

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001418-256

SUPERIOR COURT
(Class Actions)

RAPHAEL BADAoui

Applicant

v.

LOBLAW COMPANIES LIMITED *ET AL.*

Defendants

**AMENDED APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE
OF WAL-MART CANADA CORP.**

(Article 574(3), *Code of Civil Procedure*, CQLR c C-25.01 (“**CCP**”))

TO THE HONOURABLE DOMINIQUE POULIN, J.S.C., ACTING AS THE
DESIGNATED CASE MANAGEMENT JUDGE IN THE PRESENT CASE, THE
DEFENDANT WAL-MART CANADA CORP. RESPECTFULLY SUBMITS THE
FOLLOWING:

I. INTRODUCTION

1. In connection with the authorization hearing for this proposed class action, the Defendant Wal-Mart Canada Corp. (“**Walmart**”) seeks leave to adduce as relevant evidence the sworn statement of Anthony D’Agostino, Director of Merchandising Food Sourcing for Walmart (the “**D’Agostino Affidavit**”), which is communicated as **Exhibit RW-1** as well as **Exhibits AD-1 to AD-5** in support thereof, and the sworn statement of Gary Cabral, Senior Director of Produce for Walmart (the “**Cabral Affidavit**”), which is communicated as **Exhibit RW-2**.
2. The D’Agostino Affidavit and the Cabral Affidavit [...] are necessary and relevant for the Court to assess whether the criteria for class action authorization under article 575 CCP are met.
3. Specifically, paragraph 70 of the Authorization Application alleges that Walmart has offered for sale grocery products advertised as “Canadian”, “but which in fact are products of other countries.”¹ To support that allegation, the Applicant sent a bailiff to the Walmart store in Lasalle, Québec (the “**Walmart Lasalle Store**”) on September 9, 2025 to identify three products purportedly mislabelled as “Canadian”.

¹ Application to authorize a class action dated September 10, 2025 (the “**Authorization Application**”), as amended on April 13, 2026.

4. However, as explained in Mr. D'Agostino's Sworn Statement and as appears from its exhibits, the Authorization Application's allegations concerning the Walmart Lasalle Store are incorrect or incomplete: (i) there are tens of thousands of different products offered for sale at the Walmart Lasalle Store, but the bailiff—after spending one hour in the store—only identified two (rather than three) purported examples of mislabelling; (ii) with respect to the first product identified by the bailiff ("*Nutribarre Chocolat Val Nature*"), the picture of the shelf label taken by the bailiff very clearly does not relate to that product and is instead for a different product ("*Choco Noir Nugabar*"), which is certified by *Aliments du Québec*;² and (iii) with respect to the "*Great Value arachides sucrées et salées*" product identified by the bailiff, that product is manufactured by a Canadian company and can be either manufactured in Canada or the United States but, regardless of the place of manufacture, there is no price difference.
- 4.1 In the Amended Application, the Applicant added a new allegation at paragraph 68 concerning the Walmart Supercentre located at 3820 Boulevard de La Côte-Vertu, in Ville Saint-Laurent (the "**Walmart Saint-Laurent Store**"). The Applicant alleges that Green Earth Organics, Organic Greenhouse Grape Tomatoes (UPC 62871914116) (the "**Green Earth Tomatoes**") were displayed on the shelf as "Product of Canada" while the product packaging indicated "Product of Mexico".
- 4.2 However, as explained in Mr. Cabral's Sworn Statement, the allegations concerning the Walmart Saint-Laurent Store are incomplete and fail to reflect the full actual context. In particular: (i) the Green Earth Tomatoes are supplied by Green Earth Organics, a Canadian company headquartered in Ontario; (ii) Exhibit P-9 itself demonstrates that some units displayed at the Walmart Saint-Laurent Store were identified as "Product of Canada", while others were identified as "Product of Mexico", with the country of origin in each case clearly indicated on the product packaging; (iii) regardless of the country of origin, the Green Earth Tomatoes were offered for sale at the same retail price of \$3.97.
5. As a result, Walmart's proposed evidence is necessary and relevant to this Court's informed analysis of whether the facts alleged appear to justify the conclusions sought in accordance with art. 575(2) CCP, whether the claim raises identical, similar or related issues of law or fact in accordance with art. 575(1) CCP, as well as whether the proposed class definition is vague and imprecise in light of the isolated and incorrect allegations in the Authorization Application.

II. THE AUTHORIZATION APPLICATION

6. On or about September 10, 2025, the Applicant filed the Authorization Application, against several grocery retailers, namely: Loblaw Companies Limited and Loblaws Inc., Metro Inc., Groupe Adonis Inc., Sobeys Capital Incorporated, Giant Tiger Stores Limited and Walmart (collectively, the "**Defendants**"). On April 13, 2026,

² It should be noted that the allegations regarding the *Nutribarre Chocolat Val Nature* product were withdrawn by the Applicant in the Amended Application.

the Applicant filed the Amended Application, adding new allegations against the Defendants, including a new allegation against Walmart concerning the Walmart Saint-Laurent Store.

7. The Authorization Application seeks to bring a class action on behalf of the following proposed class:

“All persons who purchased an item from one of the Defendants, including via their representatives, agents, affiliate merchants, franchisees, mandataries and/or retailers acting in their name, marked as Canadian or local (or containing the maple leaf or fleur-de-lis logo) which was imported from another country;”

“Toutes les personnes qui ont acheté un article auprès de l’une des défenderesses, y compris par l’intermédiaire de leurs représentants, agents, marchands affiliés, franchisés, mandataires et/ou détaillants agissant en leur nom, marqué comme canadien ou local (ou contenant le logo de la feuille d’érable ou de la fleur de lys) qui a été importé d’un autre pays;”

8. The Authorization Application alleges that the Defendants advertised and marketed certain imported grocery items as Canadian or local products through the use of Canadian or local images, logos, and slogans such as “Made in Canada”, claiming that this constitutes misleading advertising.³
9. The Authorization Application further alleges that the Defendants breached sections 40, 41, 42, 219, 222(g), 228 and 239(a) of the *Consumer Protection Act*, sections 36 and 52 of the *Competition Act*, as well as obligations under the *Civil Code of Québec*.⁴
10. The Authorization Application seeks compensatory damages and punitive damages (or, alternatively, reimbursement), as well as injunctive relief, against the Defendants.⁵ It claims that the Applicant would have never purchased these items or “paid such a high price” (though the Applicant never alleges having purchased a product at Walmart [...], the Walmart Lasalle Store, or the Walmart Saint-Laurent Store).⁶

III. NECESSITY AND RELEVANCE OF THE PROPOSED EVIDENCE

11. Article 574(3) CCP provides that the Court may allow relevant evidence to be adduced at the authorization stage. Evidence that is necessary and relevant to assessing the criteria for authorization under article 575 CCP is permissible, and it forms part of the Court’s role to filter frivolous claims.

³ Authorization Application, paras. 16-18 and 23-24.

⁴ Authorization Application, paras. 30-32.

⁵ Authorization Application, para. 33.

⁶ Authorization Application, paras. 25 and 31.

12. The evidence that Walmart seeks leave to adduce is necessary and relevant to evaluating whether the facts alleged against Walmart appear to justify the conclusions sought, whether there is a common question of fact or law, and whether the proposed class definition is too vague and imprecise to allow members to ascertain whether they are included in the proposed class.
13. The Authorization Application contains incorrect allegations and provides an incomplete picture of the factual context underlying the allegations against Walmart, particularly with respect to allegations that the Defendants deliberately engaged in false advertising and actively concealed the origin of products and assertions of the purported “systemic nature” of the Defendants’ maple-washing”.⁷
14. These allegations are based on isolated and incorrect claims that do not accurately reflect the circumstances surrounding the two specific products identified by the Applicant’s bailiff at the Walmart Lasalle Store, nor the circumstances surrounding the Green Earth Tomatoes identified at the Walmart Saint-Laurent Store, in light of the context of a store offering for sale thousands of different grocery products.
15. It is therefore necessary and relevant that Walmart be permitted to place before the Court factual clarifications that complete the record and prevent a misleading or partial understanding of the allegations in the Authorization Application.

IV. SWORN STATEMENTS OF ANTHONY D’AGOSTINO AND GARY CABRAL AND SUPPORTING EXHIBITS

16. The D’Agostino Affidavit rectifies certain incorrect allegations and provides the Court with a complete picture of the facts alleged (but omitted) by the Applicant.
17. *First*, the D’Agostino Affidavit explains that the Walmart Lasalle store offers for sale over approximately 60,000 products, including over approximately 10,000 different grocery items.
18. Accordingly, in that context, the two isolated examples purportedly found by the Applicant’s bailiff fail to demonstrate a “practice” of “intentionally deceiving” consumers.⁸
19. *Second*, with respect to the “*Nutribarre Chocolat Val Nature – Chocolat Noir et Cerises*” identified by the Applicant’s bailiff, the Authorization Application alleges that the product was displayed at the Walmart Lasalle Store with the mention of “*Aliments du Québec*” and “*Aliments préparés au Québec*”, and “Q”, whereas the

⁷ Authorization Application, paras. 21, 26-27 and 47.

⁸ Authorization Application, paras, 1, 28 and 77.

product packaging indicates “Product of USA”. This allegation relies solely on the photograph contained in Exhibit P-7.9.⁹

20. However, as further explained in the D’Agostino Affidavit, the Authorization Application is confusing two different products. The photograph in question shows that the “*Nutribarre Chocolat Val Nature – Chocolat Noir et Cerises*” product is not the product referenced in the shelf label for which the “*Aliments du Québec*” badge is used, and the shelf label concerns a different product, namely the “*Choco Noir Nugabar*”. The “*Choco Noir Nugabar*” product is, in fact, certified under the *Aliments du Québec* program (Exhibits AD-1 and AD-2).^{9.1}
21. *Third*, with respect to the “*Great Value arachides sucrées et salées*” product, the Authorization Application alleges that the Walmart Lasalle Store displayed the product with a red maple leaf and the mention “*Fabriqué au Canada*”, while the product itself indicates “Product of USA”.¹⁰ This allegation relies on a single photograph and does not take into account the broader context of the product’s sourcing and labeling.
22. The D’Agostino Affidavit explains that this product is supplied by the Canadian company Groupe Biscuits Leclerc Inc., headquartered in Québec, and may be manufactured in either Canada or the United States. Regardless of the manufacturing location, the product is offered for sale at the same price, so there is no premium or higher price charged for the product when manufactured in Canada versus the product when manufactured in the United States. There can therefore be no claim for damages based on this isolated allegation.
23. Accordingly, the necessary and relevant evidence Walmart seeks to adduce will rectify certain allegations and provide important factual context regarding the allegations made concerning the Walmart Lasalle Store.
 - 23.1 With respect to the allegations concerning the Walmart Saint-Laurent Store, the Cabral Affidavit provides the factual context omitted from the Amended Application. In particular, the Cabral Affidavit explains that the Walmart Saint-Laurent Store is a Walmart Supercentre that offers general merchandise together with a full-service supermarket and offers for sale thousands of different grocery products.
 - 23.2 As further explained in the Cabral Affidavit, the Green Earth Tomatoes are supplied by Green Earth Organics, a Canadian company headquartered in Ontario.

⁹ Authorization Application, para. 70(a).

^{9.1} It should be noted that the allegations regarding the *Nutribarre Chocolat Val Nature* product were withdrawn by the Applicant in the Amended Application.

¹⁰ Authorization Application, para. [...] 70.

- 23.3 Furthermore, the very photograph relied upon by the Applicant as Exhibit P-9 itself demonstrates that some units of the Green Earth Tomatoes displayed at the Walmart Saint-Laurent Store were identified as “Product of Canada”, while others were identified as “Product of Mexico”. The country of origin of each unit was clearly identified directly on the product packaging.
- 23.4 The Cabral Affidavit further explains that the Green Earth Tomatoes were offered for sale at the same retail price of \$3.97 regardless of country of origin. Consequently, the allegations concerning the Green Earth Tomatoes cannot support any inference that consumers paid a premium or suffered damages as a result of any alleged representation concerning Canadian origin.
- 23.5 Accordingly, the proposed evidence provides necessary and relevant factual context regarding the allegations concerning the Walmart Saint-Laurent Store.
24. Moreover, this evidence undermines the existence of any common issue of fact or law as required by article 575(1) CCP. It demonstrates that each case is unique and attributable to distinct circumstances, which may vary from one product to another with respect to Walmart. This evidence is therefore essential for the Court to determine whether the claims of the proposed class members genuinely raise identical, similar, or related questions of law or fact.
25. It further shows that the claims in the Authorization Application concerning Walmart relate to [...] two isolated products out of tens of thousands of different products offered for sale at [...] two Walmart stores [...]. There is no widespread or systemic practice. As a result, the proposed class definition is too vague and imprecise to allow individuals to determine whether they are members of the class, as they do not know which products, at which times, in which stores are at issue.

V. CONCLUSION

26. Without leave to adduce the proposed relevant evidence, the Court will be deprived of the necessary and relevant facts that would inform its analysis of whether the Authorization Application (i) alleges facts that appear to justify the conclusions sought against Walmart, and (ii) demonstrates any common question. This is critical for the Court’s role to filter out frivolous claims.
27. The proposed evidence is limited and circumscribed and therefore complies with the principle of proportionality.

FOR THESE REASONS, MAY IT PLEASE THIS HONORABLE COURT TO:

GRANT the present Amended Application for leave to adduce relevant evidence;

AUTHORIZE the Defendant Wal-Mart Canada Corp. to file into the court record the sworn statement of Anthony D'Agostino as **Exhibit RW-1**, along with its supporting **Exhibits AD-1, AD-2, AD-3, AD-4 and AD-5** and the sworn statement of Gary Cabral as **Exhibit RW-2**;

THE WHOLE without legal costs, save in case of contestation.

Montréal, Québec on [...] June 12, 2026

Davies Ward Phillips & Vineberg LLP

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NOTICE OF PRESENTATION

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TAKE NOTICE that the Defendant Wal-Mart Canada Corp.'s *Amended Application for Leave to Adduce Relevant Evidence* (Article 574(3) CCP) shall be presented before the Honorable Dominique Poulin, J.C.S., of the Superior Court of Québec, sitting in and for the district of Montréal, at a time and place to be determined by the Court.

At Montréal, Québec on [...] June 12, 2026

Davies Ward Phillips & Vineberg LLP

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-001418-256

SUPERIOR COURT
(Class Actions)

RAPHAEL BADAoui

Applicant

v.

LOBLAW COMPANIES LIMITED *ET AL.*

Defendants

**AMENDED LIST OF EXHIBITS IN SUPPORT OF THE DEFENDANT WAL-MART
CANADA CORP.'S AMENDED APPLICATION FOR LEAVE TO ADDUCE
RELEVANT EVIDENCE**
(Article 574(3) CCP)

Exhibit RW-1: Sworn statement of Anthony D'Agostino

Exhibit AD-1: Extract from Aliments du Québec's website (Choco Noir Nugabar)

Exhibit AD-2: Extract from Aliments du Québec's website (Our mission)

Exhibit AD-3: Extract from the Québec Enterprise Register for Groupe Biscuits
Leclerc Inc.

Exhibit AD-4: Extract from Groupe Biscuits Leclerc Inc.'s website

Exhibit AD-5: Photographs of the packaging of the "*Great Value arachides sucrées
et salées*"

Exhibit RW-2: Sworn statement of Gary Cabral

At Montréal, Québec on [...] June 12, 2026

Davies Ward Phillips & Vineberg LLP

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CANADA

SUPERIOR COURT

(Class Actions)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

RAPHAEL BADAoui

Applicant

N° : 500-06-001418-256

v.

LOBLAW COMPANIES LIMITED *ET AL.*

Defendants

SWORN STATEMENT OF GARY CABRAL
WAL-MART CANADA CORP.

I, the undersigned, Gary Cabral, having my business address at 1940 Argentinia Road, Mississauga, Ontario, L5N 1P9, solemnly declare and make oath as follows:

I. INTRODUCTION

1. I am the Senior Director of Produce for Wal-Mart Canada Corp. ("**Walmart**"). I have held this position since April 2025. Prior to assuming this role, I was Senior Director of Grocery at Walmart.
2. In my current role, I oversee Walmart's fresh produce business across Canada, including the procurement and merchandising of fresh produce, supplier management, and the negotiation and administration of vendor agreements.
3. I have read and reviewed the *Application to authorize a class action* dated September 10, 2025 as well as the *Amended Application to authorize a class action* dated April 13, 2026 (the "**Amended Authorization Application**").

II. THE GREEN EARTH TOMATOES

4. Paragraph 68 of the Amended Authorization Application alleges that, on September 12, 2025, at the Walmart Supercentre located at 3820 Boulevard de La Côte-Vertu, in Ville Saint-Laurent (the "**Walmart Saint-Laurent Store**"), Green Earth Organics, Organic Greenhouse Grape Tomatoes (UPC 62871914116) (the "**Green Earth Tomatoes**") were advertised on the shelf as "Product of Canada", whereas the product packaging bore the designation "Product of Mexico". This allegation relies upon Exhibit P-9.

5. The Green Earth Tomatoes are supplied by Green Earth Organics, a Canadian company headquartered in Ontario at 21360 Bathurst Street, Holland Landing, Ontario, L9N 1P6.
6. As appears from Exhibit P-9, the country of origin of each unit of the Green Earth Tomatoes at the Walmart Saint-Laurent Store was clearly identified directly on the product packaging, with certain units identified as "Product of Canada" and others identified as "Product of Mexico".
7. Regardless of country of origin, the Green Earth Tomatoes were offered for sale at the same retail price of \$3.97 at the Walmart Saint-Laurent Store, as appears from Exhibit P-9. As a result, there was no premium price associated with the country of origin of the Green Earth Tomatoes.
8. The Walmart Saint-Laurent Store is a Walmart "Supercentre", which means that it offers for sale general merchandise items and it also has a full-service supermarket, including meat and poultry, frozen foods, packaged bread, dairy products and fresh produce.
9. At the Walmart Saint-Laurent Store, thousands of different grocery products are offered for sale.
10. All the facts in the present sworn statement are true to my personal knowledge.

AND I HAVE SIGNED:

Signed by:

Gary Cabral

032223CA4A264BA...

GARY CABRAL

SOLEMNLY AFFIRMED before me in
Montréal, Québec this 11th day of June
2026 by **Gary Cabral** whose oath was
taken in Mississauga, Ontario, the whole
by technological means

DocuSigned by:

[Signature]
5CE3E10FC7564F5...

Commissioner for Oaths for the Province
of Québec and for outside the Province of
Québec



No. 500-06-001418-256
SUPERIOR COURT
(Class Action Division)
District of Montréal

RAPHAEL BADAoui

Applicant

vs.

LOBLAW COMPANIES LIMITED *ET AL.*

Defendants

**AMENDED APPLICATION FOR LEAVE TO
ADDUCE RELEVANT EVIDENCE OF WAL-MART
CANADA CORP., NOTICE OF PRESENTATION,
AMENDED LIST OF EXHIBITS & EXHIBIT RW-2**
(Article 574(3), Code of Civil Procedure,
CQLR c C-25.01 ("CCP"))

ORIGINAL

DAVIES

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