

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

No.: 500-06-001215-231

MATHIEU TRUELLE

Plaintiff

v.

TICKETMASTER CANADA LP

et als.

Defendants

**APPLICATION OF THE DEFENDANTS FOR LEAVE TO ADDUCE RELEVANT
EVIDENCE AND TO EXAMINE THE PROPOSED REPRESENTATIVE PLAINTIFF**
(Art. 574, para. 3 CCP)

**TO THE HONOURABLE MARTIN F. SHEEHAN, J.S.C., THE DEFENDANTS
RESPECTFULLY SUBMIT AS FOLLOWS:**

I. INTRODUCTION

1. On January 18th, 2023, Plaintiff Mathieu Trudelle filed an *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff* (the “**Application for Authorization**”) against Ticketmaster Canada LP (“**Ticketmaster Canada**”), Ticketmaster Canada Holdings ULC, Ticketmaster Canada ULC and Ticketmaster LLC (together with Ticketmaster Canada, “**Ticketmaster**”), Cumis General Insurance Company (“**Cumis**”), as well as AZGA Insurance Agency Canada Ltd. and AZGA Service Canada Inc. (together, “**AZGA**”).
2. The Defendants seek leave of this Court to file relevant evidence, namely two short affidavits, by a representative of Ticketmaster and of AZGA respectively, accompanied by a limited number of explanatory documents, the whole as provided by article 574, para 3 of the *Code of Civil Procedure* (“**CCP**”), and for the reasons set out below.
3. The Defendants also seek leave of this Court to examine the proposed representative plaintiff on four subjects relevant to the conditions for authorization, for a duration of no more than sixty (60) minutes.

II. ALLEGATIONS OF THE APPLICATION FOR AUTHORIZATION

4. Plaintiff seeks authorization to institute a class action against the Defendants on behalf of the following proposed class:

All persons in Canada who purchased a ticket from Ticketmaster's website or mobile application, with insurance, and for whom the total amount to be paid for their ticket plus the insurance was not displayed by Ticketmaster at the time of purchase;

or any other class to be determined by the Court.

(hereinafter referred to as the "**Class**")

5. No time limit is proposed for the Class, but presumably the relevant time period commences three (3) years before the proceedings were filed, on or about August 2, 2019 (taking into account the suspension caused by the public health emergency).
6. In summary, Plaintiff alleges that, when offering to Class members on Ticketmaster's platforms the option to purchase Event Ticket Protector Insurance (the "**Insurance**") to protect their tickets to an event, the total price for the transaction (including both the ticket price charged by Ticketmaster and the Insurance premium charged separately) is not clearly and prominently displayed.
7. More specifically, Plaintiff alleges that the premium charged for the Insurance is not clearly and prominently displayed to the Class before members accept to purchase the Insurance.
8. Plaintiff alleges violations of sections 54.4, 224 c) and 228 of the Québec *Consumer Protection Act* ("**CPA**") and claims compensatory and punitive damages pursuant to section 272 CPA. He also alleges violations of section 52 of the *Competition Act*.
9. Plaintiff's specific allegations with respect to Cumis and AZGA are limited to alleging that they respectively underwrite and administer the Insurance.
10. Plaintiff seeks on behalf of each class member, (i) compensatory damages in an amount to be determined, and (ii) punitive damages of \$200.00 per class member.

III. NECESSITY OF RELEVANT EVIDENCE TO ASSESS AUTHORIZATION CRITERIA

A. Affidavit of a representative of AZGA

11. In support of the Application for Authorization, Plaintiff filed a number of exhibits demonstrating the Insurance offer (Exhibits P-3, P-6 and P-7). The exhibits filed

by Plaintiff present the Insurance offer as it appeared before March 31, 2023, including on the day of the purchase by Plaintiff of his tickets and Insurance.

12. On or about March 31, 2023, certain changes to the presentation of the offering on www.ticketmaster.ca were made in order to update the offering to residents of Québec, including making the amount of the Insurance premium even more prominent.
13. The Defendants seek leave to complete the Court record, by filing the current Insurance offer as **Exhibit D-1** by means of the affidavit attached to the present Application as **Annex A**.
14. As there is no time limit proposed for the Class, this evidence is directly relevant to the determination of the scope and description of the Class, and therefore directly relevant to the Court's appreciation of whether the conditions of article 575 CCP are met. It is also generally relevant to the alleged conduct and completes the Court's appreciation of the circumstances regarding the offering of the Insurance to consumers in Québec.
15. In addition, Plaintiff failed to file complete information, including terms and conditions, provided to customers as part of the Insurance offer.
16. The Defendants seek leave to complete the factual context currently in the Court record, by filing the description of coverage and policy terms and conditions as **Exhibits D-2** and **D-3** by means of the affidavit attached to the present Application as Annex A.
17. The affidavit also contains various facts relevant to the jurisdiction of the Court, such as the location of the head office and principal place of business of AZGA, and the fact that the Insurance offering (both P-3 and D-1) is offered to purchasers of events in Canada only if their billing address is within the province of Québec.
18. These facts are also relevant to the scope and definition of the proposed Class.

B. Affidavit of a representative of Ticketmaster

19. In the Application for Authorization, Plaintiff makes a number of allegations about the purchase process on Ticketmaster Canada's platforms and filed various exhibits demonstrating this purchase process on Ticketmaster Canada's website (Exhibits P-3, P-6 and P-7).
20. However, Plaintiff failed to file the Terms of Use and the Purchase Policy governing sales transactions concluded on Ticketmaster Canada's platforms at the relevant times.

21. The Defendants seek leave to complete the contractual framework currently in the Court record, by filing the said Terms of Use and Purchase Policy as **Exhibits D-4** and **D-5** by means of the affidavit attached to the present Application as **Annex B**.
22. The affidavit proposed in Annex B also sets out various facts similar to those described above in relation to Annex A, such as facts relevant to the jurisdiction of the Court, including the location of the head office and principal place of business of Ticketmaster, and the fact that the Insurance offering in P-3 and D-1 is offered only to purchasers of tickets to events in Canada and only if their billing address is within the province of Québec.
23. Again, this evidence is directly relevant to the determination of the scope and definition of the Class, and therefore directly relevant to the Court's appreciation of whether the conditions of article 575 CCP are met.
24. It is in the interest of justice to grant leave to the Defendants to file the evidence in Annexes A and B, which evidence is directly relevant to the assessment of the conditions for authorization of the proposed class action.

IV. NECESSITY FOR LEAVE TO EXAMINE THE PLAINTIFF

25. The Defendants also seek leave of this Court to conduct a circumscribed examination of Plaintiff on the following subjects:
 - a) The buying and reimbursement processes experienced by Plaintiff;
 - b) The troubles and inconveniences allegedly experienced by Plaintiff;
 - c) Plaintiff's allegations with respect to his claim for punitive damages; and
 - d) Plaintiff's knowledge with respect to the proposed Class.
26. These subjects are directly related to the Court's appreciation of whether the conditions for authorization of the proposed class action are met in this case.
27. An examination regarding these subjects will also allow the Court to better define the class and the issues to be dealt with collectively, if the proposed class action is authorized.

28. It is in the interest of justice that the Defendants examine the Plaintiff out of Court on these subjects for a maximum of sixty (60) minutes.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present *Application of the Defendants to Adduce Relevant Evidence and to Examine the Proposed Representative Plaintiff*.

GRANT LEAVE to the Defendants to file the affidavits annexed to the present Application as Annex A, as well as Exhibits D-1 to D-3, attached thereto.

GRANT LEAVE to the Defendants to file the affidavit annexed to the present Application as Annex B, as well as Exhibits D-4 and D-5, attached thereto.

GRANT LEAVE to the Defendants to examine Plaintiff Mathieu Trudelle outside of Court for a maximum of sixty (60) minutes regarding the following subjects:

- a) The buying and reimbursement processes experienced by Plaintiff;
- b) The troubles and inconveniences allegedly experienced by Plaintiff;
- c) Plaintiff's allegations with respect to his claim for punitive damages; and
- d) Plaintiff's knowledge with respect to the proposed Class.

THE WHOLE without costs, unless contested.

MONTRÉAL, June 2, 2023

(s) Torys Law Firm LLP

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Our reference: 43500-0001

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NOTICE OF PRESENTATION

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TAKE NOTICE that the *Application of the Defendants to Adduce Relevant Evidence and to Examine the Proposed Representative Plaintiff* will be presented before the Honourable Justice Martin F. Sheehan of the Superior Court, sitting in and for the District of Montréal, as case management judge, at a date and time to be determined by the Court, at the Montréal Courthouse, located at 1 Notre-Dame Street East, Montréal, Québec H2Y 1B6.

GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 2, 2023

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MATHIEU TRUELLE

Plaintiff

v.

TICKETMASTER CANADA LP

and

TICKETMASTER CANADA HOLDINGS ULC

and

TICKETMASTER CANADA ULC

and

TICKETMASTER LLC

and

CUMIS GENERAL INSURANCE COMPANY

and

AZGA INSURANCE AGENCY CANADA LTD.

and

AZGA SERVICE CANADA INC.

Defendants

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TO ADDUCE RELEVANT EVIDENCE AND TO
EXAMINE THE PROPOSED REPRESENTATIVE
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