

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001401-252

(Class Action)
SUPERIOR COURT

ADAM [REDACTED], domiciled at [REDACTED]
[REDACTED]

Applicant

v.

WESTJET, legal person having its head office
at 2400-525 8th Avenue SW, Calgary, Alberta
T2P 1G1

and

VACANCES SUNWING INC., legal person
having a principal establishment at 3105 Place
Louis R. Renaud, City and District of Laval,
Province of Quebec, H7V 0A3

Defendants

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, THE APPLICANT STATES:**

1. Applicant seeks to institute a class action on behalf of the following class of which he is a member:

All persons in Canada who purchased a specific seat for a Sunwing or WestJet flight and who were assigned another seat other than the one paid for.

(hereinafter the "**Class**")

Toutes les personnes au Canada qui ont acheté un siège spécifique pour un vol de Sunwing ou de WestJet et qui se sont vu attribuer un siège autre que celui pour lequel ils ont payé.

(ci-après le « **Groupe** »).

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6. Applicant checked-in on the WestJet website because Sunwing was acquired by WestJet and all of Sunwing's flights were apparently "*integrated*" with WestJet flights for "*a consistent onboard experience for guests*", as it appears from WestJet's website, an extract of which is communicated as **Exhibit P-4**;
7. Applicant immediately contacted customer service to request that he and his family be seated in the seats that he purchased. However, he was told by the representative that since the WestJet/Sunwing merger the company has had an issue in which it cannot deliver the seats promised and purchased by their customers;
8. The Defendants are acting in flagrant violation of the law, in particular Quebec's *Consumer Protection Act*, the *Civil Code*, and the *Competition Act*, as well as in violation of their own contractual obligations to deliver the seats purchased to their customers;
9. During his call with the customer service representative, the Applicant effectively invoked section 272(a) CPA asking for the specific performance of the obligation, which the Defendants refused. He therefore seeks a full reimbursement of the \$175.00 he paid (272(c) CPA), plus compensatory damages and punitive damages in amounts to be determined on his behalf and on behalf of all Class Members;
10. The Defendants had an obligation of result. Additionally, Quebec consumer law is of public order. The Defendants' conduct clearly constitutes gross negligence, as an airline should have systems that respect the seats sold to its customers. Applicant also claims that the Defendants were unjustly enriched since they kept his \$175.00 in exchange for absolutely nothing;
11. The Applicant's damages are a direct and proximate result of the Defendants' omissions, breaches and negligence. Applicant raises the following provisions:
 - CPA: sections 16, 40, 41, 42 (Title I); and 219, 221(d), (g), 228 and 272
 - CCQ: articles 6, 7, 1375, 1400 and 1407, 1493, 2030, 2100 and 2106
 - *Competition Act*: sections 52 and 36
12. Applicant communicates the Business information statements from the Quebec Enterprise Register for the Defendants *en liasse* as **Exhibit P-5**;
13. The Defendants must be held solidarily liable given that they were both directly involved in the breaches alleged herein and pursuant to article 1525 al. 3 CCQ;

B) THE COMMON QUESTIONS

14. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
 - a) Did the Defendants provide the Class Members with the seats paid for?

- b) If not, are the Class Members entitled to a refund, compensatory damages and/or punitive damages?

C) THE COMPOSITION OF THE CLASS

- 15. During his phone call on July 15, 2025, the Defendants' representative informed the Applicant that his situation is common to all of their customers for the past few months (since the Sunwing/WestJet merger);
- 16. Applicant is personally aware of another family who experienced the exact same situation as him, and is also aware of other Class Members in the same situation;
- 17. 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. Indeed, Class Members are very numerous and are dispersed across the province and Canada;
- 18. These facts demonstrate that it would be impossible to contact each and every Class member to obtain mandates and to join them in one action;
- 19. 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) ADEQUATE REPRESENTATIVE

- 20. 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 proposed herein;
 - b) he is competent, in that he has the potential to be the mandatory 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;
- 21. Additionally, the Applicant respectfully adds that:
 - a) he has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
 - b) after experiencing the situation, he mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class Members, recognized and protected so that they can be compensated;
 - c) he cooperates and will continue to fully cooperate with his attorneys, who have

experience in consumer protection-related class actions;

- d) he understands the nature of the action; and
 - e) he wants to hold WestJet/Sunwing accountable for their gross negligence and complete disregard for their contractual undertakings and the law.
22. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a significant number of Class Members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers;
23. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class Members;

II. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

24. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
25. The conclusions that the Applicant wishes to introduce by way of an originating application are:
- 1. **GRANT** the Representative Plaintiff's action against the Defendants on behalf of all Class Members;
 - 2. **CONDEMN** the Defendants, solidarily, to refund the Representative Plaintiff and the Class Members equivalent to the aggregate price paid for seat selections that were not honoured;
 - 3. **CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members in an amount to be determined;
 - 4. **CONDEMN** the Defendants, solidarily, to pay punitive damages to the Representative Plaintiff and the Class Members in an amount to be determined and based on the proof administered;
 - 5. **CONDEMN** the Defendants, solidarily, 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** the collective recovery to the Class Members of all the condemnations herein;
 - 7. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

8. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
9. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all 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.

III. JURISDICTION

26. The Applicant requests that this class action be exercised before the Superior Court in the district of Montreal because the principal obligation was supposed to be performed in this district (at the Montreal Airport);
27. The Applicant has standing to ask for a national class pursuant to article 3148(3) C.C.Q. because his injury was suffered in Québec (at the Montreal airport), the injurious act and omission occurred in Québec (in Montreal) or one of the obligations arising from a contract was to be performed in Québec (at the Montreal airport).

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;
2. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

All persons in Canada who purchased a specific seat for a Sunwing or WestJet flight and who were assigned another seat other than the one paid for. (hereinafter the “ Class ”)	Toutes les personnes au Canada qui ont acheté un siège spécifique pour un vol de Sunwing ou de WestJet et qui se sont vu attribuer un siège autre que celui pour lequel ils ont payé. (ci-après le « Groupe »).
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3. **IDENTIFY** the principle questions of fact and law to be treated collectively as the following:
 - a) Did the Defendants provide the Class Members with the seats paid for?
 - b) If not, are the Class Members entitled to a refund, compensatory damages and/or punitive damages?
4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:
 1. **GRANT** the Representative Plaintiff’s action against the Defendants on behalf of all Class Members;

2. **CONDEMN** the Defendants, solidarily, to refund the Representative Plaintiff and the Class Members equivalent to the aggregate price paid for seat selections that were not honoured;
 3. **CONDEMN** the Defendants, solidarily, to pay damages to the Representative Plaintiff and the Class Members in an amount to be determined;
 4. **CONDEMN** the Defendants, solidarily, to pay punitive damages to the Representative Plaintiff and the Class Members in an amount to be determined and based on the proof administered;
 5. **CONDEMN** the Defendants, solidarily, 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** the collective recovery to the Class Members of all the condemnations herein;
 7. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
 8. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
 9. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action at all levels, including the cost of all 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.
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 Defendants 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 members of the Class 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 the law;
 8. **THE WHOLE** with costs, including the court stamp, bailiff fees, stenographer fees and publication fees.

Montreal, July 25, 2025

(s) LPC Avocats

LPC AVOCATS

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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 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:** First Sunwing invoice dated May 24, 2025;
- Exhibit P-2:** Second Sunwing invoice dated June 3, 2025;
- Exhibit P-3:** Screenshot of the check-in process on WestJet's website (July 15, 2025);
- Exhibit P-4:** Extract of the WestJet website: <https://www.westjet.com/en-ca/news/2025/westjet-group-completes-integration-of-sunwing-airlines--success>;
- Exhibit P-5:** *En liasse*, Business information statements from the Quebec Enterprise Register for the Defendants;

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, July 25, 2025

(s) LPC Avocats

LPC AVOCATS

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

TO: WESTJET
2400-525 8TH AVENUE SW
CALGARY, ALBERTA T2P 1G1

VACANCES SUNWING INC.
3105 PLACE LOUIS R. RENAUD
LAVAL, QUEBEC, H7V 0A3

DEFENDANTS

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 Division.

Montreal, July 25, 2025

(s) LPC Avocats

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