C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: **500-06-001378-252**

SUPERIOR COURT
(Class Action)

DAN-MIRVICKO DURANDISSE

Plaintiff

v.

DIAGEO CANADA INC.

Defendant

APPLICATION BY DEFENDANT DIAGEO CANADA INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE AND FOR LEAVE TO EXAMINE THE CLASS REPRESENTATIVE
(Articles 574 and 575 C.C.P.)

TO THE HONOURABLE JUSTICE ENRICO FORLINI OF THE SUPERIOR COURT OF QUEBEC, SITTING IN THE JUDICIAL DISTRICT OF MONTREAL, THE DEFENDANT DIAGEO CANADA INC. SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. The Defendant Diageo Canada Inc. ("**Diageo Canada**") seeks leave to adduce relevant evidence and to examine the class representative for the purpose of the authorization hearing in order to establish facts that are necessary to enable this Court to undertake an informed analysis, in light of the criteria set out in Section 575 of the *Code of Civil Procedure* ("**CCP**"), regarding the authorization sought by the Plaintiff to institute class action proceedings against Diageo Canada;

II. PROCEDURAL BACKGROUND

2. On or about May 20, 2025, the Plaintiff filed the *Application for Authorization to Institute a Class Action and Appoint Plaintiff as Class Representative* ("**Application for Authorization**") against Diageo Canada, on behalf of the following purported class:

> *Toutes les personnes physiques résidant au Québec ayant acheté une bouteille de tequila de marques Don Julio ou Casamigos, depuis le 20 mai 2022;*

3. In essence, the Plaintiff claims that Diageo Canada participated in alleged prohibited business practices in violation of sections 219, 221(a), and 228 of the Quebec Consumer Protection Act (the "**CPA**") by making false and deceptive statements in labeling Don Julio and Casamigos Tequila bottles (the "**Subject Products**") as "100% Agave" or "100%

Agave Azul," while the Plaintiff alleges that the Subject Products are not made entirely from Blue Weber Agave;

4. The Plaintiff is therefore seeking (i) a reduction of his and the purported class members' obligations, namely the difference between the price paid for bottles of Casamigos and Don Julio brand tequila and the average price of bottles of tequila that are not made from 100% agave; and (iii) an aggregate amount for punitive damages under Section 272 of the CPA;

III. APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE

5. For the purposes of contesting the authorization of the class action, Diageo Canada seeks leave from this Honourable Court to submit relevant evidence, namely the sworn statement of Wellington Pasiani Pauperio (the "**Pauperio Affidavit**") as well as the following exhibits:

   a) **Exhibit R-1**: Canada-United States-Mexico Agreement (CUSMA);

   b) **Exhibit R-2**: Mexican Official Standard NOM-006-SCFI-2012, Alcoholic Beverages – Tequila – Specifications;

   c) **Exhibit R-3**: Certificates of compliance (100% Agave Tequila), from the Tequila Regulatory Council, A.C.(originals), *in a bundle*;

   d) **Exhibit R-3A:** English translation of the Certificates of compliance (100% Agave Tequila), from the Tequila Regulatory Council, A.C. (Exhibit R-3), *in a bundle*;

   e) **Exhibit R-4**: Certificate of authenticity for export of Tequila, from the Tequila Regulatory Council, A.C.(originals) for Lot No. L4305MR003;

6. The Pauperio Affidavit at paragraphs 5 to 9 informs the Court as to the process for the sale of Tequila in the province of Québec, as well as the control over pricing;

7. The Pauperio Affidavit at paragraphs 10 to 27 as well as Exhibits R-1 and R-2 outline the Mexican regulatory framework governing tequila production and the use of the "100% Agave" designation;

8. The Application for Authorization contains general, incomplete or vague allegations regarding the manufacturing of the tequila and the denomination of 100% Agave tequila, such that Diageo Canada should be afforded the opportunity to adduce evidence which will bring precision to the allegations made by Plaintiff so that the Court be duly informed about the issues raised;

9. The Pauperio affidavit, at paragraphs 28 and 29 as well as Exhibits R-3 and R-3A provide evidence of the annual certifications held by Diageo Canada affiliated entities to produce 100% Agave tequila from 2022 to 2025;

10. This evidence shows that Diageo Canada's affiliates held the requisite certification evidencing that they produce 100% agave tequila for all Subject Products that may have

been purchased by the class members, thereby rebutting criterion of Section 575(2) that the alleged facts justify the conclusions sought;

11. The certificates attached as Exhibits R-3 and R-3A span from 2022 through 2025, covering the entire class period;

12. Exhibit R-3A contains the English translation of the certificates filed as Exhibit R-3, as the original certificates are in Spanish. The translation was produced using AI and subsequently reviewed for accuracy by a Spanish-English speaker;

13. Finally, the Pauperio affidavit at paragraphs 30 to 34 as well as Exhibit R-4, provide information about the bottle of tequila allegedly purchased by the Plaintiff and confirm that this bottle was certified by the relevant Mexican authorities as a 100% Agave product;

14. The facts presented in the Pauperio Affidavit will primarily assist the Court in determining whether the facts alleged appear to justify the conclusions sought;

15. The evidence which Diageo Canada requests leave to adduce is limited to strictly circumscribed and precise subjects and facts and will ensure a thorough and comprehensive debate at the authorization hearing;

16. It is essential for this Honourable Court to have the benefit of this evidence in order to ensure that all of the necessary neutral facts and essential information are before it to fairly determine whether the conditions of Section 575 CCP are met against Diageo Canada and to make an informed decision at the authorization stage;

17. Diageo Canada respectfully submits the additional evidence described herein is necessary, useful and reasonable for this Honourable Court to rule on the Application for Authorization, and that it provides relevant facts that will assist the Court in determining whether the proposed Plaintiff has a *prima facie* case against Diageo Canada and whether the Court should authorize the bringing of a class action against it;

IV. APPLICATION FOR LEAVE TO EXAMINE THE CLASS REPRESENTATIVE

18. Additionally, Diageo Canada seeks leave from this Honorable Court to examine Mr. Dan-Mirvicko Durandisse on the following subjects:

    i) The circumstances surrounding the purchase by Mr. Durandisse of the bottle of tequila, Exhibit P-3;

    ii) The circumstances pursuant to which Mr. Durandisse accepted to act as a class representative;

    iii) Exhibit P-2, including the origin of the documents, how Mr. Durandisse became aware of them, and their content;

19. More specifically, the Application for Authorization, the Exhibits filed and external information, raise doubts as to whether the Plaintiff's tequila purchase on May 16, 2025 was authentic or was prompted by the context of these proceedings;

20. The information sought is necessary for this Honourable Court's analysis of the authorization criteria and more precisely, to establish whether the criteria at Sections 575(2) and 575(4) of the CCP are met;

21. If leave to examine is granted, Diageo Canada will be limiting the examination to the above subjects, for a maximum duration of 75 minutes;

22. The present Application is well-founded in fact and in law.

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

GRANT the present *Application by Defendant Diageo Canada Inc. for Leave to Adduce Relevant Evidence and for Leave to Examine the Class Representative*;

AUTHORIZE Diageo Canada Inc. to file the sworn statement of Wellington Pasiani Pauperio, as well as Exhibits R-1, R-2, R-3, R-3A and R-4, as evidence at the hearing on authorization of this proposed class action;

AUTHORIZE Diageo Canada Inc. to conduct an in-person examination of the class representative, Mr. Dan-Mirvicko Durandisse, for a duration of 75 minutes on the following topics:

i) The circumstances surrounding the purchase by Mr. Durandisse of the bottle of tequila, Exhibit P-3;

ii) The circumstances pursuant to which Mr. Durandisse accepted to act as a class representative;

iii) Exhibit P-2, including the origin of the documents, how Mr. Durandisse became aware of them, and their content.

THE WHOLE with legal costs to follow.

MONTREAL, September 22, 2025

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DISTRICT OF MONTREAL

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SUPERIOR COURT
(Class Action)

DAN-MIRVICXO DURANDISSE

Plaintiff

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Defendant

NOTICE OF PRESENTATION

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TAKE NOTICE that the foregoing *Application of Defendant Diageo Canada inc. for Leave to Adduce Relevant Evidence and for Leave to Examine the Class Representative* will be presented for adjudication on **October 29, 2025**, at 9:00 am, in room 15.04, before the Honourable Enrico Forlini of the Superior Court of Montreal, at 1, rue Notre-Dame, E., Montreal (Quebec), H2Y 1B6.

MONTREAL, September 22, 2025

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APPLICATION BY DEFENDANT DIAGEO CANADA INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE AND FOR LEAVE TO EXAMINE THE CLASS REPRESENTATIVE AND NOTICE OF PRESENTATION
(Articles 574 and 575 C.C.P.)

ORIGINAL

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