

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

No: 500-06-001195-227

**SUPERIOR COURT  
(Class Actions)**

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**EVA BITTON**

Applicant

v.

**AMAZON.COM.CA, INC.**

and

**AMAZON CANADA FULFILLMENT  
SERVICES, INC.**

and

**AMAZON.COM, INC.**

and

**AMAZON.COM LLC**

and

**WAYFAIR LLC**

and

**HOME DEPOT OF CANADA INC.**

Defendants

**APPLICATION BY DEFENDANTS AMAZON.COM.CA, INC., AMAZON CANADA  
FULFILLMENT SERVICES, INC., AMAZON.COM, INC. AND AMAZON.COM LLC  
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**

(Articles 574 and 575 C.C.P.)

**TO THE HONOURABLE JUSTICE PIERRE NOLLET, J.S.C., SITTING IN CLASS  
ACTIONS DIVISION, IN THE JUDICIAL DISTRICT OF MONTRÉAL, THE  
DEFENDANTS AMAZON.COM.CA, INC., AMAZON CANADA FULFILLMENT  
SERVICES, INC., AMAZON.COM, INC. AND AMAZON.COM LLC RESPECTFULLY  
SUBMIT AS FOLLOWS:**

## I. INTRODUCTION

1. Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC (collectively, the “**Amazon Defendants**”) seek leave to adduce relevant evidence in order to establish facts that are necessary to enable this Court to undertake an informed decision, in light of the criteria set out in art. 575 of the *Code of Civil Procedure* (“**CCP**”), regarding the authorization to institute class action proceedings sought by the Applicant Eva Bitton (the “**Plaintiff**”).
2. On or around July 26, 2022, the Plaintiff filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* against the Amazon Defendants, Wayfair LLC (“**Wayfair**”) and Home Depot of Canada Inc. (“**Home Depot**”) (collectively, the “**Defendants**”).
3. On or around November 7, 2022, the Plaintiff filed an *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* against the Amazon Defendants, Wayfair and Home Depot (the “**Amended Application**”).
4. As appears from paragraph 1 of the Amended Application, the Plaintiff seeks to represent a class comprised of the following persons:
  - Amazon Class:** All consumers who, since February 7, 2019, purchased an extended warranty on goods from the Amazon mobile application(s) and/or website(s).
  - Home Depot Class:** All consumers who, from February 7, 2019 to September 30, 2022, purchased an extended warranty on goods from the Home Depot mobile application(s) and/or website(s).
  - Wayfair Class:** All consumers who, from February 7, 2019 to October 31, 2022, purchased an extended warranty on goods from the Wayfair mobile application(s) and/or website(s).or any other class to be determined by the Court.
5. The Plaintiff alleges that the Defendants violate or have violated section 228.1 of the *Consumer Protection Act*, R.L.R.Q. c. P-40.1 (the “**CPA**”) regarding a merchant’s obligation to inform consumers of the existence and nature of Québec’s legal warranty, by failing to provide consumers in Québec with the notice required pursuant to sections 91.9 and ff. of the *Regulation respecting the application of the Consumer Protection Act*, R.L.R.Q., c. P-40.1, r. 3 (the “**Legal Warranty Notice**”) before selling them extended warranty products on their respective websites or mobile applications.

6. The Plaintiff notably alleges that at no point prior to the Plaintiff's purchase of an extended warranty product on the website [www.amazon.ca](http://www.amazon.ca), the Amazon Defendants referred the Plaintiff to the Legal Warranty Notice.
7. The Plaintiff claims damages allegedly resulting from the Defendants' failure to provide the Legal Warranty Notice and punitive damages.
8. The Amazon Defendants hereby request leave to adduce evidence at the authorization hearing in support of their submissions that the Amended Application fails to meet the threshold authorization conditions set forth in art. 575 CCP.

## II. THE EVIDENCE THAT THE AMAZON DEFENDANTS SEEK TO ADDUCE

9. In order to provide the Court with evidence that is essential to a proper determination of whether the Plaintiff's proposed class action should be authorized, the Amazon Defendants seek leave to adduce the Affidavit of Eva Lorenz (the "**Affidavit**") filed in support hereof as Exhibit R-1.
10. In addition to providing relevant context, and as indicated in the Affidavit, the clarifications it contains that will assist the Court at the authorization hearing include the following:
  - (a) On or before April 30, 2023, the Amazon Defendants will stop permitting the sale of extended warranty products to customers of the website [www.amazon.ca](http://www.amazon.ca) with a confirmed Quebec address, unless they are provided the Legal Warranty Notice (the "**Amazon End Date**");
  - (b) After the Amazon End Date, the Amazon Defendants or a third party designated or contracted by the Amazon Defendants will send the Legal Warranty Notice by electronic mail or paper mail (the "**Amazon Notice**") to all persons with a confirmed Quebec address who purchased an extended warranty product on the website [www.amazon.ca](http://www.amazon.ca) between May 24, 2019 and the Amazon End Date (the "**Amazon Notice Recipients**"); and
    - (i) for Amazon Notice Recipients whose extended warranties have expired, the Amazon Notice will offer them the opportunity to claim a refund of the price paid for the extended warranty purchased, unless Amazon or the third party designated or contracted by Amazon has evidence that the customer made a successful claim against the warranty before it expired, in which case a refund will not be issued to them; and
    - (ii) for Amazon Notice Recipients whose extended warranties have not expired, the Amazon Notice will offer them the opportunity to claim a refund of the price paid for the extended warranty purchased if they forfeit the remaining coverage under the extended warranty, unless Amazon or the third party designated or contracted by Amazon has evidence that the customer made a successful claim against the

warranty before it expired, in which case a refund will not be issued to them and their remaining coverage will not be forfeited.

**III. GROUNDS IN SUPPORT OF THE PRESENT APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**

11. Art. 574 CCP grants this Court discretion to authorize relevant evidence which is central to the issue of whether the Amended Application meets the requirements of art. 575 CCP.

12. The Affidavit is both useful and necessary to demonstrate that:

(a) the business practice of the Amazon Defendants relating to the sale of extended warranty products is in the process of being fully rectified in accordance with the CPA; and

(b) for past sale of extended warranty products, full refunds are to be offered to affected consumers along with the Legal Warranty Notice in the manner described in the Affidavit;

such that, once the steps described in the Affidavit are completed, the requirements of art. 575 CCP will not be met, and the Amended Application should accordingly be dismissed.

13. Given the above, the evidence that the Amazon Defendants seek leave to adduce is relevant and necessary to show that the facts alleged do not justify the conclusions sought in the Amended Application.

14. It is also limited to strictly circumscribed and precise subjects and facts and is thus consistent with the nature of the authorization process. It also complies with the criteria of relevance, proportionality and reasonability provided at art. 18 and 19 CCP.

15. The evidence which the Amazon Defendants seek to adduce would enable this Court to make an informed analysis of the criteria contained art. 575 CCP and would result in a more efficient hearing of the Amended Application.

16. This Court should not prevent itself from having the benefit of evidence which could assist it in its analysis of the authorization criteria set forth in art. 575 CCP.

17. For these reasons, the Amazon Defendants seek leave from this Court to adduce the Affidavit as relevant evidence.

**WHEREFORE MAY IT PLEASE THIS COURT TO:**

**GRANT** the present Application by Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC for Leave to Adduce Relevance Evidence;

**AUTHORIZE** Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC to file the Affidavit of Eva Lorenz in the form attached hereto as Exhibit R-1;

**THE WHOLE** without costs, save in the event of contestation.

Montréal, April 3, 2023



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**OSLER, HOSKIN & HARCOURT LLP**

1000 De La Gauchetière Street West

Suite 2100

Montréal, QC H3B 4W5

Telephone: (514) 904-8100

Telecopier: (514) 904-8101

**Lawyers for Defendants Amazon.com.ca,  
Inc., Amazon Canada Fulfillment Services,  
Inc., Amazon.com, Inc. and Amazon.com  
LLC**

c/o M<sup>re</sup> Alexandre Fallon /

M<sup>re</sup> Sophie Courville-Le Bouyonnec

[afallon@osler.com](mailto:afallon@osler.com) / [scourville@osler.com](mailto:scourville@osler.com)

Email notification: [notificationosler@osler.com](mailto:notificationosler@osler.com)

Our file: 1236277

## NOTICE OF PRESENTATION

**TO:** **M<sup>tre</sup> Joey Zukran** LPC  
Avocats Inc.  
276 rue Saint-Jacques, Suite 801  
Montréal, QC H2Y 1N3

*Lawyers for Applicant Eva Bitton*

**AND TO:** **M<sup>tre</sup> Éric Lefebvre**  
Norton Rose Fullbright Canada LLP  
1, Place Ville Marie  
Suite 2500  
Montréal, QC H3B 1R1

*Lawyers for Defendant Wayfair LLC*

**M<sup>tres</sup> Jean Lortie and Catherine Martin**  
McCarthy Tétrault LLP  
1000 De La Gauchetière St. West  
Suite MZ400  
Montréal, QC H3B 0A2

*Lawyers for Defendant Home Depot of Canada Inc.*

### 1. PRESENTATION OF THE PROCEEDING

**TAKE NOTICE** that the *Application by Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC for Leave to Adduce Relevance Evidence* will be presented for hearing before the Class Actions Division of the Superior Court of Québec, in Courtroom 16.06 of the Montréal Courthouse on **April 17, 2023, at 9:00 a.m.**

### 2. HOW TO JOIN THE HEARING

The contact information to join the hearing in room 16.06 is as follows:

**By Teams:** by clicking on the link available at <http://www.tribunaux.qc.ca> ("*Liens TEAMS pour rejoindre les salles du Palais de justice*"):

You must then enter your name and click «Join now» (« *Rejoindre maintenant* »). To facilitate the process and the identification of participants, we ask that you enter your name in the following manner:

Attorneys: Mtre Name, Surname (name of party represented)

Trustees: Name, Surname (trustee)

Superintendent: Name, Surname (superintendent)

Parties not represented by an attorney: Name, Surname (specify: plaintiff, defendant, applicant, respondent, creditor, opposing party, or other)

Persons attending a public hearing may simply indicate “public”.

**By telephone:**

Canada, Québec (Charges will apply): +1 581-319-2194

Canada (Toll-free): (833) 450-1741

Conference ID: 591 630 716#

**By VTC videoconference:** [teams@teams.justice.gouv.qc.ca](mailto:teams@teams.justice.gouv.qc.ca)

Videoconference ID: 1173094864

**In person:** You may go to room 16.06 of the Montréal Courthouse located at:

1, Notre-Dame Street East, Montréal, Québec.

**DO GOVERN YOURSELF ACCORDINGLY.**

Montréal, April 3, 2023

*Osler, Hoskin & Harcourt*

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**OSLER, HOSKIN & HARCOURT LLP**

1000 De La Gauchetière Street West

Suite 2100

Montréal, QC H3B 4W5

Telephone: (514) 904-8100

Telecopier: (514) 904-8101

**Lawyers for Defendants Amazon.com.ca,  
Inc., Amazon Canada Fulfillment Services,  
Inc., Amazon.com, Inc. and Amazon.com  
LLC**

c/o M<sup>re</sup> Alexandre Fallon /

M<sup>re</sup> Sophie Courville-Le Bouyonnec

[afallon@osler.com](mailto:afallon@osler.com) / [scourville@osler.com](mailto:scourville@osler.com)

Email notification: [notificationosler@osler.com](mailto:notificationosler@osler.com)

Our file: 1236277



**EXHIBIT R-1**

Affidavit of Eva Lorenz

Dated April 3, 2023

**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
**(Class Actions)**

No: 500-06-001195-227

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**WAYFAIR LLC**

and

**HOME DEPOT OF CANADA INC.**

Defendants

**AFFIDAVIT OF EVA LORENZ**

I the undersigned, Eva Lorenz, exercising my profession at 300 Boren Avenue North, in the city of Seattle, in the state of Washington, United States of America, solemnly declare the following:

1. I am the President of Amazon.com.ca, Inc. (collectively with Amazon Canada Fulfillment Services, Inc., Amazon.com, Inc. and Amazon.com LLC, the "**Amazon Defendants**").
2. Amazon.com.ca, Inc. operates the www.amazon.ca website and mobile application.
3. I have taken cognizance of the attached *Application by Defendants Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon.com,*

*Inc. and Amazon.com LLC for Leave to Adduce Relevance Evidence* (the “**Application**”).

4. All of the facts alleged in the Application are true.
5. I have sworn this Affidavit to provide further context in respect of the allegations contained in the Applicant’s *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* in this matter (“**Plaintiff’s Amended Application**”).
6. I understand that the Plaintiff wishes to institute a class action against the Amazon Defendants, Wayfair LLC and Home Depot of Canada Inc. seeking compensatory and punitive damages for allegedly failing to provide consumers with the notice required pursuant to section 91.12 of the *Regulation respecting the application of the Consumer Protection Act*, R.L.R.Q., c. P-40.1, r. 3 (the “**Legal Warranty Notice**”) before selling extended warranties to consumers in Québec.
7. In particular, regarding the Amazon Defendants, the Plaintiff alleges that at no point prior to the Plaintiff’s purchase of an extended warranty product on the website [www.amazon.ca](http://www.amazon.ca), the Amazon Defendants referred the Plaintiff to the Legal Warranty Notice.
8. The Plaintiff’s Amended Application alleges that Home Depot of Canada Inc. and Wayfair LLC have changed their business practices and that as of September 30, 2022, and October 31, 2022, respectively, they provide Québec residents with the Legal Warranty Notice.
9. On or before April 30, 2023, the Amazon Defendants will also stop permitting the sale of extended warranty products to customers of the website [www.amazon.ca](http://www.amazon.ca) with a confirmed Quebec address, unless they are provided the Legal Warranty Notice (the “**Amazon End Date**”).
10. After the Amazon End Date, the Amazon Defendants or a third party designated or contracted by the Amazon Defendants will send the Legal Warranty Notice by electronic mail or paper mail (the “**Amazon Notice**”) to all persons with a confirmed Quebec address who purchased an extended warranty product on the website [www.amazon.ca](http://www.amazon.ca) between May 24, 2019 and the Amazon End Date (the “**Amazon Notice Recipients**”); and
  - (a) for Amazon Notice Recipients whose extended warranties have expired, the Amazon Notice will offer them the opportunity to claim a refund of the price paid for the extended warranty purchased, unless Amazon or the third party designated or contracted by Amazon has evidence that the customer made a successful claim against the warranty before it expired, in which case a refund will not be issued to them; and
  - (b) for Amazon Notice Recipients whose extended warranties have not expired, the Amazon Notice will offer them the opportunity to claim a refund

of the price paid for the extended warranty purchased if they forfeit the remaining coverage under the extended warranty, unless Amazon or the third party designated or contracted by Amazon has evidence that the customer made a successful claim against the warranty before it expired, in which case a refund will not be issued to them and their remaining coverage will not be forfeited.

11. All the facts alleged herein are true.

AND I HAVE SIGNED:

DocuSigned by:  
  
B0056414D5E64FE...  
EVA LORENZ

SOLEMNLY DECLARED BEFORE ME BY  
VIRTUAL MEANS IN MONTRÉAL, QUÉBEC,  
ON April 3, 2023.

 #116,085

France Boulais  
Commissioner for Oaths for the Province of  
Québec

No: 500-06-001195-227

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**SUPERIOR COURT**  
(Class Action)  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

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**EVA BITTON**

Applicant

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**WAYFAIR LLC**

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**HOME DEPOT OF CANADA INC.**

Defendants

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**APPLICATION BY DEFENDANTS**  
**AMAZON.COM.CA, INC., AMAZON CANADA**  
**FULFILLMENT SERVICES, INC., AMAZON.COM,**  
**INC. AND AMAZON.COM LLC FOR LEAVE TO**  
**ADDUCE RELEVANT EVIDENCE**  
**(Art. 574 and 575 C.C.P.) AND EXHIBIT R-1**

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**ORIGINAL**

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**Osler, Hoskin & Harcourt LLP**

(Me Alexandre Fallon / Me Sophie Courville-Le Bouyonnec)

1000 de La Gauchetière Street West, Suite 2100

Montréal, Québec H3B 4W5

Tél: 514.904.8100 Téléc.: 514.904.8101

[afallon@osler.com](mailto:afallon@osler.com) / [scourville@osler.com](mailto:scourville@osler.com)

[notificationosler@osler.com](mailto:notificationosler@osler.com)

Code : BO 0323

Our file: 1236277

## Boulais, France

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**De:** Boulais, France  
**Envoyé:** 3 avril 2023 15:24  
**À:** jzukran@lpclex.com; eric.lefebvre@nortonrosefulbright.com; jlortie@mccarthy.ca; CMARTIN@mccarthy.ca  
**Cc:** Fallon, Alexandre; Courville-Le Bouyonnec, Sophie  
**Objet:** NOTIFICATION - E Bitton v. Amazon.com.ca, Inc. et al. 500-06-001195-227 - APPLICATION BY AMAZON DEFENDANTS FOR LEAVE TO ADDUCE RELEVANT EVIDENCE and EXHIBIT R-1  
**Pièces jointes:** Application by Amazon Defendants for Leave to Adduce Relevant Evidence (April 3 2023).PDF

### NOTIFICATION BY EMAIL (Art. 134 CCP)

#### SENDER

**FIRM:** **OSLER, HOSKIN & HARCOURT LLP**  
**LAWYER:** Mtre Alexandre Fallon / Mtre Sophie Courville-Le Bouyonnec  
**ADDRESS:** 1000 De La Gauchetière St. West, Suite 2100  
Montréal, Québec H3B 4W5  
**TELEPHONE:** 514-904-5809 / 514-904-8193  
**TELECOPIER:** 514-904-8101  
**NOTIFICATION:** [afallon@osler.com](mailto:afallon@osler.com) /  
[scourville@osler.com](mailto:scourville@osler.com) [notificationosler@osler.com](mailto:notificationosler@osler.com)  
**OUR FILE NUMBER:** 1236277

#### ADDRESSEES

**FIRM:** **LPC Avocat Inc.**  
**LAWYER:** Mtre Joey Zukran  
**EMAIL ADDRESS:** [jzukran@lpclex.com](mailto:jzukran@lpclex.com)  
(Lawyers for Applicant, Eva Bitton)

**FIRM:** **Norton Rose Fullbright Canada LLP**  
**LAWYER:** Mtre Éric Lefebvre  
**EMAIL ADDRESS:** [eric.lefebvre@nortonrosefulbright.com](mailto:eric.lefebvre@nortonrosefulbright.com)  
(Lawyers for Defendant, Wayfair LLC)

**FIRM:** **McCarthy Tétrault LLP**  
**LAWYERS:** Mtre Jean Lortie / Mtre Catherine Martin  
**EMAIL ADDRESS:** [jlortie@mccarthy.ca](mailto:jlortie@mccarthy.ca); [cmartin@mccarthy.ca](mailto:cmartin@mccarthy.ca)  
(Lawyers for Defendant, Home Depot of Canada Inc.)

**Place of transmission:** Montréal  
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Court file number: 500-06-001195-227



**France Boulais**

Legal Assistant to Me Alexandre Fallon  
514.904.5784 | [FBoulais@osler.com](mailto:FBoulais@osler.com)

Osler, Hoskin & Harcourt LLP | [osler.com](http://osler.com)  
1000 De La Gauchetière Street West, Suite 2100  
Montréal, Québec, Canada H3B 4W5