

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

**(Class Action)
SUPERIOR COURT**

NO: 500-06-001195-227

EVA BITTON

Representative Plaintiff

v.

AMAZON.COM.CA INC.
and
**AMAZON CANADA FULFILLMENT
SERVICES INC.**
and
AMAZON.COM, INC.
and
AMAZON.COM LLC
and
WAYFAIR LLC
and
HOME DEPOT OF CANADA INC.

Defendants

**APPLICATION TO ORDER THE PUBLICATION OF NOTICE TO CLASS MEMBERS
AND OTHER ORDERS TO COMMUNICATE THE LIST OF CLASS MEMBERS AND
TO PRESERVE EVIDENCE
(ARTICLES 49, 576 & 579 C.C.P.)**

**TO THE HONOURABLE PIERRE NOLLET, J.S.C., DESIGNATED JUDGE FOR THE
PRESENT CLASS ACTION, THE REPRESENTATIVE PLAINTIFF RESPECTFULLY
SUBMITS THE FOLLOWING:**

1. By judgment rendered on August 10, 2023, the Court authorized the present class action against Defendants Amazon.com.ca Inc., Amazon Canada Fulfillment Services Inc., Amazon.com Inc. and Amazon.com LLC (collectively referred to herein as "**Amazon**") and Wayfair LLC ("**Wayfair**"), with notice costs against the Defendants, and notably ordered the publication of a notice to the members of each Group authorized, namely:

Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou	All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Amazon mobile
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site(s) internet d'Amazon entre le 7 février 2019 et le 17 avril 2023. (le « Groupe Amazon ») Tous les consommateurs résidants ou domiciliés au Québec au moment de l'achat et ayant acheté une garantie supplémentaire pour un bien acheté à partir de l'application(s) mobile(s) et/ou site(s) Web Wayfair entre le 7 février 2019 et le 31 octobre 2022. (ci-après le « Groupe Wayfair »)	application(s) and/or website(s) between February 7, 2019 and April 17, 2023. (the “ Amazon Class ”) All consumers residing or domiciled in Quebec at the time of the purchase and who purchased an extended warranty on goods purchased from the Wayfair mobile application(s) and/or website(s) between February 7, 2019 and October 31, 2022. (hereinafter the “ Wayfair Class ”)
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2. Defendant Home Depot of Canada Inc. and the Representative Plaintiff reached an agreement in principle and, as such, the authorization judgment did not concern them;
3. The Court ordered the parties to agree on a protocol for disseminating the notice to members and to submit any difficulties that may arise therefrom to the Court for approval within no more than thirty (30) days of the authorization judgment (which falls on September 11, 2023);
4. Amazon and the Representative Plaintiff are in serious settlement discussions and have asked the Court to extend the 30-day delay to September 22, 2023, as it appears from the Court record;
5. Wayfair and the Representative Plaintiff have not come to an agreement on notices;
6. The Representative Plaintiff requests that notice of authorization of the class action and the opt-out deadline be communicated to the Wayfair Class members, at Wayfair's cost, by Wayfair sending an abbreviated notice in French and in English (**Annex A-1**) by email to each Wayfair Class member to his or her last known email address, containing a hyperlink to the long-form notice in French (**Annex A-2**) or in English (**Annex A-3**), the choice of language based on their current language of communication with Wayfair;
7. The long-form and short-form notices shall also be posted on Class Counsel's bilingual website dedicated to the present class action (www.lpclex.com/extendedwarranties/) and on Quebec's Registry of Class Actions;

I. Individual Notice by Email

8. Wayfair likely has valid email addresses on file for a good portion, if not all, of the Wayfair Class members, given that this class action concerns online purchases

only and the purchase process on Wayfair's website imperatively requires an email address to proceed to the check-out and to conclude the purchase contract for the extended warranties that are the object of this class action;

9. For example, Exhibit P-10 filed in support of the Re-Amended Authorization Application confirms that the Representative Plaintiff received an email on June 14, 2022, from Asurion (one of the extended warranties providers);
10. In the case of Wayfair, Exhibit P-13 filed in support of the Re-Amended Authorization Application shows that Wayfair's website requires consumers to provide their email address before checkout;
11. It is well established that notifying members individually should be preferred when circumstances permit, as is the case at bar, where the Defendant has email addresses for their clients and the evidence shows that they communicate with their clients by email;
12. Notice via email respects the principle of proportionality and is an economical application of procedural rules, as set out in the preliminary provision of the C.C.P.;
13. The content of the proposed notices and the proposed method of publication were recently approved by this Honourable Court in *Bertucci c. Société des loteries du Québec inc. (Loto-Québec)*, 2021 QCCS 348, as well as in many other cases;

II. Other Orders to Communicate the List of Class Members and to Preserve Evidence

14. The Representative Plaintiff requests that the Court order Wayfair to communicate the list of Wayfair Class members to Class Counsel, on a confidential basis, within 15 days of the judgment to be rendered herein. Indeed, Class Counsel now represents these members and are entitled to this information, which is also required in order for Class Counsel to be able to properly communicate with the Class Members they represent following to the dissemination of the notices. This Court has recently granted similar requests in similar circumstances (see *Zuckerman v. MGM Resorts International*, S.C.M. no. 500-06-001078-209, judgment rendered on May 25, 2023);
15. Communication of the list of Wayfair Class members to Class Counsel is also necessary so that the Representative Plaintiff's attorney, who undertakes to hold it confidentially, is able to verify who the members of the class action are and to be certain that Wayfair included all Class members on its notice list (which is the sole purpose of this request);
16. The Representative Plaintiff also respectfully requests that the Court order Wayfair to keep in digital form all information concerning the Class Members in its possession or in the possession of its agents, including, but not limited to, their names and contact information, the details of the extended warranties they purchased, the cost of the extended warranties paid by Class members, and to

send this information to the Court in a confidential envelope, under seal, within thirty (30) days of the judgment to be rendered herein;

17. This Honourable Court, in its role as protector of the absent class members, has already granted similar requests in the past (see, for example: *Union des consommateurs c. Air Canada*, 2015 QCCS 753, paras. 41 and 51).

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **APPROVE** the form and content of the short and long-form notices to Wayfair Class members, in French and English, attached hereto *en liasse* as Annex A;
2. **ORDER** the publication of a notice, within 15 days, to the Wayfair Class members, in accordance with article 579 C.C.P., at Wayfair's cost, by Wayfair sending the abbreviated notice in French and in English (**Annex A-1**) by email to each Wayfair Class member to his or her last known email address, containing a hyperlink to the long-form notice in French (**Annex A-2**) or in English (**Annex A-3**), the choice of language based on their current language of communication with Wayfair;
3. **ORDER** Class Counsel to post the long-form and short-form notices on its bilingual website www.lpclex.com/extendedwarranties/, within 15 days, until a final judgment is rendered in the present file, as well as on Quebec's Registry of Class Actions;
4. **FIX** the delay of exclusion to 45-days from the date of publication of the notice to Wayfair Class members, date upon which the members of the Wayfair Class that have not exercised their means of exclusion will be bound by any judgment to be rendered;
5. **ORDER** Wayfair to communicate to the Representative Plaintiff's Counsel, LPC Avocat Inc., the list of Wayfair Class members, containing at least their full names, email addresses and phone numbers, within 15 days of the judgment to be rendered;
6. **ORDER** LPC Avocat Inc. to maintain the confidentiality of the list of Wayfair Class members and to use said list for the purposes of verifying which person is a Wayfair Class member following the dissemination of the notices;
7. **ORDER** Wayfair to pay for all costs, fees and disbursements related to the dissemination of the notices, including all notice distribution fees payable to a third-party administrator (if one is required);
8. **DECLARE** that the judgment to be rendered constitutes a judgment compelling the communication of the information by Wayfair within the meaning of applicable privacy laws and strictly to Class Counsel and the third-party administrator (if one is required);

9. **ORDER** Wayfair to preserve in digital form all information concerning the Wayfair Class members in its possession or in the possession of its agents, including, but not limited to, their names and contact information, the details of the extended warranties they purchased, the cost of the extended warranties paid by Wayfair Class members, and to send this information to the Court in a confidential envelope, under seal, within thirty (30) days of the judgment to be rendered;
10. **THE WHOLE** without costs, unless contested.

Montreal, September 11, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Representative Plaintiff

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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ET ALS.

Defendants

LIST OF ANNEXES

- ANNEX A-1:** Short-form email notice in French and English;
- ANNEX A-2:** Long-form notice in French;
- ANNEX A-3:** Long-form notice in English.

Montreal, September 11, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Representative Plaintiff

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NOTICE OF PRESENTATION

TO: Me Éric Lefebvre
Norton Rose Fullbright Canada LLP
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For Wayfair LLC

Me Alexandre Fallon
Osler, Hoskin & Harcourt LLP
AFallon@osler.com
For the Amazon Defendants

Me Jean Lortie / Me Catherine Martin
McCarthy Tétrault LLP
jlortie@mccarthy.ca
For Home Depot of Canada Inc.

TAKE NOTICE that the present *Application to Order the Publication of Notice to Class Members and Other Orders to Communicate the List of Class Members and to Preserve Evidence* shall be presented for adjudication before the Honourable Pierre Nolle, J.S.C., on **a date and time to be determined, at the Montreal Courthouse**, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6.

Montreal, September 11, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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(ARTICLES 49, 576 & 579 C.C.P.)

ORIGINAL

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