

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.

AUTOMOBILES PORSCHE CANADA LTÉE,

and al.

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE OF THE
DEFENDANT AUTOMOBILES PORSCHE CANADA LTÉE**

(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,
AUTOMOBILES PORSCHE CANADA LTÉE, RESPECTFULLY SUBMIT AS
FOLLOWS:**

I. Introduction

1. The Defendant Automobiles Porsche Canada Ltée (“**PCL**”) 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, PCL seeks leave to adduce a sworn declaration (and 2 exhibits attached thereto) from Colas Henckes (the “**Declaration**”), Director, Marketing of the Defendant PCL 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 CH-1** and **Exhibit CH-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 PCL and the 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 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 PCL business model and relies on limited portion of PCL’s website, which are taken out of context. The Application for Authorization’s allegations only partially and/or incorrectly depict:
 - i. The operations of PCL and of its website, in particular the fact that (a) PCL 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 dealers 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 Porsche branded vehicles with consumers;
 - iii. The fact that the screenshots of PCL’s website selected by the Class Applicants all originate from the “*Porsche Car Configurator*” module and that they are incomplete and taken out of context;
 - iv. The fact that the “*Porsche Car Configurator*” module of PCL’s website is a tool which limits the consumers to designing a hypothetical Porsche vehicle model

and is not intended or able to provide a vehicle available for purchase with a selling or lease price; and

- v. The fact that the “*Shop*” module is a platform in which a user may obtain information on new and pre-owned vehicles’ current inventory at various authorized dealers.
7. Therefore, the Declaration (Exhibit A-1 to this application) and the Exhibits attached thereto (Exhibit CH-1 and Exhibit CH-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 PCL’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 PCL.
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, PCL respectfully submits that the Declaration (Exhibit A-1 to this application) and Exhibit CH-1 and Exhibit CH-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 Automobiles Porsche Canada Ltée*;

AUTHORIZE the Defendant, Automobiles Porsche Canada Ltée, to submit and file into the Court record the sworn Declaration of Colas Henckes (Exhibit A-1) and Exhibits CH-1 and CH-2 attached thereto;

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

MONTREAL, May 20, 2022

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MARC BERGERON
ROXANE SAULNIER**

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ET ALS.**

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ORIGINAL

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