

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

N^o: 500-06-001104-203

BENJAMIN VIOT

Plaintiff

v.

U-HAUL CO. (CANADA) LTÉE

Defendant

**DEFENCE OF DEFENDANT
U-HAUL CO. (CANADA) LTÉE**

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IN DEFENCE TO THE ORIGINATING APPLICATION TO INSTITUTE PROCEEDINGS, DEFENDANT U-HAUL CO. (CANADA) LTÉE RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. The Defendant (“**U-Haul Canada**”) vigorously denies Plaintiff’s contention that U-Haul Canada’s practice of displaying in-town rentals (which refers to rentals with pick-up and return in the same locality, “**In-Town**”) at “\$19.95 plus km/costs” (hereinafter referred to as the “**\$19.95 plus km/fees Formula**”) (or \$29.95 and \$39.95 depending of the vehicle) (together the “**Formulas**”) was a systemic scheme seeking to mislead Class members about the cost of vehicle rentals.
2. U-Haul Canada further denies that the Formulas contravene section 224c) of the *Consumer Protection Act* (the “**CPA**”), and denies that its practices related to gasoline and damage protection contravenes sections 219 and 228 CPA.
3. Throughout the Class period, U-Haul Canada was transparent about its cost structure and the services offered with the view of allowing Class members to choose the right U-Haul Canada vehicles for their specific needs.

II. RESPONSE TO PLAINTIFF’S ALLEGATIONS

4. Regarding the allegations contained in paragraphs 1 and 2 of Plaintiff’s *Demande introductive d’instance* dated December 16, 2021, (the “**Originating Application**”) U-Haul Canada refers to the conclusions of the authorization judgment dated October 7, 2021 rendered by the Honourable Pierre-C. Gagnon (the “**Authorization Judgment**”) and denies anything that is not in strict conformity therewith.
5. U-Haul Canada denies the allegation contained in paragraph 3 of the Originating Application and adds that it contradicts the Authorization Judgment and

introduces an unauthorized claim, since the application as authorized seeks a reduction of the Class members' obligations and not a claim for restitution of any amounts.

6. Regarding the allegations contained in paragraph 4 of the Originating Application, U-Haul Canada refers to the CPA and denies anything that is not in strict conformity therewith. U-Haul Canada denies having contravened the CPA as is implied by Plaintiff in this paragraph.
7. Regarding the allegations contained in paragraph 5 of the Originating Application, U-Haul Canada refers to the conclusions of the Authorization Judgment and denies anything that is not in strict conformity therewith.
8. Regarding the allegations contained in paragraph 6 of the Originating Application, U-Haul Canada refers to Exhibits P-1 and P-2 and denies anything that is not in strict conformity therewith.
9. U-Haul Canada denies the allegation contained in paragraph 7 of the Originating Application.
10. Regarding the allegations contained in paragraph 8 of the Originating Application, U-Haul Canada refers to Exhibits P-2 and P-7 and denies anything that is not in strict conformity therewith.
11. U-Haul Canada admits to the allegation contained in paragraph 9 of the Originating Application.
12. U-Haul Canada denies, as drafted, the allegations contained in paragraphs 10, 11 and 12 of the Originating Application.
13. U-Haul Canada denies the allegation contained in paragraph 13 of the Originating Application.

14. U-Haul Canada denies, as drafted, the allegation contained in paragraph 14 of the Originating Application.
15. U-Haul Canada denies the allegations contained in paragraphs 15 and 16 of the Originating Application.
16. U-Haul Canada denies, as drafted, the allegations contained in paragraphs 17 to 24 of the Originating Application.
17. U-Haul Canada denies the allegations contained in paragraphs 25 to 40 of the Originating Application.
18. U-Haul Canada has no knowledge of the allegations contained in paragraph 41 of the Originating Application and puts Plaintiff to the proof thereof.
19. Regarding the allegation contained in paragraph 42 of the Originating Application, U-Haul Canada refers to Exhibit P-3 and denies anything that is not in strict conformity therewith.
20. Regarding the allegation contained in paragraph 43 of the Originating Application, U-Haul Canada refers to Exhibit P-4 and denies anything that is not in strict conformity therewith. U-Haul Canada has no knowledge of Exhibit P-5 and puts Plaintiff to the proof thereof.
21. U-Haul Canada has no knowledge of the allegation contained in paragraph 44 of the Originating Application and puts Plaintiff to the proof thereof.
22. U-Haul Canada denies the allegations contained in paragraphs 45 and 46 of the Originating Application.

23. Regarding the allegation contained in paragraph 47 of the Originating Application, U-Haul Canada refers to Exhibit P-4 and denies anything that is not in strict conformity therewith.
24. U-Haul Canada denies the allegations contained in paragraphs 48 to 52 of the Originating Application.
25. Regarding the allegations contained in paragraphs 53 to 56 of the Originating Application, U-Haul Canada refers to the CPA and denies anything that is not in strict conformity therewith.
26. U-Haul Canada denies the allegations contained in paragraphs 57 to 59 of the Originating Application.
27. Regarding the allegations contained in paragraph 60 of the Originating Application, U-Haul Canada refers to the CPA and denies anything that is not in strict conformity therewith.
28. U-Haul Canada denies the allegations contained in paragraphs 61 and 62 of the Originating Application. U-Haul Canada adds that the Authorization Judgment only allows a claim in reduction of the Class members' obligations and not a claim in restitution of any amounts. The Authorization Judgment requires that any reduction that could eventually be granted be based on a "*perte réellement subie*", the existence of which U-Haul Canada expressly denies.
29. Regarding the allegation contained in paragraph 63 of the Originating Application, U-Haul Canada refers to the authorized common questions and denies anything that is not in strict conformity therewith.
30. Regarding the allegations contained in paragraphs 64 to 67 of the Originating Application, U-Haul Canada refers to the CPA and denies anything that is not in strict conformity therewith.

31. U-Haul Canada denies the allegations contained in paragraphs 68 to 79 of the Originating Application. U-Haul Canada asserts that its conduct in no way can give rise to an award in punitive damages, the whole as further detailed herein below.
32. U-Haul Canada has no knowledge of the intentions mentioned in paragraph 80 of the Originating Application and denies the balance of the allegation.
33. U-Haul Canada denies the allegation contained in paragraph 81 of the Originating Application.

AND IN FURTHER PLEA AND IN ORDER TO RECTIFY THE FACTS, DEFENDANT U-HAUL CO. (CANADA) LTÉE RESPECTFULLY SUBMITS AS FOLLOWS:

III. NO VIOLATION OF SECTION 224c) CPA

34. During the Class period, U-Haul Canada did not contravene the CPA and, in particular, section 224c) CPA.
35. Prior to, or during the reservation process, or at the time of vehicle pickup, U-Haul Canada does not display or post or communicate or otherwise advertise a “price” (within the meaning of section 224c) CPA) for any of its vehicle rental services. Simply put, it would be impossible for U-Haul Canada to do so.
36. The cost of any U-Haul Canada vehicle rental varies according to the customer’s choices during the reservation process and his/her actual use, including, but not limited to, the length of the rental period, actual mileage/kilometers used, cleaning fees (only charged if the vehicle is returned unclean), and fuel charges (only charged if the vehicle is returned without the same level of fuel as when picked up).

37. For these reasons, U-Haul Canada can only (i) indicate the Base Cost (as defined below) for its In-Town rentals (which varies depending on the size of the vehicle, i.e. \$19.95, \$29.95 or \$39.95), and (ii) inform Class members that there will be a charge per kilometer and other applicable fees, which also vary depending on the usage (i.e. amount of rental days and distance driven).
38. The Base Cost for In-Town rentals are: \$19.95 for vans, pickups and 10' trucks; \$29.95 for 15' and 17' trucks; and \$39.95 for 20' and 25' trucks (the "**Base Cost**").
39. The fact that U-Haul Canada provides the Class members with information concerning the Base Cost allows them to make an informed choice as to which vehicle is best suited for their needs. Why rent a bigger vehicle that has a Base Cost of \$39,95, when a smaller vehicle with a Base Cost of \$19.95 would do just fine?
40. Moreover, Class members are not shown the Base Cost in isolation from the other components mentioned in the Formulas, which specifically mention the Base Cost plus km/fees.
41. As will be more fully demonstrated at trial, Class members understood that the Formulas and the Base Cost do not and cannot constitute a "price" within the meaning of section 224c) CPA. No person could reasonably have interpreted nor assumed that the rental price would be limited to the Base Cost.
42. Class members further understood that the presence of the Base Cost allows them to make an informed decision and chose between various vehicle models and sizes, with knowledge that the total cost of their rental will vary based on their choices, the whole as will be demonstrated at trial.

43. When a vehicle type is chosen, customers are informed of the cost per mileage/kilometer applicable to the chosen vehicle type and the applicable environmental fee.
44. At no time did any of U-Haul Canada's display of Formulas state, or even imply, that the total cost to a Class member for a vehicle rental would be \$19.95 (or \$29.95 and \$39.95 depending on the vehicle).

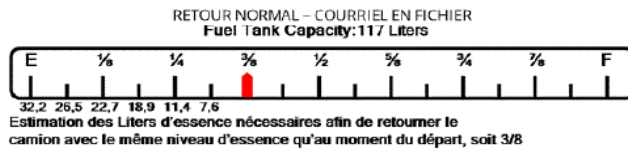
IV. U-HAUL CANADA COST STRUCTURE AND ESTIMATE PROCESS

45. For each In-Town rental, U-Haul Canada provides the Class members with the estimated cost of their rental (for example Exhibit D-1, referred to below) prior to them taking the vehicle.
46. When preparing an estimate on the basis of usage, a customer must first start with the vehicle component (i.e. the size of the vehicle). The customer then provides additional details, such as expected mileage/kilometers and the number of days for which they require the vehicle. It is only once these details have been provided by the customer (and from this time on) that U-Haul Canada is in a position to add the estimated cost associated with mileage/kilometer and the estimated environmental fee.
47. Indeed, upon completing the reservation and before picking up the vehicle, Class members receive an estimate, together with a detailed explanation as to how the cost is calculated. At this point in time (and at any other time during the reservation process), Class members are entirely free to ask questions, cancel or modify their reservation, as well as change or continue with the reservation process, without any charge.
48. For the Plaintiff, Mr. Viot, the estimate provided that the costs were of \$0.95 per kilometer and \$1 for the environmental fee, the whole as appears from the

estimate “*Contrat de location d’équipement*” dated August 31, 2019, and communicated herewith as **Exhibit D-1**.

- Si l’équipement n’est pas retourné à l’heure prévue pour la location, cela pourra entraîner des frais supplémentaires.

Équipement	KMAu départ	Tarif par Dist	Frais pour Dist	Couverture	Tarif pour la location	Frais pour la location	Estimation des frais
BE1564A AJ67942-AZ	630,0	0,95 \$ x 31,0 MI 0,59 \$ x 50,0 KM	29,50 \$	CDW: 18,00 \$	19,95 \$	19,95 \$	67,45 \$



Type de carte: MC Desjardins	Compte: XXXX-XXXX-XXXX-8030	Type: PREAUTH	Numéro de référence: 000034579575	Approuvé: 159826	Estimation des frais pour la protection de l’environnement: 1,00 \$
La banque a effectué un BLOPAGE pour 78,71 sur votre compte. Ce blocage peut apparaître sur votre relevé. U-Haul ne va pas facturer / créditer votre carte avant que vous ne retourniez l’équipement et que vos frais de location ne soient calculés. Si les frais actuels pour la location dépassent le montant du blocage, ou si votre location est prolongée, U-Haul pourra facturer le montant original et autoriser un montant supplémentaire en tant qu’estimation de tarif pour le nouveau solde dû.					Estimation du sous-total: 68,45 \$
Méthode d’entrée: CHIP	Application Label: MC Desjardins	Identification du marchand: 5769713	Identification du terminal: 003	Indicateur sur le statut de la transaction: E800	Estimation de taxe - TPS: 3,43 \$
AID: A0000000041010	Résultats pour la vérification du terminal: 0000008000		Verified By PIN		Estimation de taxe - TVP: 6,83 \$
					Estimation du total des frais: 78,71 \$
					Montant autorisé sur la carte de crédit: 78,71 \$
					Montant net payé aujourd’hui: 0,00 \$
					*Si le retour est effectué après les heures d’ouverture: 20,00 \$

49. Moreover, even after a confirmation is given to the Class members, displaying the total estimated cost for the rental (including mileage/kilometer and environmental fees), it is always possible for the Class members to cancel the reservation prior to taking possession of the vehicle at no charge. This is possible at any given time prior to taking possession of the vehicle.
50. The Class members are not charged anything at the time of reservation.
51. The Class members who accept the estimate and take possession of the vehicle agree to the terms and conditions, which clearly express that the costs will be calculated on the basis of the following formula: \$19.95/day + n\$/km + \$1/day up to \$5 environmental fee). The same applies for larger vehicles available at a different Base Cost.
52. Again, upon taking possession of the vehicle, Class members are not charged anything. They are, however, made fully aware of the estimated cost of the rental based on the parameters provided. Moreover, prior to taking possession of the

vehicle, each Class member could have chosen not to take possession of the vehicle and not to enter into a contract with U-Haul Canada, without any charge.

53. Upon return of the vehicle, the final cost charged might differ from the estimate if, for example, the customer underestimated or overestimated the number of miles they would drive. However, the cost will reflect the cost parameters agreed upon and displayed on the estimate, or would be optimized, in favour of the customer, using a different rental package.
54. For example, the Plaintiff, Mr. Viot, ended up paying less than the estimated cost he was quoted for, as he used less mileage than he had predicted he would, as appears from the invoice issued upon return filed by Plaintiff (Exhibit P-4).
55. Moreover, U-Haul Canada optimizes its clients' choices upon return of the vehicle. For example, U-Haul Canada offers a daily, weekly or monthly-base rate package that is inclusive of a certain number of kilometers. Upon return of the vehicle, if such a package is cheaper for the customer, U-Haul Canada automatically applies said package to the rental, rather than to charge the higher standard rate. This optimization is also disclosed to Class members on their estimates, prior to taking possession of the vehicle, as appears from Exhibit D-1 (p. 3).

- **Garantie du meilleur tarif pour camionnette et fourgonnette :** A la fin de votre location, nous allons calculer ce qui constitue le meilleur tarif pour vous. Que ce soit notre tarif le plus populaire (tarif de 19,95 \$ plus kilométrage) ou bien (une combinaison de tarifs de location pour une journée, une semaine ou un mois avec kilométrage inclus). Le tarif mensuel s'applique pour 28 jours.

56. Accordingly, any Class member who first made a reservation and ultimately ended up paying less (due to a different package) should automatically be excluded from the proposed class (without this being considered an admission that any other Class members have a valid claim against U-Haul Canada).

57. As will be more fully demonstrated at trial, any Class member, even a credulous and inexperienced one, would understand that “plus km/fees” means that the final cost is dependent on usage and was never meant to be the Base Cost.
58. It is not possible for U-Haul Canada to advertise a “price” at the first step of the reservation process, prior to the customer providing the required inputs concerning his/her reservation. Therefore, the Plaintiff’s contention that the “advertised price” should be the figure shown at the initial stage of the reservation process (the first page) is unreasonable and impossible to achieve, as it would require an exact “price” to be shown prior to the customer selecting the required options he/she needs. U-Haul Canada cannot assume which options the customer wants to choose.
59. At all relevant time, the costs that will be charged to the Class members correspond to the costs actually incurred following the use of the vehicle.

V. ABSENCE OF CAUSAL CONNECTION

60. U-Haul Canada maintains its position that the Formulas (and the display of the Base Cost) do not contravene section 224c) CPA. Even if they did, which is expressly denied herein, Class members have not all seen the Formulas and/or relied on said Formulas before entering into a contract with U-Haul Canada.
61. Consequently, there is no causal connection between the Formulas and the contract, nor is there any connection between the Formulas and the claimed reduction of the obligations being sought.
62. Moreover, any Class member who has not seen or relied on the Formulas has no claim pursuant to this class action.
63. But there is more, any Class member who allegedly saw a Formula and allegedly relied on that Formula to proceed with a rental, but ultimately ended up renting a

different vehicle type than the one displayed on the Formula allegedly seen by the Class member, should also be excluded from this class action.

64. For example, a Class member who allegedly claims to have seen a U-Haul Canada van displaying the \$19.95 plus km/fees Formula (applicable only to vans) but ultimately chose to rent a cubic truck with a Base Cost of \$29.95 plus kilometers and fees, cannot be said to have been charged a cost higher than “advertised”, since the latter chose a different product than the one being allegedly “advertised”.
65. In addition, and as will be more fully demonstrated at trial, numerous Class members had previously rented a vehicle from U-Haul Canada and cannot now claim that they were unaware they would be charged more than the Base Cost for the rental.
66. The Plaintiff alleges that there are different manners in which the Class members could have been exposed to the Formulas, each of which will be addressed below.

a. Formulas on Pickup, Van and 10’ Truck

67. During the Class period, certain, but not all, U-Haul Canada pickup trucks, vans and 10’ trucks displayed the \$19.95 plus km/fees Formula for In-Town rentals, as illustrated by Plaintiff’s Exhibits P-12 and P-13.
68. The number of U-Haul Canada vehicles on display on Québec roads at any given time varies greatly depending on numerous factors, including the time of year and geographic region. It is therefore impossible to ascertain which Class members and how many would have even been exposed to the specific \$19.95 plus km/fees Formula on a truck during the Class period.

69. Moreover, during the Class period, not all of U-Haul Canada pickups, vans and 10' trucks were marked with the \$19.95 plus km/fees Formula.
70. As will be more fully demonstrated at trial, it is therefore complete speculation on the Plaintiff's part to assume that all In-Town rentals conducted in Québec during the Class period are the result of the Class members having been exposed or influenced by the \$19.95 plus km/fees Formula.
71. While U-Haul Canada maintains its position that the \$19.95 plus km/fees Formula in no way contravened section 224c) CPA, it has nonetheless removed said Formula from its Québec In-Town fleet as of February 2022. That being said, it is possible that a vehicle coming from outside of Québec and which may remain in Québec for a temporary amount of time, displays such a Formula from time to time.

b. Formulas at Rental Premises

72. During the Class period, rental premises operated by U-Haul Canada (as opposed to rental premises operated by third party operators), may have had signage from time to time containing various Formulas, as shown at page 1 of Plaintiff's Exhibit P-11.
73. It is however complete speculation and outright unfounded for the Plaintiff to assume such signage had any influence over all Class members' (or any of them) decisions of entering into a contract with U-Haul Canada.
74. Class members entering rental premises have often already booked a reservation for a vehicle, either by phone or by internet, and might have received a complete estimate for the total estimated cost of their rental (based on their specific chosen options).

75. Moreover, the Class members who are exposed to the in-premises signage were already in the premises and it cannot be said that the Formula “lured” them to contract with U-Haul Canada or “mislead” them in any way.
76. All Class members who made a reservation or completed a rental solely by entering into an in-premise location, still received a complete estimate with the usage (km) and the environmental fees prior to completing the reservation or rental. They had an opportunity to ask questions and tailor their reservation and rental to their personal needs. They also had the opportunity not to enter into a contract with U-Haul Canada, based on the estimate received, without any charge.

c. Website Reservation (including mobile application)

77. Obtaining an estimate from U-Haul Canada website (uhaul.com) or mobile application (together, the “**Website**”) is a quick and easy process.
78. Before confirming the reservation using the Website, all Class members received an estimate, which includes the mileage/kilometer cost and the estimated environmental fee, as well as the total cost of the rental.
79. All Class members who made a reservation or completed a rental through the Website had an opportunity to consult the Frequently Asked Questions, call the telephone line, or send an email as needed. They received a complete estimate with the usage (km) and the environmental fees prior to completing the reservation or rental. They had an opportunity to ask questions and tailor their reservation and rental to their personal needs. They also had the opportunity not to enter into a contract with U-Haul Canada, based on the estimate received, without any charge.

80. In January 2022, U-Haul Canada implemented certain changes to the Website reservation process. Following these changes, the environmental fee is now first displayed on the same page (and therefore at the same time) as the Base Cost of the vehicle. Despite this change, U-Haul Canada maintains that the previous versions of its Website display was in conformity with section 224c) CPA.

d. Telephone Reservation

81. Finally, when making a reservation through the telephone line (1-800-GO-U-Haul), Class members were not exposed to any Formulas. However, they received an estimate prior to confirming their reservation.

82. Class members had an opportunity to ask questions and tailor their reservation to their personal needs. They also had the opportunity not to complete the reservation process, if they so wanted.

VI. ABSENCE OF PREJUDICE

86. Plaintiff never complained to U-Haul Canada regarding the cost charged for his rental.

87. Class members suffered no prejudice and are not entitled to a reduction of their obligations pursuant to section 272 CPA or any other disposition.

88. Class members would not have obtained better rental conditions elsewhere.

89. It is not in dispute that Class members took possession of the vehicles, having full knowledge of the estimated cost, and ultimately benefitted from the use of the vehicles.

90. The costs charged were also fully compliant with the estimates provided prior to the use of the vehicles. Therefore, there can be no damages. The reduction in “price” sought by the Plaintiff is not correlated to any damage suffered, it is

exaggerated and unjustified. U-Haul Canada respected its contractual obligations towards the Class members.

91. Class members are not entitled to claim an amount corresponding to the difference between the cost paid and the cost allegedly “advertised” (whatever that may be), an actual prejudice has to have been suffered for a reduction in cost to be awarded. In this case, there was no prejudice suffered.
92. The presumption of prejudice which is alleged and is derived from section 272 CPA is not applicable and is not triggered in this case.
93. There is a clear absence of proximity (causation) between the Formulas and the Base Cost shown in any of U-Haul Canada’s display, the decision of the customer to make a reservation for a vehicle and the customer’s ultimate decision to crystalize the contract by proceeding to take possession of the vehicle and to use the vehicle (i.e. concluding the ultimate contract).
94. The absence of proximity (causation) between the display and an alleged prejudice (the presence of which is denied in this case) is amplified by the fact that at the time the reservation is finalized and at any time prior to picking up the vehicle, the customer is provided with all the details concerning all the charges applicable to his/her rental.
95. Moreover, there are a multitude of elements that can happen between seeing the Formulas and/or the Base Cost displayed (when it is actually seen by Class members – which is not always the case) and the ultimate decision to enter into the contract. There is also ample opportunity between these times not to contract, without any charge being incurred.
96. The manner in which the Formulas and the Base Cost is displayed has no impact on the customer’s ultimate decision to enter into a contract.

97. Even if the presumption of prejudice would be triggered (which is denied), a prejudice still needs to be quantified to give rise to a valid claim and the reduction of “price” sought by Plaintiff is grossly exaggerated and without merit.
98. In light of the above, Class members cannot claim any damages in the form of a reduction in “price” pursuant to section 272 CPA or otherwise: (i) they have not alleged nor suffered any prejudice; (ii) they cannot benefit from the absolute presumption of prejudice; and, (iii) even if they could, they have not (and cannot) establish and quantify a prejudice allegedly suffered.
99. On the contrary, awarding a reduction in “price” or any other form of compensation would result in an unjustified enrichment by the Class members, who benefitted from their rental, according to their needs.

VII. NO CASE FOR PUNITIVE DAMAGES

a. No Punitive Damages for an Alleged Contravention to Section 224c) CPA

100. For the reasons mentioned above, Class members cannot claim punitive damages in relation to a purported violation of section 224c) CPA.
101. Following the filing of the class action, U-Haul Canada, without admission, took steps to remove the Formulas (and the Base Cost) off its In-Town vehicles located in Québec and made certain modifications to its Website to address the display of certain costs.
102. All of the above-mentioned changes were made without any admission of wrongdoing or fault and without prejudice to any of the arguments that U-Haul Canada has or may raise in defence to this class action.
103. In any event, U-Haul Canada has not demonstrated any intentional, malicious or vexatious conduct nor has it acted with ignorance, carelessness or serious

negligence with respect to its obligations and Class members' rights under the CPA.

104. As a result, this is not a case that justifies an award of punitive damages.

b. No Punitive Damages for an Alleged Contravention to Sections 219 and 228 CPA

105. Plaintiff is not alleging any misrepresentation or omission that would justify a collective claim under sections 219 and 228 CPA.

106. U-Haul Canada did not make any misrepresentation or omission pertaining to damage protection or gasoline.

107. While Plaintiff alleges a contravention to sections 219 and 228 CPA with regards to damage protection and gasoline as an additional basis to seek a condemnation to punitive damages, Plaintiff fails to identify which representations, advertisements or displays he is referring to as the basis for an alleged contravention to such provisions, either it be in the form of "false representations" or "omissions".

108. Any analysis concerning an alleged misrepresentation should include all of the information provided to the Class members and the complete reservation process, including the estimates shared with Class members.

109. A review of said information would reveal that every Class member was made aware of the complete cost for the damage protection (when this option was chosen) and the customer's obligation regarding gasoline refill.

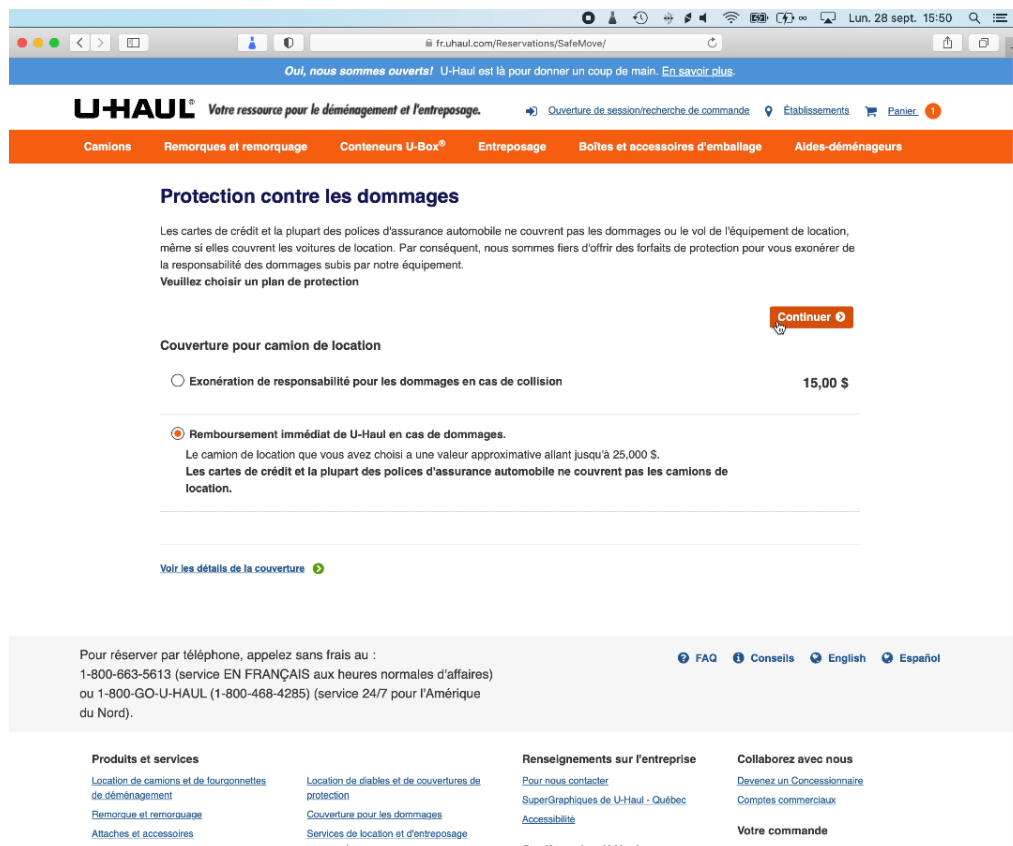
110. The Formulas are clear and explicit. There will be a Base Cost and additional costs (depending on usage and selected options). There is simply no omission.

111. Any analysis concerning an alleged misrepresentation should include all of the information provided to the Class members and the complete reservation process, including the estimates shared with Class members, which include all of the selected options and all of the costs associated therein.

The Damage Protection

112. For the damage protection, Plaintiff only refers to in-premises individual interactions; which vary with each interaction and each Class member, and thus cannot be assessed on a collective basis.
113. Damage protection is a distinct service/product, that is completely optional.
114. Class members choosing to prevail themselves of the damage protection option are made aware of the total costs prior to making their selection and being charged any amount, as appears notably from the Website's screenshots (Plaintiff's Exhibit P-8, at 00:30 and 00:48) and from Mr. Viot's estimate (Exhibit D-1, p.1), reproduced below:

Website's screenshots from Plaintiff's Exhibit P-8, at 00:30 and 00:48:



Votre panier d'achats

Location d'équipement *Garantissez votre réservation en réservant maintenant!*

Camion de 10 pi (In-Town) 1 19,95 \$ (CAD) Plus 0,69 \$/kilomètre

Prise de l'équipement prévue
1/25/2021 chez 10:00 AM
Location de 4 heures
U-Haul du Centre-Ville de Montréal Cité 2000 - entreposage

Retour d'équipement :
1/25/2021
U-Haul du Centre-Ville de Montréal Cité 2000 - entreposage
2000 Notre Dame E
Montreal, QC H2K2N3

Couverture pour les dommages 0,00 \$ (CAD)
Aucune sélection

Diabes/couvertures de protection de location

Chariot pour meubles 0 0,00 \$

Diabes pour électroménagers 0 0,00 \$

Couvertures de protection 0 0,00 \$

Diabes tout usage 0 0,00 \$

Frais environnementaux 1,00 \$ (CAD)

Sous-total : 20,95 \$ (CAD) plus 0,69 \$/kilomètre

Payable aujourd'hui :
0,00 \$ (CAD)
Tous les prix sont en dollars américains, sauf si c'est clairement mentionné en CAD (en dollars canadiens). Les taxes de vente et d'expédition ne sont pas incluses à moins qu'il ne soit mentionné autrement.
Appliquer certificat-cadeau (facultatif)
Appliquer coupon/bon (facultatif)
Paielement

Exigible au moment de la prise de l'équipement :
Location d'équipement 20,95 \$ (CAD) plus 0,69 \$/kilomètre

Sauvegarder cette estimation

Avez-vous besoin d'espace supplémentaire?
Climatisation et accès 24 heures sur 24. [Trouver des établissements d'entreposage](#)

Laissez quelqu'un d'autre faire le travail!
Embauchez des Aides-déménageurs^{MC}. [Aides-déménageurs^{MC} dans votre région](#)

Extract of Mr. Viot's estimate, Exhibit D-1 (p. 1):

Équipement	KM au départ	Tarif par Dist	Frais pour Dist	Couverture	Tarif pour la location	Frais pour la location	Estimation des frais
BE1564A AJ67942-AZ	630,0	0,95 \$ x 31,0 MI 0,59 \$ x 50,0 KM	29,50 \$	CDW: 18,00 \$	19,95 \$	19,95 \$	67,45 \$

115. U-Haul Canada does not pressure any clients to subscribe to the damage protection it offers and Plaintiff was under no pressure to do so. This damage protection is a distinct product than the vehicle rental and Class members are free to subscribe to the damage protection if they so desire.
116. Moreover, Class members who used the U-Haul Canada 24/7 Truck Share program did not speak with an employee or an independent dealer. As such, they cannot have been pressured by a U-Haul Canada representative to purchase any product.

117. Plaintiff was not pressured by U-Haul Canada to purchase the damage protection. When renting vehicles, Plaintiff regularly takes the protection offered by the vendor, as appears from a reservation made by Plaintiff at *Discount Location d'autos et camions* ("**Discount**") in which he intended to purchase a damage protection in the amount of \$31.95, the whole as appears from the Reservation contract with Discount dated September 1st, 2019, and communicated herewith as **Exhibit D-2**.
118. U-Haul Canada made no false or misleading representation concerning damage protection nor did U-Haul Canada omit to provide any information concerning same. There is no basis to claim punitive damages

The Gasoline

119. Class members knew, were made aware and should have known of their obligation pertaining to gasoline.
120. First, depending on the duration of rentals and the distances driven, Class members might need more than one full tank of gasoline during their rental period. Class members could not have reasonably expected to be reimbursed for said gasoline payments made during their rental.
121. Second, no reasonable customer could have expected that he was not responsible to replace the gasoline used during his rental period.
122. The replacement of gasoline by a customer is a standard process in the vehicle rental industry.
123. For example, the Plaintiff rented at least one vehicle from Discount, that also requires customers to return their rentals with the same level of gasoline, as appears notably from the screenshot of the "Car Rental FAQs" section on

Discount's website (i.e. now powered by Enterprise), reproduced below, **Exhibit D-3:**

enterprise.ca/en/help/faqs/fueling-rental-car.html

enterprise Careers Help CAN (English) Find a Location SIGN IN / JOIN

Rent Share Learn Inspiration Locations Business

Home / en / Car Rental FAQs / Do I need to refuel the vehicle before returning? Can I pre-pay for fuel?

Car Rental Fuel Options

As a customer, you have a choice as to how you would like to pay for fuel.

Fuel Policy at Non Airport locations:

- Customers may refuel the vehicle to the same fuel level upon picking up the vehicle.
- If a customer chooses not to refuel the vehicle to the same fuel level, they will be charged the local Enterprise rate which is typically above the local pump price.
- A full tank of gas is not guaranteed.

Fuel Policy at Airport Car Rental Locations:

- You may refuel the vehicle to the same fuel level you received when you picked up the vehicle, or
- You may opt to pre-pay for fuel – Pre-pay gives you two conveniences:
 - You can avoid the hassle of having to fuel up the vehicle before returning.
 - Pre-pay fuel option is calculated at the local rate of gas minus a per gallon discount.

Note: Prepaid fuel is only sold in full tanks at the discounted price per gallon and is not refundable. Local fuel rates will vary by the area you are renting a vehicle.

[<< Go Back to Full List of FAQs](#)

124. Notwithstanding this known fact, the estimates provided to Class members prior to taking possession of the vehicles indicate that they have the obligation to refill the gasoline to the same level of fuel contained in the tank at the time of departure.

125. Should they breach their obligation, the estimates clearly state that they will be charged for gasoline if the vehicle is not returned with the same level of fuel contained in the tank at the time of departure, the whole as appears from M. Viot's estimate, Exhibit D-1 (p. 3).

- J'accepte de vérifier que le niveau d'essence dans mon camion est à 3/8th avant de quitter l'établissement. Je vais retourner ce véhicule avec la même quantité d'essence que celui qu'il avait au moment de mon départ et/ou j'accepte de payer des frais de 1,45 \$ par litre comme frais de commodité pour l'essence qui a fait l'objet d'une estimation et que je n'aurai pas remplacée à mon retour. Si je ne retourne pas le camion avec au moins 1/4 d'essence dans son réservoir, j'accepte aussi de payer 30,00 \$ comme frais de service. U-Haul ne rembourse pas la différence si ce camion est retourné avec plus d'essence que ce qui est imprimé sur la jauge d'essence illustrée dans mon reçu. U-Haul paie pour l'huile (gardez les reçus).

126. In light of the above, U-Haul Canada did not make any false representation concerning the obligation relating to gasoline, nor did it omit to provide Class members with any relevant information pertaining to same. There is no basis for an award of punitive damages.
127. In any case, if U-Haul Canada infringed the provisions of the CPA (which is expressly denied), it did not do so with a malicious intent or by serious negligence.
128. Thus, the award of punitive damages should be dismissed.

VIII. NO COLLECTIVE RECOVERY POSSIBLE

125. Subsidiarily, in the event that this Court were to find that Class members are entitled to damages (which is denied), this is not a case that justifies a method of collective recovery. Indeed, there exist too many individual alleged issues with respect to each Class member's claim, which makes it impossible for the Plaintiff to determine with sufficient precision the total amount of the Class members' claims.
126. There is no way of determining, in the aggregate, which Class members are "consumers" within the meaning of the CPA. U-Haul Canada customers rent vehicles for a variety of reasons, including for the operation of their respective businesses.
127. For all types of reservation (online, by phone or in person), the question of whether any particular U-Haul Canada customer saw and relied on any Formulas is an individual issue that cannot be analyzed on a collective basis.
128. The issue of determining if a Class member had previously rented a U-Haul Canada vehicle is also an individual issue that cannot be analyzed on a collective basis.

129. The issue of determining if a Class member received an optimization of his/her booking is also an individual issue that cannot be analyzed on a collective basis.
130. The issue of determining the size of the vehicle rented by a Class member and the Formulas he has been exposed to or not is an individual issue that cannot be analyzed on a collective basis.

IX. THE ANSWERS TO COMMON QUESTIONS ARE NEGATIVE

131. In light of the foregoing, the answers to the common authorized questions should be as follows:
 - (a) Did the Defendant advertise on its website, its mobile application, its vehicles, in its branches and elsewhere, lower prices than those ultimately demanded, thereby contravening section 224c) CPA?

Answer: No

- (b) Are the members of the group entitled to a reduction in the rental price corresponding to the difference between the advertised price and the price charged, less the taxes and duties provided for in the exceptions of sections 224 CPA and 91.8 RRACPA?

Answer: No

- (c) Should the Defendant be ordered to pay punitive damages to the members of the class?

Answer: No

- (d) Can the claims of the members be recovered collectively?

Answer: No

WHEREFORE, THE DEFENDANT U-HAUL CO. (CANADA) LTÉE PRAYS THIS COURT TO:

GRANT the present Defence;

DISMISS Plaintiff's Originating Application (*Demande introductive d'instance*) dated December 16, 2021;

THE WHOLE with costs, including expert fees.

MONTREAL, February 21, 2023



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LTÉE

N° / No.: **500-06-001104-203**

SUPERIOR COURT
(Class Actions)
DISTRICT OF MONTRÉAL

BENJAMIN VIOT

Plaintiff

c.

U-HAUL CO. (CANADA) LTÉE.

Defendant

**DEFENCE OF DEFENDANT U-HAUL
CO. (CANADA) LTÉE**

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