

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000891-172

MARYSE NICOLAS, [REDACTED]
[REDACTED]

Applicant

-vs-

VIVID SEATS LLC, legal person having its head office at 225 West Randolph Street, 30th Floor, Chicago, Illinois, United States of America, 60606

Defendant

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. GENERAL PRESENTATION

1. This class action seeks the reimbursement of the amounts that Defendant Vivid Seats LLC (hereinafter "**Vivid**") unlawfully charged Class members for purchases made on its websites and mobile applications for shows and/or sporting events, in violation of sections 54.4(h), 219, 224(c) and 228 of Quebec's *Consumer Protection Act* (the "**CPA**"), as well as punitive damages for the exploitation of Quebec consumers;
2. Vivid operates websites, mobile applications and call centers where consumers can purchase tickets to shows and sporting events on the secondary market for events held in the province of Quebec and elsewhere around the world;
3. Vivid is a merchant within the meaning of the CPA and although not physically located in Quebec, Vivid's online presence enables it to enter into distance contracts with consumers and thus carry on business in the province of Quebec;

4. On its main website (www.vividseats.com) and the “Vivid Seats” mobile application, Vivid fails in its obligation to disclose the currency in which amounts owing under the distance contract are payable (if not Canadian dollars);
5. Vivid contracts with Quebec consumers (by selling them tickets to events both in Quebec and outside of Quebec) by advertising a price that does not indicate that the currency is in American dollars and then charges Class members in American dollars;
6. Vivid misleads Class members by giving them the impression that they are contracting in Canadian dollars, but then charges them in American dollars;
7. Since the beginning of the Class period until the filing of the present Application, the American dollar was worth approximately 29.3% more than the Canadian dollar, Applicant disclosing a chart with data obtained from the Bank of Canada website containing the monthly average USD/CAD exchange rates since November 2014 as **Exhibit P-1**;
8. The damages to Class members is thus equal to 29.3% of Vivid’s gross sales to Class members, in addition to their claim for punitive damages;
9. It is safe for Applicant to assume that Vivid seats has generated gross sales in the tens of millions of dollars during the Class period;
10. Consequently, Applicant wishes to institute a class action on behalf of the following class of which she is a member, namely:

Class:

All consumers within the meaning of Quebec’s *Consumer Protection Act* who purchased a ticket from Vivid Seats since November 16th, 2014;

Tous les consommateurs au sens de la Loi sur la protection du consommateur du Québec qui ont acheté un billet de Vivid Seats depuis le 16 novembre 2014;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

11. Applicant is a consumer as defined in the CPA;

12. On October 12th, 2017, Applicant and her partner were looking to purchase tickets to the concert of the famous singer “P!NK” scheduled for March 23rd, 2018 at the Bell Centre in Montreal, Quebec;
13. To begin their search, Applicant and her partner Googled “*Pink beautiful trauma tour montréal mars 2018*”, Applicant disclosing a simulation of her purchase process as **Exhibit P-2**;
14. As it appears from Exhibit P-2, Vivid appears at the top of Google’s search engine because Vivid pays Google to list Vivid’s site based on certain key AdWords (AdWords is an online advertising service developed by Google, where advertisers such as Vivid pay to display brief advertising copy, product listings, and video content within the Google ad network to web users);
15. Applicant clicked on Vivid’s advertisement that appeared in Google’s search results and was directed to Vivid’s website with the heading “Pink Tickets”, with the subheading “Events near CAN – QC – Montreal” (Exhibit P-2 at page 2);
16. Applicant clicked on the red “Tickets” button for the P!NK concert at the Bell Centre in Montreal on March 23rd, 2018 (hereinafter the “**Pink Concert**”);
17. Applicant is then on a webpage displaying the seating chart and inventory of tickets being sold by Vivid for the Pink Concert, which also displays the prices, but never indicates that the currency displayed is in American dollars (even though the event is being held in Canada and the vast majority of attendees are Canadian);
18. Applicant assumed that the prices advertised by Vivid for an event at the Bell Centre in Montreal, Canada, were in Canadian dollars (Exhibit P-2 at page 3);
19. Applicant selected the tickets she wished to purchase (floor seats in row AA) and then completed the purchase process with Vivid;
20. The “Order Summary” section of the “Checkout” page (Exhibit P-2 at page 6) shows the total price, without indicating that Vivid will be charging Applicant’s credit card in American dollars;
21. Applicant agreed to pay Vivid \$978.58 Canadian dollars;
22. On October 12th, 2017, Vivid sent Applicant an email to confirm her order for a total of \$978.58 (including fees), **Exhibit P-3**;
23. Applicant thought she was making a purchase for \$978.58 Canadian dollars based on the general impression given to her by Vivid throughout the purchase process;
24. On October 24th, 2017, Applicant received her credit card statement showing that Vivid in fact charged her \$978.58 USD, for a total of \$1,250.37 CAD (which is 27.77% more

than the price Vivid advertised), **Exhibit P-4**;

25. Applicant's damages in the amount of \$271.79 are a direct and proximate result of Vivid's misconduct;
26. Vivid will argue that its very subtle disclosure in the fine print at the last step of its purchase process should suffice to exonerate it from liability (see Exhibit P-2 at page 7);
27. Vivid's disclosure in the fine print, which neither the Applicant nor her partner ever saw, contravenes section 54.4 al. 2, which provides that Vivid must present the transaction's currency *prominently* and in a comprehensible manner and bring it *expressly* to the Applicant's attention, which it intentionally did not do;
28. Moreover, Vivid does not mention anywhere in its Sales Terms and Conditions that its prices are advertised and charged in American dollars, Applicant disclosing **Exhibit P-5**;
29. Vivid's representations concerning the tickets' price is also false and misleading, in violation of sections 219 and 224(c) CPA, because Vivid charged Applicant's credit card a higher price than it advertised;
30. Vivid also fails in its obligation to mention an important fact, namely that the price charged is in American dollars, in violation of section 228 CPA;
31. It is worth noting that both StubHub and Ticketmaster (Vivid's main industry competitors), clearly indicate to consumers that their prices are listed in American dollars from the very first step, Applicant disclosing *en liasse* pricing charts for StubHub and Ticketmaster as **Exhibit P-6**;
32. Not only does Vivid fail in its obligations under the CPA, but it also gains an unfair advantage against its main competitors who appear to comply with s. 54.4(h) CPA;
33. As a result of the foregoing, the Applicant is justified in claiming, for herself and on behalf of Class members, compensatory damages, as well as punitive damages based on repeated violations of sections 54.4(h), 219, 224(c) and 228 CPA (pursuant to section 272 CPA);
34. Applicant is accordingly entitled to claim and does hereby claim from Vivid the aggregate of the sum of the difference between the higher Canadian dollar price charged to Class members by Vivid and the lower American dollar price advertised by Vivid;

Applicant's claim for punitive damages

35. Vivid's overall conduct before, during and after the violation, is lax, careless, passive and ignorant with respect to consumers' rights and to its own obligations;

36. In this case, Vivid continues to breach consumer protection legislation in Quebec without any explanation, for a significant period;
37. This complete disregard for consumers' rights and to its own obligations under the CPA is in and of itself an important reason for this Court to enforce measures that will punish Vivid, as well as deter and dissuade others from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
38. The reality is that Vivid has likely generated millions of dollars in profits during the Class Period by charging Class members 29.3% more than the price it advertised;
39. Punitive damages have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
40. Vivid's violations are unconscionable, intentional, calculated, malicious and vexatious;
41. Applicant is accordingly entitled to claim and does hereby claim on behalf of Class members from Vivid \$100.00 per Class member on account of punitive damages;
42. Vivid's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

43. All Class members have a common interest both in proving a violation of the CPA (sections 54.4(h), 219, 224(c) and 228) by Vivid and in maximizing the aggregate of the amounts unlawfully charged to them by Vivid;
44. Class members include consumers in Quebec who purchased a ticket from Vivid;
45. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether Vivid failed in its obligations: (i) to disclose the currency payable by Class members; (ii) not to make false and misleading representations to Class members; and (iii) to inform Class members of an important fact;
46. The claims of every Class member are founded on very similar facts to the Applicant's claim, since every Class member was charged in American dollars instead of Canadian dollars;
47. By reason of Vivid's unlawful conduct, Applicant and every Class member have suffered damages, which they may collectively claim against Vivid;
48. In taking the foregoing into account, all Class members are justified in claiming the sums which they unlawfully paid to Vivid, as well as punitive damages;

49. Each Class member is justified in claiming at least one or more of the following as damages:
- Reimbursement in the amount of the 29.3% overcharge by Vivid (using the theory of averages applicable in class action recovery);
 - Punitive damages in the amount of \$100.00 each;
50. All of the damages to the Class members are a direct and proximate result of Vivid's misconduct;
51. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
52. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
- a) Does Vivid violate paragraph *h* of section 54.4 CPA and, if so, are Class members entitled to compensation and in what amount?
 - b) Does Vivid violate sections 219, 224(c) and 228 CPA and, if so, are Class members entitled to compensation and in what amount?
 - c) Are the class members entitled to punitive damages and if so, what amount must Vivid pay?
 - d) Should an injunctive remedy be ordered to prohibit Vivid from continuing to perpetrate the unfair, deceitful and illegal practice?

C) THE COMPOSITION OF THE CLASS

53. 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;
54. By looking at the number of tickets and events listed on Vivid's website, Applicant assumes that Vivid sells thousands of tickets to Class members each year;
55. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Vivid;
56. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
57. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;

58. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and to have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

59. Applicant requests that she be appointed the status of representative plaintiff for the following principal reasons recognized and applied liberally by recent jurisprudence:

- a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
- b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) her interests are not antagonistic to those of other members of the Class;

60. Additionally, Applicant respectfully adds that:

- a) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- b) she and her partner initially contacted her attorney to mandate him to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Vivid's illegal practice and so that Vivid can be held accountable for its misconduct;
- c) she cooperates and will continue to fully cooperate with her attorney, who has experience in consumer protection-related class actions;
- d) she has read this Application prior to its court filing, reviewed the exhibits in support thereof and understands the nature of the action;

61. As for identifying other Class members, Applicant draws certain inferences from the situation, notably from the fact that there appears to be thousands of tickets listed to events in Quebec on Vivid's website and mobile application. Consequently, Applicant realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for her to attempt to identify them given their sheer number;

62. For the above reasons, Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

63. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;
64. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendant on behalf of all the Class members;

CONDEMN the Defendant to pay the Representative Plaintiff and Class members compensatory damages in the aggregate overcharged amount being 29.3% of Defendant's gross sales to Class members;

ORDER the collective recovery of all damages owed to the Class members for the amounts overcharged by the Defendant;

CONDEMN the Defendant to pay to each Class member the sum of \$100.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

65. The interests of justice favour that this Application be granted in accordance with its conclusions;

IV. JURISDICTION

66. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reason:

- a) The Applicant is a consumer and has her domicile and residence in the judicial district of Montreal

FOR THESE REASONS, MAY IT PLEASE THE COURT:

AUTHORIZE the bringing of a class action in the form of an originating application in damages and injunctive relief;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class:

All consumers within the meaning of the CPA who purchased a ticket from Vivid Seats since November 16th, 2014;

Tous les consommateurs au sens de la Loi sur la protection du consommateur qui ont acheté un billet de Vivid Seats depuis le 16 novembre 2014;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Does Vivid violate paragraph h of section 54.4 CPA and, if so, are Class members entitled to compensation and in what amount?
- b) Does Vivid violate sections 219, 224(c) and 228 CPA and, if so, are Class members entitled to compensation and in what amount?
- c) Are the class members entitled to punitive damages and if so, what amount must Vivid pay?
- d) Should an injunctive remedy be ordered to prohibit Vivid from continuing to perpetrate the unfair, deceitful and illegal practice?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the Representative Plaintiff’s action against Defendant on behalf of all the Class members;

CONDEMN the Defendant to pay the Representative Plaintiff and Class members compensatory damages in the aggregate overcharged amount being 29.3% of

Defendant's gross sales to Class members;

ORDER the collective recovery of all damages owed to the Class members for the amounts overcharged by the Defendant;

CONDEMN the Defendant to pay to each Class member the sum of \$100.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions Le Journal de Montréal and the MONTREAL GAZETTE;

ORDER that said notice be published on the Defendant's website, Facebook page and Twitter account, in a conspicuous place, with a link stating "Notice of a Quebec Class Action";

ORDER the Defendant to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

ORDER the Defendant and its representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, November 16th, 2017

A handwritten signature in blue ink, appearing to be 'Me Joey Zukran', is written over a horizontal line.

LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the chart from the Bank of Canada website with the monthly average USD/CAD exchange rates since November 2014;
- Exhibit P-2:** Copy of simulation of Applicant's purchase process;
- Exhibit P-3:** Copy of order confirmation from Vivid to Applicant on October 12th, 2017;
- Exhibit P-4:** Copy of Applicant's October 2017 credit card statement;
- Exhibit P-5:** Copy of Vivid's Sales Terms and Conditions;
- Exhibit P-6:** *En liasse*, copies of pricing displayed by StubHub and Ticketmaster.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, November 16th, 2017

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the left.

LPCAVOCAT INC.

Per: Me Joey Zukran

Attorney for Applicant

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

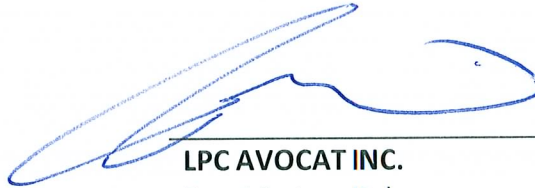
TO: VIVID SEATS LLC
225 West Randolph Street
30th Floor
Chicago, Illinois, 60606

Defendant

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELF ACCORDINGLY.

Montreal, November 16th, 2017



LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

N^o: 500-06-000891-172

(Class Action)
SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

MARYSE NICOLAS,

Applicant

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ORIGINAL



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