SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-06-001253-232

DATE: November 20, 2025

BY THE HONOURABLE MARTIN F. SHEEHAN, J.S.C.

ELIAS KARRAS
Applicant
v.
MAPLE LEAF FOODS INC.
and
METRO INC.
and
WAL-MART CANADA CORP.
and
LOBLAW COMPANIES LIMITED
and
LOBLAWS INC.
and
GEORGE WESTON LIMITED
and
WESTON FOODS DISTRIBUTION INC.
and
WESTON FOODS (CANADA) INC.
Defendants

JUDGMENT ON MOTION TO AUTHORIZE A CLASS ACTION
(Article 575 of the *Code of Civil Procedure* ("C.C.P.")

OVERVIEW

[1] Applicant, Mr. Elias Karras (the "**Applicant**"), wishes to be authorized to file a class action (the "**Authorization Application**") on behalf of Quebec residents who purchased

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certain meat category items (the "**Meat Products**") referred to in an email sent by Mr. Michael McCain (at that time CEO of the Defendant Maple Leaf Foods Inc. ("**Maple Leaf**")) on March 22, 2007, 12 p.m. (the "**Impugned Email**").[1]

[2] The Impugned Email surfaced from the information to obtain warrants ("**ITO**")[2] issued by the Competition Bureau (the "**Bureau**") in the context of an investigation into the alleged price fixing of packaged bread.

[3] On the basis of the Impugned Email as well as certain newspaper articles[3] that referred to it or to the bread cartel investigation, Mr. Karras alleges that George Weston Limited, Weston Food Distribution Inc., Weston Foods (Canada) Inc. (together the "**Weston Defendants**"), Maple Leaf, as well as retailers Metro Inc. ("**Metro**"), Wal-Mart Canada Corp. ("**Wal-Mart**"), Loblaw Companies Limited and Loblaws Inc. (together "**Loblaws**") (Metro, Wal-Mart and Loblaws hereinafter referred to as the "**Retailer Defendants**") participated in a price-fixing conspiracy related to the Meat Products.

[4] During the hearing, Applicant's counsel advised that he wished to discontinue its Authorization Application against the Weston Defendants. Counsel for the Weston Defendants did not oppose a discontinuance. The Parties agreed that the Court could deal with the request in the context of the present judgment. Conclusions authorizing the discontinuance against the Weston Defendants are included in the present judgment. For the same reason, the present judgment does not comment on the involvement (or lack thereof) of the Weston Defendants in the alleged improper conduct.

ANALYSIS

1. Does Applicant Meet the Requirements for the Authorization of a Class Action?

1.1 Conclusion

[5] Even considering the low threshold that is applicable at this stage, the requirements are not met, and the class action is not authorized.

1.2 Legal Principles

[6] A class action is a procedure by which a person, the class representative, sues on behalf of all members of a group that have a similar claim. Because the class representative is not specifically mandated to act on behalf of these members, prior authorization of the Court is required before a class action can be filed.[4]

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1 Exhibits P-8.1 and NGP-13.
2 Exhibit P-3.
3 Exhibits P-4 and P-8.
4 *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, 2019 SCC 35, para. 6.

[7] Article 574 C.C.P. provides that an application for authorization to file a class action must set out: i) the facts on which the class action is based; ii) the nature of the class action; and iii) the class on whose behalf the representative intends to act.

[8] According to article 575 C.C.P., the Court must authorize the class action if it is of the opinion that:

1° the claims of the members of the class raise identical, similar or related issues of law or fact;

2° the facts alleged appear to justify the conclusions sought;

3° 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; and

4° the class member appointed as representative plaintiff is in a position to properly represent the class members.

[9] The Court's role at the authorization stage has been described as "screening". It must weed out those untenable and frivolous cases that clearly do not meet the requirements for the issuance of class action (article 575 C.C.P.). The threshold is low. The requirements must be interpreted in a broad and liberal fashion designed to give effect to the social goals of class actions (facilitating access to justice, modifying harmful behaviour and preserving scarce judicial resources).[5] When all four criteria are met, the Court has no discretion to refuse the authorization. Moreover, if a doubt remains at the end of the analysis, this doubt should benefit the applicant, and the authorization should be granted.[6]

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5 *Western Canadian Shopping Centres Inc.* v. *Dutton*, 2001 SCC 46, paras. 27 to 29; *Royer* c. *Capital One*, 2025 QCCA 217, para. 23 (Applications for leave to appeal to the Supreme Court, 2025-04-28 (S.C. Can.) 41212).

6 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, 2020 CSC 30, paras. 27, 55, 116 and 156; *L'Oratoire Saint-Joseph du Mont-Royal* c. *J.J.*, *supra*, note 4, paras. 6, 8, 18, 19, 20, 42, 56 and 58; *Vivendi Canada Inc.* v. *Dell'Aniello*, 2014 CSC 1, paras. 1, 37, 55 and 67; *Infineon Technologies AG* v. *Option Consommateurs*, 2013 CSC 59, paras. 59 to 61; *Apple Canada inc.* c. *Badaoui*, 2021 QCCA 432, para. 25; *Benamor* c. *Air Canada*, 2020 QCCA 1597, para. 35; *Godin* c. *Aréna des Canadiens inc.*, 2020 QCCA 1291, paras. 49 and 50 (Approval of a settlement agreement granted 2022 QCCS 2110); *Tenzer* c. *Huawei Technologies Canada Co. Ltd.*, 2020 QCCA 633, para. 20 (Application for approval of a settlement agreement granted (S.C., 2021-11-03 (judgment amended on 2021-11-17)) 500-06-000913-182, 2021 QCCS 4663); *Belmamoun* c. *Ville de Brossard*, 2017 QCCA 102, paras. 73 and 74 (Application for leave to institute class action dismissed, 2025 QCCA 1011); *Charles* c. *Boiron Canada inc.*, 2016 QCCA 1716, paras. 40 to 43 (Motion for leave to appeal to the Supreme Court dismissed with dissent (Can C.S., 2017-05-04) 37366); *Union des consommateurs* c. *Bell Canada*, 2012 QCCA 1287, para. 117 (Motion for permission to appeal to the Supreme Court of Canada dismissed (S.C. Can., 2013-01-17) 34994).

[10] Nonetheless, the social objectives of class actions are not a substitute for the authorization conditions, and one must be careful not to authorize a class action that does not satisfy them simply because the action meets those objectives.[7] Indeed, while it is true that class actions constitute a formidable tool for access to justice, those who are called upon to defend them should only be forced to do so against actions that are sustainable.[8] Moreover "[p]reventing baseless class actions from monopolizing the judicial system to the detriment of other litigants' actions is also part of preserving access to justice for all litigants."[9] As Justice Stratas summarily put it, "[d]evoting resources to one case for no good reason deprives the others for no good reason".[10]

[11] In the present matter, arguments focussed on the absence of "facts alleged that appear to justify the conclusions sought".

[12] For related reasons, Defendants also submit that the representative Plaintiff has not alleged a valid personal right of action.

[13] Finally, if the Class Action is authorized, Defendants submit that the group definition should be revised to restrict it to certain products, a defined period or to exclude punitive damages.

1.2.1 Allegations that Appear to Justify the Conclusions Sought (Article 575(2) C.C.P.)

[14] Regarding the second criterion, article 575 C.C.P. states that the facts alleged must "appear" to justify the conclusions sought.

[15] While it is possible to "read between the lines" in order to discern an arguable cause of action, the approach rests first on the allegations of the proceeding.[11]

[16] The applicant must both put forth: i) a syllogism that is neither frivolous nor clearly unfounded in law; and ii) allege facts that are precise enough to support this syllogism.[12]

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7 *Rozon* c. *Les Courageuses*, 2020 QCCA 5, para. 70 (Motion for permission to appeal to the Supreme Court of Canada dismissed (S.C. Can, 2020-11-16, 39115)).

8 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, para. 61; *Boudreau* c. *Procureur général du Québec*, 2022 QCCA 655, para. 17 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2023-03-30) 40311); *Harvey* c. *Vidéotron*, 2021 QCCA 1183, para. 21; *Levy* c. *Nissan Canada inc.*, 2021 QCCA 682, para. 27 (Application for approval of a settlement agreement granted and approval of the agreement, 2024 QCCS 2282).

9 *Jensen* v. *Samsung Electronics Co. Ltd.*, 2021 FC 1185, para. 62 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2024-01-11) 40807).

10 *Coote* v. *Lawyers' Professional Indemnity Company*, 2013 FCA 143, para. 13 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2015-04-09) 36226), cited with approval in *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, para. 62.

11 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra*, note 6, paras. 11 to 21; *Royer* c. *Capital One*, *supra*, note 5, para. 25; *Haroch* c. *Toronto-Dominion Bank*, 2021 QCCA 1504, paras. 13 and 14 (Motion for approval of settlement agreement granted, 2023 QCCS 696).

12 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra*, note 6, para. 66; *Royer* c. *Capital One*, *supra*, note 5, para. 24.

[17] When the applicant alleges specific facts, these are generally presumed to be true. It follows that when those facts are sufficient to support a sustainable case, the application for leave must be granted since it satisfies the minimum threshold required. However, the presumption does not apply to facts that are implausible or have been clearly proven incorrect.[13] Furthermore, allegations that are vague or general are more akin to opinions, hypothesis, or speculation. Such allegations are not assumed to be true. Nonetheless, even in the presence of allegations that lack precision or are otherwise not considered to be proven, the court may still authorize a class action if there exists a sufficient factual basis for these allegations in the court record. Thus, prior to authorizing a class action in the presence of such allegations, the judge must verify whether the file contains some evidence to support them, while avoiding entering a debate on the veracity of the evidence or its accuracy.[14]

[18] The specificity of the allegations of fact included in the application and the requirement to provide some evidence in support of them are therefore related concepts. When the factual allegations are very specific, the need for evidence is diminished as the allegations are considered proven. When the allegations are general in nature, consist in conclusions or, in the words of the Supreme Court of Canada, are “bare”, they cannot be taken as true, and they are “insufficient to meet the threshold requirement of an arguable case […] without some form of factual underpinning”.[15]

[19] Nonetheless, the applicant’s burden is one of demonstration, not proof. The applicant does not need to show that the claim is likely to succeed. Sufficiency of allegations should not be conflated with a sufficiency of evidence.[16] All that is required is that the applicant demonstrates, on a *prima facie* basis, that there is an arguable case in light of the facts and the applicable law.[17]

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13 *Tessier* c. *Economical*, *compagnie mutuelle d'assurance*, 2023 QCCA 688, para. 27 (Motion for extension of time granted and motion for leave to appeal to the Supreme Court denied (S.C. Can., 2023-12-21) 40856); *Cozak* c. *Procureur général du Québec*, 2021 QCCA 1376, para. 7 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2022-03-24) 39964.); *Baratto* c. *Merck Canada inc.*, 2018 QCCA 1240, para. 48 (Withdrawal of class action (S.C., 2025-01-06) 500-06-000648-135, 2025 QCCS 75); *Lambert (Gestion Peggy)* c. *Écolait ltée*, 2016 QCCA 659, para. 38.

14 *L’Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 4, para. 59; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, para. 67; *Homsy* c. *Google*, 2023 QCCA 1220, paras. 24, 25, 28, 29 and 38 (Permission to authorize a class action granted, 2024 QCCS 1324); *Haroch* c. *Toronto-Dominion Bank*, 2023 QCCA 1282, para. 8; *Charles* c. *Boiron Canada inc.*, *supra,* note 6, para. 43.

15 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, para. 134.

16 *Pharmascience inc.* c. *Bourassa*, 2024 QCCA 1403, para. 22 (Settlement agreement regarding defendants GSK, Novartis, and Sanofi, 2024 QCCS 3295).

17 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra*, note 6, par. 71; *L’Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 4, paras. 7 and 58; *Vivendi Canada inc.* v. *Dell’Aniello*, *supra*, note 6, para. 37; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, paras. 58, 59, 61, 65 and 66; *Sibiga* c. *Fido Solutions inc.*, 2016 QCCA 1299, para. 52.

[20] The authorization stage must be distinguished from the trial on the merits. The merits of the case should only be considered after authorization has been granted.[18] Authorization judges may decide questions of law when the presentation of additional evidence would not place them in a better position. However, they should refrain from doing so if the decision requires applying the law to findings of fact. Any analysis of the evidence should be deferred to the merits given the frugal and limited evidence available at the authorization stage and the fact that much of the relevant evidence may remain under the control of the defendants.[19]

[21] Since the action does not exist on a class basis at the authorization stage, the court must consider plaintiff's individual claim to determine whether the action has a reasonable chance of success. If the plaintiff does not have an arguable personal cause of action, the claim must be dismissed even if other class members could theoretically have a valid cause of action.[20]

[22] When several independent causes of action are invoked in support of the application for authorization, the applicant must demonstrate an appearance of right for each of them. Thus, the Court must separately assess the merits of each and authorize only those that meet the condition.[21]

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18 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra*, note 6, paras. 16 and 17; *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 4, paras. 7 and 22; *Vivendi Canada inc.* v. *Dell'Aniello*, *supra*, note 6, para. 37; *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, paras. 65 and 68.

19 *Desjardins Cabinet de services financiers inc.* c. *Asselin*, *supra,* note 6, para. 55; *L'Oratoire Saint-Joseph du Mont-Royal* v. *J.J.*, *supra*, note 4, para. 55; *Salko* c. *Financière Banque Nationale inc.*, 2025 QCCA 74, para. 31; *Pilon* c. *Banque Amex du Canada,* 2021 QCCA 414, para. 12 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2022-03-10) 39669.); *Durand* c. *Subway Franchise Systems of Canada,* 2020 QCCA 1647, paras. 48 to 54 (Application for permission to withdraw an application for authorization to institute a class action, 2023 QCCS 179); *Benamor* c. *Air Canada, supra,* note 6 para. 42; *Godin* c. *Aréna des Canadiens inc.*, *supra*, note 6, paras. 53, 54, 55, 93 and 113; *Belmamoun* c. *Ville de Brossard*, *supra*, note 6, paras. 81 and 82; *Sibiga* c. *Fido Solutions inc.*, *supra*, note 17, paras. 76 to 86.

20 *Royer* c. *Capital One*, *supra*, note 5, para. 27; *Ehouzou* c. *Manufacturers Life Insurance Company*, 2021 QCCA 1214, para. 45 (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2022-03-24) 39863); *Champagne* c. *Subaru Canada inc.*, 2018 QCCA 1554, para. 22; *Sofio* c. *Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*, 2015 QCCA 1820, para. 10; *Beaulieu* c. *Procureur général du Canada*, 2021 QCCS 4559, para. 64; *Lehouillier-Dumas* c. *Facebook inc.*, 2021 QCCS 3524, para. 105; *Hazan* c. *Micron Technology inc.*, 2021 QCCS 2710, para. 20 (Appeal dismissed, 2023 QCCA 132); *Saurette* c. *Astrazeneca Canada inc.*, 2019 QCCS 3323, para. 24.

21 *Salko* c. *Financière Banque Nationale inc.*, *supra*, note 19, para. 28; *Belmamoun* c. *Ville de Brossard*, *supra*, note 6, para. 77; *Delorme* c. *Concession A25, s.e.c.*, 2015 QCCA 2017, para. 6 (Appeal dismissed, 2025 QCCA 1236).

1.2.2 Sufficient Allegations in the Context of Price Fixing

[23] Section 36 of the *Competition Act*[22] gives "any person who has suffered loss or damage as a result of […] conduct that is contrary to any provision of Part VI" the right to "sue for and recover from the person who engaged in the conduct […] an amount equal to the loss or damage proved to have been suffered by him, together with any additional amount that the court may allow not exceeding the full cost to him of any investigation in connection with the matter and of proceedings under this section".

[24] The provisions of Part VI of the *Competition Act* include a price-fixing conspiracy (section 45).

[25] To be successful on the merits, a claim under section 36 requires proof of the usual elements of civil liability: fault, harm, and causal link.[23]

[26] When the alleged fault involves the offence of price-fixing, the demonstration of the constituent elements of the offence includes:

26.1. The *actus reus* or objective elements:

- The existence of an agreement in which the defendant took part;
- The agreement was entered into between parties that are competitors;
- The object of the agreement is to (a) fix the price, (b) allocate markets, or (c) limit supply.

26.2. The *mens rea* or subjective elements:

- The defendant subjectively intended to enter into the agreement;
- The defendant knew that other parties to the agreement were competitors; and
- The defendant objectively intended to achieve the anti-competitive object of the agreement.[24]

[27] These elements relate to section 45 after it was amended in 2010. The previous version of section 45 did not require the "agreement" to be between "competitors" but it included the obligation to prove that the agreement "would likely lessen or prevent

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22 *Competition Act*, R.S.C., 1985, c. C-34.
23 *Pioneer Corp.* v. *Godfrey*, 2019 SCC 42, paras. 74 to 76; *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, para. 94.
24 *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, paras. 97 and 125 to 127.

competition unduly". In most cases, this required that the parties to the agreement be competitors.[25]

[28] The existence of an agreement is "the main constituent element of a section 45 conspiracy". "[W]ithout a proper pleading with regard to the alleged agreement, there are no grounds for [a] conspiracy claim."[26]

[29] Furthermore, "an agreement is only a conspiracy if the parties to it share a common, unlawful purpose".[27]

[30] Factual underpinnings that have been considered sufficient in a competition case include:

30.1. The existence of a complaint or an investigation by the Bureau;[28]

30.2. An admission of guilt or a fine in Canada or elsewhere even if the plea comes from a parent company or makes no reference to the Quebec market;[29]

30.3. A class action judgment in another jurisdiction;[30]

30.4. An expert report that opines on the existence of improper conduct.[31]

[31] On the other hand, the following assertions have been considered to be "bare allegations" insufficient to justify authorization without some factual evidence or simply factual evidence that is insufficient:

31.1. The defendants agreed to restrict competition or participated in a conspiracy to restrict competition;[32]

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25 *Lilleyman* v. *Bumblebee Foods LLC*, 2023 ONSC 4408, para. 289 (confirmed by the Court of Appeal, 2024 ONCA 606); *Jacques* c. *Petro-Canada*, 2009 QCCS 5603, para. 59 (Motion for authorization to institute a class action and for approval of a settlement, 2010 QCCS 5676).

26 *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, para. 117; *Hazan* c. *Micron Technology Inc.*, 2023 QCCA 132, para. 13.

27 *Qualcomm Incorporated* v. *Barroqueiro*, 2025 BCCA 65, paras. 83, 87, 97, 101, 102 and 116.

28 *Roy* c. *JTEKT Corporation*, 2020 QCCS 2239, para. 52 (Appeals allowed in part; case remanded to Superior Court, 2023 QCCA 1592); *Option Consommateurs* c. *Nippon Yusen Kabushiki Kaisha*, 2019 QCCS 1155, para. 24 and Annex A (Application for leave to appeal to the Supreme Court dismissed (S.C. Can., 2020-02-27) 38813); J*acques* c. *Petro-Canada*, *supra*, note 25, paras. 20 to 41.

29 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, paras. 5, 6, 7, 8, 92 and 94; *Roy* c. *JTEKT Corporation*, *supra*, note 28, paras. 52, 53, 54, 57, 59 to 62, 67 to 70; *Option Consommateurs* c. *Nippon Yusen Kabushiki Kaisha*, *supra*, note 28, para. 24 and Annex A; *Option Consommateurs* c. *LG Chem Ltd.*, 2017 QCCS 3569, paras. 20 to 22 (Approval of a welcomed transaction, 2021 QCCS 211); *Panasonic Corporation* c. *Option consommateurs*, 2017 QCCA 1442 (Approval of a transaction granted, 2021 QCCS 211); *Option Consommateurs* c. *Minebea Co. Ltd.*, 2016 QCCS 3698, paras. 12 to 15 (Motion for approval of settlement agreement granted, 2022 QCCS 1792).

30 *Roy* c. *JTEKT Corporation*, *supra*, note 28, paras. 58 and 74.

31 *Ibid*, paras. 79 to 86.

32 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, para. 134; *Hazan* c. *Micron Technology inc.*, *supra*, note 20, paras. 48, 49 and 63(3).

31.2. A foreign investigation on the alleged prohibited practice, without any report, conclusion, action or decision;[33]

31.3. The Defendants controlled a significant portion of the market;[34]

31.4. Prices increased and decreased during a specific timeframe;[35]

31.5. The conspiracy artificially inflated the prices of goods;[36]

31.6. Direct and indirect purchasers paid too much for the good as a result of the conspiracy;[37]

31.7. Publications by market analysts raising suspicions about the existence of a price-fixing scheme;[38]

31.8. A class action filed in another jurisdiction;[39]

31.9. An investigation or guilty plea concerning another period or another product.[40]

[32] Precise allegations are especially important in a conspiracy class action. As Justice Perell observed:

> [103] Conspiracy allegations require particularity, including details of the acts alleged against each defendant. Pleadings of conspiracy cannot boil down to mere speculation or to a fishing expedition to find a cause of action, and if the plaintiff does not, at the time of pleading have knowledge of the facts necessary to support the cause of action, then it is inappropriate to make the allegations in the statement of claim.
>
> [104] Each individual defendant is entitled to know the case they must meet; this is particularly true for the conspiracy pleading because, although conspiracy is a tort committed by a group, the liability of each defendant arises because they individually participated as a member of the group.[41]

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33 *Hazan c. Micron Technology inc.*, *supra*, note 20, paras. 63(10), (12) and (13).
34 *Ibid,* para. 63(2).
35 *Ibid,* paras. 63(8) and (14).
36 *Ibid,* paras. 48 and 49.
37 *Ibid,* paras. 48 and 49.
38 *Ibid,* para. 63(11).
39 *Ibid,* para. 63(6).
40 *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, paras. 266 to 269; *Hazan* c. *Micron Technology inc.*, *supra*, note 20, para. 63(10).
41 *Lilleyman* v. *Bumblebee Foods LLC*, *supra*, note 25, paras. 103 and 104; *David* v. *Loblaw*, 2021 ONSC 7331, paras. 32 to 34 (Appeal quashed, 2022 ONCA 833 and Leave to appeal dismissed, 2023 ONSC 1585), Exhibit NGP-4; *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, para. 164.

[33] While these remarks were made in the context of an Ontario certification motion that is subject to a different standard than a civil law authorization application, the principle remains. An application for authorization must allege "the facts on which it is based"[42] so that each of the proposed Defendants know the case they have to meet.

[34] It is not up to the Defendants to disprove their participation in the alleged conspiracy.[43]

1.3 Discussion

1.3.1 The Context

[35] Applicant seeks permission to file a class action on behalf of:

> All persons, entities, partnerships or organizations resident in Quebec who purchased at least one product included in the "meat categories" referred to in the email sent by Michael McCain on March 22, 2007, at 14h12 (including beef, chicken and pork), produced, supplied or sold by one of the Defendants.

[36] The Authorization Application describes the context as follows:

[37] On December 19, 2019, the Superior Court of Quebec authorized a class action against the Defendants (except for Maple Leaf who was not named) based on allegations that they participated in a bread price-fixing conspiracy (the "**Bread Cartel Class Action**") for a period of twenty years.[44] In the ITO, the Bureau refers to approximately fifteen bread price increases over the relevant period.

[38] When the Bread Cartel Class Action was authorized, Loblaw and the Weston Defendants had admitted their participation in the price-fixing scheme.

[39] On June 21, 2023, Canada Bread (a company that was owned by Maple Leaf prior to 2014) pled guilty and admitted its participation with the Weston Defendants in two price increases (in October 2007 and March 2011). The discussions leading to such agreements took place in June 2007 and November 2010.[45]

[40] The Impugned Email was disclosed in the ITO sworn on May 13, 2019, to support a seizure of documents by the Bureau. It reads:

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42 Art. 574(2) C.C.P.

43 *Jacques* c. *Petro-Canada*, *supra*, note 25, paras. 196 to 198.

44 *Govan* c. *Loblaw Companies Limited,* 2019 QCCS 5469 (Application for approval of a settlement agreement granted and approval of a national settlement agreement, 2025 QCCS 2629), Exhibit P-1 (the "**Govan Authorization Judgment**").

45 Exhibit P-2, paras. 6, 14, 17 and 20.

> Thursday 2007-03-22
>
> From: Sue Perkins
>
> To: Ménard, Réal; Gingrich, Doug; Hardinge, Michele S; McLean, C. Barry; Young, Rick; Lan, Richard A
>
> Re: Paul del Duca
>
> I met with Paul this week. We had a wide-ranging conversation. One of the topics that we discussed vigorously was the strategy of managing category profit up in the retail environment. Consistent with the position that he took on the last bread price increase, his point of view (and it is a very vigorous point of view) is that this is an acceptable strategy and they are aligned with it even in our meat categories, but it has to mould in elements that take into account the unique discount banner strategies that exist in Ontario.
>
> He is quite satisfied with the solutions you generated Barry in the fresh bread business, particularly the concept of using non-national brand labels as price fighters and finding alternative promotional points in other categories. What it has done is ensure that our category pricing strategies should differentiate conventional retail banners from discount banners and provide him the tools to manage in this environment. I will confess I did not understand all of the nuances of how we would accomplish that and some of the what he was saying, did not resonate with me fully. We should know this appears to be a hot button.
>
> Michael

[41] On June 14, 2021, The Tyee, an online news magazine from B.C., published an article entitled: ”Grocery Giants Discussed Fixing More Than Bread Prices, Court Files Suggest” (the “**Tyee Article**”).[46]

[42] The Tyee Article refers to the Bureau’s investigation on the alleged bread cartel made public in 2017. It also mentions that as part of the investigation, the court authorized the seizure of Maple Leaf and that documents obtained contain “emails between top-level industry executives that indicate a desire to co-ordinate meat prices much in the same way they had allegedly co-ordinated bread prices”. These emails were made available on the online publication.[47]

[43] The only email that refers to Meat Products is the one quoted above.

[44] On June 26, 2023, The Globe and Mail reported on Canada Bread’s guilty plea. Referring to the Impugned email, it published an article titled “Former Maple Leaf Foods CEO knew about alleged bread price-fixing, says Competition Bureau document” (the “**Globe and Mail Article**”).[48]

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46 Exhibit P-8.
47 Exhibit P-8.1.
48 Exhibit P-4.

[45] Based on the above, Plaintiff alleges that he and other putative class members have suffered damages because of the Defendants' anti-competitive and unlawful activities.

[46] In view of the applicable criteria, the Court must determine which allegations of the Authorization Application can be taken for granted.

1.3.2 Allegations that cannot be considered proven because they have been shown to be incorrect

[47] Some of the allegations of the Authorization Application have now been proven incorrect.

i) The Impugned Email (Exhibit NGP-13)

[48] Applicant alleges[49] that the Impugned Email was "sent" on Mr. McCain's behalf "to representatives of the other Defendants" and that the "recipients are/were representatives of Maple Leaf Foods Inc., Wal-Mart, Metro and Canada Bread." The Authorization Application includes a table that assigns to each alleged recipient executive roles at Maple Leaf, Walmart, Metro and Canada Bread.

[49] The Parties admit that the Impugned Email was sent on Mr. McCain's behalf. However, the meail was not sent to representatives of the other Defendants. The native electronic version of the Impugned Email shows that it was an internal communication limited to Maple Leaf representatives.[50] The domain name for each of the recipients' email address is "@MapleLeaf.ca".

[50] While Applicant claims that Mr. Paul Del Duca, a Metro executive, was one of the recipients, he does not appear in the recipient list.

[51] Based on publications from the Canadian Grocer magazine,[51] Applicant alleges that Ms. Hardinge was a Wal-Mart employee in 2007. In fact, the evidence is to the effect that Ms. Hardinge only joined Wal-Mart in 2010.[52] There is no evidence that she was working there in 2007, five years earlier, when she received the Impugned Email.

[52] Therefore, it is incorrect to imply that the Impugned Email is a communication between alleged co-conspirators.

[53] To their credit, Applicant's counsel have conceded that the above allegations are unfounded. Their honest mistake can be explained by reference to some of the sources they used.

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49 Authorization Application, paras. 6 and 7.
50 Exhibit NGP-13.
51 Exhibits P-6.3.1 and 6.3.2.
52 Sworn statement of Joanna Gallagher, Vice President, People, SCC and Organizational Design at Wal-Mart Canada dated January 16, 2024.

[54] Nonetheless, the fact remains that, given the clear contradictory evidence, the allegations cannot be assumed to be true.

[55] Furthermore, it is incorrect to state[53] that the Impugned Email "refers to the bread price-fixing agreement" when it declares "that this is an acceptable strategy and they [Metro] are aligned with it even in our meat categories".

[56] In fact, the reference to an "acceptable strategy" does not mention a price-fixing agreement but rather to "the strategy of managing category profit up in the retail environment". The Impugned Email refers to "the concept of using non-national brand labels as price fighters and finding alternative promotional points in other categories".

[57] In addition, it is not contested that Maple Leaf is a manufacturer. It sells its products to retail, food service and industrial channels, and agricultural operations in pork and poultry. It does not sell directly to retail consumers.[54]

[58] Thus, the Retailer Defendants are not competitors of Maple Leaf but clients.

[59] Finally, the Impugned Email fails to support the existence of an agreement. Indeed, Mr. McCain states, "I will confess I did not understand all of the nuances of how we would accomplish that and some of the what [*sic*] he was saying, did not resonate with me fully". This undermines the Applicant's claim that there was an agreement or a meeting of the minds regarding the potential strategy being discussed.

[60] What is left is that there was a discussion between a supplier and a retailer on prices. As Maple Leaf and Metro are not competitors, the Court cannot assume that there was something improper about the conversation.

[61] In the Ontario bread cartel class action, the plaintiff in that case had attempted to include Maple Leaf as a defendant based on the content of the Impugned Email. Justice Morgan refused. Commenting on the Impugned Email, he observed:

> [57] One such email [dated March 22, 2007], already disclosed by the Competition Bureau in the Second ITO, describes Mr. McCain as having had a conversation with Paul Del Duca, an executive with Metro Inc.
>
> […]
>
> [63] The price-fixing conspiracy, as described by the Competition Bureau and in David Certification, at para. 12, is a horizontal one operating on two levels: bread producers fixing prices as between themselves, and retailers fixing prices as between themselves. The result of such horizontal cooperation is that competition is eliminated, and prices are inflated, at the wholesale level and again at the retail level. […]

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53 Authorization Application, para. 8.

54 Exhibit NGP-6, Maple Leaf 2022 Annual Report, pp. 1, 4 and 5.

> [64] A horizontal agreement to fix prices is not, however, what is evidenced in the Canada Bread emails. Rather, what those records relate is Canada Bread, a producer/wholesaler of packaged bread, speaking with Metro and Loblaw, two supermarket retail chains. Even if an executive of [Maple Leaf] as owner of Canada Bread is speaking on the bread producer's behalf, what each of the records shows is a producer/wholesaler talking price with its customer, a retailer. That is hardly an improper or shocking business practice.
>
> […]
>
> [66] On its face, at least – and without a Canada Bread deponent the face of the documents is all there is to go on – there is nothing conspiratorial or anti-competitive about these communications. They show two businesses, one of which sells products to the other, discussing price. That is not a conspiracy; it is the legitimate way that business is conducted. An email showing a seller and a buyer, in effect, negotiating a price for the goods being sold and bought, is about as un-shocking a piece of evidence as one could find in the commercial world.[55]

[62] While this judgment is before the Ontario Court of Appeal, the Court agrees with Justice Morgan's assessment.

ii) The Globe and Mail Article (Exhibit P-4)

[63] Secondly, the Authorization Application[56] states that the Globe and Mail article[57] "provides evidence that the Defendants' price-fixing agreements were not just limited to bread, but to other products as well".

[64] In fact, the Globe and Mail Article does not provide such evidence.

[65] The Globe and Mail Article reports on the Bureau's investigation into the alleged bread price-fixing conspiracy. It mentions that the Bureau "believed Maple Leaf Foods' former chief executive, Michael McCain, was aware of alleged arrangements to fix bread prices" (which is probably why Mr. David wanted Maple Leaf included as a defendant in the Bread Cartel Class Action).

[66] The article refers to Maple Leaf's and Metro's strong denial of any such awareness of, or involvement in the alleged bread conspiracy. Mr. McCain referred to the email as "a routine discussion between a supplier and a customer".

[67] The Globe and Mail Article does not mention meat products.

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55 *David* v. *Loblaw*, 2024 ONSC 5818, paras. 64 and 66 (under appeal); Canada, Competition Bureau, *Competitor Collaboration Guidelines*, Ottawa, Industry Canada, 2021, p. 18.

56 Authorization Application, para. 6.

57 Exhibit P-4.

[68] Thus, the allegation to the effect that the Globe and Mail Article "provides evidence that the Defendants' price-fixing agreements were not just limited to bread, but to other products as well" is a conclusion that is unsupported by the factual evidence in the court record.

[69] This conclusion cannot be assumed to be true.

iii) The Tyee Article (Exhibit P-8)

[70] Applicant files the Tyee Article as evidence supporting the fact that "Defendants and others colluded to fix the prices and supply for not only bread products, but also the "meat categories" products they sell in Quebec and throughout Canada".[58]

[71] The Tyee Article indeed mentions the following:

> But court documents obtained by The Tyee reveal new details, including a court-authorized raid of meat supply giant Maple Leaf Foods and emails between top-level industry executives that indicate a desire to co-ordinate meat prices much in the same way they had allegedly co-ordinated bread prices.

[72] This assertion is based on the search warrant issued to authorize a seizure on Maple Leaf, the Impugned Email as well as other emails that make no reference to Meat Products.[59]

[73] Since the Impugned Email (and the others) have been filed, the Court can form its own opinion on the issue. The journalist's opinion is thus of little assistance.[60]

[74] Furthermore, one notes that even the journalist concedes that his conclusion consists of speculation. He states that the search warrant and the email "raise questions about co-ordinated meat pricing."

[75] The article concludes that "[t]ruth remains in the shadows" following the execution of this search warrant at Maple Leaf and that "the details in these documents raise more questions than answers."

iv) The Journal de Montreal Article

[76] On July 22, 2023, the Journal de Montréal published an article titled "*Metro et Loblaw se remplissent les coffres avec l'inflation alimentaire*" (the "**Journal de Montréal Article**").[61]

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58 Authorization Application, para. 12.
59 Exhibit P-8.1.
60 *Cohen* c. *Dollarama*, 2025 QCCA 804, para. 12; *Valiquette* c. *Groupe TVA*, 2020 QCCS 3877, para. 13; *Dieudonné* c. *Apple inc.*, 2014 QCCS 4450, paras. 88 to 93.
61 Exhibit P-7.

[77] Applicant alleges[62] that the article confirms that the rise in prices of certain grocery products (meat in particular) is inconsistent with the Canadian Consumer Price Index ("**CPI**").

[78] The article does not quite state that.

[79] Rather, the journalist, using CPI data, highlights that, between 2021 and 2023, the price of certain grocery products (including meat) increased twice as much as Quebec's average wage index. It adds that the increase appears to have profited more to retailers than to farmers, transporters or manufacturers.

[80] The Journal de Montréal Article also mentions several grocery products (not manufactured by Maple Leaf) that increased as much - if not more - than Meat Products.[63]

[81] Though the content of the article may be assumed to be true for the present purposes, it does not support the syllogism set out in the Authorization Application.

[82] The article provides no basis to assist in a possible conclusion that collusion between the Defendants since 2001 on Meat Products is responsible for grocery price increases between 2021 and 2023.

[83] Price increases, without a demonstration of concerted conduct or coordination, do not support an anti-competitive conspiracy.[64]

[84] If anything, the fact that the inflation rates for beef, pork and chicken are consistent with, or lower than other food products support the absence of a conspiracy targeting "meat categories" products and contradicts the Applicant's theory of the case.

1.3.3 The "bare allegations"

[85] The Authorization Application contains the following general allegations:

85.1. Defendants colluded to fix the prices and supply for not only bread products, but also the "meat categories" products they sell in Quebec (para. 12);

85.2. Defendants engaged in activities prohibited under the general rules of Quebec civil law, as well as under sections 45 and 46 of the Competition Act (para. 14);

85.3. The conduct significantly impacts on competition by artificially increasing the price of "meat categories" products across Quebec and Canada (para. 13);

85.4. Applicant has suffered damages as a result of the Defendants' anti-competitive and unlawful activities (paras. 30 and 34)

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62 Authorization Application, para. 10.
63 For example: butter, cereal, fresh fruit, fresh and canned vegetables, oils, cheese, coffee, tea, etc.
64 *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, para. 252.

85.5. Due to the Defendants' anti-competitive and illegal price-fixing activities, the Applicant was deprived of the benefit of a competitive market and therefore paid a higher price for the "meat categories" products he purchased over the years (para. 33).

[86] Such allegations are considered "bare allegations" which cannot be considered proven:

> [133] […] As we mentioned above, the respondent alleged the following in its motion for authorization: (a) a price-fixing conspiracy had artificially inflated the price of DRAM sold in Quebec (para. 2.14); (b) direct and indirect purchasers of DRAM had collectively overpaid as a result of this anti-competitive conspiracy (paras. 2.15 and 2.15.1); (c) all members of the group had assumed the inflated portion of the price, either in whole or in part (para. 2.16); and finally (d) the collective injury suffered by the entire group was equivalent to the total overpayment by the direct and indirect purchasers (para. 2.17).
>
> [134] On their own, these bare allegations would be insufficient to meet the threshold requirement of an arguable case. Although that threshold is a relatively low bar, mere assertions are insufficient without some form of factual underpinning. […][65]

[87] Justice Bisson (later confirmed by the Court of Appeal) came to the same conclusion:

> [48] Donc, de l'avis du Tribunal, si l'on combine les paragraphes 80 à 139 de l'arrêt I*nfineon Technologies AG* c. *Options consommateurs* et les paragraphes 59 à 61, 64 et 68 de l'arrêt *L'Oratoire Saint-Joseph du Mont-Royal c. J.J.*, les allégations suivantes sans aucun autre élément de preuve ne sont pas suffisantes en matière de complot et sont soit des allégations imprécises, vagues ou générales ou des hypothèses :
>
> - Les parties défenderesses se sont entendues pour restreindre la concurrence ou ont participé à un complot pour restreindre la concurrence;
> - Le complot a gonflé artificiellement les prix d'un bien;
> - Les acheteurs directs et indirects ont payé trop cher le bien en raison de ce complot.
>
> [49] Autrement dit, alléguer seulement ces éléments sans rien d'autre ne constitue pas une démonstration acceptable en matière de complot. Toute la jurisprudence québécoise récente est exactement au même effet. Toutes les autorités ont interprété l'arrêt *Infineon Technologies AG* c. *Options consommateurs* comme le fait ici le Tribunal. On voit même que des décisions antérieures de 2009 et de 2012 avaient la même interprétation.

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65 *Infineon Technologies AG* v. *Option consommateurs*, *supra,* note 6, paras. 133 and 134.

1.3.4 Allegations Based on the Bread Cartel Investigation

[88] At the outset of the Authorization Application, the Applicant refers to the Bread Cartel Class Action.

[89] All parties recognize that a company's potential past participation in a conspiracy regarding one product does not demonstrate, even *prima facie*, that the same company has since engaged in another conspiracy over another product or even the same product.[66]

[90] However, Applicant's counsel states that the Bread Cartel Class Action is alleged as context because the Defendants would have agreed to act the same way.

[91] As indicated above, the Court concludes that this assumption is pure speculation that is unsupported by the evidence.

[92] As such, the allegations regarding what transpired in the Bread Cartel Class Action are not helpful to decide the Authorization Application.

[93] However, it is useful to contrast the allegations included in the Bread Cartel Class Action with those included in the present Authorization Application to illustrate how different these are.

[94] In the Bread Cartel Class Action, Justice Gagnon had before him the following allegations and evidence:

94.1. The existence of an investigation by the Bureau;[67]

94.2. The existence of an immunity agreement between Loblaw, the Weston Defendants and the Bureau;[68]

94.3. A press release in which Loblaw and the Weston Defendants disclosed "their role in an industry-wide price-fixing arrangement involving certain packaged bread" and also involving "other major grocery retailers and another bread wholesaler";[69]

94.4. The Bureau's court records regarding search warrants issued by a judge of the Ontario Superior Court of Justice for each of the Bread Cartel Class Action's defendants;[70]

94.5. Admissions by two whistleblowers;[71]

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66 *Jensen* v. *Samsung Electronics Co. Ltd.*, *supra*, note 9, paras. 266 to 269; *Hazan* c. *Micron Technology inc.*, *supra*, note 20, para. 63(11).
67 *Govan* c. *Loblaw Companies Limited*, 2023 QCCS 4774, para. 16.
68 *Ibid*, para. 12.
69 Govan Authorization Judgment, Exhibit P-1, paras. 111 to 113.
70 *Ibid*, para. 85.
71 *Ibid*, paras. 107 and 117.

94.6. ITOs from Mr. Bessette,[72] referring to statements by confidential informers[73] and including a statement that the "*complot est encore actif à cette date*"[74] and reporting:

i) Historically coordinated bread price increases among some of the defendants;[75] and

ii) Emails in which certain defendants agree to bread price increases, as long as they are coordinated among major bread stakeholders.[76]

[95] The ITO filed as an exhibit in support of the Authorization Application does not refer to the existence of a meat cartel. Maple Leaf is only mentioned because it was the owner of Canada Bread, one of the companies targeted by the bread cartel investigation.[77] The search warrant included Maple Leaf because "the electronic archives of former Canada Bread senior officials and Michael McCain (the CEO of Maple Leaf Foods) were located on Maple Leaf Foods' computer servers" and because Mr. McCain allegedly had knowledge of the bread cartel conversations.[78]

[96] This is not to say that admissions, guilty pleas, whistleblowers or investigations are needed in every case. Section 36 of the Competition Act does not require this. However, as general allegations cannot, on their own, support the authorization of a class action, some factual underpinning is necessary.

[97] This factual basis is absent here.

[98] While this fact is by no means determinative, the Court notes that the Impugned Email was considered by the Bureau as part of its investigation into the alleged bread cartel and was referred to in the ITO in 2019. Yet, there is no allegation and no evidence that the Bureau ever investigated Maple Leaf or others with respect to an anti-competitive agreement over Meat Products.

1.3.5 Conclusion

[99] As Justice Samson observed in *Roy* c. *JTEKT Corporation*,[79] it is not easy to prove a violation of competition rules. By nature, price-fixing schemes result from secret agreements and private conversations which occur away from prying eyes and ears. It would be unreasonable to insist that a class action applicant have detailed evidence in hand at the authorization stage.

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72 *Ibid*, para. 86.
73 *Ibid*, para. 87.
74 *Ibid*, para. 90.
75 *Ibid*, para. 119.
76 *Ibid*, para. 120.
77 Exhibit P-3, para. 1.13
78 Exhibit P-3, paras. 4.15, 4.16 and 4.89.
79 *Roy* c. *JTEKT Corporation*, *supra*, note 28, paras. 43 and 44.

[100] For the same reason, the Court does not necessarily agree with the Defendants that a price-fixing class action can only be authorized if the products, period and the individuals who were parties to the agreement are clearly identified. There may be cases where some of the pieces of the puzzle will be missing and the full picture will be completed later.

[101] Nonetheless, as a motion to authorize a class action requires the applicant to allege precise facts on which the proposed action is based, it is not possible to leave the canvas fully blank.

[102] As Justice Gascon noted in *Jensen*:

> [117] Even if it is read generously, the Statement of Claim does not contain material facts as to how and when an agreement could have been formed and entered into between the defendants, what if anything could have been agreed upon between the defendants, any meeting of the minds with regard to the commission of the alleged conspiracy offence, or any overt acts undertaken by the defendants in furtherance of an alleged conspiracy. The Statement of Claim is too sparse in detail and insufficient on the alleged wrongful act, making it plain and obvious that the plaintiffs' claim cannot succeed. When all is said and done, the Statement of Claim contains only vague and general allegations that amount to mere speculation and conjecture on an alleged agreement between the defendants. […]

[103] The same is true here.

[104] The class action based on the *Competition Act* is not authorized.

[105] The Applicant also alleges causes of action based on articles 6, 7 and 1457 of the C.C.Q. and misrepresentation under the *Consumer Protection Act* ("**CPA**").[80] In the price fixing context, these other causes of action cannot succeed in the absence of an actionable cause of action under the *Competition Act*.[81]

[106] Given the finding that that the class action cannot proceed, it is not required for the Court to pronounce itself on the arguments raised regarding prescription, punitive damages or the class definition.

FOR THESE REASONS, THE COURT:

[107] **PRAYS ACT** of the Plaintiff's oral application during the authorization hearing to discontinue without costs against the Defendants George Weston Limited, Weston Food Limited, and Weston Food Distribution Inc. only;	**PREND ACTE** de la demande formulée oralement par le demandeur lors de l'audience de se désister sans frais à l'encontre des défenderesses George Weston Limited, Weston Food Limited et Weston Food Distribution inc. seulement;

[80] *Consumer Protection Act*, CQLR, c. P-40.1.

[81] *Hazan* c. *Micron Technology inc.*, *supra*, note 20, paras. 27, 28 and 67; *Hazan* c. *Micron Technology Inc.*, *supra*, note 26, para. 13.

[108] **AUTHORIZES** the Plaintiff to discontinue without notice of publication (other than publication of the discontinuance to the Class Action Registry) and without costs against the Defendants George Weston Limited, Weston Food Limited and Weston Food Distribution Inc.	**AUTORISE** le demandeur à se désister sans avis de publication (autre que la publication du désistement au Registre des actions collectives) et sans frais de justice en faveur des défenderesses George Weston Limited, Weston Food Limited et Weston Food Distribution inc.;
[109] **AUTHORIZES** the Plaintiff to file with the Court the notice of discontinuance against the Defendants George Weston Limited, Weston Food Limited and Weston Food Distribution Inc. within ten days of this judgment;	**AUTORISE** le demandeur à déposer au dossier de la Cour l'acte de désistement en faveur des défenderesses George Weston Limited, Weston Food Limited et Weston Food Distribution inc. dans les dix jours suivant la date du présent jugement;
[110] **DISMISSES** Applicant's Application to Authorize the Bringing of a Class Action;	**REJETTE** la Demande pour être autorisé à intenter une action collective;
[111] **THE WHOLE**, with costs.	**LE TOUT**, avec frais de justice.

Martin Sheehan

Signature numérique de Martin Sheehan
Date : 2025.11.20 08:52:49 -05'00'

MARTIN F. SHEEHAN, J.S.C.

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