

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class action)

No: 500-

ROBERT LAMONTAGNE, residing and domiciled at 38 rue d'Ambroise, in the city of Blainville, Province of Québec, J7B 1Y1

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, Robert Lamontagne, wishes to institute a class action on behalf of the class of persons hereinafter described, namely:**

«All natural persons in Canada who, since June 9, 2012, redeemed Aeroplan Miles, through the Aeroplan Program owned and/or operated by Aimia Canada inc. and Aimia inc., to purchase Air Canada flight tickets and who paid, with respect to such flights, Passenger Charges, and applicable taxes, as a result of departing from or transiting through the following airports (collectively the «Foreign Airports»):

- a. the Heathrow airport in London, UK;
- b. the Charles de Gaulle airport in Paris, France;
- c. the Lyon airport in Lyon, France;
- d. the Frankfurt airport in Frankfurt, Germany;
- e. the Munich airport in Munich, Germany;
- f. the Copenhagen airport in Copenhagen, Denmark (the airports mentioned in paragraphs a. to f. being hereinafter collectively referred to as the "**European Airports**");
- g. the Narita airport in Tokyo, Japan;
- h. the Haneda airport in Tokyo, Japan (the airports mentioned in paragraphs g. and h. being hereinafter collectively referred to as the "**Japanese Airports**"). »

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

2. The personal claim of the Petitioner, Robert Lamontagne, 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 flight tickets;
- 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 Robert Lamontagne («**Petitioner**») has been and remains a member of the Aeroplan Program, as appears from a printout of his online Aeroplan account page, produced herewith as **Exhibit R-2**;
- 2.5. On February 18, 2014, Petitioner booked through the Aeroplan Program two multi-city flight tickets on Air Canada (one for himself and one for his wife, Monique Racette) with the following itinerary:
- April 10, 2014: Depart Montreal, QC. Arrive in Frankfurt, Germany;
 - May 3, 2014: Depart Lyon, France. Arrive in Frankfurt, Germany;
 - May 3, 2014: Depart Frankfurt, Germany. Arrive in Montreal, QC.
- 2.6. Petitioner purchased the two flight tickets from Respondents by redeeming the required number of Aeroplan Miles and by being charged various fees, taxes and surcharges totalling \$605.85 for each ticket, the whole as appears from a flight confirmation dated February 18, 2014, produced herewith as **Exhibit R-3**;
- 2.7. As appears from said confirmation, Exhibit R-3, the above amount included a charge of \$31.80 identified under the code «RA», which refers to an international passenger service charge for flights departing from or transiting through the Frankfurt airport, and a charge of \$14.70 identified under the code «QX», which refers to an international passenger service charge for flights departing from or transiting through the Lyon Airport, as appears from a universally applied code list provided by Singaporean Airlines Limited, produced herewith as **Exhibit R-4**;
- 2.8. These charges result from the fact that the European Airports, including the Frankfurt and Lyon Airports, charge fees to airlines whose flights transit through or depart from their airport for the use of the airport's facilities, equipment and services, and that a portion of such fees are then passed on and charged back by airlines, including Air Canada, to their passengers as an «international passenger service charge» (or other similar names, including Passenger Service Charges, Passenger Facility Charges or Airport Security Charges) (the «**Passenger Charges**»);
- 2.9. The Passenger Charges paid by the Petitioner, totalling \$93.00 for both tickets, were illegally charged by Respondents since they are not a «surcharge imposed by an airline», nor a charge imposed by or with the authority of any government or «governmental authority» nor, under the French version of paragraph 9 of Exhibit R-1, a charge «*imposé[e] par toute autorité gouvernementale*»;

- 2.10. Indeed, as appears from a flight reservation printout from Air Canada for the same flight as Petitioner's, attached herewith as **Exhibit R-5**, Air Canada clearly identifies which amounts it qualifies as a surcharge it imposes under the heading «carrier surcharges» (or, prior to November 29, 2014 (or thereabouts), under the heading «surcharges»), which **does not** include Passenger Charges;
- 2.11. Instead, as appears from Exhibit R-5, the Passenger Charges imposed by Air Canada are separate charges labelled «Germany Intl. Psgr. Service Tax» (although it is not a tax) and «France Intl. Psgr. Service Charge» and appear in the «Taxes, Fees and Charges» section of the fare, **not** in the «surcharges» or «carrier surcharges» section;
- 2.12. The Passenger Charges imposed on Petitioner are therefore not considered a «carrier surcharge» (or «surcharge») by Air Canada itself, and they are not «charges imposed by or with the authority of any government or governmental authority» or «*imposés par toute autorité gouvernementale*»; since they are imposed on passengers by Air Canada and not by a governmental authority;
- 2.13. Respondents therefore had no right to charge to Petitioner the Passenger Charges, and such charge was contrary to the Aeroplan Terms and Conditions;
- 2.14. Petitioner is accordingly entitled to claim, and hereby does claim, the amount of \$93.00, plus applicable taxes, in restitution of the Passenger Charges that he was illegally required to pay by Respondents;
- 2.15. 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, among others, to Respondents' false and misleading representations regarding the Passenger Charges and due to the fact that they illegally charged an amount greater than what was advertised by charging Passenger Charges that they were not allowed to impose under the Aeroplan Terms and Conditions;
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 flight tickets on Air Canada through the Aeroplan Program and was required to pay Passenger Charges, plus applicable taxes, as a result of departing from or transiting through one or several of the following airports:

- a. the Heathrow airport in London, UK;
 - b. the Charles de Gaulle airport in Paris, France;
 - c. the Lyon airport in Lyon, France;
 - d. the Frankfurt airport in Frankfurt, Germany;
 - e. the Munich airport in Munich, Germany;
 - f. the Copenhagen airport in Copenhagen, Denmark;
 - g. the Narita airport in Tokyo, Japan;
 - h. the Haneda airport in Tokyo, Japan.
- 3.2.** The Passenger Charges (also designated as Passenger Service Facilities Charges and Passenger Service Security Charges when departing from or transiting through the Tokyo Airports) paid by the Class members were illegally charged by Respondents since they are not a «surcharge imposed by an airline», nor a «charge imposed by or with the authority of any government or governmental authority» or, under the French version of paragraph 9 of Exhibit R-1, a charge *«imposé[e] par toute autorité gouvernementale»*;
- 3.3.** Indeed, all the European Airports charge fees to Air Canada for the use of the airport's facilities, equipment and services, and a portion of such fees are then passed on and charged back by Air Canada to its passengers as Passenger Charges;
- 3.4.** Air Canada does not consider such Passenger Charges to be a «surcharge imposed by an airline» (i.e., imposed by itself), since it always identifies airline surcharges under the heading «carrier surcharge» (or «surcharge») within the «Air Transportation –Charges» section of its fare, while Passenger Charges appear in the «Taxes, charges and fees» section of the fare;
- 3.5.** Furthermore, such Passenger Charges are not imposed with the authority of a «government or governmental authority» since they are imposed by Air Canada;
- 3.6.** Such charges are therefore illegally imposed by Respondents and are contrary to the Aeroplan Terms and Conditions;
- 3.7.** The Japanese Airports impose the Passenger Fees to the passengers directly. Such fees are not passed on and charged back to passengers by Air Canada, but are collected by Air Canada on behalf of the Japanese Airports;
- 3.8.** As a result, such Passenger Charges are not imposed by the airline, but by the airport authorities operating the Japanese Airports;

- 3.9. Furthermore, the airport authorities operating the Japanese Airports are private corporations acting under their own authority;
 - 3.10. Accordingly, the Passenger Charges imposed by the Japanese Airports are not «charges imposed by or with the authority of any government or governmental authority» either (as required by the Aeroplan Terms and Conditions), and Respondents had no right to impose such charges on the Class members under the Aeroplan Terms and Conditions;
 - 3.11. Each of the Class members therefore paid Passenger Charges which were neither «surcharges imposed by an airline» nor charges imposed «by or with the authority of any government or governmental authority» (or «*imposés par toute autorité gouvernementale*») and which Respondents therefore had no right to require them to pay, as per the Aeroplan Terms and Conditions;
 - 3.12. Accordingly, each of the Class members is entitled to be reimbursed for all Passenger Charges, plus applicable taxes, he or she was required to pay by Respondents;
 - 3.13. 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-6**;
 - 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-7**;
 - 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 required the payment of a Passenger Charge (a cautiously conservative proposition given that most of the Foreign Airports are among the busiest in the world), 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 ("CPP") 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 Passenger Charges 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 Passenger Charges, plus applicable taxes, that they were required to pay?
- 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 Passenger Charges 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 he represents;

8.2 CONDEMN Respondents, solidarily, to reimburse the totality of the Passenger Charges, plus applicable taxes, 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 he 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 he is ready, willing and able to manage the present class action in the interest of the Class members that he wishes to represent and he 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 his 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 his entourage that they were also affected by the same situation;
 - 9.7. 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 flight tickets through the Aeroplan Program during the Class period and who were required to pay Passenger Charges, (ii) the details of all such flights taken during the Class period by such Aeroplan members, (iii) the amounts of Passenger Charges 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 Robert Lamontagne 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 June 9, 2012, redeemed Aeroplan Miles, through the Aeroplan Program owned and/or operated by Aimia Canada inc. and Aimia inc., to purchase Air Canada flight tickets and who paid, with respect to such flights, Passenger Charges, and applicable taxes, as a result of departing from or transiting through the following airports (collectively the "Foreign Airports"):

- a. *the Heathrow airport in London, UK;*
- b. *the Charles de Gaulle airport in Paris, France;*
- c. *the Lyon airport in Lyon, France;*
- d. *the Frankfurt airport in Frankfurt, Germany;*
- e. *the Munich airport in Munich, Germany;*
- f. *the Copenhagen airport in Copenhagen, Denmark;*
- g. *the Narita airport in Tokyo, Japan;*
- h. *the Haneda airport in Tokyo, Japan.»*

e) That the principal questions of law and of fact to be dealt with collectively be identified as follows:

1. Were the Passenger Charges 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 Passenger Charges, plus applicable taxes, that they were required to pay?
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 he represents;

CONDEMN Respondents, solidarily, to reimburse the totality of the Passenger Charges, plus applicable taxes 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, June 9, 2015



SAVONITTO & ASS. INC.

Attorneys for Petitioner

COPIE CONFORME

SAVONITTO & ASS. INC.

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 **July 24, 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-7**:

- EXHIBIT R-1:** Terms and conditions of the Aeroplan Program (French and English versions);
- EXHIBIT R-2:** Printout of online Aeroplan account page of Robert Lamontagne;
- EXHIBIT R-3:** Flight confirmation dated February 18, 2014;
- EXHIBIT R-4:** Universally applied code list provided by Singaporean Airlines Limited;
- EXHIBIT R-5:** Flight reservation printout from Air Canada for the same flight as Petitioner's;
- EXHIBIT R-6:** Aimia Inc.'s 2012 Annual Report;
- EXHIBIT R-7:** Aeroplan Fact Sheet appearing on Respondents' website.

Montreal, June 9, 2015


SAVONITTO & ASS. Inc.
Attorneys for Petitioner


COPIE CONFORME
SAVONITTO & ASS. INC.

N° : 500-06-

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

ROBERT LAMONTAGNE, residing and domiciled at 38, rue
d'Ambroise, in the city of Blainville, Province of Quebec, J7B
1Y1

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 Montreal, province of Quebec, 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 Montreal, province of Quebec, H2Z 0B2

Respondents

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

COPY FOR SAVONITTO & ASS. INC.

Savonitto

468, rue St-Jean # 400
Montréal (Québec) H2Y 2S1
Tél. : 514-843-3125, #201

Fax. : 514-843-8344

Courriel : ms@savonitto.com

Courriel : ell@savonitto.com

Me Michel Savonitto

Me Emmanuel Laurin-Légaré

☎ : 50238-1

BS2448