

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF LONGUEUIL

S U P E R I O R C O U R T
(Class Action)

N^o.: 505-06-000029-228

JEAN VALIQUETTE,

and al.

Plaintiffs

v.

VOLKSWAGEN GROUP CANADA INC.,

and al.

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE OF THE
DEFENDANT VOLKSWAGEN GROUP CANADA INC.**

(ART. 574 al. 3 CCP)

**TO THE HONOURABLE STÉPHANE LACOSTE OF THE SUPERIOR COURT, ACTING
AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE DEFENDANT,
VOLKSWAGEN GROUP CANADA INC., RESPECTFULLY SUBMITS AS FOLLOWS:**

I. Introduction

1. The Defendant Volkswagen Group Canada Inc. ("**VGC**") is seeking leave from this Honourable Court to file relevant evidence to be used in the context of the hearing of the *Demande pour autorisation d'exercer une action collective et pour être représentants* (the "**Application for Authorization**"), the whole pursuant to Article 574 and ff. of the *Code of Civil Procedure* (the "**CCP**").
2. More specifically, VGC seeks leave to adduce a solemnly affirmed declaration (and 2 exhibits attached thereto) from Lynne Piette (the "**Declaration**"), Director, Marketing and Communications of the Defendant VGC in order to ensure that the Court has the necessary facts to fairly consider the criteria for authorization set out at Article 575 CCP. The Declaration is communicated hereto as **Exhibit A-1**, together with **Exhibit LP-1 and Exhibit LP-2** attached thereto.

II. The Application for Authorization

3. By way of the Application for Authorization dated January 17, 2022, Jean Valiquette, Marc Bergeron and Roxane Saulnier (the "**Class Applicants**") seek to

initiate a class action proceeding against VGC and other defendants on behalf of the following class:

“Tous les consommateurs qui, depuis le 31 juillet 2018, ont payé un montant supérieur à celui initialement annoncé par les défenderesses et/ou se sont fait exiger une somme pour un bien ou un service par les défenderesses sans qu’ils ne l’aient demandé, lors de l’achat ou la location d’un véhicule neuf ou usagé.” (the **“Proposed Class”**);

4. The Class Applicants allege that the defendants have violated sections 219, 223, 224c), 228 and 230a) of the *Consumer Protection Act* (the **“CPA”**), by allegedly charging a higher price for the purchase of vehicles than that advertised.
5. The Class Applicants seek to obtain the following condemnations: (i) the difference between the amount paid and the amount allegedly advertised and (ii) punitive damages of \$1,000 per class member.

III. The Usefulness of the Proposed Declaration for the Authorization Assessment

6. The allegations contained in the Application for Authorization only partially depict the factual matrix relevant to the Plaintiffs’ proposed cause of action. In particular, the Application for Authorization provides an incomplete and inaccurate depiction of VGC business model and relies on limited portion of VGC’s website which are taken out of context. The Application for Authorization’s allegations only partially and/or incorrectly depict:
 - i. The operations of AC and of its website, in particular the fact that (a) VGC does not sell or lease vehicles to consumers through its website or any other medium and (b) does not set the sale or lease price (including any fees related thereto) at which the vehicles are sold or leased to consumers;
 - ii. The fact that the authorized retailers are the ones that independently determine the sale or lease price of a vehicle and are the ones completing the sale or lease transaction of Volkswagen branded vehicles with consumers;
 - iii. The fact that the screenshots of VGC’s website selected by the Class Applicants all originate from the *“Models and Builder”* navigation and that they are incomplete and taken out of context;
 - iv. The fact that the *“Models and Builder”* navigation of VGC’s website is only a tool allowing the consumers to select and design a hypothetical Volkswagen vehicle model and is not intended to provide a selling or lease price; and
 - v. The fact that VGC has no record of Ms. Saulnier, one of the Class Applicants, interacting with any of its employees and representatives regarding the price or sale transaction of a vehicle.

7. Therefore, the Declaration (Exhibit A-1 to this application) and the Exhibits attached thereto (Exhibit LP-1 and Exhibit LP-2) will permit to clarify, complete and correct the factual elements and allegations raised in the Application for Authorization with respect to the above-mentioned elements.
8. The Declaration will also enlighten the Court as to the way to navigate through VGC's website and what is displayed on the website.
9. All of the elements mentioned above will permit this Honourable Court to determine if the Class Applicants have sufficiently pleaded their personal cause of action against VGC.
10. This will further allow this Honourable Court to have all of the necessary facts in its assessment of the criteria provided at Article 575 CCP.

IV. Conclusion

11. In light of the foregoing, VGC respectfully submits that the Declaration (Exhibit A-1) and the Exhibits attached thereto (Exhibits LP-1 and LP-2) are necessary, useful and reasonable in order for this Honourable Court to take cognizance of the relevant facts in order to determine whether the Class Applicants have an "arguable case" and whether the authorization criteria set out at Article 575 CCP are met.
12. Under the circumstances, the present application is proportional and in the interest of justice.
13. Moreover, such evidence will be helpful to determine the appropriate class description and identify the questions to be dealt with collectively, if necessary, as required by Article 576 CCP.
14. This application is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Leave to Adduce Relevant Evidence of the Defendant Volkswagen Group Canada Inc.*;

AUTHORIZE the Defendant, Volkswagen Group Canada Inc., to submit and file into the Court record the sworn Declaration of Lynne Piette (Exhibit A-1), together with the Exhibits attached thereto (Exhibit LP-1 and Exhibit LP-2);

THE WHOLE without costs, except in the event of contestation.

MONTREAL, May 20, 2022

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ROXANE SAULNIER**

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ET ALS.**

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ORIGINAL

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