

CANADA

SUPERIOR COURT
(Class action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.:500-06-000737-151

NORMAN PRINCE, [REDACTED]
[REDACTED]

Petitioner

vs

AVIS BUDGET GROUP, INC., a corporate
entity with a head office at [REDACTED]
[REDACTED]

and

AVISCAR, INC., a corporate entity with a
head office at [REDACTED]
[REDACTED]

and

BUDGETCAR, INC., a corporate entity with a
head office at [REDACTED]
[REDACTED]

and

THE HERTZ CORPORATION, a corporate
entity with a head office at [REDACTED]
[REDACTED]

and

HERTZ CANADA LIMITED, a corporate
entity with a head office at [REDACTED]
[REDACTED]

and

ENTERPRISE HOLDINGS, INC., a corporate
entity with a head office at [REDACTED]
[REDACTED]

and

**ENTERPRISE RENT-A-CAR CANADA
COMPANY,** a corporate entity with a head
office at [REDACTED]
[REDACTED]

and

ALAMO RENT A CAR, a corporate entity
with a head office at [REDACTED]

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

**IN SUPPORT OF HIS MOTION FOR PERMISSION TO INSTITUTE A CLASS ACTION AND
OBTAIN THE STATUS OF A REPRESENTATIVE, PETITIONER RESPECTFULLY
SUBMITS AS FOLLOWS:**

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following Group, of which he is a member, namely:

"All residents in Quebec, who rented a vehicle from one of the Respondents from March 2009 onwards, and paid a vehicle licensing fee, concession recovery fee, energy recovery fee, customer facility fee, tire management fees, or other fees (the "Surcharges")".
2. Avis Budget Group, Inc., Aviscar, Inc., Budgetcar, Inc., The Hertz Corporation, Hertz Canada Limited, Enterprise Holdings, Inc., Enterprise Rent-A-Car Canada Company, and Alamo Rent A Car, operate vehicle rental agencies in Canada (hereinafter, collectively referred to as "Respondents");
3. The Respondents offer and carry on business in the Province of Québec and throughout Canada, deriving revenue as a result of their presence and providing services located in Québec and throughout Canada;
4. Aviscar, Inc. and Budgetcar, Inc., along with their parent company Avis Budget Group, Inc. (hereinafter, collectively referred to as "Avis"), operates a car rental company in Canada. Avis has over 180 offices in Canada and in 2013, generated total revenues of \$7.937 billion;
5. Hertz Canada Limited, along with its parent company The Hertz Corporation (hereinafter, collectively referred to as "Hertz"), also operate a vehicle rental company in Canada. Hertz has over 100 offices in Canada and in 2013, generated total revenues of \$10.771 billion;

6. Enterprise Rent-A-Car Canada Company and Alamo Rent A Car, along with its parent company, Enterprise Holdings, Inc. (hereinafter, collectively referred to as "Enterprise"), also operate a vehicle rental company in Canada. Enterprise has over 500 offices in Canada and in 2014, generated total revenues of \$17.8 billion;

MISREPRESENTATION

7. The Respondents have engaged in deceptive marketing practices;
8. The Respondents have negligently and deceitfully misrepresented and failed to disclose that in addition to the base price to rent a vehicle, there were additional Surcharges that are part of the vehicle rental agreement;
9. The additional Surcharges are known to the Respondents at the time they make their price or discounted representations to the public, however, they exclude these Surcharges from the advertised price;
10. The Respondents knew or ought to have known that their acts and omissions were causing their customers and the public to falsely believe that the advertised base price to rent a vehicle would be the actual price of renting that vehicle, when in fact, that base price was unattainable;
11. The promotional materials and representations of the Respondents are or have been silent, ambiguous, or materially misleading concerning the nature of the Surcharges, and were designed to mislead the Petitioner and Class members as to the actual price of renting a vehicle;
12. Since at least March 2009, all of the Respondents have adopted the practice of adding Surcharges to the cost of renting a vehicle;
13. According to the Respondents, these Surcharges were taxes, surcharges and fees that governments and agencies require the Respondents to collect from consumers. This was a false and misleading representation;
14. In reality, the Surcharges are not charges that governments and authorized agencies require the Respondents to collect from consumers. The Surcharges are charges the Respondents choose to impose on consumers in order to recoup part of their own cost of doing business;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

15. The Petitioner, Norman Prince, resides in the city of Montréal in the Province of Québec;
16. On January 7, 2015, Mr. Prince rented a Nissan Versa sedan from Alamo Rent A Car, located at 1200 Stanley, Montreal, Quebec, H3B2S8;
17. The Petitioner paid a base price of \$115.99 for a term of one (1) week. In addition to the base price, the Petitioner paid surcharges in the amount of \$26.40, which includes a Regional Tire Recovery Fee of \$19.74 and a Vehicle License Fee of \$9.66, the

whole as it appears in a copy of a reservation confirmation from Alamo, communicated herewith as **Exhibit P-1**;

18. On February 2, 2015, Mr. Prince rented a Chrysler 200 sedan from Budgetcar, Inc., located at 8960 Boul Langelier, Saint Leonard, Quebec, H1P 3C8;
19. The base price for the vehicle rental was \$585.00 for a term of approximately one (1) month (from February 2, 2015 to March 4, 2015). In addition, the Petitioner paid surcharges in the amount of \$181.94, which includes an Energy Recovery Fee of \$27.44, Vehicle License of \$57.30, and a Tire Management Fee of \$97.20, the whole as it appears in a copy of a reservation confirmation from Budget, communicated herewith as **Exhibit P-2**;
20. On March 3, 2015, Mr. Prince rented a Fiat 500 from Enterprise Rent-A-Car Canada Company, located at 7740 rue du Mans, Saint-Léonard, Quebec, H1S 1Z9;
21. The base price for the vehicle rental was \$29.37 for three (3) days. In addition to the base price, Mr. Prince paid Surcharges in the amount of \$12.60, which includes a Vehicle License Fee of \$4.14 and a Regional Tire Recovery Fee of \$8.46, the whole as it appears in a copy of an invoice from Enterprise Rent-A-Car Canada, communicate herewith as **Exhibit P-3**;
22. The Respondents consistently provided insufficient, deficient, deceitful, and misleading information with respect to the nature of these Surcharges;
23. The Respondents were misrepresenting the actual cost of renting vehicles by implying that these Surcharges were government taxes, surcharges, and fees, when in fact, they were not; the Respondents impose these Surcharges to recoup part of their own cost of doing business;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

24. The claims of each Group Member are founded on very similar facts to the Petitioner's claim;
25. Each Group Member rented a vehicle from one of the Respondents and were forced to pay the following Surcharges in addition to the advertised price:
 - a) Aviscar, inc.
 - i) Concession Recovery Fee \$7.37 per rental;
 - ii) Energy Recovery Fee \$0.98 per day;
 - iii) Customer Facility Fee \$5.50 per day;
 - iv) Other Fees in the amount of \$1.39,

as it appears more fully in a copy of sample car rental agreement with Avis, communicated herewith as **Exhibit P-4**;

- b) Budgetcar, inc.
 - i) Vehicle Licensing Fee \$1.91 per day
 - ii) Energy Recovery Fee \$0.98 per day
 - iii) Tire Management Fee \$3.24 per day
- c) Hertz
 - i) Vehicle Licensing and Air Conditioning Surcharge Recovery \$1.41 per day
 - ii) Concession Recovery Fee \$4.37 per rental
 - iii) Energy Surcharge \$0.88 per day
 - iv) Customer Facility Charge \$5.50 per day

the whole as appears more fully from a sample car rental agreement with Hertz, communicated herewith as **Exhibit P-5**;

- d) Enterprise Rent-A-Car Canada Company
 - i) Vehicle License Fee \$1.38 per day
 - ii) Regional Tire Recovery Fee \$2.82 per day
- e) Alamo Rent A Car
 - i) Regional Tire Recovery Fee \$2.82 per day
 - ii) Vehicle License Fee \$1.38 per day

26. The Surcharges were deceitfully represented as charges imposed by governments and authorized agencies, when in fact, they were not;
27. The Respondents choose to impose the Surcharges on consumers to recoup part of their own cost of doing business, and as a result, consumers end up paying higher prices or receiving lower discounts than advertised;
28. Each Group Member is seeking damages in the amount of the Surcharges that were paid to the Respondent Companies and punitive or exemplary damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

29. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;
30. The number of persons included in the Group is estimated to be in the hundreds of thousands;

31. The names and addresses of all persons included in the Group are not known to the Petitioner, however, are in the possession of the Respondents;
32. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondents;
33. Even if the Group Members could afford such individual litigation, the Court system could not as it would be overloaded;
34. 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;
35. The recourses of the Members raise identical, similar or related questions of fact or law, namely:
 - a) Did the Respondents engage in false and/or misleading advertising?
 - b) Were the Respondents required by governments and authorized agencies to impose the Surcharges?
 - c) Did Respondents mislead the Group Members regarding the nature of the Surcharges?
 - d) Were the prices advertised by the Respondents misleading or deceptive?
 - e) Are the Group Members entitled to compensatory damages and, if so, in what amount?
 - f) Are the Group Members entitled to punitive or exemplary damages, and if so, in what amount?
36. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

37. The action the Petitioner wishes to institute for the benefit of the members of the Group is an action for damages;
38. The conclusions that Petitioner wishes to introduced by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to pay to the members of the Group compensatory damages, plus interest as well as the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to every Group Member, in an amount to be determined by the Court, with interest as well as the additional indemnity;

GRANT the class action of Plaintiff on behalf of all members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Québec and with full costs and expenses including expert's fees and publication fees to advise members;

39. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Group Members, including Petitioner, are domiciled in the District of Montreal;
 - b) Respondents conducted business in the District of Montreal;
 - c) Petitioner's legal counsel practice in the District of Montréal;
40. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the Group, since Petitioner:
- a) rented vehicles from three of the Respondent Companies, and paid the Surcharges;
 - b) was misled into paying Surcharges as a result of the Respondents providing insufficient, deficient, deceitful, fraudulent or misleading information to its customers with respect to the nature of these Surcharges;
 - c) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
 - d) is available to dedicate the time necessary for the present proceedings and to collaborate with Class attorneys in this regard; and
 - e) does not have interests that are antagonistic to those of other members of the Group;

41. The present motion is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

ASCRIBE the Petitioner the status of representative of the persons included in the Group herein described as:

"All residents in Quebec, who rented a vehicle from one of the Respondents from March 2009 onwards, and paid a vehicle licensing fee, concession recovery fee, energy recovery fee, customer facility fee, tire management fees, or other fees (the "Surcharges")".

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents engage in false and/or misleading advertising?
- b) Were the Respondents required by governments and authorized agencies to impose the Surcharges?
- c) Did Respondents mislead the Group Members regarding the nature of the Surcharges?
- d) Were the prices advertised by the Respondents misleading or deceptive?
- e) Are the Group Members entitled to compensatory damages and, if so, in what amount?
- f) Are the Group Members entitled to punitive or exemplary damages, and if so, in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to pay to the members of the Group compensatory damages, plus interest as well as the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount in punitive and/or exemplary damages to every Group Member, in an amount to be determined by the Court, with interest as well as the additional indemnity;

GRANT the class action of Plaintiff on behalf of all members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Québec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the members;

ORDER the publication of a notice to the members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

Montréal, April 7, 2015

(s) Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for Petitioner

CERTIFIED COPY

Merchant Law Group LLP
Attorneys for Petitioner