

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

**SUPERIOR COURT**  
(Class Action)

NO. 500-06-000895-173

**EMANUEL FARIAS**

Petitioner

vs.

**FEDERAL EXPRESS CANADA  
CORPORATION dba FEDEX EXPRESS,**  
a legal person, duly constituted according  
to law, having an establishment at 1 Place  
Ville-Marie, in the City of Montreal,  
Province of Quebec, H3B 3Y1

Respondent

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Articles 574 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. The Petitioner wishes to institute a class action on behalf of the class of persons hereinafter described, namely:**

"All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality in Canada or, in the alternative, Quebec who, since September 21, 2017, were charged customs duties and/or processing fees collected by Federal Express Canada Corporation dba FedEx Express ("**FedEx**"), in respect of the import of any goods originating from a European Union country (the "**EU**") or a beneficiary of the Canada-European Union Comprehensive Economic and Trade Agreement ("**CETA**")."

(the "**Class**");

2. **The Petitioner's personal claim against the Respondent is based on the following facts:**

2A. **The Parties**

- 2.1. The Petitioner is a natural person, domiciled and residing in the Province of Quebec, District of Montreal;
- 2.2. At all relevant times, FedEx provided services to consumers and businesses throughout Canada, including Quebec and has its headquarters located in Halifax, Nova Scotia, the whole as appears from a CIDREQ report communicated herewith as **Exhibit R-1**;
- 2.3. FedEx holds itself out as the world's largest express transportation company and is part of the larger FedEx Corporation group, which reports corporate-wide consolidated revenues over USD\$60 billion in fiscal 2017 alone. For its part, FedEx reports annual revenues for fiscal 2017 of USD\$34.8 billion, the whole as appears from an excerpt from the 2017 annual report of FedEx Corporation and a page from the FedEx website communicated herewith *en liasse* as **Exhibit R-2**;
- 2.4. FedEx and others within the FedEx Corporation group serve 228 countries and handle more than 8.5 million shipments daily. FedEx also has 61 stations, 3 call centers and 1,141 drop-off locations throughout Canada, including Quebec, notably at 1 Place Ville Marie in Montreal, Quebec, H3B 3Y1, the whole as appears more fully from the FedEx fact sheet and other excerpts from FedEx's website, [www.fedex.com](http://www.fedex.com), communicated herewith *en liasse* as **Exhibit R-3**;

2B. **Respondent's Unlawful Conduct**

**Violation of CETA**

- 2.5. CETA provides that no tariffs or customs duties are to be imposed on goods originating from an EU country or other CETA beneficiary which are imported into Canada. Petitioner refers to, without limitation, Chapter 2, Annex 2-A of CETA;
- 2.6. As appears from the attached Government of Canada News Release communicated herewith as **Exhibit R-4**, nearly all provisions of CETA came into effect as of September 21, 2017, such that 98% of tariff lines for goods originating from the EU or other CETA beneficiary and imported into Canada became duty free as and from such date;
- 2.7. The News Release (Exhibit R-4) goes on to state that: "Canadians, including Canadian business owners of all sizes and from all sectors are poised to benefit from unprecedented access to the EU market of half a



billion customers, with a GDP of \$22 trillion and procurement opportunities worth \$3.3 trillion. This is great news for Canada's economy and will make a positive difference for the middle class";

- 2.8. As appears from a Government of Quebec website, the Quebec government has also welcomed the entry into force of CETA, touting it as a "major diplomatic, political and economic gain for Québec, which played a decisive role in the Canada-EU negotiations", the whole as appears from the excerpt communicated herewith as **Exhibit R-5**;
- 2.9. Another Government website, [www.international.gc.ca](http://www.international.gc.ca), reports that "Quebec stands to benefit significantly from preferential access to the EU market. The EU is already Quebec's second-largest export destination and second- largest trading partner", the whole as appears from an excerpt of such website communicated herewith as **Exhibit R-6**;
- 2.10. Notwithstanding the coming into force of CETA on September 21, 2017, FedEx has continued to systematically charge and collect custom duties and/or processing fees from members of the Class, including Petitioner, in respect of imported goods originating from the EU or other beneficiaries of CETA, the whole as appears more fully from the invoice issued by FedEx to Petitioner (the "**Invoice**") communicated herewith as **Exhibit R-7**;
- 2.11. As appears from the purchase order form and invoice issued by Berg & Berg for the goods (men's clothing) ordered by Petitioner online at [shop@bergbergstore.com](mailto:shop@bergbergstore.com), such goods originated from the EU and as such, should have been exempt from duties and/or processing fees, the whole as appears more fully from the order confirmation form and Berg & Berg's invoice communicated herewith *en liasse* as **Exhibit R-8**;
- 2.12. As appears from the Invoice (R-7), any party who accepts a shipment from FedEx is deemed to have appointed the latter as its agent for the performance of customs clearance, unless a party previously advises otherwise in writing;
- 2.13. The Invoice (R-7) also reflects that FedEx charges and collects both customs duties and a processing fee for collecting and purportedly forwarding duties and taxes to the Canadian Border Services Agency ("**CBSA**") on behalf of the party accepting shipment;
- 2.14. Furthermore, the Invoice (R-7) provides that all customs duties and processing fees are due by the receiving party *immediately* upon delivery of the goods, given that FedEx alleges it has already, by that time, "paid duties/taxes and GST to Canada Customs and Revenue Agency ("**CCRA**")" on behalf of said party;
- 2.15. As appears from the Invoice (R-7), the Petitioner is an individual who paid \$66.72 in purported customs duties as well as a \$10.00 processing "ROD"



fee for goods originating from the EU and delivered to his domicile in the Town of Mount-Royal, Quebec. See also Exhibit R-8 and the attached photos communicated herewith *en liasse* as **Exhibit R-9**;

- 2.16. Petitioner has learned that FedEx charged and collected from other members of the Class customs duties and processing fees in respect of purchases of imported goods originating in the EU as well, such that Petitioner understands that FedEx has systematically acted unlawfully by charging and collecting customs duties from the Class members which were not due, and by charging and collecting processing fees in order to purportedly remit the customs duties to the CBSA;
- 2.17. Petitioner and all members of the Class have therefore been unlawfully charged and had to pay customs duties and/or processing fees to Respondent, the whole contrary to CETA;
- 2.18. As appears more fully below, the charging and collecting by FedEx of customs duties and/or processing fees in relation to goods originating from the EU or other CETA beneficiaries and imported into Canada, including Quebec, is not only a violation of CETA, but also of the Consumer Protection Act ("**CPA**");

#### **Violations of the CPA**

- 2.19. At all relevant times, FedEx has been a "Merchant", whose contracts with Quebec consumers are governed by the CPA;
- 2.20. By charging and collecting customs duties and/or processing fees contrary to CETA, Respondent has violated, *inter alia*, sections 216, 219, 227.1, and 228 of the CPA;
- 2.21. More particularly, but without limitation, the Invoice issued to the Petitioner fails to comply with the CPA in that FedEx charged Petitioner and other members of the Class customs duties and processing fees which are, in light of CETA, not owing;
- 2.22. The foregoing breaches of the CPA also give rise to a claim for punitive damages pursuant to section 272 thereof on behalf of "consumers" (as defined in the CPA) who are members of the Class;
- 2.23. As such, for the period beginning as and from September 21, 2017 onwards (the "**Class Period**"), Respondent breached the CPA;

#### **2C. The Respondent's Liability**

- 2.24. Pursuant to CETA, Respondent has no legal right to charge or collect customs duties and related processing fees when such customs duties and processing fees are not applicable or owed as a result of CETA;

- 2.25. The Petitioner is accordingly entitled to claim reimbursement of customs duties and fees paid to Respondent and Respondent is, in turn, required to reimburse Petitioner \$66.72 in customs duties and \$10.00 in fees plus any applicable taxes thereon;
- 2.26. Petitioner is also entitled to claim, on behalf of the members of the Class, collectively, reimbursement of all customs duties and fees paid to Respondent that Respondent was not legally entitled to charge;

## **2D. The Remedies**

- 2.27. Given that the customs duties and processing fees charged and collected by Respondent during the Class Period were charged and collected in violation of CETA, Petitioner is entitled to claim and does hereby claim that the members of the Class be reimbursed, collectively, for all such customs duties and fees charged and collected by Respondent;
- 2.28. For the fiscal 2017 year, FedEx reported consolidated revenue of over USD \$60 billion, the whole as appears from Exhibit R-2;
- 2.29. The Petitioner accordingly estimates that Respondent has, during the Class Period, unlawfully collected significant amounts from members of the Class and the Petitioner seeks to recover, collectively, all such amounts which Respondent has unlawfully collected;
- 2.30. The Petitioner estimates, *sauf à parfaire* upon receipt of the Respondent's records, that the Respondent has unlawfully charged and collected in excess of \$40 million in customs duties and processing fees;
- 2.31. The Petitioner further claims punitive damages from Respondent arising from its breaches of the CPA, thereby adversely affecting Quebec consumers;
- 2.32. In light of the number of consumers likely affected, the fact that Respondent has breached CETA and the CPA during the Class Period and continues to do so, and considering the patrimonial situation of Respondent, the Petitioner seeks an order of this Honourable Court condemning Respondent to pay punitive damages in the minimum amount of \$20 million, *sauf à parfaire*, to be recovered collectively;

## **3. The personal claims of each of the members of the class against Respondent are based on the following facts:**

- 3.1. All members of the Class are in the same situation as the Petitioner in that they all paid customs duties which were not owed in virtue of CETA, as well as processing fees to Respondent during the Class Period;



- 3.2. Accordingly, each member of the Class is entitled to be reimbursed for customs duties and processing fees which were not owed, thereby recovering from Respondent all such amounts unlawfully collected;
4. **The composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings:**
    - 4.1. To the best of Petitioner's knowledge, Respondent has imported and delivered a substantial number of packages throughout the Province of Quebec, and throughout Canada, to thousands of recipients which contain goods originating in the EU or other beneficiaries under CETA and which are tariff-free in accordance with CETA;
    - 4.2. Respondent is in possession of the data regarding those parties in Quebec and Canada who have accounts with it or who have, during the Class Period, received goods originating from the EU or other beneficiaries under CETA and who have been charged and paid customs duties and processing fees. The Petitioner does not have access to this data;
    - 4.3. It would, accordingly, be impossible, and certainly difficult or impracticable, for the Petitioner to locate and contact all members of the Class to obtain a mandate to institute proceedings for their benefit or for there to be a consolidation of proceedings;
  5. **The identical, similar or related questions of law or of fact between each member of the class and the Respondent, which Petitioner wishes to have decided by this class action, are:**
    - 5.1. Was/is Respondent entitled to charge and collect customs duties and/or processing fees from members of the Class who purchased goods originating in the EU or other CETA beneficiary after the coming into force of CETA?
    - 5.2. Did Respondent, in charging and collecting customs duties and/or processing fees during the Class Period, breach the terms of CETA?
    - 5.3. Is Respondent a "Merchant" governed by the CPA?
    - 5.4. Are certain members of the Class consumers governed by the CPA?
    - 5.5. Did Respondent fail to comply with the requirements of the CPA by charging and collecting, during the Class Period, customs duties and processing fees from members of the Class who purchased goods originating in an EU country or other CETA beneficiaries under CETA?
    - 5.6. If Respondent failed to comply with the requirements of the CPA in charging and collecting such customs duties and processing fees during the

Class Period, is the Petitioner entitled to recover the amounts so charged to and paid by the members of the Class to Respondent?

- 5.7. How much money did Respondent collect from members of the Class collectively for customs duties and processing fees during the Class Period?
  - 5.8. Is Respondent liable to pay punitive damages to consumer members of the Class for their repeated breaches of the CPA and if so, what amount of punitive damages should Respondent be condemned to pay, collectively?
6. **The questions of law or of fact which are particular to each of the members of the class are:**
- 6.1. The only individual or particular question for the members of the Class is determining the specific amount paid to Respondent by each member of the Class for customs duties and processing fees during the Class Period;
7. **It is expedient that the institution of a class action for the benefit of the members of the class be authorized for the following reasons:**
- 7.1. A class action is the best procedural vehicle available to members of the Class in order to protect and enforce their rights herein;
  - 7.2. A class action is the best, and likely the only, means for a multitude of Class members, which includes consumers under the CPA, to seek justice from Respondent, arising from its violation of CETA and the CPA;
  - 7.3. Respondent's violation of CETA and the CPA is identical for each and every member of the Class, the questions of law and of fact are identical for each member of the Class, and the legal issues accordingly ought to be determined by a single Judge within a single judicial proceeding in order to avoid a multitude of proceedings and the risk of contradictory judgments;
8. **The nature of the recourse which the Petitioner wishes to exercise on behalf of the members of the class is:**
- 8.1. An Action to recover monies collected by Respondent in violation of CETA and the CPA and to condemn Respondent to the payment of punitive damages;
9. **The conclusions sought by the Petitioner against the Respondent are as follows:**
- GRANT** the class action against the Respondent;
- CONDEMN** the Respondent to pay to the Petitioner, for the benefit of the Class, the total amount of customs duties and processing fees that Respondent collected from



Class members during the Class Period for delivery of goods originating from the EU or other CETA beneficiary, to be recovered collectively, the whole with interest and the additional indemnity provided by law, said amount currently estimated to be \$40 million, *sauf à parfaire*;

**CONDEMN** the Respondent to pay punitive damages in the minimum amount of \$20 million, *sauf à parfaire*, the whole with interest and the additional indemnity provided by law;

**ORDER** collective recovery of the total amount of the claims herein;

**ORDER** that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 599 to 601 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

**CONDEMN** the Respondent to any further relief as may be just and proper;

**THE WHOLE** with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

10. **Petitioner is in a position to represent the members of the class adequately for the following reasons:**

- 10.1. Petitioner is an individual, domiciled and residing in the Province of Quebec;
- 10.2. Petitioner is a member of the Class, in that during the Class Period, he was charged and paid customs duties and processing fees to the Respondent in respect of imported goods originating from a EU country;
- 10.3. Petitioner has learned that the Respondent has, during the Class Period, unlawfully charged other members of the Class customs duties and processing fees, as they did him, and accordingly believes that Respondent has systematically violated CETA and the CPA and has thereby detrimentally affected the rights of consumers and other members of the Class;
- 10.4. Petitioner, with the undersigned attorneys, is prepared to devote the time to communicate with numerous members of the Class, in order to inform them of the present class action (the "**Action**") and to inform them of their rights;
- 10.5. Petitioner is not in a conflict with any member of the Class;
- 10.6. Petitioner has the resources to advance the present class action in the best interests of the members of the Class;



- 10.7. Petitioner is in good faith and is interested in protecting and advancing the rights of consumers and other members of the Class;
  - 10.8. Petitioner is well-informed of and understands the facts giving rise to the present Action and the nature of the present Action;
  - 10.9. Petitioner is determined to devote the time necessary to act as the representative of the Class in this Action;
  - 10.10. Petitioner has retained competent counsel with experience in class actions, and has met with class counsel for purposes of the present Action;
  - 10.11. Petitioner has fully cooperated with the undersigned attorneys, including answering diligently and intelligently their questions, and there is every reason to believe that he will continue to do so;
  - 10.12. Petitioner will fairly and adequately represent and protect the rights of the members of the Class and will take measures with the undersigned attorneys to keep the members of the Class informed of the present Action.
11. **Petitioner suggests that the class action be brought before the Superior Court for the district of Montreal for the following reasons:**
- 11.1. Petitioner is domiciled in the District of Montreal;
  - 11.2. To the best of Petitioner's knowledge, a significant number of members of the Class are domiciled in the City of Montreal, Quebec's most populous city;
  - 11.3. Petitioner's undersigned attorneys practice in the District of Montreal;
12. The present Motion is well-founded in fact and in law;

**WHEREFORE THE PETITIONER PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present Application;

**AUTHORIZE** the institution of the class action;

**GRANT** the status of representative to Petitioner for the purpose of instituting the said Class action for the benefit of the following group of persons, namely:

"All natural persons, legal persons established for a private interest, partnerships and associations or other groups not endowed with judicial personality in Canada or, in the alternative, Quebec who, since September 21, 2017, were charged customs duties and/or processing fees collected by Federal Express Canada Corporation dba FedEx

Express (“**FedEx**”), in respect of the import of any goods originating from a European Union country (the “**EU**”) or a beneficiary of the Canada-European Union Comprehensive Economic and Trade Agreement (“**CETA**”).”

(the “**Class**”);

**IDENTIFY** the principal questions of law and of fact to be dealt with collectively as follows:

1. Was/is Respondent entitled to charge and collect customs duties and/or processing fees from members of the Class who purchased goods originating in the EU or other CETA beneficiary after the coming into force of CETA?
2. Did Respondent, in charging and collecting customs duties and/or processing fees during the Class Period, breach the terms of CETA?
3. Is Respondent a “Merchant” governed by the CPA?
4. Are certain members of the Class consumers governed by the CPA?
5. Did Respondent fail to comply with the requirements of the CPA by charging and collecting, during the Class Period, customs duties and processing fees from members of the Class who purchased goods originating in an EU country or other CETA beneficiaries under CETA?
6. If Respondent failed to comply with the requirements of the CPA in charging and collecting such customs duties and processing fees during the Class Period, is the Petitioner entitled to recover the amounts so charged to and paid by the members of the Class to Respondent?
7. How much money did Respondent collect from members of the Class collectively for customs duties and processing fees during the Class Period?
8. Is Respondent liable to pay punitive damages to consumer members of the Class for their repeated breaches of the CPA and if so, what amount of punitive damages should Respondent be condemned to pay, collectively?

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

**GRANT** the Class Action against the Respondent;



**CONDEMN** the Respondent to pay to the Petitioner, for the benefit of the Class, all amounts owing to the Class, the whole with interest and the additional indemnity provided by law;

**CONDEMN** the Respondent to pay punitive damages in the minimum amount of \$20 million, *sauf à parfaire*, the whole with interest and the additional indemnity provided by law;

**ORDER** collective recovery of the total amount of the claims herein;

**ORDER** that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 599 to 601 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

**CONDEMN** the Respondent to any further relief as may be just and proper;

**THE WHOLE** with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

**DECLARE** 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;

**FIX** the delay for exclusion from the Class 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;

**ORDER** the publication of a notice to the members of the Class drafted according to the terms of form VI of the Rules of Practice of the Superior Court of Quebec and to be published:

1. In the following newspapers: La Presse, Le Journal de Montréal, The Gazette, Le Devoir, Le Soleil, The Globe and Mail, and National Post;
2. On the internet site of the Respondent, [www.fedex.com](http://www.fedex.com), and the website of the attorneys for Petitioner with a hypertext entitled "Avis aux membres d'une action collective, Notice to all Class Action Members" prominently displayed on Respondent's website and to be maintained thereon until the Court orders publication of another notice to members by final judgment in this instance or otherwise;

**ORDER** the Respondent to provide to Class counsel, in electronic form, a list containing the names and last known coordinates of all members of the Class, as well as the customs duties and processing fees that each Class member paid during the Class Period;

**REFER** the record 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;

**ORDER** the Clerk of this Court, in the event that the Class action is to be brought in another district, upon receiving the decision of the Chief Justice, to transmit the present record to the Clerk of the district so designated;

**THE WHOLE** with legal costs, including the costs of all publications of notices.

MONTREAL, December 8, 2017

*Kugler Kandestin LLP*

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**KUGLER KANDESTIN LLP**

Attorneys for Petitioner

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**NOTICE OF PRESENTATION**

TO: **FEDERAL EXPRESS CANADA CORPORATION**  
**dba FEDEX EXPRESS**  
1 Place Ville-Marie  
Montreal, Quebec, H3B 3Y1

TAKE NOTICE of the foregoing Application for Authorization to Institute a Class Action and to Obtain the Status of Representative attached hereto and that same will be presented for adjudication before one of the Judges of this Honourable Court, sitting in and for the Judicial District of Montreal, in **Room 2.16** of the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montreal, Quebec, on **March 26, 2018, at 9:00 a.m.**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 8, 2017

*Kugler Kandestin LLP*

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CANADA  
PROVINCE OF QUEBEC  
  
DISTRICT OF MONTREAL

**SUPERIOR COURT**  
(Class Action)

NO.: 500-06-

**EMANUEL FARIAS**

Petitioner

vs.

**FEDERAL EXPRESS CANADA  
CORPORATION dba FEDEX EXPRESS**

Respondent

**PETITIONER'S LIST OF EXHIBITS**

- EXHIBIT R-1:** CIDREQ report;
- EXHIBIT R-2:** Excerpt from the 2017 annual report of FedEx Corporation and a page from the FedEx website, *en liasse*;
- EXHIBIT R-3:** FedEx fact sheet and other excerpts from FedEx's website, *en liasse*;
- EXHIBIT R-4:** Government of Canada News Release;
- EXHIBIT R-5:** Excerpt from the Government of Quebec website;
- EXHIBIT R-6:** Excerpt from Government website;
- EXHIBIT R-7:** Invoice issued by FedEx to Petitioner;
- EXHIBIT R-8:** Order confirmation form and Berg & Berg's invoice, *en liasse*;
- EXHIBIT R-9:** Photos, *en liasse*;

MONTREAL, December 8, 2017

*Kugler Kandestin LLP*

**KUGLER KANDESTIN LLP**

Attorneys for Petitioner

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