

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000924-189

KAYLEIGH TROLIO-KEATS, domiciled and residing at 9020 Boulevard des Galeries-d'Anjou, City of Anjou, District of Montreal, Province of Quebec, H1J 2B8

Representative Plaintiff

vs.

L'ARÉNA DES CANADIENS INC., legal person duly constituted, having its head office at 1275 rue Saint-Antoine West, City of Montreal, Province of Quebec, H3C 5L2

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

TO THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR REPRESENTATIVE PLAINTIFF STATES AS FOLLOWS:

I. INTRODUCTION

1. This class action seeks the full reimbursement (or alternatively, a reduction) of the Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and Ticketless fees of between \$5.00-\$7.50 (and most often \$5.75) that Class members paid the Defendant (operating under the tradename “evenko”) to receive an email, mobile transfer, allow for pick up, or to have their credit card act as a ticket, as well as, for punitive damages;
2. By judgment dated November 27, 2018 (the “Authorization Judgment”), the Honourable Mr. Justice Donald Bisson, J.S.C., authorized a class action against the Defendant on behalf of the following class:



English:

All persons who purchased a ticket from the Defendant (including under the name evenko) and who paid an “Electronic Ticket” fee, a “Will Call - Box Office pickup” fee, a “Mobile Ticket” fee, a “Ticketless” fee, or any other delivery fee to receive their tickets via email, mobile device, physical pickup, or to use their credit card as a ticket since May 3, 2015;

French:

Toutes les personnes qui ont acheté un billet de la défenderesse (incluant sous le nom evenko) et qui ont payé des frais de « Billet Électronique », des frais de cueillette à la « Billetterie », des frais de « Billet Mobile », des frais pour un billet « Ticketless » ou tous autres frais de livraison pour recevoir leurs billets par courrier électronique, appareil mobile, cueillette en personne à la billetterie ou pour utiliser leur carte de crédit en tant que billet depuis le 3 mai 2015;

3. The Authorization Judgment also sets out the principal issues of fact and law to be dealt with collectively in the class action as follows:

English:

- a) Do the Electronic Ticket, Will Call, Mobile Ticket, or Ticketless fees paid by the Class Members constitute exploitation and objective lesion under section 8 of the CPA?
- b) Are the Defendant’s Electronic Ticket, Will Call, Mobile Ticket, or Ticketless fees excessively and unreasonably detrimental to Class Members such that the contractual clauses allowing them to charge such fees are abusive under article 1437 of the CCQ?
- c) Is the portion of the contract concerning Electronic Ticket, Will Call, Mobile Ticket, or Ticketless fees null, entitling Class Members to a full reimbursement of the amounts paid to the Defendant?
- d) In the alternative, must the Class Members’ obligations be reduced and if so, by how much?
- e) Should an injunctive remedy be ordered to prevent the Defendant from continuing to charge these fees?
- f) Are Class Members entitled to punitive damages and, if so, in what amount?



French:

- a) Les frais de livraison payés par les membres du groupe pour un Billet Électronique, la cueillette à la billetterie, un Billet Mobile ou un billet Ticketless constituent-ils de l'exploitation du consommateur et une lésion objective au sens de l'article 8 LPC?
- b) Les frais pour un Billet Électronique, la cueillette à la billetterie, un Billet Mobile ou un billet Ticketless facturés aux membres du groupe pour recevoir leur billet sont-ils excessifs et déraisonnables de sorte que les clauses permettant d'imposer ces frais sont abusives en vertu de l'article 1437 CcQ?
- c) La clause du contrat relative aux frais de Billet Électronique, la cueillette à la billetterie, Billet Mobile ou de billet Ticketless est-elle nulle, donnant droit aux membres du groupe à un remboursement intégral des montants versés à la défenderesse?
- d) Dans l'affirmative, les obligations des membres du groupe doivent-elles être réduites et si oui, de combien?
- e) Une injonction devrait-elle être émise afin d'interdire à la défenderesse de continuer à percevoir ces frais?
- f) Y-a-t-il lieu d'octroyer des dommages punitifs et, si oui, pour quel montant?

II. THE DEFENDANT

4. The Defendant, L'Aréna des Canadiens Inc., has its head office in Montreal, Quebec and often does business under the tradename evenko, the whole as appears more fully from a copy of an extract from the *Registre des entreprises*, communicated herewith as **Exhibit P-1**;
5. The Defendant is the owner and registrant of the trademarks "EVENKO" Word (TMA799867) and "EVENKO" Design (TMA799862), both of which were filed on April 14, 2010, the whole as appears more fully from copies of said trademarks from the CIPO database, communicated herewith *en liasse* as **Exhibit P-2**;
6. The Defendant operates the evenko website (www.evenko.ca), amongst its other commercial activities;
7. The Defendant operates as a monopoly for the distribution of tickets on the primary market for live music, festivals, and events such as Heavy Montreal (Heavy Mtl), Osheaga Music and Arts Festival, ÎleSoniq and '77 Montreal (at Parc Jean Drapeau), the YUL EAT festival, Electro Parade Montreal, the Ice Show, and other events. It acts as the exclusive manager of the Bell Centre, Theatre Corona, Place Bell in Laval, L'Étoile National Bank and Club Dix30 in Brossard, the whole as appears more fully from a copy of the list of the Defendant's trademarks from the



CIPO database, communicated herewith as **Exhibit P-3**;

8. On the “About evenko” section of its website, Defendant represents the following:

“evenko is a Quebec company which is the most important independent promoter and producer in Canada. Presenting more than 1,200 musical, family and sporting events annually throughout the province of Quebec, Atlantic Canada and the eastern United States, evenko plays host to the biggest entertainers in the world and invests in the development and promotion of Quebec artists. It is the creator and producer of: Osheaga Music and Arts Festival, HEAVY MONTRÉAL, îleSoniq, '77 Montréal all held at Parc Jean-Drapeau in Montreal, the Festival YUL EAT which takes place at the Old Port of Montreal and Electro Parade Montreal. evenko is also the promoter of the Montreal ePrix for the FIA Formula E Championship. Moreover, evenko is the exclusive manager of the Bell Centre, the Corona Theatre, Place Bell in Laval, L'Étoile Banque Nationale and Le Club Dix30 in Brossard. In January 2017, Pollstar, the entertainment industry's most respected source, ranked evenko as the top independent promoter in Canada and the 10th most important promoter in North America. The evenko trademark is the property of L'Aréna des Canadiens Inc.”

The whole as appears more fully from a copy of an extract from the Defendant's website at www.evenko.ca, communicated herewith as **Exhibit P-4**;

9. During 2016, evenko presented 1,224 events and based on publicly-available information, it appears that the Defendant generates tens of millions of dollars annually through the sale of tickets to live sporting, cultural or entertainment events in North America;
10. Evenko is a merchant within the meaning of the *Consumer Protection Act*, CQLR c P-40.1 (“CPA”) and its activities are governed by this legislation, among others;

III. **THE SITUATION**

A. *Delivery Fees – Explained*

11. When it sells tickets to Class Members, the Defendant imposes the following fees on each ticket purchase:
- Facility Fee of \$3.25 per ticket; and
 - Service Charge of an amount that increases based on the ticket price; and
 - On the Evenko website: “Delivery Method” (“*Méthode de livraison*”) charge which gives the customer 2 options:



- (i) “Electronic Ticket” (“*Billet Électronique*”) fee of \$5.75 per order; or
 - (ii) “Standard Mail” (“*Poste Régulière*”) fee of \$5.75 per order [if there is enough time before the show] or “Will Call - Box Office pickup” (“*Billetterie*”) fee of \$5.75 to \$7.50 per order [if it is too close to show or game time];
- For some events only: “Ticketless - Credit card required for entry” (“*Ticketless: Carte de crédit requise à l’entrée*”) fee of \$5.00-\$7.00 depending per order;
 - For Montreal Canadiens hockey games: “Mobile Ticket” (“*Billet mobile*”) fee of \$5.00 per order.
12. A description of the 4 delivery methods are explained by the Defendant in its Frequently Asked Questions (“FAQ”) section of its website, as appears more fully from a copy of the Defendant’s webpage under the title “Delivery Method | FAQ | evenko”, communicated herewith as **Exhibit P-5**;
 13. It appears that the Defendant is the only player in its industry that charges consumers an Electronic Ticket fee, a Will Call fee, a Mobile Ticket fee, and Ticketless fee where they are also charging a Service Fee;
 14. The Electronic Ticket fee is an amount of money (\$5.75) that the Defendant charges consumers to email them their electronic tickets upon completion of their order;
 15. The Will Call – Box Office pickup fee is an amount of money (\$5.75 to \$7.50) that the Defendant charges to allow consumers to physically come and pick up their printed tickets at one of their box office locations;
 16. The Ticketless fee is an amount of money (\$5.00-\$7.00 depending) that the Defendant charges to consumers to simply have them use their own credit cards as an entry to an event;
 17. The Mobile Ticket fee is an amount of money (\$5.00) that the Defendant charges to transfer a consumers’ electronic tickets to their mobile devices upon completion of their order for Montreal Canadiens hockey games;
 18. This action does not challenge the Standard Mail fee as there are clearly delivery costs associated with this method (i.e. stamps, envelopes, labels, etc.) and the industry recognizes this and does indeed charges a fee for this type of ticket delivery;
 19. The Defendant is effectively charging Class Members anywhere from \$5.00-\$7.50 (and most often \$5.75) to send them an email or a mobile transfer or to allow them to pick up the tickets or to have them use their credit card for entry, when the cost for these methods of “delivery” is either nothing – because the process is entirely



automated – or in the case of actual tickets such a cost is minimal (i.e. ink and paper for printing);

20. The Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and Ticketless fees are disproportionate, exploitative and abusive, and bear no relation to the underlying cost of sending an electronic ticket or allowing a customer to pick up the ticket, which is either \$0, minimal, or already factored into the ticket price that the Defendant charges to consumers;
21. Under article 8 CPA and article 1437 CCQ, it is abusive for the Defendant to charge these fees to Class Members. These provisions provide as follows:

<p>8 L.P.C. Le consommateur peut demander la nullité du contrat ou la réduction des obligations qui en découlent lorsque la disproportion entre les prestations respectives des parties est tellement considérable qu'elle équivaut à de l'exploitation du consommateur, ou que l'obligation du consommateur est excessive, abusive ou exorbitante.</p>	<p>8 C.P.A. The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.</p>
<p>1437 C.c.Q. La clause abusive d'un contrat de consommation ou d'adhésion est nulle ou l'obligation qui en découle, réductible.</p> <p>Est abusive toute clause qui désavantage le consommateur ou l'adhérent d'une manière excessive et déraisonnable, allant ainsi à l'encontre de ce qu'exige la bonne foi; est abusive, notamment, la clause si éloignée des obligations essentielles qui découlent des règles gouvernant habituellement le contrat qu'elle dénature celui-ci.</p>	<p>1437 C.C.Q. An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.</p> <p>An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to the requirements of good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.</p>

B. The Level at which the Disproportion Becomes Exploitative

22. Ticketmaster, Admission.com, and Réseau Ovation are evenko's main competitors in the province of Quebec for ticket sales on the primary market during the Class Period;
23. The difference between them is generally the venue where the event is held and



the artist who is performing (or sporting event that is taking place);

24. Although they offer virtually identical services, Ticketmaster, Admission.com, and Réseau Ovation do not charge anything to consumers for emailing them their tickets, sending it to their mobile device, or allowing them to pick up their tickets – where they are also charging a Service Fee;
25. A screenshot from Ticketmaster’s website illustrates that: (i) Ticketmaster does not charge any fees to send tickets electronically or to print the tickets online; and (ii) where Ticketmaster charges a service fee, there is no charge for a customer to pick up their tickets at “will call” or “au guichet” / “à la billetterie”, the whole as appears more fully from a copy of the Defendant’s webpage under the title “Delivery”, communicated herewith as **Exhibit P-6**, as reproduced below:

The screenshot displays the Ticketmaster website for the Montreal Alouettes vs. Hamilton Tiger-Cats game on Saturday, June 9, 2009, at 12:00pm at Percival Molson Stadium. The page is titled "Delivery" and offers three regional options: Canada, USA, and Other Country. Under the "Canada" option, there are four delivery methods:

- Go Mobile, Print-at-Home - FREE**: This is the selected option. It includes sub-options for "Go Mobile" (phone-based) and "Print-at-Home" (computer-based).
- UPS**: \$16.00
- XpressPost**: \$16.00
- Canada Post Mail**: No additional charge
- Will Call**: No additional charge

On the right side of the page, there is a summary box for "SEC L2 General Admission" featuring the team logo and a "verifiedtickets" badge. Below this, the "Order Details" section shows "1 Régulier - Regular" and a "Fees" section with a "Service Fee" of \$5.40. A "Delivery" dropdown menu is set to "Go Mobile, Print-at-Home". A "Subtotal" section is visible at the bottom, followed by a prominent green "NEXT" button.

26. A screenshot from the Admission.com website (a division of Ticketmaster) illustrates that: (i) it does not charge any fees to send tickets electronically, or to print the tickets online; and (ii) it does not charge customers to pick up their tickets at the box office or “à la billetterie”, the whole as appears more fully from a copy of the Defendant’s webpage under the title “Comment voulez-vous que votre billets soit livrés?”, communicated herewith as **Exhibit P-7**, as reproduced below:

admission
division de ticketmaster®

1 2 Acheter 4

MAI DIMANCHE, 20:00
13 ENRICO MACIAS
2018 L'Olympia, Montréal

vosre commande

Comment voulez-vous que vos billets soient livrés? i

Sélectionnez une méthode de livraison à partir de la liste ci-dessous.

Billet électronique
C'est rapide et facile avec le Billet électronique. Télécharger votre billet sur votre téléphone mobile ou Imprimer à la maison.

Xpresspost QC et ON i **15.00 CAD**
CONSOMMATEURS DU QUÉBEC ET ONTARIO SEULEMENT. Vous recevrez vos billets dans les 5 À 7 JOURS OUVRABLES suivant l'achat et uniquement à l'adresse de facturation de la carte de crédit, à moins d'indication contraire spécifiée dans la page de l'événement.

Xpresspost Canada i **20.00 CAD**
Vous recevrez vos billets dans les 5 À 7 JOURS OUVRABLES suivant l'achat et uniquement à l'adresse de facturation de la carte de crédit, à moins d'indication contraire spécifiée dans la page de l'événement.

À récupérer à la billetterie où l'événement a lieu i
Veuillez récupérer vos billets à la billetterie. Les billets peuvent être récupérés seulement 24 heures après l'achat. ATTENTION, certaines salles et billetteries n'ouvrent que le soir de l'événement seulement. Veuillez contacter la salle pour de plus amples informations. Veuillez noter que seul le titulaire de la carte de crédit est autorisé à récupérer les billets et que vous devez avoir en votre possession une carte d'identité avec photo, ainsi que la carte de crédit que vous avez utilisée lors de votre achat pour prendre possession des billets. Billets non récupérables dans un point de vente Admission.

Votre commande

Temps restant pour compléter la commande **08:10**

Billets 1 x

ENRICO MACIAS 100.93 CAD
2018-05-13 20:00

Section PARTERRE-CENTRE
Rangée F
Sièges 17
Information Parterre A à L

Tarifs RÉGULIER
Prix du billet 100.93 CAD x 1
(Incl. frais 10.10 CAD)

Livraison

Billet électronique 0.00 CAD

27. A screenshot from Réseau Ovation's website illustrates that: (i) it does not charge any fees to send tickets electronically; and (ii) there is no charge for a customer to pick up their tickets from the box office or "*au guichet*", the whole as appears more fully from a copy of an extract from Réseau Ovation's website at www.ovation.qc.ca, communicated herewith as **Exhibit P-8**, as reproduced below:



FR | EN

Effectuer d'autres achats

Vider le panier et recommencer

Notifcation: Votre transaction est traitée par Réseau Ovation, 23 953 Québécois(es) ont également acheté des billets en ligne depuis 1 mois en utilisant cette solution.

PANIER

	Prix (\$ CAD)
<p>François Bellefeuille - Ven. 27 avril 2018, 20h00 - Salle Albert-Rousseau</p> <p>Supprimer</p> <p>Reprendre</p> <p>Emplacement(s): Section: Balcon, Rangée: D, Siège(s): 28 Voir les sièges dans le plan</p> <p>Tarif(s): Régulier (1)</p>	38,27 \$

Veillez s.v.p. sélectionner un mode de livraison:

- Au guichet - 0,00 \$**
Les billets que vous avez achetés peuvent être récupérés dès maintenant à la billetterie de la Salle Albert-Rousseau. Si vous souhaitez prendre possession de vos billets lors de votre spectacle, présentez-vous à la billetterie au minimum 30 minutes avant le début de la représentation.
Dans le cas où une personne autre que vous-même doit récupérer les billets, merci d'en aviser la billetterie au 418 659-6710.
- Billet(s) électronique(s) - 0,00 \$**
Choisissez le format désiré:
 - Format détaillé à imprimer sur papier seulement (non adapté pour présentation sur téléphone mobile)
 - Format compact à présenter sur votre téléphone mobile
 Vous recevrez sous peu un courriel contenant vos billets électroniques. Il est très important d'avoir avec vous, lors du spectacle, les billets reçus dans le courriel qui vous sera envoyé. La confirmation d'achat ne peut être utilisée comme billet. Si vous ne recevez aucun courriel contenant vos billets électroniques, communiquez avec la billetterie dans les plus brefs délais au 418 659-6710

28. Place des Arts sells tickets to and hosts an array of performances in Montreal (in the area commonly referred to as the “Quartier des Spectacles”), such as *Les Grands Ballets Canadiens*, the *Montreal Symphony Orchestra* and the *Opéra de Montréal*. The first screenshot below demonstrates that Place des Arts does not charge any fees to send tickets electronically and the second screenshot shows that it does not charge any fees when the tickets are picked up from the box office (*billetterie*), the whole as appears more fully from copies of extracts from the Place des Arts website at placedesarts.com, communicated herewith *en liasse* as **Exhibit P-9**, as reproduced below:



Screenshot #1:

PLACE
DES
ARTS
BILLETTERIE

My Place des Arts Account

powered by **ticketmaster**

[home](#) | [faq](#) | [contact us](#) | [log out](#)

Hello, [REDACTED]

Your order will expire in
9:30

Cost Summary

Item Total	86.25
Delivery Total	0.00
Total Amount	\$86.25

[checkout](#)

[continue shopping](#)

More information on Place des Arts parking

Place des arts parking - Save now and add parking to your purchase now

[More information on Place des Arts parking](#)

Shopping Cart

Your order will expire in **9:30 minutes**

This icon on an event means you can also get in with your smartphone, no matter which ticket delivery method you choose! See how easy it is in your confirmation email.

Cart Items

item	details	type	price	total
Roméo & Juliette - Gounod	Section LBA27	Regular	\$86.25	\$86.25
Tue, 22 May 2018 19:30	Rangee 1			
Salle Wilfrid-Pelletier	Siege 1			

Select Delivery Electronic (\$0.00 Per Order)

[Mobile Entry](#) [change seats](#) | [remove](#)

Cost Summary

	Item Total	\$86.25
	Delivery Total	\$0.00
	Total Amount	\$86.25



Screenshot #2:

PLACE
DES
ARTS

BILLETTERIE

My Place des Arts Account

powered by **ticketmaster**

[home](#) | [faq](#) | [contact us](#) | [log out](#)

Hello, [REDACTED]

Your order will expire in **8:40**

Shopping Cart

Your order will expire in **8:40 minutes**

This icon on an event means you can also get in with your smartphone, no matter which ticket delivery method you choose! See how easy it is in your confirmation email.

Cart Items

item	details	type	price	total
Cendrillon Sat, 5 May 2018 14:00 Salle Wilfrid-Pelletier	Section LCO4 Rangee 1 Siege 3	Regular	\$149.00	\$149.00

Select Delivery Select Delivery Method
Billetterie (\$0.00 Per Order)

Mobile Entry [change seats](#) | [remove](#)

Cost Summary

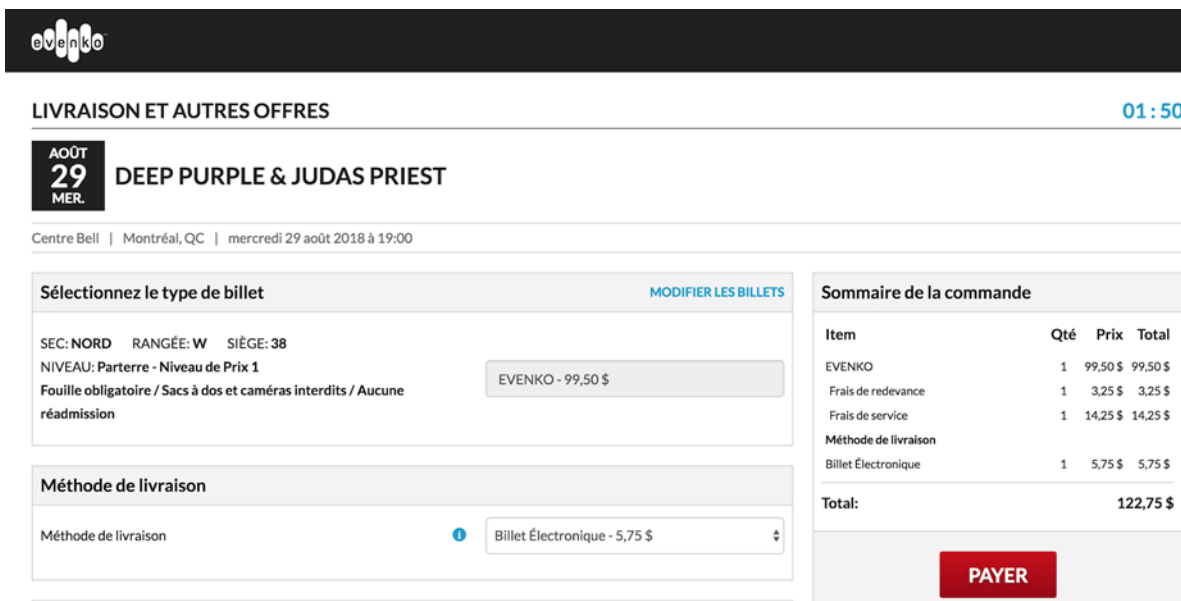
Item Total	\$149.00
Delivery Total	\$0.00
Total Amount	\$149.00

[checkout](#)

[continue shopping](#)

More information on Place des Arts parking
Place des arts parking - Save now and add parking to your purchase now
[More information on Place des Arts parking](#)

29. On the other hand, the Defendant charged upwards of \$5.75 to Class Members to send them an email, which costs them nothing, and that no other merchants charge for, the whole as appears more fully from a copy of a screenshot of evenko's website at www.evenko.ca, communicated herewith as **Exhibit P-10**:



evenko

LIVRAISON ET AUTRES OFFRES 01:50

AOÛT 29 MER. **DEEP PURPLE & JUDAS PRIEST**

Centre Bell | Montréal, QC | mercredi 29 août 2018 à 19:00

Sélectionnez le type de billet MODIFIER LES BILLETS

SEC: NORD RANGÉE: W SIÈGE: 38
 NIVEAU: Parterre - Niveau de Prix 1
 Fouille obligatoire / Sacs à dos et caméras interdits / Aucune réadmission

EVENTO - 99,50 \$

Méthode de livraison

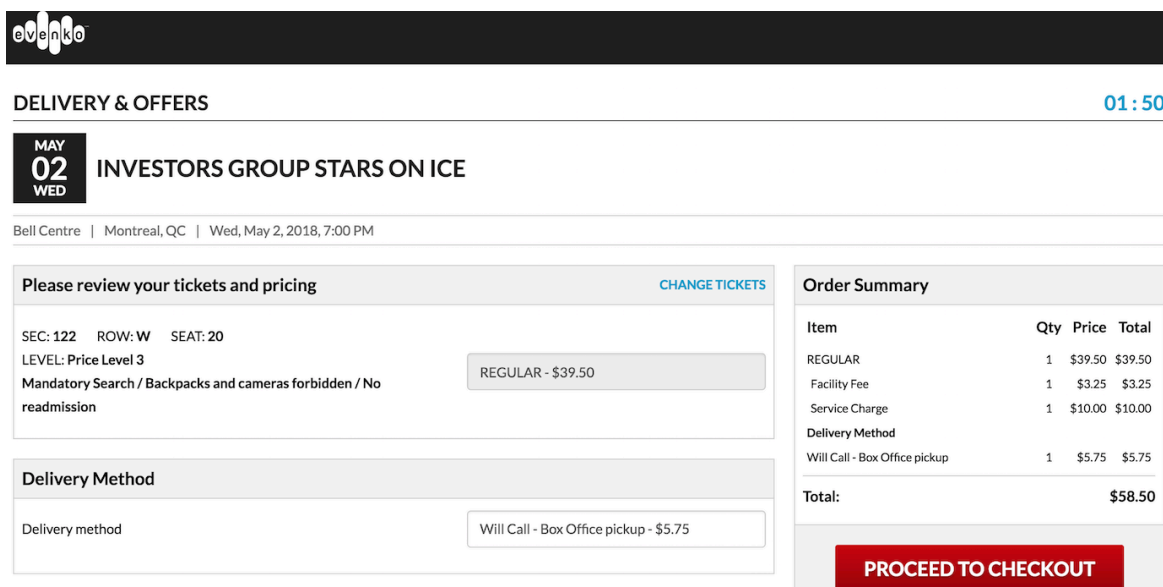
Méthode de livraison Billet Électronique - 5,75 \$

Sommaire de la commande

Item	Qté	Prix	Total
EVENTO	1	99,50 \$	99,50 \$
Frais de redevance	1	3,25 \$	3,25 \$
Frais de service	1	14,25 \$	14,25 \$
Méthode de livraison			
Billet Électronique	1	5,75 \$	5,75 \$
Total:			122,75 \$

PAYER

30. The Defendant further charges \$5.75 to Class Members to pick up their tickets from the box office which costs them close to nothing (i.e. other than ink and paper) and that no other merchants charge for where they are also charging a Service Fee, the whole as appears more fully from a copy of a screenshot of evenko's website at www.evenko.ca, communicated herewith as **Exhibit P-11**:



evenko

DELIVERY & OFFERS 01:50

MAY 02 WED. **INVESTORS GROUP STARS ON ICE**

Bell Centre | Montreal, QC | Wed, May 2, 2018, 7:00 PM

Please review your tickets and pricing CHANGE TICKETS

SEC: 122 ROW: W SEAT: 20
 LEVEL: Price Level 3
 Mandatory Search / Backpacks and cameras forbidden / No readmission

REGULAR - \$39.50

Delivery Method

Delivery method Will Call - Box Office pickup - \$5.75

Order Summary

Item	Qty	Price	Total
REGULAR	1	\$39.50	\$39.50
Facility Fee	1	\$3.25	\$3.25
Service Charge	1	\$10.00	\$10.00
Delivery Method			
Will Call - Box Office pickup	1	\$5.75	\$5.75
Total:			\$58.50

PROCEED TO CHECKOUT

31. The above facts can leave no doubt as to the abusive and illegal nature of the Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and Ticketless fees charged by the Defendant to which, the fair market value for the service for which the Defendant charges these fees is zero or very close to zero;
32. The Defendant ought never to have charged the Electronic Ticket fee, the Will Call fee, the Mobile Ticket fee, and the Ticketless fees to the Representative Plaintiff

or to any of the Class Members;

33. The Defendant's imposition of these fees in a consumer contract and contract of adhesion is excessively and unreasonably detrimental to the Representative Plaintiff and to all of the Class Members and is, therefore, contrary to the requirements of good faith inherent in all contracts, the evenko Purchase Agreement and Terms of Use are communicated herewith *en liasse* as **Exhibit P-12**;
34. Consequently, an excessive disproportion exists in this case and the Defendant must reimburse the Representative Plaintiff and Class Members for all such fees imposed on every ticket purchase that they made from the Defendant (whether from evenko or otherwise);
35. The Representative Plaintiff is accordingly entitled to claim and does hereby claim from the Defendant the aggregate of the sums paid by Class Members on account of Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and Ticketless fees;
36. In the Representative Plaintiff's submission, it is clear that evenko willfully engaged in the above-mentioned prohibited business practices as a means of unlawfully profiting from Class members ignorance and inattentiveness;
37. As for the conclusion for injunctive relief as authorized in the Authorization Judgment, it appears to no longer be necessary for the reasons that follow;
38. On June 6, 2019, several months after the present class action was authorized, it was announced that Ticketmaster entered into an agreement with Groupe CH (the parent company of evenko) and that Ticketmaster will be its exclusive ticketing partner for the Montreal Canadiens and their 20 Quebec-based venues and festivals, the whole as appears more fully from a copy of the press release entitled "Ticketmaster and Montreal's Groupe CH Grow Partnership to 1,500 Events" dated June 6, 2019 and from a copy of the Radio-Canada article entitled "Le Groupe CH s'allie à Ticketmaster pour intégrer la vente et la revente de billets" dated June 6, 2019, communicated herewith *en liasse* as **Exhibit P-13**;
39. It appears that evenko has since ceased charging additional amounts on account of Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees under its new agreement with Ticketmaster, and that it adopted Ticketmaster's model of not charging additional fees for same. For example, evenko is selling tickets to the Justin Bieber concert scheduled at the Bell Center for July 6, 2021 via Ticketmaster's platform and now indicates "**Delivery – FREE**",



the whole as appears from **Exhibit P-14** (an extract is reproduced below):

1 Régulier - Regular ▾	CA \$199.50 (CA \$199.50 x 1)
Fees	
CA \$23.65 (Service Fee) x 1	CA \$23.65
CA \$3.50 (Facility Charge) x 1	CA \$3.50
Delivery ^	FREE
Go Mobile	
Go Mobile	
Your phone's your ticket. Locate your tickets in your account - or in your app. When you go mobile, your tickets will not be emailed to you or available for print.	

40. Exhibit P-14 contains evenko's logo at the top left and is a screen capture from Ticketmaster's website (<https://www.ticketmaster.ca/checkout/order>);
41. Given that evenko ceased charging delivery fees for electronic tickets, it would be appropriate to close the Class Period to the date on which evenko ceased the impugned practice (likely in late 2019);

C. THE EXAMPLE OF THE REPRESENTATIVE PLAINTIFF

42. On January 25, 2018, the Representative Plaintiff purchased two tickets from evenko to see the Elton John concert scheduled for October 4, 2018 at the Bell Centre in Montreal, the whole as appears more fully from a copy of the Order Confirmation email (order #002-0545 7152) sent to her by evenko communicated herewith as **Exhibit P-15**;
43. At the last step prior to completing her purchase for the Elton John tickets, the Representative Plaintiff was given the choice to receive her tickets as paper copies by regular mail for \$5.75, or electronically via email for \$5.75. The Representative Plaintiff was forced to select between these two options, otherwise she would not have been able to purchase these tickets;
44. Because evenko operates as a monopoly for the distribution of tickets on the primary market for events at the Bell Centre, the Representative Plaintiff had no other choice other than to purchase her tickets from evenko if she wanted to purchase them on the primary market;
45. On January 25, 2018, the Representative Plaintiff paid the Defendant the Electronic Ticket fee of \$5.75, only to receive an email containing a PDF file with her tickets, the whole as appears more fully from a copy of the email sent to the Representative Plaintiff from evenko with the subject line "Your E-Tickets - 002-0545 7152" dated January 25, 2018, and the PDF file attached thereto communicated *en liasse* as **Exhibit P-16**;
46. Not only did sending these two emails (Exhibits P-15 and P-16) cost the Defendant nothing, but the Representative Plaintiff actually had to incur costs to print her



tickets so that she can enter the Bell Centre (these costs are obviously minimal i.e. paper, ink, and electricity, but nonetheless greater than the cost to evenko for the sending of an automated email);

47. In fact, in the email that had been sent with the electronic tickets (Exhibit P-16), evenko provided the following instructions to Representative Plaintiff and to all Class Members:

“Open and print the PDF file attached. Please note that you'll need Acrobat Reader in order to be able to open your e-tickets (version 6.0 or above). If you don't use Acrobat reader, you can always download it from here”;

48. The Representative Plaintiff was unhappy about having to pay the Electronic Ticket fees, but was in no position to argue or negotiate with the Defendant;
49. The only choice that the Representative Plaintiff had in the bargain was which seats to purchase at the Bell Centre – all the rest is imposed by the Defendant;
50. The Representative Plaintiff alleges that the existence and imposition of the Electronic Ticket fee contravenes article 8 of the C.P.A. and article 1437 C.C.Q.;
51. The Representative Plaintiff suffered objective lesion by paying \$5.75 to receive an automated email from the Defendant;
52. There is an important disproportion between the \$5.75 charged to the Representative Plaintiff for an email and the cost to evenko for sending an email;
53. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the Electronic Ticket fees (in this case, \$5.75 per order) and the “wholesale” cost to the merchant of providing this service (i.e. the sending of an automated email), which in this case is zero;
54. The Representative Plaintiff agrees that the \$5.75 delivery fee may not be abusive when a consumer orders “hard copy tickets (*billets en carton*)”, because there are hard costs associated to printing and mailing out a ticket (including the cost of the stamp). For instance, on June 16, 2015, which is during the Class Period, she purchased hard copy tickets from evenko for *The Australian Pink Floyd Show* that took place on July 23, 2015 and she does not contest evenko charging her \$5.75 for “Standard Mail”, as it appears from her purchase confirmation and picture of the hard copy ticket communicated herewith *en liasse* as **Exhibit P-17**;
55. The Representative Plaintiff does seek reimbursement for every time evenko charged her and Class Members \$5.75 to send emails (the Representative Plaintiff had purchased tickets to several concerts from evenko during the Class Period, including to Elton John, Andrea Bocelli, Enrique Iglesias, Dave Chappelle, Paul



McCartney and Eros Ramazzotti);

56. The Representative Plaintiff believes that further evidentiary support for her allegations (concerning the Defendant's cost to send an email) will come to light after a reasonable opportunity for discovery;
57. The Representative Plaintiff's damages in the amount of \$34.50 (\$5.75 x 6 concert ticket purchases), subject to adjustment, are a direct and proximate result of Defendant's misconduct;
58. As a result of the foregoing, the Representative Plaintiff and Class Members are justified in claiming compensatory damages, as well as punitive damages based on repeated violations of section 8 CPA (pursuant to section 272 CPA), as well as compensatory damages and a declaratory judgment pursuant to article 1437 CCQ;

D. THE DAMAGES

59. Every member of the Class has purchased tickets from the Defendant and has thereby paid an Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and/or Ticketless fee;
60. Every member of the Class has therefore paid fees that are: (i) abusive, disproportionate and constitute objective lesion under article 8 C.P.A.; and (ii) excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to article 1437 C.C.Q.;
61. Class Members are therefore entitled to recover said fees in their entirety from the Defendant in compensation for their monetary damages;
62. All of the damages to the Class Members are a direct and proximate result of the Defendant's conduct;
63. In consequence of the foregoing, members of the Class are justified in claiming as damages the totality of the Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and/or Ticketless fees paid from May 3, 2015 to the date when the Defendant ceased the impugned practice;
64. As to punitive damages, the Defendant's overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;
65. In this case, the Defendant's monopoly enables it to operate in a wholly dominant position, both with respect to its competitors and particularly so with respect to consumers – in continuing to breach the C.P.A. and the C.C.Q., without any explanation, for a significant period (even after this class action was authorized) it has taken a cavalier and arbitrary attitude to its legal and moral obligations to Class



Members;

66. The Defendant's complete disregard for consumers' rights and to its own legal obligations is an important reason for this Honourable Court to enforce measures that will punish the Defendant, as well as deter and dissuade other entities – both local and foreign – from engaging in similar reprehensible conduct to the detriment of consumers;
67. Should the Defendant only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations;
68. The reality is that the Defendant has likely generated tens of millions of dollars in revenues over the years by charging Electronic Ticket, Will Call – Box Office pickup, Mobile Ticket, and Ticketless fees (both on its evenko website and via its "Vault" service where Montreal Canadiens season ticket holders resell their tickets to others);
69. These fees are nothing more than a cash-cow for the Defendant, who is charging Class Members for an automatic service that the other companies in the same industry perform at no charge;
70. The Defendant behaves as if it has carte blanche to exploit consumers and adherents and to charge them abusive and disproportionate delivery fees;
71. The punitive damages provided for in section 272 C.P.A. have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
72. The Defendant's violations are intentional, calculated, malicious and vexatious;
73. The Defendant has demonstrated through its behavior that it is more concerned about its bottom line than about consumers' rights and its own obligations under the C.P.A. and the C.C.Q. (which is compounded by virtue of them being a Quebec-based company);
74. The Representative Plaintiff is accordingly entitled to claim and does hereby claim from the Defendant the following as damages on behalf of Class Members:
 - a) Reimbursement of the whole (or a portion) of the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees charged by the Defendant during the Class Period; and
 - b) Punitive damages in the amount of \$15.00 per Class Members per purchase;



FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

1. **GRANT** the Representative Plaintiff's class action against Defendant on behalf of all the Class Members;
2. **DECLARE** the Defendant liable for the damages suffered by the Representative Plaintiff and each of the members of the Class;
3. **DECLARE** that the Electronic Ticket, Will Call, Mobile Ticket, and Ticketless fees charged by Defendant amount to exploitation under article 8 of the C.P.A.;
4. **DECLARE** that the Electronic Ticket, Will Call, Mobile Ticket, and Ticketless fees charged by the Defendant are excessively and unreasonably detrimental to consumers or adhering parties and are therefore in violation of article 1437 of the C.C.Q.;
5. **DECLARE** abusive and null the clauses in the Defendant's service agreements which provide for these fees;
6. **CONDEMN** the Defendant to pay the Representative Plaintiff and Class Members compensatory damages for the aggregate of the amounts charged as Electronic Ticket, Will Call, Mobile Ticket, and Ticketless fees;
7. **ORDER** the collective recovery of all damages owed to the Class Members for the amounts overcharged;
8. **CONDEMN** the Defendant to pay to each Class member the sum of \$15.00 per purchase on account of punitive damages, and **ORDER** collective recovery of these sums;
9. **CONDEMN** the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;
10. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
11. **ORDER** the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;
12. **CONDEMN** the Defendant to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;



Montreal, December 21, 2020

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

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SUMMONS
(Arts. 145 and following C.C.P.)

TO: L'ARÉNA DES CANADIENS INC.
1275 rue Saint-Antoine West
Montreal, Quebec, H3C 5L2

Defendant

Filing of a judicial application

Take notice that the Representative Plaintiff has filed this Originating Application in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1, Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Representative Plaintiff's lawyer or, if the Representative Plaintiff is not represented, to the Representative Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Representative Plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Representative Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Originating Application, the Representative Plaintiff intends to use the following exhibits:

- EXHIBIT P-1:** Copy of an extract from the *Registre des entreprises*;
- EXHIBIT P-2:** Copy of trademarks from the CIPO database;
- EXHIBIT P-3:** Copy of the list of the Defendant's trademarks from the CIPO database;
- EXHIBIT P-4:** Copy of an extract from the Defendant's website at www.evenko.ca;
- EXHIBIT P-5:** Copy of the Defendant's webpage under the title "Delivery Method | FAQ | evenko";
- EXHIBIT P-6:** Screen capture from Ticketmaster's website;



- EXHIBIT P-7:** Screen capture from Admission.com’s website;
- EXHIBIT P-8:** Screen capture from Réseau Ovation’s website at www.ovation.qc.ca;
- EXHIBIT P-9:** *En liasse*, screen captures from the Place des Arts website at placedesarts.com;
- EXHIBIT P-10:** Copy of a screenshot of evenko’s website at www.evenko.ca (Deep Purple);
- EXHIBIT P-11:** Copy of a screenshot of evenko’s website at www.evenko.ca (Stars on Ice);
- EXHIBIT P-12:** Copy of the evenko Purchase Agreement and Terms of Use, *en liasse*;
- EXHIBIT P-13:** Copy of the press release entitled “Ticketmaster and Montreal’s Groupe CH Grow Partnership to 1,500 Events” dated June 6, 2019,
- EXHIBIT P-14:** Screen capture taken on December 20, 2020, of the checkout page for Justin Bieber tickets sold by evenko on Ticketmaster’s website;
- EXHIBIT P-15:** Copy of the email sent to the Representative Plaintiff from evenko with the subject line with the subject line “Your order confirmation – 002-0545 7152” dated January 25, 2018;
- EXHIBIT P-16:** *En liasse*, copies of the email sent to the Representative Plaintiff from evenko with the subject line “Your E-Tickets - 002-0545 7152” dated January 25, 2018 and the PDF file containing the Elton John tickets attached thereto;
- EXHIBIT P-17:** *En liasse*, copy of the Representative Plaintiff’s June 16, 2015 purchase confirming for *The Australian Pink Floyd Show* that took place on July 23, 2015 and a picture of the hard copy ticket.

The exhibits in support of the application are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, December 21, 2020

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

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500-06-000924-189

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

KAYLEIGH TROLIO-KEATS

Representative Plaintiff

-VS.-

L'ARÉNA DES CANADIENS INC.

Defendant

ORIGINATING APPLICATION
(Articles 141 and 583 C.C.P.)

ORIGINAL

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