

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Action)

No.: **500-06-001211-222**

SHAI MEDALSY

Plaintiff

v.

MAPLEBEAR INC.

-and-

MAPLEBEAR CANADA INC.

-and-

MAPLEBEAR DELIVERY CANADA INC.

Defendants

APPLICATION FOR LEAVE TO EXAMINE THE PLAINTIFF
(Art. 574 and 575 C.C.P.)

TO THE HONOURABLE JUSTICE PIERRE NOLLET, J.S.C., IN HIS CAPACITY AS CASE MANAGEMENT JUDGE, THE DEFENDANTS, MAPLEBEAR INC., MAPLEBEAR CANADA INC. AND MAPLEBEAR DELIVERY CANADA INC., STATE AS FOLLOWS:

I. INTRODUCTION

1. The Defendants, Maplebear Inc., Maplebear Canada Inc. and Maplebear Delivery Canada Inc., hereby request leave to examine out of Court the Plaintiff, Mr. Shai Medalsy, on limited and specific topics relating to the class action authorization criteria.

II. THE PROCEDURAL CONTEXT

2. On December 1, 2022, Mr. Shai Medalsy, the Plaintiff, filed an *Application for Authorization to Institute a Class Action* (the “**Application for Authorization**”) in the present file.
3. By way of the Application for Authorization, the Plaintiff seeks authorization to bring a class action against the Defendants on behalf of the following putative class members:

All residents of Quebec who have completed a transaction on Defendants’ “Instacart” mobile app or on Defendants’ Instacart.ca

website and who paid a price higher than initially indicated or advertised, including without limitation paying for service fees, delivery fees, and/or other fees, or any other group or sub-groups to be determined by the Court;

4. As stated by the Plaintiff, the proposed class action is an action in damages, consumer protection and restitution and is predicated on Sections 219, 224c) and 228 of the *Consumer Protection Act* (the “CPA”).
5. According to the claims made by the Plaintiff in the Application for Authorization, the Defendants are charging fees of various kinds that are allegedly displayed or advertised in a manner not in accordance with the aforementioned CPA provisions. On this basis, the Plaintiff argues that the Defendants made a false and misleading representation by failing to display fees before the checkout stage of the transaction process.
6. On behalf of the putative class members, the Plaintiff claims a reduction of obligation equivalent to the amount of fees allegedly charged by Defendants and paid by class members above the price initially indicated or advertised, as well as punitive damages.
7. The Plaintiff personally claims the amounts of \$9.99 (plus taxes), as well as punitive damages.

III. THE RIGHT AND NEED TO EXAMINE THE PLAINTIFF

8. At the authorization hearing, this Court will analyze the allegations found in the Application for Authorization in view of the criteria provided at Article 575 CCP, as developed by jurisprudence. The Plaintiff’s individual claim and his adequacy as the proposed class representative are among the main issues to be analyzed by this Court.
9. At the authorization hearing, the Defendants are entitled to a full and complete defence in this regard.
10. Article 574 CCP empowers this Court to authorize the presentation of appropriate evidence that is relevant to the analysis of the conditions set out in Articles 574 and 575 CCP, including the examination of the Plaintiff.
11. When this Court assesses the Application for Authorization in light of Articles 575(2) and 575(4) CCP, it will do so in view of the Plaintiff’s personal situation.
12. The Court is entitled to know precisely if the Plaintiff is a consumer eligible to claim a remedy under the CPA. The Application for Authorization does not provide any clarity on this point. However, the examination, if authorized, will.
13. Indeed, apart from stating that on November 21, 2022, the Plaintiff purchased on the Instacart platform a pack of 48 AAA batteries and four gallons of windshield

fluid, the Application for Authorization neither states why the Plaintiff made this purchase nor the intended and actual use for these products.

14. Without additional evidence, the Court will be unable to determine whether the Plaintiff is a consumer within the ambit of the CPA, particularly since both purchased products may be used for a business purpose, as well as a personal purpose.

IV. THE PROPOSED EXAMINATION

15. In order to verify the facts giving rise to the Plaintiff's individual claim and to determine the Plaintiff's adequacy to act as class representative, the Defendants submit that they should be granted leave to examine the Plaintiff with respect to the following precise topics in order to determine whether the Plaintiff is a consumer and is in a position to properly represent the class members:
 - a) The circumstances of the purchase of the items listed in Exhibit P-5 (Kirkland Signature Alkaline AAA Batteries and Windshield Fluid) by the Plaintiff on the Instacart platform;
 - b) Information about the specific use of the purchased products, as well as all other products purchased by the Plaintiff on the Instacart website or mobile app;
 - c) Whether the Plaintiff owns or operates a business; and
 - d) Whether the Plaintiff was reimbursed for the purchased products or claimed any input tax credit in relation thereto.
16. Such examination would last a maximum of forty-five minutes, and would be conducted out of Court, in Montreal, on a date agreed upon by the parties or as directed by this Court in the absence of any agreement between the parties.
17. The Defendants intend to file the transcript of the examination at the authorization hearing.
18. This Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Defendants to examine the Plaintiff, Mr. Shai Medalsy, in Montreal, at a date to be determined by the parties or by this Court in the absence of any agreement for a duration of forty-five minutes, on the following topics:

- a) The circumstances of the purchase of the items listed in Exhibit P-5 (Kirkland Signature Alkaline AAA Batteries and Windshield Fluid) by the Plaintiff on the Instacart platform;

- b) Information about the specific use of the purchased products, as well as all other products purchased by the Plaintiff on the Instacart website or mobile app;
- c) Whether the Plaintiff owns or operates a business; and
- d) Whether the Plaintiff was reimbursed for the purchased products or claimed any input tax credit in relation thereto.

THE WHOLE without costs, unless contested.

Montreal, July 4, 2023

Blake, Cassels & Graydon L.L.P.

BLAKE, CASSELS & GRAYDON LLP

Attorneys for Defendants

(Court Code: BB-8098)

1 Place Ville-Marie, Suite 3000

Montréal, Québec H3B 4N8

M^{re} Robert J. Torralbo

robert.torralbo@blakes.com

M^{re} Simon J. Seida

simon.seida@blakes.com

Telephone: 514-982-4014 / 514-982-4103

Fax: 514-982-4099

Our reference: 14585-27

N°: 500-06-001211-222

SUPERIOR COURT
(Class Action Division)
DISTRICT OF MONTRÉAL

SHAI MEDALSY

Plaintiff

v.

MAPLEBEAR INC. ET AL.

Defendants

**APPLICATION FOR LEAVE TO EXAMINE THE
PLAINTIFF**

ORIGINAL

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

M^{tre}. Robert J. Torralbo

M^{tre}. Simon J. Seida

BB-8098

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

1 Place Ville Marie, Suite 3000

Montréal, Québec H3B 4N8

Tel: **514-982-4014** | **514-982-4103**

Fax: 514 982-4099

Emails : robert.torralbo@blakes.com

simon.seida@blakes.com

Our File: 14585/27