

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No: 500-06-000724-142

CHANTALE TAILLON, residing and domiciled at
221, rue Dupernay, in the city of Boucherville,
district of Longueuil, Province of Québec, J4B
1G5

Petitioner

v.

AIMIA CANADA INC., a legal person having its
head office and principal place of business at
1000-525, avenue Viger O, in the city and district
of Montréal, Province of Québec, H2Z 0B2

-and-

AIMIA INC., a legal person having its head office
and principal place of business at 1000-525,
avenue Viger O, in the city and district of
Montréal, Province of Québec, H2Z 0B2

Respondents

**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 1002 et seq. C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND
FOR THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS THE
FOLLOWING:**

1. **Petitioner, Chantale Taillon, wishes to institute a class action on behalf of the
class of persons hereinafter described, namely:**

*“All natural persons in Canada who, since December 12, 2011, redeemed
Aeroplan Miles, through the Aeroplan Program owned and/or operated by
Aimia Canada inc. and Aimia inc., to purchase airline tickets for domestic
or US transborder flights operated by Air Canada, Air Canada Rouge or
Air Canada Express and who paid a fuel surcharge for such flights.”*

Hereinafter referred to as the « **Class** »;

2. **The personal claim of the Petitioner, Chantale Taillon, is based on the following facts:**

- 2.1. Respondents Aimia inc. and Aimia Canada inc. (collectively, "**Respondents**") own and operate a Canadian loyalty rewards program known as Aeroplan (the « **Aeroplan Program** »), which was founded in 1984;
- 2.2. The Aeroplan Program allows its members ("**Aeroplan members**") to earn and accumulate Aeroplan Miles that may be redeemed to purchase various rewards, including airline tickets for flights operated by Air Canada, Air Canada Rouge and Air Canada Express (hereinafter individually or collectively referred to as "Air Canada") as well as other airlines affiliated with the Aeroplan Program;
- 2.3. When Aeroplan Miles are redeemed by Aeroplan members to purchase rewards including flight tickets, the terms and conditions of the Aeroplan Program [the French and English versions of which are produced herewith *en liasse* as **Exhibit R-1** (the "**Aeroplan Terms and Conditions**") allow the Respondents to charge to Aeroplan members, in addition to the required amount of Aeroplan Miles, certain fees, taxes and surcharges restrictively enumerated at paragraph 9 of the Aeroplan Terms and Conditions, which reads as follows:

"Members shall be responsible for any taxes, departure fees, security charges, levies or other charges imposed by or with the authority of any government or governmental authority in respect to any rewards or reward travel or benefit; any surcharge imposed by an airline; and any service fee imposed by Aeroplan."

« Le membre Aéroplan est tenu d'acquitter les taxes, les frais de départ et de sécurité, les droits ou frais applicables aux primes ou aux avantages, tels qu'imposés par toute autorité gouvernementale, les surtaxes exigées par tout transporteur aérien et tous frais de service imposés par Aéroplan. »

- 2.4. Throughout the Class period, Petitioner Chantale Taillon ("**Petitioner**") has been and remains a member of the Aeroplan Program, as appears from a printout of her online Aeroplan account page, produced herewith as **Exhibit R-2**;
- 2.5. On March 7, 2013, Petitioner booked two Air Canada flight tickets to Kelowna, B.C., through the Aeroplan Program;
- 2.6. Petitioner purchased the two Air Canada flight tickets from Respondents by redeeming the required number of Aeroplan Miles and by paying to Respondents various fees, taxes and surcharges totalling \$158.50 for each flight ticket, the whole as appears from a flight confirmation dated March 7, 2013, produced herewith as **Exhibit R-3**;
- 2.7. As appears from said confirmation, Exhibit R-3, the various fees, taxes and surcharges charged by Respondents for each of the two tickets are enumerated in the following coded manner:

« *Calcul du tarif:
01JUL13YMQ AC XYYC AC YLW R0.00AC XYYR AC YMQ
R0.00CAD0.00
END ROE1.00 XT12.29XQ54.00YQ30.00YR40.00SQ1.80RC »

- 2.8. The code "54.00YQ" included in the various coded charges appearing on the confirmation, Exhibit R-3, indicates that a fuel surcharge of \$54.00 allegedly imposed by the airline (in this case, Air Canada) is being charged by Respondents to Petitioner on each flight ticket, as appears from a universally applied code list provided by Singaporean Airlines Limited, produced herewith as **Exhibit R-4**;
- 2.9. A fuel surcharge imposed by the airline is indeed one of the restrictively listed charges that the Respondents are allowed to pass on to Aeroplan members, pursuant to paragraph 9 of the Aeroplan Terms and Conditions, since it is a "surcharge imposed by an airline";
- 2.10. According to an extract from the Aeroplan Program's website, produced as **Exhibit R-5**, "all fuel surcharge amounts are applied by Aeroplan on behalf of the ticketing carrier and are passed through directly to the ticketing carrier. Fuel surcharge amounts are determined by each airline and may change from time to time. Aeroplan has applied fuel charges for flight rewards on Air Canada since 2004";
- 2.11. As a result, for example, since Air Canada imposes fuel surcharges on all of its international flights, such fuel surcharges are charged to Aeroplan members when they purchase international flight tickets through the Aeroplan Program;
- 2.12. However, Air Canada has ceased imposing fuel surcharges on its domestic and US transborder flights ("**North American flights**") since September 18, 2008, as appears from a press release from Air Canada dated September 18 [2008], produced as **Exhibit R-6**, which states the following:

"[...] Air Canada is making its pricing more transparent by removing add-on fuel surcharges for flights within North America and instead adjusting its base fares to cover the total cost of fuel. [...] These initiatives are made possible by the recent relief from all-time high oil prices [...].

With the measures announced today Air Canada will:

[...]

Incorporate into its advertised prices the one-way, add-on fuel surcharge that currently ranges between \$20 and \$60 on domestic and U.S. transborder flights. Starting September 18, 2008, Air Canada will adjust its published fares to include the total cost of fuel in its advertised base fares. This will provide customers with simple, transparent and low fares always available at www.aircanada.com."

- 2.13. Accordingly, since the Aeroplan Terms and Conditions only allow the Respondents to pass on fuel *surcharges imposed by an airline* [*surtaxes exigées par tout transporteur aérien*] and since Air Canada ceased to impose a fuel surcharge on its North American flights since September 18, 2008, the Respondents had no right to charge a fuel surcharge to Petitioner when she booked a domestic flight on Air Canada;
- 2.14. As a result, the amount of \$54.00 charged by Respondents to Petitioner on each flight ticket as a fuel surcharge was charged without right and contrary to the Aeroplan Terms and Conditions;
- 2.15. Petitioner is accordingly entitled to claim, and hereby does claim, the amount of \$108.00 in restitution of the fuel surcharges that she was illegally required to pay by Respondents;
- 2.16. Petitioner is also entitled to punitive damages in the amount of \$100, as allowed by the Quebec Consumer Protection Act (“CPA”) and by the prevailing consumer protection legislation in the other Canadian provinces, due to Respondents’ false and misleading representations regarding the fuel surcharges and due to the fact that they illegally charged an amount greater than what was advertised by charging fuel surcharges that they were not allowed to impose;

3. The personal claims of each of the members of the Class against the Respondents are based on the following facts :

- 3.1. Each of the Class members purchased one or more Air Canada North American flight tickets through the Aeroplan Program and was required to pay a fuel surcharge (the “Fuel Surcharge”);
- 3.2. Each of the Class members purchased their ticket after Air Canada ceased imposing fuel surcharges since the Class period begins on December 12, 2011 and Air Canada stopped imposing fuel surcharges on North American flights in September 2008;
- 3.3. Each of the Class members was thus required to pay a Fuel Surcharge which the Respondents had no right to impose, as per the Aeroplan Terms and Conditions;
- 3.4. Accordingly, each of the Class members is entitled to be reimbursed for all Fuel Surcharges he or she was required to pay for Air Canada North American flight tickets purchased through the Aeroplan Program;
- 3.5. Each Class member is also entitled to punitive damages under the CPA or under the prevailing consumer protection legislation of his or her respective province;

4. The composition of the members of the Class makes the application of articles 59 and 67 C.C.P. difficult and/or impractical for the following reasons :

- 4.1. The Class is likely comprised of hundreds of thousands, if not millions, of individuals;

- 4.2. Indeed, in 2012, Aeroplan members redeemed Aeroplan Miles to purchase a total of 1.6 million flights, according to Aimia Inc.'s 2012 Annual Report, produced herewith as **Exhibit R-7**;
 - 4.3. In 2013, Aeroplan members redeemed Aeroplan Miles to purchase a total of 1.5 million flights, according to an Aeroplan Fact Sheet appearing on Respondents' website, produced herewith as **Exhibit R-8**;
 - 4.4. Accordingly, Aeroplan members have minimally purchased several million flights during the Class period;
 - 4.5. Assuming that even a fraction of these flights were North American flights taken with Air Canada, there are minimally hundreds of thousands of Aeroplan members who would form part of the Class;
 - 4.6. Since the claims of such members would generally be modest, it is unlikely that the Class members would invest time and money to litigate their claims through individual recourses;
 - 4.7. Also, the Class members are disseminated throughout Canada and the Petitioner has no way of identifying all of them;
 - 4.8. Even if Petitioner could identify all Class members, they would be so numerous that it would be highly impractical, if not impossible, to obtain a mandate from each of them and/or to proceed by joinder of actions;
 - 4.9. Accordingly, the composition of the Class renders the application of sections 59 and 67 Code of civil procedure ("CCP") highly difficult and impractical;
- 5. The identical, similar or related questions of law or of fact between each member of the Class and the Respondents, which Petitioner wishes to have decided by this class action, are :**
- 5.1 Were the Fuel Surcharges imposed by Respondents on the Class members charged illegally and contrary to the Aeroplan Terms and Conditions?
 - 5.2 If so, are the Class members entitled to the full restitution of the Fuel Surcharges paid to Respondents?
 - 5.3 Are the Class members entitled to punitive damages under the CPA or under their province's consumer protection legislation?
 - 5.4 If so, what is the amount of punitive damages that each Class member should obtain?
- 6. The question of fact which is particular to each of the members of the Class is :**
- 6.1 What is the specific amount of Fuel Surcharges for which each member is entitled to be reimbursed?

7. **The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the Class is :**
 - 7.1. An action in restitution and punitive damages against Respondents.
8. **The conclusions sought by Petitioner against the Respondents are as follows :**
 - 8.1 **GRANT** Petitioner's class action on behalf of every Class member she represents;
 - 8.2 **CONDEMN** Respondents, solidarily, to reimburse the totality of the Fuel Surcharges paid by the Class members, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for authorization to institute a class action;
 - 8.3 **CONDEMN** Respondents, solidarily, to pay punitive damages to the Class members in the amount of \$100 each, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for authorization to institute a class action;
 - 8.4 **ORDER** the collective recovery of the Class members' claims;
 - 8.5 **THE WHOLE**, with costs, including expert costs and the cost of notices;
9. **Petitioner is in a position to represent the members of the Class adequately for the following reasons :**
 - 9.1. Petitioner asks that she be ascribed the status of Class representative for the purpose of the present class action;
 - 9.2. Petitioner is able to adequately represent the Class members, for the following reasons:
 - 9.3. Petitioner is a member of the Class and she is ready, willing and able to manage the present class action in the interest of the Class members that she wishes to represent and she is determined to bring this case to a final resolution, in the interest of the Class members;
 - 9.4. Petitioner is prepared to dedicate whatever time is necessary to manage this case;
 - 9.5. Petitioner is prepared to collaborate closely with her attorneys;
 - 9.6. Petitioner is highly interested in the present case and undertook several steps to understand the issues of the case and to confirm with her entourage that they were also affected by the same situation;

9.7. Notably, Petitioner contacted Aeroplan by phone and by email on several occasions to understand the surcharges being applied to her purchase, she took steps to verify whether such surcharges were legally applied and she consulted with friends and family to see if they were in a similar situation as she was;

9.8. Petitioner is not related to Respondents and is acting in good faith and in the interest of the Class members;

10. Petitioner suggests that the class action be brought before the Superior Court for the district of Montreal for the following reasons :

10.1. The undersigned attorneys have their offices in Montreal;

10.2. The Class members are disseminated throughout Canada, but statistically, a large proportion of them likely resides in Montreal;

10.3. Both Respondents have their head office and principal place of business in Montreal;

WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN:

- a) The present Motion be granted;
- b) That Respondents be ordered to provide the undersigned attorneys, in an electronic format, a list of (i) all Canadian Aeroplan members who purchased an Air Canada North American flight ticket through the Aeroplan Program during the Class period, (ii) the details of all Air Canada North American flights taken during the Class period by such Aeroplan members, (iii) the amounts of fuel surcharges charged to such Aeroplan members for such flights.
- c) That the institution of a class action be authorized as follows:

An action in restitution and punitive damages against Respondents.
- d) That the status of representative be granted to Chantale Taillon for the purpose of instituting the said class action for the benefit of the following group of persons, namely:

“All natural persons in Canada who, since December 12, 2011, redeemed Aeroplan Miles, through the Aeroplan Program owned and/or operated by Aimia Canada inc. and Aimia inc., to purchase airline tickets for domestic or US transborder flights operated by Air Canada, Air Canada Rouge or Air Canada Express and who paid a fuel surcharge for such flights.”

- e) That the principal questions of law and of fact to be dealt with collectively be identified as follows:
1. Were the Fuel Surcharges imposed by Respondents on the Class members charged illegally and contrary to the Aeroplan Terms and Conditions?
 2. If so, are the Class members entitled to the full restitution of the Fuel Surcharges paid to Respondents?
 3. Are the Class members entitled to punitive damages under the CPA or under their province's consumer protection legislation?
 4. If so, what is the amount of punitive damages that each Class member should obtain?

- f) That the conclusions sought by the Petitioner in relation to such questions are as follows:

GRANT Petitioner's class action on behalf of every Class member she represents;

CONDEMN Respondents, solidarily, to reimburse the totality of the Fuel Surcharges paid by the Class members, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for authorization to institute a class action;

CONDEMN Respondents, solidarily, to pay punitive damages to the Class members in the amount of \$100 each, together with interest at the legal rate and the additional indemnity provided by law, as of the date of service of the Motion for authorization to institute a class action;

ORDER the collective recovery of the Class members' claims;

THE WHOLE, with costs, including expert costs and the cost of notices;

- g) That it be declared that any member of the Class who has not requested his/her exclusion from the Class be bound by any judgment to be rendered on the class action, in accordance with law;
- h) That the delay for exclusion from the Class be fixed at sixty (60) days from the date of notice to the members, and at the expiry of such delay, the members of the Class who have not requested exclusion be bound by any such judgment;
- i) That it be ordered that a notice to the members of the Class be drafted according to the terms of form VI of the Rules of Practice of the Superior Court of Quebec and that it be made public within thirty (30) days of judgment to intervene in the present Motion in the following manner:

1. By publication of a notice to members of the Class in newspapers, the details of which to be decided following the hearing on the present Motion, in accordance with the model notice provided for as form VI of the Rules of Practice of the Superior Court of Quebec;
 2. By publication of the notice to members of the Class on the internet site of the Respondents and the internet site of the attorneys for Petitioner with a hypertext entitled "Avis aux membres de recours collectif, Notice to all Class Action Members" prominently displayed on Respondents' internet site and to be maintained thereon until the Court orders publication of another notice to members by final judgment in this instance or otherwise;
- j) That the record be referred to the Chief Justice so that he may fix the district in which the class action is to be brought and the Judge before whom it will be heard;
- k) That in the event that the class action is to be brought in another district, the Clerk of this Court be ordered upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated.

THE WHOLE with costs, including expert costs and the costs of all publications of notices.

Montreal, December 12, 2014.

Savonitto & Ass. inc

SAVONITTO & ASS. INC.

Attorneys for Petitioner

NOTICE TO RESPONDENTS
(Art. 119 C.C.P.)

TAKE NOTICE that the Petitioner has filed this action or application in the office of the Superior Court of Quebec of the judicial district of Montreal.

To file an answer to this action or application, you must first file an appearance, personally or by advocate, at the **Courthouse of Montreal located at 1 Notre-Dame East, Montreal, Quebec** within **10 days** of service of this motion.

If you fail to file an appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an appearance, the action or application will be presented before the Court on **January 27, 2015 at 9:00 a.m.**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case, unless you make a written agreement with the Petitioner or the Petitioner's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

In support of the *Motion for authorization to institute a class action and to obtain the status of representative*, the Petitioner discloses the exhibits **R-1** to **R-8** :

- EXHIBIT R-1:** Terms and conditions of the Aeroplan Program (French and English versions);
- EXHIBIT R-2:** Printout of online Aeroplan account page of Chantale Taillon;
- EXHIBIT R-3:** Flight confirmation dated March 7, 2013;
- EXHIBIT R-4:** Code list provided by Singaporean Airlines Limited;
- EXHIBIT R-5:** Aeroplan Program's website;
- EXHIBIT R-6:** Press release from Air Canada dated September 18, 2008;
- EXHIBIT R-7:** Aimia Inc.'s 2012 Annual Report;
- EXHIBIT R-8:** Aeroplan Fact Sheet appearing on Respondents' website.

Montreal, December 12, 2014



SAVONITTO & ASS. Inc.
Attorneys for Petitioner

N° : 500-06-000724-142

SUPERIOR COURT (Class action)
Province of Quebec
District of **MONTREAL**

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**MOTION FOR AUTHORIZATION TO INSTITUTE
A CLASS ACTION AND TO OBTAIN THE
STATUS OF REPRESENTATIVE**
(Art. 1002 et seq. C.C.P.)

Savonitto

450, rue St-Pierre, suite 101

Montréal (Québec) H2Y 2M9

Tél. : 514-843-3125, #201

Fax. : 514-843-8344

Courriel : ms@savonitto.com

Me Michel Savonitto

☎ : 50238-1

BS2448