

**SUPERIOR COURT
(Class Action)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-000910-188

JENNIFER BALABANIAN

Plaintiff

v.

PAYPAL CANADA CO.

-and-

PAYPAL CA LIMITED

-and-

PAYPAL HOLDINGS INC.

Defendants

**APPLICATION OF THE DEFENDANTS IN DECLINATORY EXCEPTION
(Article 167 CCP, 3148 CcQ)**

**TO THE CASE MANAGEMENT JUDGE TO BE APPOINTED HEREIN, THE DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:**

A. Introduction

1. The Defendants hereby respectfully seek the dismissal of the *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff*, dated February 28, 2018 (the "**Application**"), as pertaining to the claims of the non-consumer Class Members who were subject to the User Agreements spanning from July 9, 2008, to June 30, 2015, inclusively, due to the absence of jurisdiction of the Quebec Courts.

B. The Procedural Context

2. In the Application, the Plaintiff seeks leave from this Court to institute a class action against the Defendants on behalf of the following group:

“All Quebec residents who, from the date upon which the Defendants began performing currency conversions in Quebec, purchased goods or services using the Defendant’s payment system in a currency other than the currency in which the goods or services were offered for sale (the “**Transaction Class**”); and

All Quebec consumers who, from the date upon which the Defendants began performing currency conversions in Quebec, purchased goods or services using the Defendants’ payment system in a currency other than the currency in which the goods or services were offered for sale (the “**Transaction Consumer Sub-Class**”); and

All Quebec residents who held accounts with PayPal Canada, who, from the date upon which the Defendants began performing currency conversions in Quebec, withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring the funds to the individuals’ linked bank accounts and credit cards (the “**Withdrawal Class**”); and

All Quebec consumers who held accounts with PayPal Canada, who, from the date upon which the Defendants began performing currency conversions in Quebec, withdrew funds from their accounts that the Defendants converted to Canadian dollars before transferring the funds to the individuals’ linked bank accounts and credit cards (the “**Withdrawal Consumer Sub-Class**”).”

3. The Plaintiff, in her Application, alleges three main reproaches against the Defendants:
 - (a) That the Defendants charged Undisclosed FX Transaction Fees when undertaking the currency conversion in respect of all purchases made using their payment systems;
 - (b) That the Defendants did not permit the putative Class Members, upon checkout, to elect to have their credit card issuer perform the currency conversion for their transactions; and
 - (c) That the Defendants unilaterally and automatically converted any foreign currency held by PayPal accountholders upon withdrawal and that the Defendants charged Class Members Undisclosed FX Withdrawal Fees upon this conversion.
4. The Plaintiff’s action is rooted in contractual claims, as well as claims pursuant to the *Competition Act* and the *Consumer Protection Act*.
5. The Plaintiff is seeking reimbursement of:
 - (a) alleged undisclosed fees charged by the Defendants in connection with the exchange of currency in transactions effected using the Defendants’ payment system;
 - (b) alleged undisclosed fees in connection with the exchange of foreign currency upon withdrawal of funds from accounts held with the Defendants;

Or, in the alternative:

- (c) an accounting and disgorgement of all profits the Defendants earned in connection with foreign exchange transactions in respect of the Class Members.
6. The Plaintiff is also claiming \$2 million in punitive damages on behalf of the Transaction Consumer Sub-Class and the Withdrawal Consumer Sub-Class pursuant to the *Consumer Protection Act*.

C. Declinatory Exception

7. As described above, the Plaintiff purports to represent a class containing both consumers and non-consumers for an undefined class period.
8. The Defendants respectfully submit that as it concerns non-consumer putative Class Members who were subject to the User Agreements spanning July 9, 2008, to June 30, 2015, inclusively, the Plaintiff has brought her in action before the wrong Court.
9. By way of the *Amended Application of the Defendants for Leave to Adduce Relevant Evidence* and the Affidavit of Amy Stohlman, Exhibit D-2, Defendants seek leave to file the User Agreements.
10. During the relevant period, from July 9, 2008, to June 30, 2015, it was PayPal CA Limited, whose head office was located in New Brunswick, as appears from Exhibit P-2, who provided the online payment services to putative Class Members, as appears from the User Agreements applicable from July 9, 2008, to June 30, 2015, Exhibits AS-4 to AS-28.
11. As appears from said User Agreements applicable from July 9, 2008, to June 30, 2015, Exhibits AS-4 to AS-28, users agreed that any claim or dispute must be resolved by a court located in New Brunswick, Canada, and agreed to submit to the personal jurisdiction of the courts in New Brunswick.
12. In light of the above, the Quebec Courts are not competent to hear the claims of the non-consumer putative Class Members who were subject to the User Agreements applicable between July 9, 2008, to June 30, 2015, Exhibits AS-4 to AS-28, as the parties have chosen by agreement to submit their disputes between themselves to a foreign authority.
13. Defendants therefore seek the dismissal of the claims of the non-consumer putative Class Members who were subject to the User Agreements applicable between July 9, 2008, to June 30, 2015 due to the lack of jurisdiction of this Honourable Court.
14. The present application is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

DISMISS the *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* with regard to the claims of the non-consumer putative Class

Members subject to the User Agreements spanning from July 9, 2008, to June 30, 2015, on the grounds that the Superior Court is without jurisdiction;

THE WHOLE without cost, unless contested.

Montreal, this August 30, 2018

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