaintiff and the members of Group A;
42. To this day, the Defendants continue to post prices higher than those allowed under the *Fluid Milk Price Regulation*, up to November 1st 2023 (Exhibit P-16) and an excerpt from their website dated February 16, 2024 and referred to as Exhibit P-17;
43. Pursuant to section 272 T.C.A., and due to the manifestly intentional nature of the Defendants' actions, as well as their conduct marked by recklessness and serious negligence with respect to the rights of the Plaintiff and the members of the Class, the latter are entitled to claim punitive damages in the amount of five dollars (\$5) per member of the Class, the whole with a view to dissuading the Defendants and their competitors from adopting such business conduct;

B. THE CLAIMS OF THE MEMBERS OF THE GROUP RAISE IDENTICAL QUESTIONS OF LAW AND SIMILAR FACTS (ART. 575(1) C.P.C.)

44. Each member of the Class made a purchase from the Defendants via their online web platform or mobile applications;
45. Each member of the Group was overcharged and billed in a manner that did not comply with the law and regulations, in violation of the C.P.A. and the C.C.Q.;
46. The Defendants have been using the same electronic invoicing method for years, making the facts and law applicable similar to all members of the Class;

47. It would be detrimental to the members of the Class to have to bring an individual action against the Defendants given the similar nature of the transactions for thousands of consumers and customers of the Defendants;
48. None of the members of the Group received from the Defendants any reimbursement of the amounts illegally invoiced, or compensation for the harm suffered, as should have been the case;
49. The legal issues raised by the members of the Group are similar:
 - a) Did the Defendants overcharge or allow the Plaintiff and the members of Group A to be overcharged for zero-rated basic groceries?
 - b) Did the Defendants overcharge or allow the Plaintiff and members of Class B to be overcharged for dairy products?
 - c) Did the Defendants post or permit the posting of prices in excess of the higher prices set by regulation?
 - d) With respect to Group A, did the Defendants allow third party suppliers to infringe tax laws through their web platform and mobile applications?
 - e) With respect to Group B, did the Defendants permit third party suppliers to breach the Fluid Milk Pricing Regulations?
 - f) Did members of the Class suffer damages as a result of the conduct alleged against the Defendants?
 - g) What are the damages suffered by the Class members as a result of the conduct alleged against the Defendants??
 - h) Are the Plaintiff and the members of the Class entitled to claim interest at the legal rate plus additional compensation on the amounts to be paid??
 - i) Are the Plaintiff and the members of the Class entitled to claim punitive damages and, if so, for what amounts?
50. In the circumstances, the Defendants have an obligation to compensate each member of the Class for the amounts overpaid in each of their transactions;
51. Accordingly, each member of the Class is entitled to claim the following amounts from the Defendants:
 - a) The equivalent of any overpayment for each transaction;
 - b) Punitive damages equivalent to five dollars (\$5) per member of the Group;

52. Each of the members of the Group is entitled to claim interest at the statutory rate and additional compensation on the amount owed to it from the date of filing of this Request for Authorisation;
- C. THE COMPOSITION OF THE GROUP MAKES IT DIFFICULT OR IMPRACTICAL TO APPLY THE RULES ON MANDATES TO SUE ON BEHALF OF OTHERS OR ON JOINDER OF PROCEEDINGS (ART. 575(3) C.C.P.)**
53. The Plaintiff does not know the names and addresses of all the persons who may make up the Group;
54. Because of the type of business operated by the Defendants, the Plaintiff is of the opinion that a large number of people find themselves in the same situation as he does, and that the Group represents thousands of members, if not tens of thousands of members;
55. It would be impractical, if not impossible, for a mandatary to properly carry out his mandate, given the organizational, monitoring and control difficulties involved in managing such a large number of parties to the litigation;
56. It is not in the interests of justice for each individual to first initiate an individual appeal and then request a merger, which would be impractical and costly, both for the individuals concerned and for the judicial system;
57. Collective action is the most appropriate procedural vehicle in the circumstances for members of the Group to assert their respective rights and obtain justice and redress;
58. In this case, the choice to use collective action avoids a multiplication of potentially contradictory judgments on identical questions of fact and law;
- D. THE PLAINTIFF IS ABLE TO ENSURE ADEQUATE REPRESENTATION OF THE MEMBERS OF THE GROUP (ART. 575(4) C.P.C.)**
59. The Plaintiff wishes to act as the Group's representative;
60. The Plaintiff is a member of the Class;
61. The Plaintiff undertakes to represent the interests of the members of the Class vigorously and loyally;
62. The Plaintiff understands the nature of the action and the facts giving rise to it;
63. The Plaintiff is willing to devote the time necessary to ensure adequate representation of Class members at all stages of this action;

64. The Plaintiff has demonstrated great availability to its lawyers and is in a position to ensure adequate representation of the members of the Class since it has, with the assistance of its lawyers, conducted a summary investigation, retained competent counsel and diligently commenced this class action;
65. The Plaintiff has provided its lawyers with all information relevant to this application for authorization to institute a class action and undertakes to cooperate in the future provision of useful information;
66. The Plaintiff has shown a keen interest in this case and has expressed a desire to be kept informed at every stage;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT (ART. 574 C.P.C.)

67. The action that the Plaintiff wishes to bring on behalf of the members of the Class is an action in damages;
68. The conclusions sought by the Plaintiff against the Defendants are as follows:

GRANT the class action brought by the Plaintiff on behalf of the members of the Class against the Defendants;

ORDER the Defendants to reimburse the Plaintiff and each member of the Class the amounts overpaid for each of the transactions carried out, with interest at the legal rate plus the additional indemnity provided for in article 1619 C.C.Q. calculated from the filing of the application for authorization;

ORDER that members' claims for reimbursement of sums paid and for compensation and interest thereon shall be collectively recovered;

ORDER, as punitive damages, the Defendants to pay the Plaintiff and the members of the Class the sum of five dollars (\$5) per member of the Class, with interest at the legal rate plus the additional indemnity provided for in Article 1619 C.C.Q. calculated from the date of the judgment to be rendered;

ORDER that members' claims for punitive damages and interest thereon be collectively recovered;

ALL with legal costs, including the costs of expert opinions and fees, where applicable

V. THE JUDICIAL DISTRICT

69. The Plaintiff proposes that this class action be brought before the Superior Court sitting in the judicial district of Montreal for the following reasons:

- a) The Defendant Uber Canada Inc. has an establishment there and the Defendant Uber Portier Canada Inc. has appointed a proxy in this judicial district;
- b) A large number of the Group's members live there;
- c) The Plaintiff's lawyers have their offices in the judicial district of Montréal.

FOR THESE REASONS, THE COURT :

AUTHORIZE the Plaintiff to pursue this class action in the judicial district of Montréal;

ATTRIBUTE to the Plaintiff the status of representative for the purposes of exercising this collective action on behalf of the two groups as proposed below:

"All persons in Quebec who have made a transaction on the Uber or Uber Eats mobile application or on the www.ubereats.com website and who have overpaid taxes on zero-rated products;

Hereinafter referred to as "Group A

"All persons in Quebec who have made a transaction on the Uber or Uber Eats mobile application, or on the www.ubereats.com website, and who have paid an amount in excess of the maximum allowed for fluid milk.";

Hereinafter referred to as "Group B

Group A and Group B are jointly referred to as "the Group".

IDENTIFY the questions to be dealt with collectively as follows:

- a) Did the Defendants overcharge, or allow the Plaintiff and members of Group A to be overcharged, for zero-rated basic groceries?
- b) Did the Defendants overcharge or allow the Plaintiff and the members of Class B to be overcharged for dairy products?
- c) Did the Defendants post or permit the posting of prices in excess of the higher prices set by regulation?
- d) Did the Defendants allow third-party merchant suppliers to violate tax laws through their web platform and mobile applications?
- e) Are the members of the Class entitled to claim from the Defendants the

recovery of the part of the overpayment that was made in contravention of the law and regulations?

- f) Are the Plaintiff and the members of the Class entitled to claim interest at the legal rate plus additional compensation on the amounts to be reimbursed?
- g) Are the Plaintiff and the members of the Class entitled to claim punitive damages and, if so, for what amounts?

IDENTIFY the conclusions sought as follows:

GRANT the class action brought by the Plaintiff on behalf of the members of the Class against the Defendants;

ORDER the Defendants to reimburse the Plaintiff and each member of the Class the amounts overpaid for each of the transactions carried out, with interest at the legal rate plus the additional indemnity provided for in article 1619 C.C.Q. calculated from the filing of the application for authorization;

ORDER that members' claims for reimbursement of sums paid and for compensation and interest thereon shall be collectively recovered;

ORDER, as punitive damages, the Defendants to pay the Plaintiff and the members of the Class the sum of five dollars (\$5) per member of the Class, with interest at the legal rate plus the additional indemnity provided for in Article 1619 C.C.Q. calculated from the date of the judgment to be rendered;

ORDER that members' claims for punitive damages and interest thereon be collectively recovered;

ALL with legal costs, including the costs of expert opinions and fees, where applicable

DECLARE that, unless excluded, the members of the Class will be bound by any judgment to be entered in the class action in the manner provided by law;

TO SET at 30 days the period during which a member may request exclusion, following which all members of the Class who have not requested exclusion will be bound by the judgment to be rendered in this class action;

ORDER the publication of a notice to Class members accessible and drafted in a manner appropriate to this class action;

ORDER the Defendants to send this notice to the members of the Class at their last known email addresses with the words "Notice of Class Action" in the subject line of the email;

ORDER the Defendants to publish this notice to the members of the Class on their web platforms, mobile applications, *Facebook* page, *Instagram* and X account (*Twitter*) with the mention "Class Action Notice" for 30 days from the date of judgment;

ALL with legal costs, including the costs of advice and, where applicable, expert fees.

Montréal, July 10th, 2024

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