

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001283-239

NIMROD [REDACTED]
[REDACTED]

Applicant

v.

AIR CANADA, legal person having its head office at 7373 boulevard Côte Vertu West, Ville Saint-Laurent, District of Montreal, Province of Quebec, H4S 1Z3

Defendant

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

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

I. INTRODUCTION

1. The Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

Class:

All persons worldwide who purchased one or more Air Canada Economy Basic or Standard tickets for an international flight, who did not use their ticket, or any part thereof, and were not refunded taxes, fees, and additional charges that were collected for any authority or third party during the ticket purchasing process, and were eventually not paid by Air Canada;

(hereinafter referred to as the “**Class**”)

2. Air Canada prides itself as “*Canada's largest airline*” with its head office in the

district of Montreal, province of Quebec, as it appears from an extract of the enterprise's information statement from the Quebec enterprise register for Air Canada disclosed as **Exhibit P-1**;

3. During the flight ticket purchasing process Air Canada collects taxes, fees and other charges from its customers (the "**Taxes**"). Some of these taxes are payable to the relevant authorities only upon the passengers' actual departure. In cases where passengers did not show up for their flight (i.e. "**no-shows**"), Air Canada keeps those Taxes in its coffers (i.e., by never remitting it to the domestic or foreign government, airport authority, or third party), and **does not refund** them to its clients who are misled into believing they are not entitled to a refund;
4. The primary objective of this class action is to ask the Court to condemn Air Canada and compel the reimbursement of the total taxes that led to Air Canada's unjust enrichment. These taxes are unlawfully retained by Air Canada, as Class Members paid them for a specific purpose that was never fulfilled. Furthermore, Air Canada misled its customers by leading them to believe they are not entitled to a refund of these taxes. Additionally, the goal is to obtain a Court order compelling Air Canada to discontinue this prohibited practice;
5. As further detailed herein, Air Canada's representation that the payments made by customers for the relevant tickets (Economy Basic or Standard tickets) are not refundable contradicts Air Canada's own contractual agreements with Class Members;
6. Air Canada has also been misleading its customers into believing that their ticket is entirely non-refundable, by deliberately omitting to reference their refund policy for taxes, fees and additional charges;
7. Air Canada does business in the province of Quebec and manages websites and call centers where people can purchase flight tickets and vacation packages. Air Canada is a merchant within the meaning of Quebec's *Consumer Protection Act* (the "**C.P.A.**") and its activities are governed by this legislation, among others;
8. Regarding persons worldwide that are non-Quebec residents, as of February 23 2016, Air Canada's Governing Law clause provides that the Terms of Use governing the use of their website shall be treated in all respects as an Alberta contract, governed by, construed and interpreted in accordance with the laws of Alberta and the laws of Canada applicable therein, and that any dispute is to be submitted to the **non-exclusive** jurisdiction of the courts of Calgary, Alberta, Applicant disclosing **Exhibit P-2**;
9. This clause also provides that Quebec residents remain governed by the laws of the Province of Quebec and Canada, and any dispute is to be submitted to the exclusive jurisdiction of the Courts of Montreal, Quebec;
10. In the circumstances detailed hereinafter, the Applicant is entitled to ask the Court to condemn Air Canada to either restitution or compensatory damages, and

punitive damages, in amounts to be determined on the merits, as well as for injunctive relief ordering Air Canada to cease the illegal practice;

II. CONDITIONS REQUIRED TO AUTHORIZE THE CLASS ACTION (art. 575 C.C.P.):

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

11. Applicant is a consumer within the meaning of the C.P.A.;
12. On April 13, 2023, the Applicant purchased a round trip flight ticket in economy to fly from Miami to Montreal, as it appears from his booking confirmation receipt received by email from Air Canada disclosed as **Exhibit P-3**;
13. On April 28, 2023, the Applicant's plans changed and he did not show up for his flight out of Miami to Montreal;
14. As it appears from Exhibit P-3, Air Canada billed the Applicant the amount of **\$91.31 USD** on account of taxes, fees, and charges;

Taxes, fees and charges	
September 11th Security Fee - United States	5.60
Transportation International/Domestic Tax - United States	15.00
Animal and Plant Health Inspection Service (APHIS) User Fee - United States	3.83
Immigration User Fee - United States	7.00
Customs User Fee - United States	6.52
Flight Segment Tax - United States	9.60
Air Travellers Security Charge - Canada	9.42
Goods and Services Tax - Canada - 100092287 RT0001	1.30
Quebec Sales Tax - Canada - 1000043172 TQ1991	2.59
Airport Improvement Fee - Canada	25.95
Passenger Facility Charge - United States	4.50

15. As it appears from Exhibit P-3, Air Canada states only of the following in the "Fare Rules" for his Economy Basic class tickets:
 - a. "Failure to show up for your flight (No Show) may result in a penalty. Please see the complete fare rules for details.";
 - b. "Tickets are **non-refundable**" [emphasis in the original];
 - c. "If you do not show up for your flight, the rest of your itinerary will automatically be cancelled.";
 - d. "Find out more about [Air Canada's refund services.](#)" (disclosed herewith as **Exhibit P-4**)
16. As it appears from the above, Air Canada misleadingly and unlawfully states that

the tickets are “non-refundable”, when, in fact, a portion of these ticket **is** refundable according to Air Canada’s Policy itself (Exhibit P-4). In other words, Air Canada states in a conclusive way that the ticket is **non-refundable** and hides in a different document (which the consumer is only referred to), that part of the price paid for the ticket, the significant taxes, **are indeed** refundable;

17. The customer must, in their booking confirmation, click on “Find out more about Air Canada’s refund services”, (which is only found in the cancellation portion and is divided by a line from the section referring to no-shows), that they will be redirected to the “Air Canada Refund and Cancellation policy”;
18. From there, the customer would be required to navigate to the Frequently asked questions section including the key question: “*Are taxes, fees and additional charges associated with my ticket refundable?*” (Exhibit P-4);
19. Clicking on this question expands a table with examples of taxes, fees, and additional charges that are refundable even for tickets Air Canada labels everywhere else to their customers as non-refundable tickets (comprised of Economy Basic and Standard tickets);
20. The answer to the question states, “Certain taxes, fees, and charges are refundable based on the following: the type of ticket you bought (refundable/non-refundable), whether the ticket was wholly or partially used” and “Regulations of the country where the ticket was purchased and/or the departure country” (Exhibit P-4);
21. Air Canada then provides examples of which taxes, fees, and additional charges are refundable by Air Canada for “non-refundable tickets” that are completely unused, which contradicts the information sent by Air Canada to the Applicant and Class Members in their booking confirmation receipts (such as Exhibit P-3) where Air Canada falsely states that the ticket is “non-refundable”;
22. The examples of **refundable** taxes/fees for so-called “non-refundable tickets” (according to Air Canada) include (see Exhibit P-4):
 - a) CA-Air Travellers Security Charge-Canada and the added Quebec Sales Tax (XQ), Goods and Services Tax (XG) and the Harmonized Sales Tax (RC) on it;
 - b) SQ- Airport Improvement Fee-Canada and the added XQ, XG, and RC taxes on it;
 - c) AY – Passenger Security Fee- U.S.
 - d) XY – Immigration Fee – U.S.
 - e) YC – Customs Fee – U.S.

- f) XA – Animal and Plant Health Inspection Service (APHIS) User Fee – U.S.
 - g) FR – Civil Aviation Tax – France
 - h) O4 – Air Passenger Solidarity Tax Surplus – France
 - i) QW – Passenger Service Charge (domestic flights) – France
 - j) QX – Passenger Service Charge (international flights) – France
 - k) IZ – Solidarity Tax – France
 - l) DO – Transportation Tax – Dominican Republic
 - m) EC – Government Transportation Tax – Ecuador
 - n) PA – Value Added Tax – Panama
 - o) PE – Sales Tax – Peru
 - p) K3 – Goods and Services Tax - India
23. The examples of **non-refundable** taxes/fees for so-called “non-refundable tickets” (according to Air Canada) include (see Exhibit P-4):
- a) US – Transportation Tax- U.S.
 - b) XF – Passenger Facility Charge – U.S.
 - c) ZP – Flight Segment Tax- U.S.
 - d) E2 – Infrastructure tax – Ecuador
 - e) ED – International Tourism Fee - Ecuador
24. This information provided by Air Canada is based on examples and does not provide a complete list of which taxes are refundable or not worldwide;
25. According to the above information, the Applicant is entitled to a refund for all of the following taxes, fees, and additional charges listed in his booking confirmation for total of \$62.21 USD (approximately **\$84.59 CAD** according to the Bank of Canada exchange rate calculator as of December 7, 2023), all of which Air Canada falsely stated were non-refundable and which they have still not refunded him for:

a)	September 11 th Security Fee – United States (AY)	\$5.60 USD
b)	Animal and Plant Health Inspection Service (APHIS) User Fee – United States (XA)	\$3.83 USD
c)	Immigration User Fee – United States (XY)	\$7.00 USD
d)	Customs User Fee – United States (YC)	\$6.52 USD

e)	Air Travellers Security Charge – Canada (CA)	\$9.42 USD
f)	Goods and Services Tax – Canada – 100092287 RT0001 (XG)	\$1.30 USD
g)	Quebec Sales Tax- Canada – 1000043172 TQ1991 (XQ)	\$2.59 USD
h)	Airport Improvement Fee – Canada (SQ)	\$25.95 USD
	TOTAL:	\$62.21 USD

26. The only non-refundable taxes in the Applicant’s case, according to Air Canada’s Contract, would consist of the Transportation International/ Domestic Tax – United States (US) of \$15.00, the Flight Segment Tax – United States (ZP) of \$9.60, and the Passenger Facility Charge – United States (XF) of \$4.50;
27. Air Canada omits the two-letter tax code in the customers’ billing confirmations, further making this information unnecessarily difficult to assess for a customer when trying to determine the value of the refund they are entitled to;
28. As such, not only does Air Canada retain money it is not authorized to, but it also made – and continuous to make – false and misleading representations concerning the refundability of taxes, fees, and additional charges on Economy Basic and Standard flight reservations that are completely unused;
29. Stating these fares are non-refundable when in fact there is a non-negligible amount of taxes, fees, and other charges that are refundable, is notably contrary to sections 40, 41, 42, 54.4 k) and paragraph 2 of 54.4, 227.1 and 228 of Quebec’s C.P.A., and 1699 C.C.Q., as well the obligations of good faith (sections 270 and 272 CPA also apply);
30. Regarding non-Quebec residents, it is also a violation of the equivalent legislation in the *Alberta Consumer Protection Act*, RSA 2000, c. C-26.3, most notably the following sections, Applicant communicating **Exhibit P-5**:
 - 6 (1)** In this section, “material fact means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction;
 - 6 (2)** It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction; (b) to take advantage of the consumer as a result of the consumer’s inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction; (b) to use exaggeration, innuendo or ambiguity as a material fact with respect to the consumer transaction;
 - 6 (4)** Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers: (a) a supplier’s doing or saying anything that might reasonably deceive or mislead a consumer;

31. In addition, Air Canada's practice is a violation of both art. 54.4 of Quebec's C.P.A. and the Internet Sales Contract Regulation, *Alberta Regulation 81/2001* (disclosed as **Exhibit P-6**) which provides:
- 4 (1)** A supplier must do the following before a consumer enters into an Internet sales contract:
- (a) disclose to the consumer the following information:
 - (xii) the supplier's cancellation, return, exchange and refund policies, if any;
 - (2)** For the purposes of subsection (1), a supplier is considered to have disclosed to the consumer the information described in subsection (1)(a) if the information is
 - (a) prominently displayed in a clear and comprehensible manner, and
 - (b) made accessible in a manner that ensures that
 - (i) the consumer has accessed the information, and
 - (ii) the consumer is able to retain and print the information.
- 5 (1)** A supplier must provide a consumer who enters into an Internet sales contract with a copy of the contract in writing or electronic form within 15 days after the contract is entered into.
- (2)** The copy of the Internet sales contract under subsection (1) must include
- (a) the information described in section 4(1)(a),
32. The common-law principles of restitution and disgorgement apply in Alberta (*Spring v Goodyear Canada Inc*, 2021 ABCA 182, para. 47, 53, **Exhibit P-7**);
33. Additionally, the information provided to their customers is misleading since there is no hyperlink on the billing confirmation page allowing Applicant and Class Members to consult what Air Canada refers to as "*the complete fare rules*".
34. The webpage hyperlink in the billing confirmation document titled "Economy basic is a restricted fare" leads to a general page of information about fares. If the customer selects "international flights", they are led to a table stating again that there is **no refund** for Economy Basic fares or Standard fares which is clearly not true, Applicant disclosing **Exhibit P-8** available at <https://www.aircanada.com/ca/en/aco/home/book/fare-options-and-fees/to-international-destinations.html> - /
35. If the Class Member then clicks on the information icon under "Refundability", Air Canada displays the following message (see third bullet point): "*Customers who do not show up for their flight will forfeit the full amount of their ticket*" (see **Exhibit**

P-8); as we showed above, these statements are misleading due to the Refund policy that allows a refund of significant part of the sums which were paid.

36. By consulting the link in the billing confirmation email under “General Conditions of Carriage”, available at <https://www.aircanada.com/ca/en/aco/home/legal/conditions-carriage-tariffs.html#/>, disclosed as **Exhibit P-9**, the following information is provided:

“Failure to respect check-in and boarding gate deadlines **may** result in the reassignment of any pre-reserved seats, the cancellation of reservations, and/or ineligibility for denied boarding compensation.”

37. However, under the section “Check-in and boarding gate deadlines” (Exhibit P-3, middle of page 2-PDF), Air Canada states the boarding gate closes at a certain time: “Arriving after this time **will** result in reassignment of any reserved seats, the cancellation of reservations and/or ineligibility for denied boarding compensation.”;

38. These contradictory statements make it unclear for a customer as to whether their reservations will be cancelled or not if they do not show up;

39. The only way for a Class Member to know the rules governing refunds is by consulting the “General Conditions of Carriage and Applicable Tariffs” (https://www.aircanada.com/content/dam/aircanada/portal/documents/PDF/en/International_Tariff_en.pdf) and then within it, consulting the International Tariff link towards a 122 page document titled *Air Canada’s International Tariff General Rules Applicable to the Transportation of Passengers and Baggage*, Applicant disclosing the “International Tariff” as **Exhibit P-10**;

40. The official rule regarding a breach of check-in and boarding time limits, for example by not showing up for an outbound flight, is found under rule 70, in the “International Tariff” (page 90 of Exhibit P-10):

“C. If passenger fails to meet any of these requirements, the carrier may reassign pre-reserved seat and/or cancel the reservation of such passenger(s) who arrives past the time limits. Carrier is not liable to the passenger for loss or expense due to failure by a passenger to comply this rule. Carrier's liability shall be limited to providing a General Refund, per RULE 100 - REFUNDS.”

41. Section E. Rule 100 - “General Refunds” (page 110 of P-10) provides the following information:

- a. “Economy Basic tickets are **entirely non-refundable** and hold no credit for future travel”
- b. “General Refund, includes (...) situations described in RULE 70- CHECK-IN AND BOARDING TIME LIMITS (...) and any other circumstances in which the passenger chooses to longer travel.”

- c. "When a ticket is cancelled within 24 hours of purchase, a full refund without penalty can be obtained" (...) **In all other cases, the amount of General Refund will be as follows** and is subject to fare refundability in accordance to the fare rules: **When a ticket is fully unused, the amount of refund will be the fare, fees, charges and surcharges paid** less any applicable cancellation / change fee or penalty, **as set out in the applicable fare.**"
42. The applicable fare rules for Economy Basic and Standard reservations, as mentioned in paragraphs 34 and 35, do not indicate to customers that fees, charges and surcharges paid are refundable;

Remedies

i. Damages or a reimbursement

43. In these circumstances, the Applicant is entitled to claim compensatory damages (or a reimbursement) in the amount of \$84.59 CAD as alleged at paragraph 25;

ii. Punitive damages

44. Applicant also hereby claims punitive damages on his behalf and on behalf of class members in an amount to be determined on the merits pursuant to section 272 CPA, and section 13(1) of the *Alberta Consumer Protection Act*);
45. Punitive damages are appropriate because Air Canada's conduct is intentional, calculated and serves its own financial interest at the expense of vulnerable and powerless Class Members, most of whom are consumers;

iii. Injunction

46. The Applicant also seeks injunctive relief ordering Air Canada to cease misinforming clients by emphasizing Economy Basic and Standard fares are non-refundable, since when the ticket is completely unused or cancelled, the consumer is entitled to be refunded a significant amount of taxes, fees, and other charges, that Air Canada otherwise pockets instead of remitting it to the competent authority;

Unjust Enrichment

47. Air Canada's conduct constitutes unjust enrichment, in essence because the airline is charging passengers taxes with a specific purpose, which is to forward these funds to the relevant tax authorities;
48. However, in cases where a passenger does not use their ticket and the airline is not required to remit the tax to the relevant tax authority (e.g., in cases where

Taxes payment by Air Canada is triggered by the passenger's actual departure), the original purpose of remitting these funds is left completely unfulfilled;

49. The following table provides examples of taxes and fees that are not legitimately withheld from passengers when they do not board:

Immigration User Fee – United States	XY/ IUF	Immigration User Fee 8 C.F.R. 286.1 – 286.7.	s.286.2(a) keyword- “aboard”
Customs User Fee – United States	YC/ CUF	H.R.3128 - Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) 19 U.S.C. 58c - Fees for certain customs services	s.13031(a)(5) (page 308) s.58c.(a)(5)(A) and (B)
Air Travellers Security Charge – Canada	CA	Air Travellers Security Charge Act (S.C. 2002, c. 9, s. 5)	11(1) and 2 (“chargeable emplanement”)

50. These laws provide examples of Taxes that airlines are not obligated to pay if the passenger does not use the flight;
51. This assertion is further supported by Air Canada's policy, which states that the taxes are refundable even in non-refundable ticket scenarios;
52. Additionally, the “General Conditions of Carriage and Applicable Tariffs” (Exhibit P-10) under Rule 20 explicitly states that: *“refund of unused taxes, fees, and other charges will be made only if permitted by the domestic or foreign government, airport authority, or third party”*;
53. In essence, the fact that Air Canada states that these taxes are refundable in its refund policy implies that the situation in other countries is similar to the case in Canada;
54. There is a duty of restitution when funds were deposited for a specific but unfulfilled purpose, otherwise it constitutes unjust enrichment;
55. The core concept of “failure of basis” is straightforward: a benefit is conferred with the mutual understanding that the recipient’s right to retain it is contingent upon

certain conditions being met. If these conditions are not fulfilled, the recipient, Air Canada in this case, is obliged to return the benefit;

56. Creating an obligation for the passenger to have to request a refund as stipulated in rule 100(A)(3) of the tariff (Exhibit P-10) is an unreasonable obligation and constitutes an unfair term in consumer contracts and contracts of adhesion as in in the present case. It should not absolve Air Canada's of its responsibility in regards to unjust enrichment since the amount was paid for a specific purpose that was never fulfilled:

"Carrier shall make all or any individual refunds **upon written request**, through its general accounting offices or regional sales or accounting offices, through Air Canada's call centers, at certain airports, or on its transactional websites."

57. According to the unjust enrichment doctrine, the obligation of restitution is not subject to a demand and hence imposing a demand obligation is unfair;
58. Moreover, Air Canada's misleading information has likely caused passengers to refrain from claiming a refund of the taxes because they were informed that tickets are **non-refundable**, and hence there is no essences to the refund claiming obligation;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

59. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:
- a) Did Air Canada mislead Class members into believing their Economy Basic and Standard fares are non-refundable, namely by not adequately informing them of their unused ticket refund policy for taxes, fees, and other charges, and, if so, are Class members entitled to a refund of the amount paid or compensation?
 - b) By stating the ticket is entirely non-refundable, yet having a policy stating taxes, fees, and other charges are refundable, did Air Canada violate s. 42, 54.4 k) and para. 2 of 54.4, 227.1 and 228 of Quebec's C.P.A. regarding Quebec residents, and sections 35(f) and 6(4) of Alberta's *Consumer Protection Act* regarding non-Quebec residents, and, if so, are Class members entitled to punitive damages pursuant to s. 272 of Quebec's C.P.A. and s. 13(1) of Alberta's *Consumer Protection Act*?
 - c) Should an injunctive remedy be ordered to prohibit Air Canada from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
 - d) When does prescription start for Class members and what is the effect of Air

Canada's perpetuation of the misrepresentation on the starting point of prescription?

- e) Was Air Canada unjustly enriched by charging passengers for taxes with a specific purpose – i.e., pay them to relevant authority or third party – and that were never paid for their purpose?

C) THE COMPOSITION OF THE CLASS

60. 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;
61. The Applicant presumes that Air Canada has an important number of clients who purchased Economy Basic or Standard fares, and are in a situation where their ticket was completely unused or did not show up for their flight, and were misled or otherwise discouraged from claiming their refund for taxes, charges, and other fees based on the misleading information provided by Air Canada that their tickets are non-refundable. While he is unaware of the total number of Class Members who are included in the Class, he estimates that it is likely in the tens of thousands, if not more;
62. According to certain reports, no-shows represent 3 to 6 % of all bookings, as it appears from **Exhibit P-11** (page 41);
63. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Air Canada;
64. Class members are numerous and are dispersed around the world;
65. 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;
66. Considering the common questions and comparable applicable legislation between Quebec and Alberta, article 3148 C.C.Q. and the terms of Air Canada's own contract, authorizing the present class action for a worldwide class is justified when compared to requiring consumers that are non-residents of Quebec to institute an individual action against Air Canada, in their own country or in Alberta, for such modest amounts, which is unlikely to ever happen, unreasonable and a disproportionate use of legal resources;
67. 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 CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS

68. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
- a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) His interests are not antagonistic to those of other Class members;
69. The Applicant adds that he participated in the filing of the present application and has a good understanding of the legal issues;
70. He is taking this action so that he and all Class Members can be compensated, and to hold Air Canada accountable so that Air Canada modifies its practice;

III. DAMAGES AND RESTITUTION

71. Air Canada has breached several obligations imposed on it by legislation in Quebec and Alberta, notably:
- a) Quebec's C.P.A., including sections 40, 41, 42, 54.4 k) and para. 2 of 54.4, 215, 219, 227.1, 228, and 270 thus rendering section 272 applicable;
 - b) Article 1699 C.C.Q. ;
 - c) Alberta's *Consumer Protection Act*, including sections 35(f), 6(4), and 13(1).
72. In light of the foregoing, the following damages may be claimed against Air Canada:
- a) compensatory damages (or a refund) in the aggregate amount of the taxes, fees, and additional charges that were collected for any authority or third party during the ticket purchasing process, and were eventually not paid by Air Canada;
 - b) an aggregate amount in punitive damages to be determined on the merits, for the breach of obligations imposed pursuant to s. 272 C.P.A. and s. 13(1) of Alberta's *Consumer Protection Act*;
73. Furthermore and/or alternatively, Air Canada was unjustly enriched by Taxes that were collected from class members but eventually were not paid by Air Canada, and hence restitution may be claimed;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

74. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages (or restitution) and injunctive relief;
75. The conclusions that the Applicant wishes to introduce by way of an originating application are:
 1. **GRANT** the Plaintiff's action against the Defendant;
 2. **ORDER** the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts;
 3. **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in compensatory damages (or refund or restitution), and **ORDER** collective recovery of these sums;
 4. **CONDEMN** the Defendant to pay to the members of the Class punitive damages in an amount to be determined, and **ORDER** collective recovery of these sums;
 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 the Bringing of a Class Action*;
 6. **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;
 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. **CONDEMN** the Defendant to bear the costs of the present action including the cost of 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;

V. PRESCRIPTION

76. In the present case, Air Canada should not be entitled to claim the benefit of prescription because they misled – and continue to mislead – Class Members about the non-refundable nature of the Economy Basic and Standard fares (see Exhibit P-3 for example);
77. These misrepresentations have been ongoing for years;
78. Air Canada is the nation's largest airline and where a professional reassures the client, the Court of Appeal has stated that the prescription starts at the moment when the confidence breaks. Applying this reasoning by analogy to the present

case, most Class Members are still unaware of the ongoing false representations and it is respectfully submitted that prescription should only start running once Air Canada ceases the unlawful practice;

VI. JURISDICTION

79. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal, on behalf of an international class, because Air Canada has its head office in Quebec and article 3148(1) C.C.Q. provides for this;
80. Air Canada's Governing law clauses provide that Quebec residents remain governed by the laws of the Province of Quebec and Canada, and any dispute is to be submitted to the exclusive jurisdiction of the courts of Montreal, Quebec;
81. Additionally, regarding consumers worldwide that are non-Quebec residents, Air Canada's Governing Law clause provides that any dispute is to be submitted to the **non-exclusive** jurisdiction of the courts of Calgary, Alberta;
82. Thus, this is not a real choice of forum clause, but simply an attornment clause, since it does not imperatively stipulate that the parties recognize that Calgary, Alberta has exclusive jurisdiction (*Bombardier produits récréatifs inc. c. PICC Property and Casualty Insurance Co. Limited*, 2019 QCCS 1503, par. 21, 22);
83. The clause does not exclude the jurisdiction of Quebec courts in the matter, and art. 2809 al. 1 C.C.Q. permits the courts of Quebec to apply foreign law, such as Alberta's, as long as it is invoked;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present Application;
2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
3. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All persons worldwide who purchased one or more Air Canada Economy Basic or Standard tickets for an international flight, who did not use their ticket, or any part thereof, and were not refunded taxes, fees, and additional charges that were collected for any authority or third party during the ticket purchasing process, and were eventually not paid by Air Canada;

or any other class to be determined by the Court.

4. **IDENTIFY** the principle questions of fact and law to be treated collectively as

the following:

- a) Did Air Canada mislead Class members into believing their Economy Basic and Standard fares are non-refundable, namely by not adequately informing them of their unused ticket refund policy for taxes, fees, and other charges, and, if so, are Class members entitled to a reimbursement of the amount paid or compensation?
- b) By stating the ticket is entirely non-refundable, yet having a policy stating taxes, fees, and other charges are refundable, did Air Canada violate s. 42, 54.4 k) and para. 2 of 54.4, 227.1 and 228 of Quebec's C.P.A. regarding Quebec residents, and sections 35(f) and 6(4) of Alberta's *Consumer Protection Act* regarding non-Quebec residents, and, if so, are Class members entitled to punitive damages pursuant to s. 272 of Quebec's C.P.A. and s. 13(1) of Alberta's *Consumer Protection Act*?
- c) Should an injunctive remedy be ordered to prohibit Air Canada from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
- d) When does prescription start for Class members and what is the effect of Air Canada's perpetuation of the misrepresentation on the starting point of prescription?
- e) Did Air Canada was unjustly enriched by charging passengers for Taxes with a specific purpose – i.e., pay them to relevant authority or third party – and that were never paid for their purpose?

5. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

1. **GRANT** the Plaintiff's action against the Defendant;
2. **ORDER** the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts;
3. **CONDEMN** the Defendant to pay to the members of the Class an amount to be determined in compensatory damages (or refund or restitution), and **ORDER** collective recovery of these sums;
4. **CONDEMN** the Defendant to pay to the members of the Class punitive damages in an amount to be determined, and **ORDER** collective recovery of these sums;
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 the Bringing of a Class Action*;

6. **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;
 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. **CONDEMN** the Defendant to bear the costs of the present action including the cost of 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;
6. **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;
 7. **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
 8. **THE WHOLE** with costs including publication fees.

Montreal, December 8, 2023

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran

Mtre Léa Bruyère

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

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 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 Québec, 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 judgement 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 applicant.

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:** Copy of the enterprise's information statement from the Quebec enterprise register for Air Canada;
- Exhibit P-2:** Copy of Air Canada's Terms of Use;
- Exhibit P-3:** Copy of the Applicant's Air Canada Booking Confirmation
- Exhibit P-4:** The "Air Canada Refund and Cancellation Policy" webpage;
- Exhibit P-5:** Copy of the *Alberta Consumer Protection Act*, RSA 2000, c. C-26.3;
- Exhibit P-6:** Copy of the Internet Sales Contract Regulation, *Alberta Regulation 81/2001*;
- Exhibit P-7** Copy of the Court of Appeal judgment in *Spring v Goodyear Canada Inc*, 2021 ABCA 182;
- Exhibit P-8:** Air Canada's fare options and fees "To International Destinations" webpage;

- Exhibit P-9:** Air Canada's "Our General Terms and Conditions of Carriage" webpage;
- Exhibit P-10:** Copy of Air Canada's *International Tariff General Rules Applicable to the Transportation of Passengers and Baggage*;
- Exhibit P-11:** Copy of the report titled "Taxes in the Field of Aviation and their impact".

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, December 8, 2023

(s) LPC Avocats.

LPC AVOCATS

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Mtre Léa Bruyère

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: AIR CANADA
7373 Côte Vertu West Boulevard
Ville Saint-Laurent, Quebec, H4S 1Z3

Defendant

TAKE NOTICE that 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 chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, December 8, 2023

(s) LPC Avocats

LPC AVOCATS

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Mtre Léa Bruyère

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