

SUPERIOR COURT

(Class action chamber)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL.

No.: 500-06-001195-227.

DATE: January 8, 2024.

BY THE HONOURABLE PIERRE NOLLET., J.S.C.

EVA BITTON
Plaintiff - Representative

v.

WAYFAIR LLC et AI
Defendant.

JUDGMENT ON AUTHORIZATION NOTICE AND EXCLUSION DEADLINE

OVERVIEW

[1] This judgment deals with Plaintiff Representative's application to approve the short and long-form notices to Class members of the judgment authorizing the class action and the extent of the dissemination plan.

ANALYSIS

1.1 Facts relevant to the issue

[2] By judgment rendered on August 10, 2023, the Court authorized a class action against, among other things, Defendant Wayfair LLC ("**Wayfair**"), with notice costs against the Defendant, and ordered the publication of a notice to the members of the Class authorized, namely:

<p>Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022.</p> <p>(ci-après le « Groupe Wayfair »)</p>	<p>All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022.</p> <p>(hereinafter the “Wayfair Class”)</p>
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[3] The Court ordered the parties to agree on a protocol for disseminating the notice to members and to submit any difficulties that may arise therefrom to the Court for approval within no more than thirty (30) days of the authorization judgment.

[4] Wayfair and the Representative Plaintiff have come to an agreement on notices but differ in respect of the dissemination plan and other minor elements.

[5] The Representative Plaintiff requests that notice of authorization of the class action and the opt-out deadline be communicated to the Wayfair Class members, at Wayfair's cost, by Wayfair sending an abbreviated notice in French and in English (Annex A-1) by email to each Wayfair Class member to his or her last known email address, containing a hyperlink to the long-form notice in French (Annex A-2) or in English (Annex A-3), the choice of language based on their current language of communication with Wayfair.

[6] Wayfair consents to the content of the abbreviated notices in French and English (Annex A-1) as well as that of the long-form notices in French (Annex A-2) and English (Annex A-3).

[7] The long-form and short-form notices shall also be posted on Class Counsel's bilingual website dedicated to the present class action and on Quebec's Registry of Class Actions.

[8] Wayfair does not object to sending the notice on an individual basis, so long as the notice is exclusively provided to the Wayfair Class members, as defined in the judgment on authorization. Wayfair does object to sending the notices to corporate entities as, according to Wayfair, corporate entities are excluded from the Wayfair Class.

[9] It is Wayfair's contention that the Wayfair Class, as authorized by the Court, concerns only Quebec consumers, as defined by the *Consumer Protection Act* (the CPA).¹ According to Wayfair, under the CPA the term “consumer” can only refer to natural persons. It is alleged that sending notices to corporate customers could cause irreparable damage to Wayfair's reputation.

¹ *Consumer Protection Act*, RLRQ, c. P-40.1.

[10] Wayfair also contends that it needs to filter the list of customers receiving the notice to avoid including customers who cancelled their order or returned it for a refund and requests a period of sixty (60) days from the date of the judgment to send out the notices.

1.2 Legal principles

[11] The rules governing the distribution of notices of authorization in class actions are set out in article 579 C.C.P., a provision that grants the Tribunal broad discretion. That section reads as follows:

579. Lorsque l'action collective est autorisée, un avis est publié ou notifié aux membres, indiquant:

- 1° la description du groupe et, le cas échéant, des sous-groupes;
- 2° les principales questions qui seront traitées collectivement et les conclusions recherchées qui s'y rattachent;
- 3° le nom du représentant, les coordonnées de son avocat et le district dans lequel l'action collective sera exercée;
- 4° le droit d'un membre de demander à intervenir à l'action collective;
- 5° le droit d'un membre de s'exclure du groupe, les formalités à suivre et le délai pour s'exclure;
- 6° le fait qu'un membre qui n'est pas un représentant ou un intervenant ne peut être appelé à payer les frais de justice de l'action collective;
- 7° tout autre renseignement que le tribunal juge utile dont, entre autres, l'adresse du site Internet pour accéder au registre central des actions collectives.

Le tribunal détermine la date, la forme et le mode de la publication en tenant compte de la nature de l'action, de la composition du groupe et de la situation géographique de ses membres; le cas échéant, l'avis indique, en les désignant nommément ou en les décrivant, ceux des membres qui seront notifiés individuellement. Il peut, s'il l'estime opportun, autoriser la publication d'un avis abrégé.

[12] The purpose of a class notice is to inform as many potential class members as possible as to their rights resulting from the authorization judgment. It is well established that in the case of doubt the Court should be over-inclusive.²

² *Sopropharm v. Groupe Jean-Coutu (PJC) inc.*, 2018 QCCS 4907, par. 35.

[13] According to *Société Canadienne des postes v. Lépine*³, the notification procedure must be “*designed in such a way as to make it likely that the information will be communicated to its recipients*”.

[14] The Minister of Justice’s comments on article 579 C.c.p., at the time it was adopted, confirms that the objective of the notice to members at the authorization stage is to reach as many members as possible and to inform them of their rights.⁴

[15] In *Viot c. U-Haul Co. (Canada) Itée*⁵, Justice Bisson agreed with the defendant's position that sending the notice to a group of customers that could include corporate customers, could cause irreparable damage to the defendant's reputation.

1.3 Discussion

[16] The Court shall start by distinguishing the facts in the current matter from the facts in *Viot c. U-Haul Co.* In the latter the applicant proposed the following delivery methods of the notice to class members: (i) the sending of individualized emails; (ii) a Facebook campaign; (iii) posting on the Class Action Register; and (iv) posting on the applicant counsel's website. The respondent objected only to the sending of individualized emails because, in its view, this method of distribution was not appropriate in the circumstances of the case.

[17] In our case, there are two substantial differences: 1) Defendant accepts the sending of individualized emails and 2) no Facebook campaign with specific targets is contemplated.

[18] All Wayfair wants is to limit the sending of the individualized email to Wayfair Class members, exclusive of corporate entities.

[19] The CPA does not refer to corporate entities *per se*. «Corporate entities» have no specific meaning within the *Quebec Civil Code*. The Code refers to either «legal persons» or «natural persons».

[20] Corporate entities are one category of «*legal persons*» but there are many others.

[21] Within the CPA, a « consumer » means a natural person. It however excludes a natural person who, as a merchant, obtains goods or services for the purposes of his business. Wayfair is not asking specifically to exclude «*merchant*» from the email list, very likely because this task would prove difficult if not impossible without further evidence.

³ 2009 CSC 16, par. 43.

⁴ Yves LAUZON et Anne-Julie ASSELIN, «Article 579» dans Luc Chamberland (dir.), *Le Gand Collectif-Code de procédure civile : Commentaires et annotations*, 5 ed., vol. 2, Éditions Yvon Blais, 2020, p. 2935.

⁵ 2022 QCCS 1794, paras 54 to 57.

[22] Wayfair wants to weed out only one category of legal persons those called «corporate entities». It is unclear, for example, how Wayfair would classify a natural person who bought the extended warranty through a «**corporate** credit card».

[23] To achieve its goal, Wayfair would have to be allowed to make a determination as to whether a customer is or not a «**consumer**» within the definition of the CPA.

[24] Wayfair has filed no evidence proving that it is capable of distinguishing – with any degree of certainty – between a consumer and a merchant within the meaning of the CPA. Even to determine if a customer is a «*corporate entity*», the court has no evidence as to whether it is the name of the person ordering which would be used to make the determination, the name of the person being billed, its email address, the fact that the «sent to address» is a corporate address or other criteria.

[25] Wayfair’s position goes against a commonplace practice where notices are published in very broad ways such as newspapers, radio or television and internet and social media reaching not only Class members, but also other customers of a defendant be they corporate or otherwise. In all these broad notice campaigns, no one claims that there is irreparable damage to a company’s reputation simply because the notices are publicly available. This is the very essence of notice publication.

[26] At this stage, a defendant should not be permitted to unilaterally determine who is a consumer or not. As Representative Plaintiff suggests, there is an easier and simpler way to disseminate the notices in a way that prevents confusion and limits the alleged irreparable damages.

[27] The notices would be sent by email to persons who made the purchase of a good and the related extended warranties with a Quebec billing address or with a “Quebec-ship to” address – information⁶.

[28] The notice could clearly explain that “merchants” as defined in the CPA are excluded. This could be achieved by adding the following text to the notice (under the class definition):

“You are a Wayfair Class member if your purchase was not made in relation to the operation of a business”.	« Vous êtes membre du Groupe Wayfair si votre achat n'a pas été effectué dans le cadre de l'exploitation d'une entreprise ».
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[29] Wayfair also requested the ability to filter out the customers who cancelled their order or returned it for a refund.

[30] The difficulty with this request is that it is akin to redefining the Wayfair Class without the appropriate evidence. The Court is not suggesting that customers who

⁶ In the Court’s view this is a sufficient rebuttable presumption that the person is residing or domiciled in Quebec at the time of the purchase.

cancelled their order should be part of the Wayfair Class. All the Court is saying is that the notice dissemination plan is not the place to redefine or modify the Class. This could be achieved later in the process, for instance at the time the claim is granted, if and when it happens.

[31] Wayfair is requesting additional time (60 days) to sort out through the various types of purchases and determine who is or is not a corporate entity, or a customer who cancelled an order. Not allowing the requested segregation reduces the time and difficulty related to the sorting out the Class members email list.

[32] The Representative Plaintiff requests that the Court order Wayfair to communicate the list of Class members to Class Counsel on a confidential basis, within fifteen (15) days of the judgment.

[33] Wayfair wants the ability to ensure that this list includes only the members of the Wayfair Class as defined in the judgment authorizing the class action. It wishes to make sure that the list does not include corporate customers and customers whose orders have been cancelled or returned and refunded. It also wishes to preserve the confidentiality of the information of such customers who are not to be included in the Class.

[34] For the same reasons as mentioned above, this request must be denied, at least in part. Wayfair deals with customers and not strictly with consumers. Wayfair should not be the one determining who is or is not a consumer. Wayfair is however right in requesting that the personal information of customers not part of the Class be protected.

[35] Plaintiff's Representative made two requests with respect to the list of potential Class members. The first request is that the list be communicated to them while the second one is that the list be filed with the Court in a confidential envelope.

[36] The communication of the list of potential Class members to Class counsel is not an issue. It is rather the use of some personal information which could end up being an issue. As such, the Representative Plaintiff's counsel will not be allowed to use the personal information contained in the list to communicate with the potential Class members prior to reaching an agreement with Defendant's counsel as to which email recipients may be contacted by Representative Plaintiff's counsel if it is their desire to do so. Any difficulty arising in that regard could be brought to the Court's attention. This way to proceed avoids unilateral determination by either one party.

[37] The Representative Plaintiff asked the Court to order Wayfair to keep all information concerning the Wayfair Class members and to send this information to the Court in a confidential envelope, under seal, within thirty (30) days of the judgment to be rendered.

[38] All parties in litigation are bound by an obligation of good faith that implies a duty to preserve the evidence in their possession. The obligation is severely limited by the

reference to good faith, as Justice Bélanger explains in *Jacques c. Ultramar Itée*.⁷ Justice Bélanger rather refers to the injunctive nature of such a request to suggest that all the criteria for issuing an injunctive relief should be met.

[39] Here, Representative Plaintiff's application is not supported by a sworn statement and does not contain factual allegations to support an injunctive demand that the evidence be preserved and communicated to the Court. The criteria for an injunctive relief are not met. Therefore, this portion of the application will be denied.

[40] To ensure the effectiveness of the dissemination program, the Court will request from Wayfair a report on the number of emails sent to Wayfair Class members and the numbers of emails who have bounced back.

[41] The exclusion deadline has already been determined in the authorization judgment as being 45 days from the date of publication of the notices. Given the dissemination method being used, the deadline will start from the day the notices are sent by email to potential Class members.

FOR THESE REASONS, THE COURT:

[42] **APPROVES** the form and content of the short-form and long-form notices to Wayfair Class members, in French and English, *as modified by the Court* and attached hereto *en liasse* as Schedule A;

[43] **ORDERS** the communication by Wayfair, within 30 days of this judgment, to all persons who purchased an extended warranty for goods purchased through the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022 and having a Quebec billing address or with a "Quebec-ship to" address, by sending the abbreviated notice in French and in English (Schedule A-1) by email to each such person to his or her last known email address, containing a hyperlink to the long-form notice in French (Schedule A-2) or in English (Schedule A-3), the choice of language based on their current language of communication with Wayfair;

[44] **ORDERS** Wayfair to pay for all costs, fees and disbursements related to the dissemination of the notices;

[45] **ORDERS** Wayfair to report to the Court within 30 days of the dissemination of the notices, through a sworn declaration of one of its representatives, on the number of emails sent and the number of emails who bounced back;

[46] **ORDERS** Class Counsel to post the long-form and short-form notices on its bilingual website www.lpclex.com/extendedwarranties/, within 15 days, until a final judgment is rendered in the present file, as well as on Quebec's Registry of Class Actions;

⁷ 2011 QCCS 6020.

[47] **ORDERS** Wayfair to communicate to the Representative Plaintiff's Counsel, LPC Avocat Inc., a list of all persons who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022 and having a Quebec billing address or with a "Quebec-ship to" address –such list to contain at least their full names, email addresses and phone numbers when available, within 30 days of this judgment;

[48] **DECLARES** that this judgment constitutes a judgment compelling the communication of the information by Wayfair within the meaning of applicable privacy laws and strictly to Class Counsel and the third-party administrator (if one is required);

[49] **ORDERS** LPC Avocat Inc. to maintain the confidentiality of the list of Wayfair Class members, to not use such list to contact Wayfair Class members prior to reaching an agreement with Defendant on which customers are to be considered potential Wayfair Class members and to only use said list for the purposes of verifying which person is a Wayfair Class member following the dissemination of the notices;

[50] **DISMISSES** the Representative Plaintiff's request that the Court order Wayfair to preserve in digital form all information concerning the Wayfair Class members in its possession or in the possession of its agents.

[51] **OTHER** legal costs to follow.

HONOURABLE PIERRE NOLLET J.S.C.

Me Joey Zukran.
Me Léa Bruyère
LPC avocat inc.
Class Counsel

Me Eric Lefebvre
Me Guillermo Uria Santander
Norton Rose Fullbright Canada LLP
Wayfair's counsel

Hearing date: On docket

ANNEXE/SCHEDULE A-1 (avis abrégé bilingue)

Version française

AVIS AUX MEMBRES : ACTION COLLECTIVE AUTORISÉE CONTRE WAYFAIR LLC

AVIS à tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022 (ci-après le « **Groupe Wayfair** »).

Vous êtes membre du Groupe Wayfair si votre achat n'a pas été effectué dans le cadre de l'exploitation d'une entreprise. Vous pourriez ne PAS être membre du Groupe Wayfair si votre achat et sa garantie ont subséquemment été annulés et remboursés.

Le 10 août 2023, la Cour supérieure du Québec a autorisé une action collective dans le dossier judiciaire no. 500-06-001195-227.

La demanderesse allègue que Wayfair et d'autres défenderesses ont vendu les garanties supplémentaires sans informer les consommateurs de l'existence et de la nature de la garantie légale du Québec. La Cour sera appelée à se prononcer sur les questions suivantes :

- a) Wayfair a-t-elle manqué à son devoir d'information en vertu de l'article 228 de la *Loi sur la protection du consommateur* (ci-après la « LPC ») dans ses représentations auprès des consommateurs québécois concernant les garanties supplémentaires qu'elles ont vendu entre le 7 février 2019 et le 31 octobre 2022 ?
- b) En l'absence d'information adéquate lors de la vente des garanties supplémentaires aux consommateurs québécois, ces derniers ont-ils droit aux remèdes prévus à l'article 272 LPC et, si oui, lesquels ?
- c) Wayfair devra-t-elle payer des dommages-intérêts exemplaires et/ou punitifs aux membres du Groupe Wayfair et dans l'affirmative, de quel montant ?
- d) À compter de quel moment la prescription pour la classe Wayfair est-elle acquise et pendant combien de temps la prescription a-t-elle été suspendue par la déclaration d'une urgence sanitaire due à la pandémie de Covid ?

La Cour ne s'est pas encore prononcée sur le fonds de l'action collective ni sur l'octroi d'une compensation en faveur des membres du groupe. La défenderesse Wayfair LLC conteste les allégations.

Si vous désirez demeurer membres de cette action collective, vous n'avez rien à faire. Par contre, si vous désirez vous **exclure** du recours, vous devez aviser le greffe de la Cour supérieure du Québec du district de Montréal par courrier recommandé au 1, rue

Notre-Dame Est, Montréal, H2Y 1B6, au plus tard le **[45 jours de la date de communication de l'avis]** en inscrivant le numéro de dossier, votre nom et l'exclusion.

Pour plus d'informations sur cette action collective, vous pouvez contacter l'avocat du groupe indiqué ci-dessous ou consulter l'avis aux membres détaillé, disponible en cliquant [ici](#). Votre nom et les informations que vous fournissez aux avocats du groupe resteront confidentiels :

LPC Avocat inc.

Me Joey Zukran, avocat de la demanderesse

276, rue Saint-Jacques, bureau 801

Montréal, Québec, H2Y 1N3

Téléphone : (514) 379-1572

Courriel : jzukran@lpclex.com

Site Internet : www.lpclex.com/fr/garantiesprolongees

LA PUBLICATION DU PRÉSENT AVIS AUX MEMBRES A ÉTÉ APPROUVÉE ET ORDONNÉE PAR LA COUR SUPÉRIEURE DU QUÉBEC.

Version anglaise

NOTICE TO MEMBERS: CLASS ACTION AGAINST WAYFAIR

NOTICE to all consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022. (the "**Wayfair Class**")

You are a Wayfair Class member if your purchase was not made in relation to the operation of a business. You may NOT be a Wayfair Class member if your purchase and warranty have subsequently been cancelled and refunded.

On August 10, 2023, the Superior Court of Quebec authorized a class action in court file no. 500-06-001195-227.

The Representative Plaintiff alleges that Wayfair and other Defendants sold extended warranties without informing consumers of the existence and nature of Quebec's legal warranty. The Court will be called upon to decide on the following questions:

- a) Did Wayfair fail in its duty to inform in violation of section 228 of Quebec's *Consumer Protection Act* (hereinafter, the "C.P.A.") in its representations to Quebec consumers

regarding the extended warranties it sold between February 7, 2019 and October 31, 2022?

- b) In the absence of adequate information at the time of sale of the extended warranties to Quebec consumers, are they entitled to the remedies provided for in section 272 of the C.P.A., and if so, which ones?
- c) Should Wayfair pay compensatory and/or punitive damages to the Wayfair Class members, and if so, in what amount?
- d) At what time is prescription acquired for the Wayfair Class and for how long was prescription suspended by the declaration of a health emergency due to the Covid pandemic?

The Court has not yet ruled on the merits of the class action, nor on any compensation that may be awarded to Class members. Wayfair LLC challenges the allegations.

If you wish to remain a Class member, you have nothing to do. On the other hand, if you wish to **exclude** yourself from the class action, you have until **[45 days from the date of publication of the notice]**, to advise the registry of the Superior Court of Quebec, District of Montreal, at 1 Notre Dame Street East, Montreal, Quebec, H2Y 1B6, by registered mail by entering the file number, your name and the exclusion.

For further information about this class action, you may contact class counsel listed below or consult the detailed notice to the members, available [here](#). Your name and any information you provide to class counsel will be kept confidential.

LPC Avocat Inc.

Me Joey Zukran, Attorney for Plaintiff

276, rue Saint-Jacques, Suite 801

Montréal, Québec, H2Y 1N3

Phone: (514) 379-1572

Email: jzukran@lpclex.com

Website: www.lpclex.com/extendedwarranties

**THE PUBLICATION OF THIS NOTICE TO CLASS MEMBERS HAS BEEN
APPROVED AND ORDERED BY THE SUPERIOR COURT OF QUÉBEC.**

SCHEDULE/ANNEXE A-2

AVIS AUX MEMBRES : ACTION COLLECTIVE CONTRE WAYFAIR LLC

AVIS AUX CONSOMMATEURS QUÉBÉCOIS QUI ONT ACHETÉ UNE GARANTIE PROLONGÉE À PARTIR DES SITES WEB OU DES APPLICATIONS MOBILES DE WAYFAIR ENTRE LE 7 FÉVRIER 2019 ET LE 31 OCTOBRE 2022

PRENEZ AVIS que le 10 août 2023, l'honorable juge Pierre Nollet, de la Cour supérieure du Québec, a autorisé l'exercice d'une action collective contre la défenderesse Wayfair LLC (« Wayfair ») et a attribué le statut de représentante à Mme Bitton afin de représenter le groupe de personnes décrites comme suit :

Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022. (le « **Groupe Wayfair** »);

Vous êtes membre du Groupe Wayfair si votre achat n'a pas été effectué dans le cadre de l'exploitation d'une entreprise. Vous pourriez ne PAS être membre du Groupe Wayfair si votre achat et sa garantie ont subséquemment été annulés et remboursés.

[1] Cette action collective sera exercée dans le district judiciaire de Montréal.

[2] Aux fins de la présente action collective, la demanderesse a élu domicile au cabinet de son avocat situé au:

Me Joey Zukran

LPC Avocat inc.

276, rue Saint-Jacques, bureau 801

Montréal, Québec, H2Y 1N3

Téléphone : (514) 379-1572

Télécopieur : (514) 221-4441

Courriel : jzukran@lpclex.com

Site Internet : www.lpclex.com/fr/garantiesprolongees

[3] Les principales questions de faits et de droit qui seront traitées collectivement sont :

- a) Wayfair a-t-elle manqué à son devoir d'information en vertu de l'article 228 LPC dans ses représentations auprès des consommateurs québécois concernant les garanties supplémentaires qu'elle a vendu entre le 7 février 2019 et le 31 octobre 2022

- b) En l'absence d'information adéquate lors de la vente des garanties supplémentaires aux consommateurs québécois, ces derniers ont-ils droit aux remèdes prévus à l'article 272 LPC et, si oui, lesquels ?
- c) Wayfair devra-t-elle payer des dommages-intérêts exemplaires et/ou punitifs aux membres du Groupe Wayfair et dans l'affirmative, de quel montant ?
- d) À compter de quel moment la prescription pour la classe Wayfair est-elle acquise et pendant combien de temps la prescription a-t-elle été suspendue par la déclaration d'une urgence sanitaire due à la pandémie de Covid?

[4] Les conclusions recherchées qui se rattachent à ces questions sont les suivantes :

PERMETTRE l'action collective de la Demanderesse et de tous les membres du Groupe Wayfair contre la défenderesse Wayfair LLC;

CONDAMNER la Défenderesse à verser aux membres du Groupe Wayfair une somme à déterminer au fond conformément à l'art. 253 ou 272 L.p.c. et **ORDONNER** que cette condamnation fasse l'objet d'un redressement collectif;

CONDAMNER la Défenderesse à payer aux membres du Groupe Wayfair, 100,00 \$ par membre à titre de dommages-intérêts punitifs et **ORDONNER** que cette condamnation fasse l'objet d'un recouvrement collectif;

ORDONNER à la Défenderesse de déposer au greffe de la Cour la totalité des sommes qui font partie du recouvrement collectif, avec intérêts, indemnité additionnelle et frais de justice suivant la loi;

ORDONNER que les réclamations des membres individuels du Groupe Wayfair fassent l'objet d'une liquidation collective si la preuve le permet et alternativement, d'une liquidation individuelle;

CONDAMNER la Défenderesse à supporter les frais de la présente action y compris les frais de pièces, d'avis, les frais de gestion des réclamations et les frais d'experts, le cas échéant, y compris les frais d'experts nécessaires pour établir le montant des ordres collectifs de recouvrement;

[5] La Cour supérieure ne s'est pas encore prononcée sur le fonds de l'action collective ni sur l'octroi d'une indemnisation en faveur des membres du groupe. Wayfair LLC nie les allégations contenues dans l'action collective.

[6] **Si vous souhaitez vous exclure** de la présente action collective, vous devez en aviser le greffier de la Cour supérieure du Québec, district de Montréal, et ce, au plus tard

le **[45 jours de la date de communication de l'avis]** via courrier recommandé ou certifié à l'adresse :

Cour supérieure du Québec, 1, rue Notre-Dame Est
Montréal, Québec, H2Y 1B6

Vous devez mentionner que vous souhaitez vous exclure de l'action collective *Bitton c. Wayfair LLC et als.* (numéro de cour 500-06-001195-227).

[7] La date après laquelle un membre **ne pourra plus s'exclure du groupe**, à moins d'une autorisation spécifique du Tribunal, est le **[45 jours de la date de communication de l'avis]**.

[8] Un membre du groupe qui n'a pas demandé son exclusion sera lié par tout jugement qui pourrait être rendu dans le cadre de l'action collective qui sera instituée et ce, tel que prévu par la loi.

[9] Si vous souhaitez être inclus dans l'action collective, vous n'avez rien à faire.

[10] En tant que membre du groupe, vous avez le droit d'intervenir dans la présente action collective, et ce, de la manière prévue par la loi.

[11] Un membre qui n'est pas un représentant ou un intervenant ne peut être appelé à payer les frais de justice de l'action collective.

[12] Pour plus d'informations, vous pouvez contacter l'avocat du groupe identifié ci-dessous. Votre nom et les informations fournis resteront confidentiels.

Me Joey Zukran
LPC Avocat inc.

276, rue Saint-Jacques, bureau 801

Montréal, Québec, H2Y 1N3

Téléphone : (514) 379-1572

Télécopieur : (514) 221-4441

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**LA PUBLICATION DU PRÉSENT AVIS AUX MEMBRES A ÉTÉ APPROUVÉE ET
ORDONNÉE PAR LA COUR SUPÉRIEURE DU QUÉBEC.**

SCHEDULE/ANNEXE A-3

NOTICE TO MEMBERS: CLASS ACTION AGAINST WAYFAIR LLC

NOTICE TO QUEBEC CONSUMERS WHO HAVE PURCHASED AN EXTENDED WARRANTY FROM WAYFAIR'S WEB SITE OR MOBILE APPLICATION FROM FEBRUARY 7, 2019, TO OCTOBER 31, 2022

TAKE NOTICE that on August 10, 2023, the Honourable Justice Pierre Nollet of the Superior Court of Québec authorized the bringing of a class action against Wayfair LLC ("Wayfair") and appointed the status of Representative Plaintiff to Ms. Bitton to act on behalf of the class of persons described as:

All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019, and October 31, 2022. (the "**Wayfair Class**");

You are a Wayfair Class member if your purchase was not made in relation to the operation of a business. You may NOT be a Wayfair Class member if your purchase and warranty have subsequently been cancelled and refunded.

[1] This class action will be brought in the judicial district of Montréal.

[2] For the purpose of this class action, the class representative has elected domicile at her attorney's office located at:

Mtre Joey Zukran

LPC Avocat Inc.

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Fax: (514) 221-4441

Email: jzukran@lpclex.com

Website: www.lpclex.com/extendedwarranties

[3] The principal questions of facts and law that will be dealt with collectively are:

- a) Did Wayfair fail in its duty to inform in violation of section 228 of Quebec's *Consumer Protection Act* (hereinafter, the "C.P.A.") in its representations to Quebec consumers regarding the extended warranties it sold between February 7, 2019, and October 31, 2022?
- b) In the absence of adequate information at the time of sale of the extended

warranties to Quebec consumers, are they entitled to the remedies provided for in section 272 of the C.P.A., and if so, which ones?

- c) Should Wayfair pay compensatory and/or punitive damages to the Wayfair Class members and if so, in what amount?
- d) At what time is prescription acquired for the Wayfair Class and for how long was prescription suspended by the declaration of a health emergency due to the Covid pandemic?

[4] The conclusions sought in relation to the above questions are as follows:

ALLOW the class action of the Representative Plaintiff and all Wayfair Class members against Defendant Wayfair LLC;

CONDEMN the Defendant to pay the members of the Wayfair Class an amount to be determined on the merits pursuant to art. 253 or 272 C.P.A. and **ORDER** that this condemnation be subject to collective redress;

CONDEMN the Defendant to pay the members of the Wayfair Class, \$100.00 per member as punitive damages and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendant to deposit in the Court Offices all of the sums that form part of the collective recovery, with interest, the additional indemnity and legal costs according to law;

ORDER that the claims of individual members of the Wayfair Class be subject to collective liquidation if the evidence permits and, alternatively, to individual liquidation;

CONDEMN the Defendant to bear the costs of this action, including the costs of exhibits, notices, claims management costs and the costs of experts, if any, including the costs of experts necessary to establish the amount of collective recovery orders;

[5] The Superior Court has not yet ruled on the merits of the class action, nor on any compensation that may be awarded to Class members. Wayfair LLC challenges the allegations contained in the class action.

[6] If you wish to **opt-out of the class action**, you must notify the registry of the Superior Court of Quebec, District of Montreal no later than **[45 days from the date of communication of the notice]**, by registered or **certified mail at this address**:

Superior Court of Québec,

1 Notre-Dame Street East, Montreal, H2Y 1B6.

You must state that you wish to exclude yourself from the class action of
Bitton v. Wayfair LLC et als. (case number 500-06-001195-227).

[7] The date after which a class member can **no longer request his or her exclusion** from the class, unless specifically authorized by the Court, is **[45 days from the date of communication of the notice]**.

[8] A class member who has not requested his exclusion is bound by any judgement that may be rendered in the class action to be instituted in the manner provided for by law.

[9] If you wish to be included in the class action, you have nothing to do.

[10] As a class member, you have the right to intervene in the present class action, in the manner provided for by law.

[11] No class member other than the representative plaintiff or an intervenor may be required to pay legal costs arising from the class action.

[12] For further information, you may contact class counsel listed below. Your name and any information provided will be kept confidential:

Me Joey Zukran

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**THE PUBLICATION OF THIS NOTICE TO CLASS MEMBERS HAS BEEN
APPROVED AND ORDERED BY THE SUPERIOR COURT OF QUÉBEC.**