

CANADA  
Province of Québec  
District: Montréal  
Locality: Montréal  
File No.:500-06-000895-173

SUPERIOR COURT  
Class Action Division

**EMANUEL FARIAS**

Plaintiff

v.

**FEDERAL EXPRESS CANADA CORPORATION dba  
FEDEX EXPRESS**

Defendant

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**FIRST CASE PROTOCOL (in civil matters)  
PRESENTATION PAGE  
Superior Court of Québec, Montréal Division**

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1. You are **required to complete** this page when filing the **first case protocol** in the record of the Court.  
(**Do not complete this presentation page** if you are filing a proposed case protocol or an amended case protocol).
  2. If applicable, place this page before the case protocol (before page 1) and staple them together.
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For each question, you must check an answer, either YES or NO.  
No answer will be deemed to be YES.

<b>The parties are requesting a stay of the proceeding:</b> (line 4 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The parties are requesting an extension of the time limit:</b> (line 6 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The parties plan to file more than six expert opinions:</b> (lines 40 to 43 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>A party (defendant, third person, person called) intends to file an application for authorization to file a written defence:</b> (line 33 of the protocol)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<b>The parties plan to conduct more than six pre-trial examinations:</b> (lines 47 and 48 of the protocol)	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The parties plan to conduct examinations the duration of which is incompatible with article 229 of the <i>Code of Civil Procedure</i> (C.C.P.):</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>The protocol was not signed by the parties or was not notified to them:</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

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Plaintiff

v.

**FEDERAL EXPRESS CANADA CORPORATION dba  
 FEDEX EXPRESS**

Defendant

**FIRST CASE PROTOCOL**  
 Superior Court of Québec, Montréal Division  
 (article 148 of the Code of Civil Procedure)

1.	Nature of the dispute: Class Action in damages	
2.	Value of the subject matter of the dispute: To be determined	
3.	Latest date on which the application was served on all the parties:	7 février 2020
4.	All the parties are requesting a stay of the proceeding in order to allow them to negotiate an out-of-court agreement (C.C.P., a. 156):  Duration: (where applicable, indicate a maximum stay of 3 months)  If the application is allowed by the Court, the proceeding will therefore be stayed until:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  <input type="checkbox"/> 1 month <input type="checkbox"/> 2 months <input type="checkbox"/> 3 months
5.	Before filing judicial proceedings, did the parties consider private prevention and resolution processes (C.C.P. a. 1, 3 <sup>rd</sup> para. and a. 148)?  If so, did the parties participate in a private prevention and resolution process before filing judicial proceedings?  A settlement conference:  <input type="checkbox"/> will be requested <input type="checkbox"/> is probable <input checked="" type="checkbox"/> is possible <input type="checkbox"/> is out of the question	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

6.	All the parties are requesting an extension of the time limit for trial readiness (C.C.P., a. 173):  Duration: (where applicable, indicate an additional time limit of 9 months maximum)  If the Court allows the application, the six-month time limit will be extended until:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO  <input type="checkbox"/> 3 months <input checked="" type="checkbox"/> 6 months <input type="checkbox"/> 9 months  February 7, 2021
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PRELIMINARY EXCEPTIONS		
7.	<b>Declinatory exceptions</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
8.	<input type="checkbox"/> Referral to competent court or dismissal (C.C.P., a. 167)	
9.	<input type="checkbox"/> Other exception (with a reference to the C.C.P. article):	
10.	Submitted by (enter the name of the party):	

11.	<b>Exceptions to dismiss</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
12.	<input type="checkbox"/> Dismissal (C.C.P., a. 168):	
13.	Submitted by (enter the name of the party):	

14.	<b>Other preliminary exceptions</b>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
		Deadline for filing
15.	<input checked="" type="checkbox"/> Clarifications regarding the allegations (C.C.P., a. 169):	April 10, 2020
16.	<input checked="" type="checkbox"/> Disclosure of documents (C.C.P., a. 169):	April 10, 2020
17.	<input checked="" type="checkbox"/> Striking of immaterial allegations (C.C.P., a. 169):	April 10, 2020
18.	<input type="checkbox"/> Requirement to provide suretyship (C.C.P., a. 492):	
19.	<input type="checkbox"/> Other exception (indicate its nature):	
20.	Submitted by (enter the name of the party):	

21.	<b>Application under article 51 C.C.P.</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
22.	<input type="checkbox"/> Application under article 51 C.C.P.	
23.	Submitted by (enter the name of the party):	

OTHER PROCEEDINGS		
24.	<b>Safeguard measures</b> (C.C.P., a. 169 1st para.):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
25.	<input type="checkbox"/> Application for safeguard measures	
26.	Submitted by (enter the name of the party):	

27.	<b>Other incidental procedures</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Deadline for filing
28.	<input type="checkbox"/> Amendment of a pleading	
29.	<input type="checkbox"/> Determination of an issue of law	

30.	<input type="checkbox"/> Declaration of disqualification	
31.	<input type="checkbox"/> Other (indicate its nature):	
32.	Submitted by (enter the name of the party):	

DEFENCE		
33.	<p><b>Under article 171 C.C.P., the case is subject to the rules of oral defence. Despite this, all the parties are applying for authorization from the Court for the case to be subject to the rules of written defence, on the following grounds (C.C.P., aa. 148(5) and 171) (indicate the grounds):</b></p> <p>The complexity of the facts alleged and of the custom duties framework justifies the filing of a written defence.</p> <p><b>In the absence of an application for authorization for a written defence, the defendant must state the grounds by oral defence (C.C.P., aa. 154 and 170 2nd para.) (indicate the grounds):</b></p>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO  September 8, 2020

34.	<b>The defendant intends to file a cross-application.</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
35.	Deadline for filing the cross-application	
36.	Deadline for filing the defence to cross-application	

37.	<p><b>Issues in dispute (C.C.P., a. 148):</b></p> <p>According to the parties, as per the Authorization Judgment:</p> <ol style="list-style-type: none"> <li>Was/is FedEx entitled to charge and collect customs duties and/or processing fees from members of the Class who purchased goods originating from a European Union (EU) country or other beneficiary of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) after its coming into force?</li> <li>Did FedEx, in charging and collecting customs duties and/or processing fees from September 21, 2017, breach the terms of CETA and/or the obligations of the mandatary towards its mandator?</li> <li>Is FedEx a merchant governed by the Consumer Protection Act (CPA)?</li> <li>Are certain members of the Class consumers governed by the CPA?</li> <li>Did FedEx fail to comply with the requirements of the CPA by charging and collecting from September 21, 2017, customs duties and processing fees from members of the Class who purchased goods originating from a EU country or other beneficiary of the CETA?</li> <li>Are Plaintiff and the members of the Class entitled to recover the amounts so charged and paid to FedEx that were not yet reimbursed?</li> <li>Is FedEx liable to pay punitive damages to consumer members of the Class and if so, what amount of punitive damages should FedEx be condemned to pay, collectively?</li> </ol>	
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38.	<b>Third person intervention or impleading (C.C.P., aa. 151 and 158(4))</b>	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
39.	Deadline for the intervention or impleading of a third person	

EXPERT OPINIONS		
40.	<b>Joint expert opinion (C.C.P. a. 232)</b>  Nature of and need for joint expert opinion:   Reasons for refusing joint expert opinion (C.C.P., a. 148(4)):   Deadline for filing joint expert opinion:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
41.	<b>Expert opinion for the plaintiff (not more than one per area or matter of expertise) (C.C.P., a. 232):</b> (indicate number, nature and need for each expert opinion)  Plaintiff reserves his rights to file counter-expertise report(s) in answer to each expertise report filed by the Defendant.  Deadline for filing an expert opinion for plaintiff:	<input type="checkbox"/> YES <input type="checkbox"/> NO    4 months following the filing of the Defendant's expertise report(s)
42.	<b>Expert opinion for the defendant (not more than one per area or matter of expertise) (C.C.P., a. 232):</b> (indicate number, nature and need for each expert opinion)  1. The amounts paid by FedEx to the class members; 2. The Canada Border Services Agency's framework.  Deadline for filing an expert opinion for defendant:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    November 20, 2020
43.5	<b>Expert opinion for third person or impleaded person (not more than one per area or matter of expertise) (C.C.P., a. 232):</b> (indicate number, nature and need for each expert opinion)   Deadline for filing an expert opinion for third person or impleaded person:	<input type="checkbox"/> YES <input type="checkbox"/> NO

EXAMINATIONS		
44.	<b>Pre-trial examination(s) by either party</b> (C.C.P., aa. 148(3), 158(3) and 221)	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
45.	Value of the subject matter of the dispute is less than \$100 000 (C.C.P., a. 229):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
46.	The parties intend to submit their anticipated objections before pre-trial examination (C.C.P., a. 228):	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
47.	<b>Number of examinations before defence</b>	1
48.	<b>Number of examinations after defence</b>	1

49.	Name of persons to be examined for the defendant:			
	Emanuel Farias	May 12, 2020	9:00 AM	Kugler Kandestin
	Given name, surname	Date	Time	Place
50.	Name of persons to be examined for the plaintiff:			
	Renate Jalbert	October 21, 2020	9:00AM	BLG
	Given name, surname	Date	Time	Place
51.	<p><b>In order to avoid service of a subpoena, the parties agree that, in the 20 days preceding a pre-trial examination, the examining party will disclose in writing to the other parties a detailed list of all the documents that must be in the possession of the party to be examined at the pre-trial examination. List the documents below if the parties are currently able to identify them (an appendix of all the documents may be enclosed with this protocol):</b></p>			
	Given name, surname	Documents		
52.	Deadline for filing transcripts for the plaintiff (C.C.P., a. 227)			Deadline for setting down for trial
	Deadline for filing transcripts for the defendant (C.C.P., a. 227)			Deadline for setting down for trial
53.	Deadline for filing transcripts for the impleaded person (C.C.P., a. 227)			N/A
54.	Deadline for presenting the objections set forth in the second paragraph of article 228 C.C.P., which were raised during the pre-trial examinations for the plaintiff			15 days following the examination
55.	Deadline for presenting the objections set forth in the second paragraph of article 228 C.C.P., which were raised during the pre-trial examinations for the defendant			15 days following the examination
56.	Deadline for disclosure of all the undertakings made during the pre-trial examinations for the plaintiff			30 days following receipt of transcripts
57.	Deadline for disclosure of all the undertakings made during the pre-trial examinations for the defendant			30 days following receipt of transcripts
58.				

EXHIBITS	
Exhibits and other evidence (C.C.P., aa. 145 and 158)	Deadline

59.	Filing of exhibits for the plaintiff	Deadline for setting down for trial
60.	Filing of exhibits for the defendant	Deadline for setting down for trial
61.	Filing of exhibits for the third person, impleaded person or intervening person	N/A
62.	List of exhibits admitted by plaintiff:	
63.	List of exhibits admitted by defendant:	
	<b>Filing of affidavits in lieu of testimony</b>	<b>Deadline</b>
64.	Filing of affidavits for plaintiff	Deadline for setting down for trial
65.	Filing of affidavits for defendant	Deadline for setting down for trial

<b>OTHER</b>		
66.	<b>Legal costs</b> (C.C.P., aa. 148 1st para., and 339) <ul style="list-style-type: none"> <li>Evaluation of legal costs for plaintiff (including expert opinions):</li> <li>Evaluation of legal costs for defendant (including expert opinions):</li> <li>Evaluation of legal costs for other parties (including expert opinions):</li> </ul>	\$ 15,000.00 \$ 10,000.00 \$ N/A

67.	<b>Methods of notification the parties intend to use</b> (C.C.P., aa. 109 to 140 and 148(9)): By email : For Plaintiff : smastrogiuseppe@kklex.com / jlongpre@kklex.com For Defendant : kchenevert@blg.com / JSaintOnge@blg.com
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68.	<b>Appointment of a lawyer to a minor or a person of full age considered incapable</b> If yes, name of proposed lawyer:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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N.B. Non-compliance with this protocol may constitute a breach punished under articles 341 and 342 C.C.P.

On March 19 2020

*Kugler Kandestin LLP*

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Mtre. Jérémie Longpré  
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On March 20 2020

*Borden Ladner Gervais*

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