

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

NO: 500-06-001224-233

(Class Action)
SUPERIOR COURT

VALERIE [REDACTED]
[REDACTED]

Applicant

v.

UBER TECHNOLOGIES INC., legal person
having its head office at 1515 3rd Street
San Francisco, California, 94158, U.S.A.

and

UBER RASIER CANADA INC., legal person
66 Wellington Street West, Suite 5300, TD
Bank Tower, Toronto, Ontario, M5K 1E6

and

UBER PORTIER CANADA INC., legal person
66 Wellington Street West, Suite 5300, TD
Bank Tower, Toronto, Ontario, M5K 1E6

and

UBER CASTOR CANADA INC., legal person
66 Wellington Street West, Suite 5300, TD
Bank Tower, Toronto, Ontario, M5K 1E6

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(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:**

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following class, of which she is a member, namely:

Class:

All persons in Quebec who, after cancelling their Uber (or after Uber initiated the cancellation): (i) paid a stipulated fixed amount of charges, penalties or damages to Uber, contrary to section 13 CPA; or (i) were charged costs by Uber that were not precisely indicated in the contract contrary to sections 12 and 219 CPA.

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

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (S. 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

2. The Applicant is a consumer within the meaning of Quebec’s *Consumer Protection Act* (the “**C.P.A.**”);
3. The Defendants are collectively referred to herein as “Uber”;
4. The Applicant uses Uber’s platform for its “ride” service, its “Uber Eats” service and its “delivery service. A copy of Uber’s Terms and Conditions for these services is communicated in English and French *en liasse* as **Exhibit P-1**;
5. The Applicant shares her account with her son who is a minor and who also uses these services. It is the Applicant’s credit card that is linked to this account and the Applicant who pays for the Uber services (the contract within the meaning of article 2 C.P.A. is between the Applicant and the Defendants);
6. On November 26, 2022, at **7:26 p.m.**, the Applicant’s son ordered an Uber ride, which he decided to cancel a few minutes later at **7:29 p.m.**, without ever entering the vehicle or meeting the driver, as it appears from the email confirmation sent by Uber and the Uber receipt communicated *en liasse* as **Exhibit P-2**;
7. However, Uber charged the Applicant’s credit card the amount of \$5.75 because of this cancellation, without ever providing the services, as seen in Exhibit P-2;
8. To put this into context, this is the equivalent of ordering a taxi back in the day, changing your mind and then the taxi company demanding \$5.75 as a fixed fee or penalty for *not* using their service;
9. This cancelation fee charged by Uber is illegal for three (3) reasons;

10. First, Uber always charges \$5.75 as a cancellation fee for Uber rides, meaning that its policy is to charge a fixed amount of charges, which violates section 13 al.1 C.P.A. that stipulates:

<p>13. Any stipulation requiring the consumer, upon the non-performance of his obligation, to pay a stipulated fixed amount or percentage of charges, penalties or damages, other than the interest accrued, is prohibited.</p>	<p>13. Est interdite la stipulation qui impose au consommateur, dans le cas de l'inexécution de son obligation, le paiement de frais, de pénalités ou de dommages, dont le montant ou le pourcentage est fixé à l'avance dans le contrat, autres que l'intérêt couru.</p>
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11. Second, Uber's Terms and Conditions (Exhibit P-1) fail to specify the amount of the cost/*frais*, which violates section 12 C.P.A. that stipulates:

<p>12. No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract.</p>	<p>12. Aucuns frais ne peuvent être réclamés d'un consommateur, à moins que le contrat n'en mentionne de façon précise le montant.</p>
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12. Third, and as it appears from Exhibit P-1, the language used by Uber is also misleading because it says that Uber "*may*" charge a cancellation fee, when, its policy and practice is to always charge the cancellation fee in those situations (indeed, in its email communicated as Exhibit P-2 Uber states: "*To compensate drivers for the inconvenience, a fee is charged if you cancel a request 2 minutes after a driver accepts your ride. If you need to cancel a ride request, do so before the grace period to avoid a fee*"):

<p>You may elect to cancel your request for transportation services from a Third Party Provider at any time prior to such Third Party Provider's arrival, in which case you may be charged a cancellation fee. (Exhibit P-1)</p>	<p>Vous pouvez choisir d'annuler votre demande de services de transport d'un Fournisseur tiers à tout moment avant l'arrivée du Fournisseur tiers, auquel cas des frais d'annulation peuvent vous être facturés. (Exhibit P-1)</p>
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13. The declaration reproduced in the preceding paragraph is misleading within the meaning of ss. 215, 219 and 228 C.P.A. because it is not that Class member "*may*" be charged, but *will* be charged;

14. Also, Uber never expressly mentions the amount of the cancellation fee anywhere in its contract, or even on its website. For instance, in the help section of its website, Uber repeats variations of the above and, shockingly, adds that a fee will also be charged if the driver cancels, Applicant disclosing the webpages *en liasse* as **Exhibit P-3**;

15. Applicant is also entitled to claim punitive damages from Uber, in amount to be determined on the merits, because Uber is very well aware of its obligations under the C.P.A. and they have already been sanctioned in other jurisdictions concerning this specific clause and practice;
16. For instance, the Australian authorities fined Uber \$21 million for this reason, as it appears from the December 7, 2022 article titled "*Uber fined \$21 million over false cancellation fee message, inflated taxi prices*", communicated as **Exhibit P-4**;
17. On December 7, 2022, Uber even publicly acknowledged its misleading cancellation practice by stating publicly on its website the following (<https://www.uber.com/en-AU/newsroom/uber-accs-settlement-finalised/>), as it appears from **Exhibit P-5**:

“We apologise to our riders for the mistakes we made, and we have since proactively made changes to our platform based on the concerns raised with us. This includes discontinuing the UberTAXI option in 2020 **and changing our cancellation messaging to make it clear exactly when cancellation charges will or will not apply**, so that riders always have certainty”.
18. The above is an admission by Uber that its terms and conditions are misleading. Yet, Uber continues to operate in Quebec with complete disregard for its own declarations and for the C.P.A., which is of public order;
19. It is also worth noting that when Uber cancels a ride or delivery, it of course does not pay a cancellation penalty or otherwise compensate its customers, thereby confirming the asymmetric and unfair nature of the impugned cancellation charge;
20. Applicant hereby claims compensatory damages in the amount of \$5.75 on her behalf and on behalf of every Class member per charge;
21. The Applicant also claims, on her behalf and on behalf of all Class members, punitive damages in an amount to be determined, for what can only be qualified as an intentional breach and egregious misconduct on Uber’s part;
22. A condemnation in punitive damages is appropriate given that Uber is aware of the legal issues, have publicly admitted that they were wrong, but continue to profit from this illegal practice for their financial gain and to the detriment of consumers;
23. Uber is a publicly traded company (NYSE: UBER) with a \$70 billion market cap and its patrimonial situation is significant;
24. Applicant’s damages are a direct result of Uber’ misconduct. In the circumstances, the Applicant is entitled to ask the Court to condemn Uber to both compensatory and punitive damages, in amounts to be determined on the merits, as well as for

injunctive relief ordering Uber to cease the prohibited practice;

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

25. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:
- a) By charging a cancellation fee, does Uber violate Title I of the CPA (ss. 12 or 13), and, if so, are Class members entitled to compensatory or punitive damages pursuant to s. 272 CPA?
 - b) By charging a cancellation fee, does Uber violate Title II of the CPA (ss. 215, 219 and 228), and, if so, are Class members entitled to compensatory or punitive damages pursuant to s. 272 CPA?
 - c) Should an injunctive remedy be ordered to prohibit Uber from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
 - d) Did Uber act in bad faith?
 - e) When does prescription start for Class members and what is the effect of Uber's perpetuation of the misrepresentation on the starting point of prescription?

C) THE COMPOSITION OF THE CLASS

26. 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;
27. Applicant presumes that Uber has an important number of customers who were unlawfully charged the cancellation fee, including for its "ride" service, its "Uber Eats" service and its "delivery service". While unaware of the total number of Class members who are included in the Class, she estimates that it is likely in the hundreds of thousands (and some Class members were charged multiple times);
28. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Uber;
29. Class members are numerous and are dispersed across the province;
30. 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;
31. 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 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

32. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
- 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 Class members;
33. The Applicant adds that she participated in the filing of the present application and has a good understanding of the legal issue;
34. She is taking this action so that she and all Class members can be compensated, to hold Uber accountable and so Uber modifies its practice;

III. DAMAGES

35. Uber has breached several obligations imposed on it by legislation in Quebec, notably:
- a) Quebec's C.P.A., including sections 12, 13, 215, 219, and 228, thus rendering section 272 applicable;
 - b) The failure to perform its contractual obligations in good faith, contrary to article 6, 7 and 1375 C.C.Q. and the Supreme Court of Canada's decisions.
36. In light of the foregoing, the following damages may be claimed against Uber:
- a) compensatory damages in the aggregate of the cancellation fees unlawfully charged by Uber for its "ride" service, "Uber Eats" service and its "delivery service"; and
 - b) punitive damages in an amount to be determined on the merits for the breach of obligations imposed pursuant to s. 272 C.P.A.;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

37. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;
38. The conclusions that the Applicant wishes to introduce by way of an originating application are:
- 1. **GRANT** the Plaintiff's action against Defendants;

2. **ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;
3. **CONDEMN** the Defendants, solidarily, to pay to the members of the Class an amount to be determined in compensatory damages (in the aggregate amount of the cancellation fees unlawfully charged by Uber for its “ride” service, “Uber Eats” service and its “delivery service”), and **ORDER** collective recovery of these sums;
4. **CONDEMN** the Defendants, solidarily, to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;
5. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action*;
6. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
8. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of 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;

V. PRESCRIPTION

39. In the present case, Uber should not be entitled to claim the benefit of prescription because they misled – and continue to mislead – Class members about the existence of the fee (see Exhibit P-1 for an example as recent as February 21, 2023);
40. It appears that these misrepresentations have been ongoing since the inception of Uber’s services in the province of Quebec;
41. Uber is now the largest ride sharing service in the country, and where a professional reassures the client, the Court of Appeal has stated that the prescription starts at the moment when the confidence breaks. Applying this reasoning by analogy to the present case, most Class members are still unaware of the ongoing false representations and it is respectfully submitted that prescription should only start running once Uber ceases the unlawful practice;

VI. JURISDICTION

42. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal, because she is a consumer and resides in this district.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present Application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All persons in Quebec who, after cancelling their Uber (or after Uber initiated the cancellation): (i) paid a stipulated fixed amount of charges, penalties or damages to Uber, contrary to section 13 CPA; or (i) were charged costs by Uber that were not precisely indicated in the contract contrary to sections 12 and 219 CPA.

or any other class to be determined by the Court.

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) By charging a cancellation fee, does Uber violate Title I of the CPA (ss. 12 or 13), and, if so, are Class members entitled to compensatory or punitive damages pursuant to s. 272 CPA?
 - b) By charging a cancellation fee, does Uber violate Title II of the CPA (ss. 215, 219 and 228), and, if so, are Class members entitled to compensatory or punitive damages pursuant to s. 272 CPA?
 - c) Should an injunctive remedy be ordered to prohibit Uber from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
 - d) Did Uber act in bad faith?
 - e) When does prescription start for Class members and what is the effect of Uber's perpetuation of the misrepresentation on the starting point of prescription?
5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

1. **GRANT** the Plaintiff's action against Defendants;
2. **ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;
3. **CONDEMN** the Defendants, solidarily, to pay to the members of the Class an amount to be determined in compensatory damages (in the aggregate amount of the cancellation fees unlawfully charged by Uber for its "ride" service, "Uber Eats" service and its "delivery service"), and **ORDER** collective recovery of these sums;
4. **CONDEMN** the Defendants, solidarily, to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;
5. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action*;
6. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
8. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of 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;
6. **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;
7. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notices to Class 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;
8. **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 by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";
9. **THE WHOLE** with costs including publication fees.

Montreal, February 21, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

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Montreal, February 21, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

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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 applicant.

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:** *En liasse*, copies of Uber's Terms and Conditions in English and French;
- Exhibit P-2:** *En liasse*, copies of the email from Uber and receipt showing cancellation fee of \$5.75 dated November 26, 2022;
- Exhibit P-3:** *En liasse*, Uber's "help" webpages;
- Exhibit P-4:** Copy of December 7, 2022 article titled "Uber fined \$21 million over false cancellation fee message, inflated taxi prices";
- Exhibit P-5:** Copy of declaration made by Uber on its website (<https://www.uber.com/en-AU/newsroom/uber-accs-settlement-finalised/>) on December 7, 2022;

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, February 21, 2023

Montreal, February 21, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

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

TO: UBER TECHNOLOGIES INC.
1515 3RD STREET
SAN FRANCISCO, CA, 94158, U.S.A.

UBER RASIER CANADA INC.
66 WELLINGTON STREET WEST, SUITE 5300
TORONTO, ONTARIO, M5K 1E6

UBER PORTIER CANADA INC.
66 WELLINGTON STREET WEST, SUITE 5300
TORONTO, ONTARIO, M5K 1E6

UBER CASTOR CANADA INC.
66 WELLINGTON STREET WEST, SUITE 5300
TORONTO, ONTARIO, M5K 1E6

Defendants

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of 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 YOURSELVES ACCORDINGLY.

Montreal, February 21, 2023

Montreal, February 21, 2023

(s) Renno Vathilakis Inc.

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