

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Actions)  
SUPERIOR COURT

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NO: 500-06-001257-233

NOURIT



Applicant

v.

**WAL-MART CANADA CORP.**, legal person  
having a principal establishment at 17000  
Trans-Canada Highway, Kirkland, district of  
Montreal, Province of Quebec, H9J 2M5

Defendant

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. Applicant wishes to institute a class action on behalf of the following class:

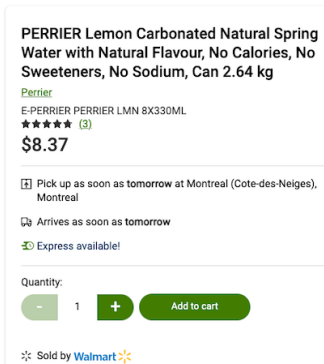
All consumers in Canada who purchased Perrier carbonated water from Wal-Mart and who paid a price higher than the price advertised (excluding sales tax). (hereinafter referred to as the " <b>Class</b> ")	Tous les consommateurs au Canada qui ont acheté de l'eau gazéifiée Perrier chez Wal-Mart et qui ont payé un prix supérieur au prix annoncé (excluant la taxe de vente). (ci-après le « <b>Groupe</b> »)
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2. This class action concerns the illegal manner in which Wal-Mart intentionally and in bad faith charges its customers \$0.05 per Perrier carbonated water can on account of the deposit fee for refundable containers (the French term more commonly used is "**consigne**" and will be used herein for consistency). Wal-Mart unlawfully charges the consigne fee for certain 330 ml Perrier carbonated water cans (generally sold in packs of 8), even though these same cans cannot be returned under the Quebec consigne system and no refund is given for the \$0.05 paid per can (or \$0.40 for a pack of 8);

3. Prior to instituting these proceedings, the Applicant escalated this issue up to Wal-Mart's management and was told that a meeting took place in which Wal-Mart's management was aware that they should not be charging the consignee for the 330 ml Perrier carbonated water cans, but continue to do so with impunity. The Applicant therefore brings this action in order for Wal-Mart to modify its illegal business practice and to obtain financial compensation for Class members;

I. **THE ISSUE:**

4. In its physical stores and on its website, Wal-Mart advertises and sells Perrier carbonated water, including 8-packs containing 330 ml cans (both flavored and natural). These 8-packs are generally advertised for \$8.37 per pack and there is no mention whatsoever of any other fees, as it appears from screen captures of Wal-Mart's website and pictures of their in-store displays (taken at the Wal-Mart in Ville St-Laurent on August 13, 2023), communicated *en liasse* as **Exhibit P-1**:



5. When customers purchase any of the above 8-pack Perrier carbonated water cases from Wal-Mart's website, they are charged the exact price advertised, namely **\$8.37** plus GST and QST, as it appears from the purchase confirmation email dated August 10, 2023, communicated as **Exhibit P-2** (in this example, 5 cases were purchased on Wal-Mart's website in order to avoid additional fees being charged below a certain order value, but which has no impact for the purposes of this case):

### Your items



<b>PERRIER Original Carbonated...</b>	x5
SKU	6000206008095
Price	\$8.37
<b>Total</b>	<b>\$41.85 C</b>

### Order Summary

Items Subtotal:	\$41.85
GST 137466199 RT0001 @ 5%	\$2.09
QST 1016551356 TQ0001 @ 9.98%	\$4.17

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**Order total:** **\$48.11**

Your order is subject to the [Terms of Sale](#). The total includes applicable taxes, shipping charges and environmental fees.

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6. However, when customers purchase any of the **exact same** 8-pack Perrier carbonated water cases from Wal-Mart's physical stores, they are charged an additional **\$0.40** per pack (i.e. \$0.05 per can) **in addition to the \$8.37** plus GST and QST, as it appears from the receipt dated August 13, 2023, showing a charge of **\$8.77** plus GST and QST per 8-pack, communicated as **Exhibit P-3**:

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SUCCURSALE 1189
3820 DE LA COTE VERTU BLVD
ST-LAURENT, QC
H4R 1P8
514-832-4810
ST# 01189 OP# 009061 TE# 61 TR# 04707
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
PERRIER CIV 055000203960 $8.37 E
DEPOT QUEBEC 400092091630 $0.40 H
SOUS-TOTAL $43.85
TPS 5.0000 % $2.09
TVQ 9.9750 % $4.17
TOTAL $50.11
AMEX PMNT $50.11
MONNAIE $0.00
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7. Therefore, for five (5) of the exact same 8-pack Perrier carbonated water cases, Wal-Mart charges **\$50.11** (i.e. \$10.02 per case) in its physical stores, but only **\$48.11** (i.e. \$9.62 per case) for cases purchased from Wal-Mart's website. As it appears from

Exhibit P-3 reproduced above, the difference of \$0.40 per 8-pack is – according to Wal-Mart – on account of the “**Depot Quebec**”, which is a false statement because this deposit is never returned to customers, as it appears from the video taken by the Applicant trying to return one of the Perrier carbonated water cans in Wal-Mart’s recycling/consigne machines (also known as “reverse vending machines” or *gobeuses* in French), situated at the entrance of the Wal-Mart stores, communicated herewith as **Exhibit P-4**;

8. The false “Depot Quebec” statement is systemically made and reproduced on Wal-Mart’s cash registers (both automated and human), on Wal-Mart’s receipts and by Wal-Mart staff;
9. Therefore, Exhibit P-3 and Exhibit P-4 leave no doubt that Wal-Mart violates section 227.1 of Quebec’s *Consumer Protection Act* (the “**CPA**”) which stipulates:

<p><b>227.1</b> No person may, by any means whatever, make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal or provincial statute.</p>	<p><b>227.1</b> Nul ne peut, par quelque moyen que ce soit, faire une représentation fautive ou trompeuse concernant l’existence, l’imputation, le montant ou le taux des droits exigibles en vertu d’une loi fédérale ou provinciale.</p>
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10. These exhibits also prove that Wal-Mart also violates section 54 of the *Competition Act* (drip-pricing) and section 224(c) CPA which stipulates:

<p><b>224.</b> No merchant, manufacturer or advertiser may, by any means whatever,</p> <p>...</p> <p><b>(c)</b> charge, for goods or services, a higher price than that advertised.</p> <p>...</p> <p>For the purposes of subparagraph c of the first paragraph, <b>the price advertised must include the total amount the consumer must pay for the goods</b> or services. However, the price advertised need not include the Québec sales tax or the Goods and Services Tax. More emphasis must be put on the price advertised than on the amounts of which the price is made up.</p>	<p><b>224.</b> Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit:</p> <p>...</p> <p>c) exiger pour un bien ou un service un prix supérieur à celui qui est annoncé.</p> <p>...</p> <p>Aux fins du paragraphe c du premier alinéa, <b>le prix annoncé doit comprendre le total des sommes que le consommateur devra déboursier pour l’obtention du bien</b> ou du service. Toutefois, ce prix peut ne pas comprendre la taxe de vente du Québec, ni la taxe sur les produits et services du Canada. Le prix annoncé doit ressortir de façon plus évidente que les sommes dont il est composé.</p>
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11. Additionally, since there is no obligation to pay a “depot Quebec” fee on these Perrier carbonated water cans (which Wal-Mart invents out of thin air for purchases made in

stores), the receipt of a payment not due provisions allow Class members to recover the amounts paid in excess (articles 1491, 1492 and 1554 al. 1 CCQ);

12. In August of 2023, Applicant purchased the exact same 8-pack Perrier case from other stores (Super C, Esposito and Maxi) and none of them charged the fictitious \$0.05 fee per Perrier carbonated water can like Wal-Mart does in its stores, at it appears from the receipts from these and other stores communicated *en liasse* as **Exhibit P-5**;
13. *Consignaction*, a non-profit organization set up in 2001 by Boissons Gazeuses Environnement (BGE) and created by the Quebec soft drink industry to administer the deposit system for non-refillable soft drink containers, describes the benefits of Quebec’s “Deposit System” (*système de consigne*) as follows, as it appears from **Exhibit P-6** (<https://consignaction.ca/>):

<p><b>Why to use the system?</b></p> <p>All <b>refundable</b> containers, such as cans and bottles, that are brought back to the store are 100% recycled. With this system, nothing is lost, all is transformed. It’s the most ecologically-friendly way to recycle your beverage containers.</p> <p>...</p> <p><b>What to return?</b></p> <p>All beverage containers marked “<b>CONSIGNÉE QUÉBEC</b>” whether made from aluminum, glass or plastic, <b>can be returned for a refund</b>. It’s as simple as that!</p>	<p><b>Pourquoi consigner ?</b></p> <p>Les canettes et les bouteilles <b>consignées</b> qui sont rapportées chez le marchand sont recyclées à 100 %. Avec la consigne, rien ne se perd, tout se transforme. La consigne est la façon plus écologique de recycler vos contenants.</p> <p>...</p> <p><b>Quoi rapporter?</b></p> <p>Tous les contenants de boisson portant l’inscription «consignée Québec», qu’ils soient faits d’aluminium, de verre ou de plastique, peuvent être rapportés.</p>
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14. Under the heading “Quoi rapporter”, *Consignaction* provides a hyperlink titled “*Liste des contenants consignés*”, communicated as **Exhibit P-7**. Although some Perrier (juice) drinks are included in this list (identified by UPC codes), the natural and flavoured 330 ml Perrier carbonated water cans contained in the 8-packs sold at Wal-Mart stores and subject to the fictitious \$0.05 fee are not included in this list, leaving no doubt that Wal-Mart did not have the right to impose this additional charge;
15. In particular, Wal-Mart sells and unlawfully charges the \$0.05 fee per Perrier carbonated water can on at least the following ten (10) Perrier 8-pack cases that are **not** included in the *Liste des contenants consignés*:

<b>PERRIER</b>	<b>UPC</b>
Lime Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020396
Lemon Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020393

Peach Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020405
Raspberry Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020408
Pink Grapefruit Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020294
Strawberry Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020411
Ginger Lime Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020278
Orange Carbonated Natural Spring Water, Can 2.64 kg	5500020399
Blackberry Carbonated Natural Spring Water with Natural Flavour, Can 2.64 kg	5500020280
Original Carbonated Natural Spring Water, Can 2.64 kg	5500020402

16. In Quebec, retail stores, including Wal-Mart, are bound by their undertaking to comply with the *Order in Council respecting the Policy on accurate pricing for merchants who use optical scanner technology* (the “**Accurate Pricing Policy**”) and, as such, owe Class members statutory damages of up to \$10.00 per case of Perrier purchased, or for Perrier cases under \$10.00, the product should have been given to the consumers free of charge given that it scanned at checkout at a higher price (**\$8.77**) than that advertised in the store (**\$8.37**) pursuant to section 1(1)(b) of the *Accurate Pricing Policy*, which stipulates:

<p>1. For each establishment in which the merchant intends to use the exemption prescribed in section 91.4 of the <i>Regulation respecting the application of the Consumer Protection Act</i> (chapter P-40.1, r. 3), the merchant shall adopt and apply an accurate pricing policy offering consumers compensation in the case of an unfavourable error corresponding to the following minimum standards:</p> <p>(1) where the price of the good rung in at the check-out is higher than the price advertised, the lower price shall be honoured and:</p> <p>(a) the merchant <b>shall give the good to the consumer free of charge</b>, if the accurate price of the good is \$10 or less; or</p> <p>(b) the merchant shall correct the price and grant the consumer <b>a discount of \$10 on the</b></p>	<p>1. Le commerçant doit adopter et appliquer, pour chacun des établissements dans lequel il entend se prévaloir de l'exemption prévue à l'article 91.4 du <i>Règlement d'application de la Loi sur la protection du consommateur</i> (chapitre P-40.1, r. 3), une politique d'exactitude des prix offrant aux consommateurs une <b>indemnisation correspondant aux normes minimales suivantes en cas d'erreur défavorable au consommateur</b> :</p> <p>1° lorsque le prix d'un bien enregistré à la caisse est <b>supérieur au prix annoncé</b>, le prix le plus bas prévaut et:</p> <p>a) le commerçant <b>remet gratuitement ce bien au consommateur</b> si le prix exact du bien est de 10 \$ ou moins;</p> <p>b) le commerçant corrige le prix et</p>
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<p><b>corrected price</b>, if the accurate price of the good is higher than \$10;</p> <p>...</p> <p>(3) the accurate pricing policy shall apply even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good;</p>	<p><b>accorde au consommateur un rabais de 10 \$ sur le prix</b> ainsi corrigé, si le prix exact du bien est supérieur à 10 \$;</p> <p>...</p> <p>3° la politique d'exactitude des prix s'applique même si l'erreur est constatée avant que la transaction ne soit complétée, à la condition toutefois que le consommateur achète le bien;</p>
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17. Wal-Mart's conduct as alleged herein can only be qualified as intentional and reprehensible. Worse, Applicant made Wal-Mart aware of their illegal practice and they refused to modify their conduct, instead definitely doubling-down and forcing her to initiate proceedings and waste judicial resources for a law that every other merchant is able to comply with;
18. Every Class member who purchased Perrier carbonated water cans that were not part of the consigne system and who paid \$0.05 more per can on account Wal-Mart's fictitious "depot Quebec" fee is entitled to statutory damages equivalent to the value of the full price paid to Wal-Mart, i.e. \$8.77 (plus taxes thereon), given that section 1(1)(a) of the Accurate Pricing Policy stipulates that the merchant must give the item to the consumer free of charge when said item scans at the cash for a price higher than advertised and is less than \$10.00;
19. The damages are the same for every Class member who purchased the Perrier carbonated water cases at issue from Wal-Mart;
20. Given that Wal-Mart also operate in the rest of Canada, they are bound by the *Scanner Price Accuracy Voluntary Code* (the "**Code**") which they adhere to and which provides for the same free item section 1.1(a) and \$10.00 compensation at its section 1.1(b), as it appears from a copy of the Code communicated as **Exhibit P-8**;
21. Wal-Mart is also bound by section 54 of the *Competition Act* which stipulates:
  - 54 (1)** No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied,
    - (a) on the product, its wrapper or container;
    - (b) on anything attached to, inserted in or accompanying the product, its wrapper or container or anything on which the product is mounted for display or sale; or
    - (c) on an in-store or other point-of-purchase display or advertisement.
22. In its Bulletin titled "*The Deceptive Marketing Practices Digest*", the Competition

Bureau refers to a common deceitful practice to which consumers fall prey, known as “*drip-pricing*”, and how this practice has a fraudulent effect on a consumer’s decision-making process, Applicant communicating **Exhibit P-9**:

There is a significant body of research that shows **that hiding or obscuring costs significantly affects consumers’ ability to make well informed decisions**, and has a negative impact on the proper functioning of the marketplace. The international consumer protection community, through the Committee on Consumer Policy of the Organization for Economic Cooperation and Development (OECD), has identified similar concerns.

23. This class action seeks: **(i)** compensatory damages pursuant to the CPA and the *Competition Act*; **(ii)** statutory damages pursuant to the Accurate Pricing Policy or the Code; **(iii)** an aggregate amount of punitive damages; and **(iv)** an injunction forcing Wal-Mart to cease perpetuating the illegal practice;

## **II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 CCP):**

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

**(i) *Applicant’s claim against Wal-Mart for violations of ss. 223, 224c) and 227.1 CPA, the Accurate Pricing Policy and s. 54 of the Competition Act:***

24. Applicant has been purchasing Perrier carbonated water (flavoured and natural) 10-packs for many years and often purchases multiple packs every week from Wal-Mart in Ville St-Laurent and on Jean-Talon;
25. For years, the 10-packs contained 250 ml Perrier carbonated water cans and Wal-Mart never charged the \$0.05 consignee fee per can;
26. Approximately one year ago, Applicant noticed that the Perrier carbonated water cans increased in size, from 250 ml to 330 ml, and that the pack size was reduced from 10 to 8 cans;
27. Applicant subsequently noticed that Wal-Mart began charging her \$0.40 more per 8-pack of Perrier (representing \$0.05 per can) on account of what Wal-Mart described as a “Depot Quebec” (Exhibit P-3);
28. Initially, Applicant raised the issue with Wal-Mart’s customer service at the store situated in Ville St-Laurent and on July 26, 2023, the store manager (Jay) even agreed to credit the \$0.40 fee (times 3 cases, for a total of \$1.20), Applicant communicating her receipt showing the credit as **Exhibit P-10**;
29. During that transaction on July 26, 2023, Applicant invoked the Accurate Pricing Policy and demanded that Wal-Mart provide the 8-pack case free of charge accordingly. Wal-Mart refused and only agreed to credit the overcharge of \$0.40, thereby undeniably violating the CPA and failing in its legal obligation to respect its own undertaking, as



well as the law;

30. After July 26, 2023, Wal-Mart refused to credit Applicant for the so-called "Depot Quebec" fee and insisted that this was a fee that they had to collect for the government, which is false pursuant to section 227.1 (Wal-Mart even admits this by not charging this fee when customers purchase the exact same items from their website; see Exhibit P-2);
31. Applicant continued to raise the issue with Wal-Mart's manager (Jay), but was told that a meeting was held with higher management following her complaints and that the decision was made by Wal-Mart's upper management to continue charging the additional fee of \$0.05 per can. Wal-Mart's manager shockingly told Applicant that Wal-Mart's position was that if its customers wanted to avoid paying the so-called "Depot Quebec" fee they should simply shop at other stores;
32. Wal-Mart is bound by the Accurate Pricing Policy and the Code, but systemically refuses requests made by Class members to honour the Accurate Pricing Policy in its stores;
33. Applicant also specifies that section 1(3) of the Accurate Pricing Policy provides:
  - (3) the accurate pricing policy shall apply even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good.
34. Therefore, whether the Applicant or Class members had knowledge of the additional and fragmented \$0.40 "Depot Quebec" fee per Perrier 8-pack is irrelevant, as the statutory provisions raised in this application must be analyzed objectively as to whether or not the real price is prominently displayed; if not, Wal-Mart is liable for damages to Class members and cannot raise any defense to exonerate itself in the circumstances;
35. Indeed, given that the CPA creates a prohibition on advertising an incomplete or fragmented price, the issue of whether there was a violation of 223 or 224c) must be addressed objectively, and there is no reason to assess whether the Applicant and Class members understood the various elements of the actual price or even whether they were misled. It is thus irrelevant to consider whether a consumer, even a credulous and inexperienced one, would have understood that the real price to pay at the cash was the sum of the price advertised on the shelves plus another (hidden) price of \$0.40 per 8-pack that was only displayed for the first time when the customer arrives at the cash to check out;
36. Section 227.1 CPA also creates a prohibition on inventing a tax, which is precisely what Wal-Mart is guilty of here;
37. Applicant also benefits from the legal presumption of fraud committed by Wal-Mart as provided for by section 253 CCP and the Supreme Court's decision analyzing this provision;

38. Moreover, Wal-Mart cannot argue that the Applicant accepted (or confirmed), given that the Court of Appeal has held that in the situation of violations of Title II CPA (which includes sections 223, 224 and 227.1), a contract that violates a public order of direction statute cannot be confirmed;
39. In light of the above, Applicant has suffered ascertainable loss as a result of Wal-Mart's fraudulent practice and failures to comply with the law, notably the amount of \$8.77 plus taxes per Perrier 8-pack of carbonated water, since she is entitled to statutory damages equivalent to the value of the product in question pursuant to section 1(1)(a) of the Accurate Pricing Policy (alternately pursuant to ss. 223, 224c), 227.1 and 272 CPA);
40. Applicant notes that the Consumer Protection Office's website specifies that the request for compensation does not have to be made on the spot, Applicant communicating **Exhibit P-11**:

**32. Un consommateur qui constate chez lui qu'une erreur a été commise peut-il retourner chez le commerçant et demander l'application de la Politique d'exactitude des prix?**

Oui, il n'y a pas de délai particulier pour faire la demande. Cependant, il faut tenir compte des règles générales de prescription, c'est-à-dire des règles légales déterminant le délai pendant lequel une personne peut faire valoir ses droits.

41. Applicant has decided to exercise her rights by way of a class action given that there are likely tens of thousands of people entitled to compensation and because she wants to hold Wal-Mart accountable for imposing a tax that simply does not exist in this deceitful manner – which is also a form of greenwashing. She hereby requests the application of the Accurate Pricing Policy and the Code on her behalf and on behalf of all Class members similarly situated;
42. Applicant's damages are a direct and proximate result of the Wal-Mart's misconduct;

**(ii) Applicant's claim for punitive damages (s. 272 CPA)**

43. There is no doubt that Wal-Mart's conduct here is intentional, calculated, vexatious and with complete disregard to the law and consumers' rights. While the compensatory damages in this case may be modest, Wal-Mart must be condemned to a significant amount of punitive damages to ensure that such conduct is both discouraged and not repeated;
44. Indeed, Wal-Mart manager at the Ville St-Laurent location (Jay) has already admitted on behalf of Wal-Mart that it is aware that these Perrier 8-packs of carbonated water are not subject to the consigne, but that Wal-Mart's upper management insists on charging it to customers, unlike all of Wal-Mart's competitors who do not (i.e. Super C, Maxi, Esposito, Costco, Pharmaprix and IGA to name a few that Applicant tested; see Exhibit P-5);

45. Wal-Mart's conduct as alleged herein is egregious;
46. Wal-Mart is sophisticated merchant with a legal department who knows or ought to know that the CPA and the *Competition Act* apply, especially given their undertakings to comply with the Accurate Pricing Policy and the Code;
47. Wal-Mart's management is very well aware of the situation and the law because: **(1)** they do not charge the consigne for Perrier carbonated water 8-packs purchased from their website; **(2)** they did not charge the consigne previously for the Perrier carbonated water 10-packs of 250 ml cans; and **(3)** the Applicant has informed Wal-Mart of the illegality, yet Wal-Mart intentionally chose to ignore (1) and (2), as well as its obligations under the law and the many guidelines publicly available online free of charge (such as the *Liste des contenants consignés*, Exhibit P-7);
48. Wal-Mart has systems in place to charge the consigne for purchases made on its website, as it appears from the purchase of Coke Zero cans made on August 10, 2023, showing a specific item line for "**Bev. deposit**", communicated as **Exhibit P-12** (this proves that Wal-Mart is aware that the consigne does not apply to the Perrier carbonated water 8-packs because it does not include a line for "Bev. deposit" on its website email purchase confirmations/receipts, as evidenced by Exhibit P-2);
49. A layman perusing *Consignaction's* website or even calling them would have been able to figure out which items on that list are subject to the consigne; Wal-Mart is certainly no layman, it is a publicly traded company with a \$434 billion USD market cap;
50. Wal-Mart's overall conduct before and during the violation is lax, careless, passive and ignorant with respect to consumers' rights and to its own obligations;
51. Wal-Mart's disregard for consumers' rights and to its own obligations under the CPA and the *Competition Act* is in and of itself an important reason for the Court to enforce measures that will punish Wal-Mart, as well as deter and dissuade others – both local and foreign – from engaging in similar reprehensible conduct to the detriment of consumers;
52. Even if Wal-Mart modifies its practice after the filing of the present application (which it will certainly do), Applicant is still justified in claiming a meaningful amount in punitive damages for a flagrant breach of the CPA (by not modifying its practice when Applicant brought it to its attention, Wal-Mart left Applicant – and the public – with no choice but to bring this matter before the Courts in order to seek redress);
53. The punitive damages provided for in section 272 CPA have a preventive objective, that is to discourage the repetition of such undesirable conduct (and not to give a free pass to merchants who comply with the law only once they get caught off-side);
54. In these circumstances, Applicant's claim for **\$10 million** in aggregate punitive damages, subject to adjustment, against Wal-Mart is justified. Wal-Mart's patrimonial situation is significant enough that the foregoing amount of punitive damages are appropriate in the circumstances;

**B) THE CLAIMS OF THE CLASS MEMBERS RAISE SIMILAR ISSUES:**

55. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
- a) Does Wal-Mart violate ss. 223, 224c) or 227.1 CPA, or its *Regulations*?
  - b) For items under \$10.00, must Wal-Mart compensate all Class members the total cost of the Perrier item (including the so-called “Depot Quebec”) plus taxes, pursuant to section 1(1)(a) of the Accurate Pricing Policy or section 1.1(a) of the *Scanner Price Accuracy Code*?
  - c) For items over \$10.00, must Wal-Mart compensate all Class members \$10.00 plus the amount of the so-called “Depot Quebec” (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy or section 1.1(b) of the *Scanner Price Accuracy Code*?
  - d) Does Wal-Mart violate s. 54 of the *Competition Act*? If so, are Class members entitled to damages and in what amounts?
  - e) Do the receipt of a payment not due provisions (articles 1491, 1492 and 1554 al. 1 CCQ) allow Class members to recover the amounts paid in excess?
  - f) Does Wal-Mart act in bad faith?
  - g) Are Class members entitled to punitive damages and in what amount?
56. Applicant submits that all Class members have a common interest both in proving the commission of a prohibited business practice (the violations of ss. 223, 224c) or 227.1 CPA and its Regulations, as well as s. 54 of the *Competition Act*) by Wal-Mart and in maximizing the aggregate of the amounts unlawfully charged to them by the Wal-Mart;
57. In this case, the legal and factual backgrounds at issue are common to all the Class members, namely whether Wal-Mart advertises a lower price on its shelves and then charges a higher price at the cash for Perrier carbonated water can cases;
58. Every Class member purchased a product that prominently announced one price, but were charged a higher price by Wal-Mart on account of the so-called “Depot Quebec” when they got to the cash. At no time was the real total price for these products displayed to the Class members, until they arrived at the cash and received their receipts (and even then, the price was fragmented, in violation of section 224 CPA);
59. By reason of the Wal-Mart’s unlawful conduct, the Applicant and Class members have suffered a prejudice, that are claimed collectively, every time they purchased Perrier carbonated water cans from a Wal-Mart store;
60. Applicant and Class members and are entitled to statutory damages that they may

collectively claim from Wal-Mart, as well as punitive damages pursuant to s. 272 CPA;

61. All Class members benefit from the presumption of fraud provided for at s. 253 CPA;
62. Each Class member has objectively suffered damages equivalent to the amount of the so-called "Depot Quebec" that was not included in the advertised price on the shelves, as well as the sum of \$10.00 as provided for at s. 1(1)(b) of the Accurate Pricing Policy or the Code (for items over \$10.00), and the full value of the product for items less than \$10.00;
63. All of the damages to the Class members are a direct and proximate result of Wal-Mart's faults;
64. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, Wal-Mart charging a higher price than the one advertised;
65. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;

#### **C) THE COMPOSITION OF THE CLASS**

66. 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;
67. Wal-Mart has 403 stores across Canada and 72 in Quebec that likely collected millions of dollars on account of charging a fictitious "Depot Quebec" tax that simply does not apply to the purchase of the Perrier products purchased by the Class members;
68. In the province of Quebec alone, the size of the class is conservatively estimated in the tens of thousands of members, if not more. Class members are very numerous and are dispersed across the province and across Canada;
69. The names of all persons included in the Class are not known to Applicant;
70. 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;
71. 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 REPRESENTATIVE PLAINTIFF**

72. 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 mandatory 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;

73. Additionally, Applicant respectfully adds that:

- a) she mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Wal-Mart's faults and so that Wal-Mart can be held accountable;
- b) in addition to the above, Applicant is taking this action in order to ensure that Wal-Mart promptly modifies its business practice;
- c) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- d) she understands the nature of this action;

### **III. DAMAGES**

74. Applicant estimates that Wal-Mart has generated aggregate amounts in the of millions of dollars while intentionally choosing to ignore the laws in Quebec and Canada, including the Accurate Pricing Policy and the Code;

75. Wal-Mart must be held accountable for the breach of obligations imposed on it by consumer protection legislation in Quebec and Canada, including:

- a) Quebec's *Consumer Protection Act*, notably section 223, paragraph c of section 224 and section 227.1 CPA;
- b) Section 1(1)(a) of the *Accurate Pricing Policy* (and the Code);
- c) Section 1(1)(b) of the *Accurate Pricing Policy* (and the Code);
- d) The *Competition Act*, sections 36 and 54; and/or
- e) The receipt of a payment not due provisions (articles 1491, 1492 and 1554 al. 1 CCQ);

76. In light of the foregoing, the following aggregate damages may be claimed by Class members against Wal-Mart:

- a) compensatory damages of \$10.00 plus the amount of the so-called "Depot

Quebec” fee (plus taxes thereon), or the value of Perrier carbonated water product for packs purchased for less than \$10.00; and

- b) punitive damages in the amount \$10 million, subject to adjustment, for the intentional breach of obligations imposed on Wal-Mart pursuant to section 272 CPA and the common law;

#### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

77. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages (alternately, in receipt of a payment not due), with injunctive relief;
78. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendant;
  2. **ORDER** the Defendant to cease charging the consigne fee for products not subjected thereto;
  3. **CONDEMN** the Defendant to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the so-called “Depot Quebec” fee, or the value of the Perrier carbonated water product for items less than \$10.00;
  4. **CONDEMN** the Defendant to pay \$10 million on account of punitive damages, subject to adjustment;
  5. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;
  6. **ORDER** that all of the above condemnations be subject to collective recovery;
  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. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  9. **CONDEMN** the Defendant to bear the costs of the present action including the cost of Court stamps, bailiffs, exhibits, 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;
  10. **RENDER** any other order that this Honourable Court shall determine;

## V. JURISDICTION AND NATIONAL CLASS

79. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district;
80. Wal-Mart has a principal establishment in Quebec and the dispute relates to its activities in Quebec. Therefore, the jurisdiction of the Superior Court of Quebec to authorize a national class action is anchored through a valid connecting factor under article 3148 CCQ.

### FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief (alternately, in receipt of a payment not due);
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All consumers in Canada who purchased Perrier carbonated water from Wal-Mart and who paid a price higher than the price advertised (excluding sales tax). (hereinafter referred to as the “ <b>Class</b> ”)	Tous les consommateurs au Canada qui ont acheté de l’eau gazéifiée Perrier chez Wal-Mart et qui ont payé un prix supérieur au prix annoncé (excluant la taxe de vente). (ci-après le « <b>Groupe</b> »)
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3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) Does Wal-Mart violate ss. 223, 224c) or 227.1 CPA, or its *Regulations*?
  - b) For items under \$10.00, must Wal-Mart compensate all Class members the total cost of the Perrier item (including the so-called “Depot Quebec”) plus taxes, pursuant to section 1(1)(a) of the Accurate Pricing Policy or section 1.1(a) of the *Scanner Price Accuracy Code*?
  - c) For items over \$10.00, must Wal-Mart compensate all Class members \$10.00 plus the amount of the so-called “Depot Quebec” (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy or section 1.1(b) of the *Scanner Price Accuracy Code*?
  - d) Does Wal-Mart violate s. 54 of the *Competition Act*? If so, are Class members entitled to damages and in what amounts?
  - e) Do the receipt of a payment not due provisions (articles 1491, 1492 and 1554 al. 1 CCQ) allow Class Members to recover the amounts paid in excess?
  - f) Does Wal-Mart act in bad faith?



- g) Are Class members entitled to punitive damages and in what amount?
4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendant;
  2. **ORDER** the Defendant to cease charging the consigne fee for products not subjected thereto;
  3. **CONDEMN** the Defendant to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the so-called "Depot Quebec" fee, or the value of the Perrier carbonated water product for items less than \$10.00;
  4. **CONDEMN** the Defendant to pay \$10 million on account of punitive damages, subject to adjustment;
  5. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to Authorize a Class Action;
  6. **ORDER** that all of the above condemnations be subject to collective recovery;
  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. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  9. **CONDEMN** the Defendant to bear the costs of the present action including the cost of Court stamps, bailiffs, exhibits, 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;
  10. **RENDER** any other order that this Honourable Court shall determine;
5. **ORDER** the publication of a notice to the Class members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendant to pay for said publication costs;
6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

7. **DECLARE** that all Class members that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by law;
8. **RENDER** any other order that this Honourable Court shall determine;
9. **THE WHOLE** with costs including publication fees.

Montreal, August 16, 2023

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran  
Attorney for the Applicant  
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Montréal, Québec, H2Y 1N3  
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**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**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 of Quebec** 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 Quebec, 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 judgment 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 plaintiff.

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*, screen captures of Wal-Mart's website and pictures of their in-store displays taken at the Wal-Mart in Ville St-Laurent on August 13, 2023;
- Exhibit P-2:** Copy of purchase confirmation for five (5) 8-pack Perrier cases from Wal-Mart's website dated August 10, 2023;
- Exhibit P-3:** Copy of Wal-Mart receipt dated August 13, 2023;
- Exhibit P-4:** Video of Applicant trying to return one of the Perrier cans in Wal-Mart's recycling/consigne machines (gobeuses) and the machine refusing her Perrier can;
- Exhibit P-5:** *En liasse*, copies of receipts from August 2023, from Super C, Esposito, Maxi, Pharmaprix and IGA showing that these stores do not charge a fictitious \$0.05 fee for the same 8-packs of Perrier carbonated water as sold by Wal-Mart;
- Exhibit P-6:** Extract of the website <https://consignaction.ca/> explaining the

- “Deposit System” (système de consigne);
- Exhibit P-7:** Copy of the “Liste des contenants consignés”;
- Exhibit P-8:** Copy of the *Scanner Price Accuracy Voluntary Code*;
- Exhibit P-9:** Bulletin titled “*The Deceptive Marketing Practices Digest*” by the Competition Bureau;
- Exhibit P-10:** Copy of Wal-Mart receipt dated July 26, 2023, showing that Applicant received a refund/credit of the \$0.40 fee (multiplied by 3 cases of 8 cans, for a total credit of \$1.20);
- Exhibit P-11:** OPC’s FAQ titled “*Indication et exactitude des prix – Questions et réponses*”;
- Exhibit P-12:** Copy of email receipt from Wal-Mart dated August 10, 2023, for the purchase of Coke Zero on Wal-Mart’s website showing the “Bev. deposit” fee of \$0.05 per can.

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, August 16, 2023

(s) *LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran  
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**NOTICE OF PRESENTATION**  
(articles 146 and 574 al. 2 C.C.P.)

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**TO: WAL-MART CANADA CORP.**  
17000 Trans-Canada Highway  
Kirkland, Quebec, H9J 2M5

**DEFENDANT**

**TAKE NOTICE** that the Applicant's *Application to Authorize the Bringing of a Class Action* 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 Division.

**GOVERN YOURSELVES ACCORDINGLY.**

Montreal, August 16, 2023

(s) *LPC Avocat Inc.*

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**LPC AVOCAT INC.**

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