

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action)

No: 500-06-001112-206

FAY LEUNG

Plaintiff

v.

DOORDASH TECHNOLOGIES CANADA  
INC.

Defendant

**APPLICATION BY DEFENDANT DOORDASH TECHNOLOGIES CANADA INC.  
FOR LEAVE TO ADDUCE RELEVANT EVIDENCE**

(Article 574 CCP)

**TO THE HONOURABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT OF QUEBEC, SITTING IN FOR THE DISTRICT OF MONTREAL, DEFENDANT DOORDASH TECHNOLOGIES CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. Defendant DoorDash Technologies Canada Inc. (“**DoorDash Canada**”) seeks leave to adduce relevant evidence in order to establish facts that are necessary to enable this Court to undertake an informed decision, in light of the criteria set out in article 575 of the *Code of Civil Procedure* (“**CCP**”), regarding the authorization to institute class action proceedings sought by the Plaintiff.
2. On or around December 21, 2020, the Plaintiff filed an Application for authorization to institute a class action and to obtain the status of representative (the “**Application**”).
3. As appears from paragraph 1 of the Application, the Plaintiff seeks to represent a class comprised of the following persons:

[*Our translation*] All persons residing in Québec who made a transaction on the DoorDash mobile application or on the website [www.doordash.com](http://www.doordash.com) belonging to the Defendant and who paid a higher price than that advertised;

or any other class to be determined by the Court;

4. The Plaintiff seeks a reduction of her obligations, as well as punitive damages, allegedly resulting from DoorDash Canada's alleged violations of Articles 12, 219, 224 c) and 228 of the *Consumer Protection Act*.
5. DoorDash Canada hereby requests leave to adduce evidence at the authorization hearing in support of its submissions that the Application fails to meet the threshold authorization conditions set forth in Article 575 CCP.

## II. THE EVIDENCE THAT DOORDASH CANADA SEEKS TO ADDUCE

6. The evidence that DoorDash Canada seeks leave to adduce is eminently relevant and appropriate to the authorization inquiry proposed by the Plaintiff.
7. This proposed class action is premised on Plaintiff's allegations of insufficient disclosure by DoorDash Canada of certain fees, namely small order fees and service fees, which allegedly resulted in Plaintiff and Class Members paying fees that were not included in the advertised price.
8. In order to provide further context in respect of the allegations contained in Plaintiff's Application, DoorDash Canada seeks leave to adduce the sworn statement of Brent Seals (the "**Sworn Statement**") communicated herewith as Exhibit R-1.
9. In addition to providing relevant context, and as indicated in the Sworn Statement, the clarifications it contains that will assist the Court at the authorization hearing include the following:
  - (a) DoorDash Canada discloses all fees to the consumer once the consumer finalizes the order and before he or she proceeds with the confirmation and payment of the order;
  - (b) Small order fees only apply to orders amounting to a subtotal below \$12. DoorDash Canada does not know whether a small order fee will apply to a given transaction until the consumer has completed the selection of the items to be purchased, as the application of this fee depends entirely on the total amount of the items selected;
  - (c) Service fees were calculated on a percentage basis according to the total of a transaction. DoorDash Canada cannot disclose the amount of the fee until the consumer has completed the selection of the items to be purchased, as the subtotal determines the amount payable;
  - (d) DoorDash Canada decided to discontinue service fees on March 18, 2021 in the province of Québec.
10. The evidence that DoorDash Canada requests leave to adduce is limited to strictly circumscribed and precise subjects and facts.

11. Furthermore, the evidence is both relevant and necessary for the Court in considering and applying the criteria for authorization set out in Article 575 CCP.
12. The above-mentioned evidence complies with the criteria of relevance, proportionality and reasonability provided at Articles 18 and 19 CCP.

### **III. GROUNDS IN SUPPORT OF THE PRESENT APPLICATION**

13. It appears from Plaintiff's Application that it contains incomplete allegations which are prejudicial to DoorDash Canada, such that it should be afforded the opportunity to adduce evidence which will complete and bring more precision to the allegations made by the Plaintiff.
14. The Sworn Statement is both useful and necessary to demonstrate that several Plaintiff's allegations are incomplete and, when completed with the relevant context set out in the proposed evidence, do not justify the conclusions sought, such that the proposed class action is untenable and destined to fail.
15. The Sworn Statement is very limited in scope and is thus consistent with the nature of the authorization process and the principle of proportionality.
16. The evidence that DoorDash Canada seeks to adduce will also assist the Court in gaining a general understanding of the DoorDash Canada's platform.
17. In sum, the evidence which DoorDash Canada seeks to adduce would enable this court with an efficient review of the criteria contained at Article 575 CCP and would result in a more efficient hearing of the Application.
18. This Court should not prevent itself from having the benefit of evidence which could assist it in its analysis of the authorization criteria set forth in Article 575 CCP.

### **WHEREFORE MAY IT PLEASE THIS COURT TO:**

**GRANT** the present Application for leave to adduce relevant evidence;

**AUTHORIZE** Defendant DoorDash Canada to file the sworn statement of Brent Seals communicated herewith as Exhibit R-1;

**THE WHOLE** without costs, save in case of contestation.

Montréal, April 12, 2021

*Osler, Hoskin & Harcourt*

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Lawyers for Defendant,

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c/o Me Alexandre Fallon / Me Cristina

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Our file: 1217472

**NOTICE OF PRESENTATION**

To: Lambert Avocat Inc.  
c/o Me Jimmy Ernst Jr Laguë-Lambert  
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Suite 204  
Montréal, Québec H2Z 1Y6

Attorneys for Plaintiff

**TAKE NOTICE** that the present *Application by Defendant DoorDash Technologies Canada Inc. for Leave to Adduce Relevant Evidence* will be presented for hearing at a time and place to be determined by the Honourable Pierre-C. Gagnon of the Superior Court of Québec, 1 Notre-Dame Street East, Montreal, Québec, given the case management.

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, April 12, 2021



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Our file: 1217472

**CANADA**  
**PROVINCE OF QUÉBEC**  
**DISTRICT OF MONTRÉAL**

**SUPERIOR COURT**  
**(Class Action)**

---

No: 500-06-001112-206

**FAY LEUNG**

Plaintiff

v.

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**INC.**

Defendant

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**SWORN STATEMENT OF BRENT SEALS**

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I, Brent Seals, carrying out my occupation at 41 West 25th Street, 10th Floor, in the City of New York, in the state of New York, 10010, United States of America, solemnly declare that:

**I. INTRODUCTION**

1. I am the General Manager of Canada at DoorDash, Inc., the parent of the Defendant DoorDash Technologies Canada Inc. (hereinafter "**DoorDash Canada**"). I have personal knowledge of the facts and matters related in this sworn statement, except where stated to be based upon information and belief, in which case I believe the information to be true.
2. I have sworn this statement to provide further context in respect of the allegations contained in the Plaintiff's Application for Authorization to Institute a Class Action in this matter.
3. I understand that the Plaintiff wishes to institute a class action against DoorDash Canada seeking damages for allegedly insufficient disclosure of certain fees, namely small order fees and service fees.

**II. DOORDASH CANADA**

1. DoorDash Canada is a Canadian corporation with its headquarters located in Vancouver, British Columbia. It has an office in the Province of Québec.

2. DoorDash Canada is a technology platform that, among other services, facilitates delivery and pick-up from restaurants via its mobile application (the “app”) and its website: [www.doordash.com](http://www.doordash.com).

### III. DISCLOSURE OF FEES

1. A consumer can place an order for delivery from restaurants via the DoorDash app or website. Once logged in to either application, the consumer selects their current location and then DoorDash Canada lists those restaurants from whom the consumer can order.
2. Once the consumer selects a restaurant to order from, DoorDash Canada displays the restaurant’s virtual storefront to the consumer, which sets forth the prices of the individual items offered and advertised by the restaurant and the applicable delivery fee, as illustrated on the screenshots of the app and website “storefront” pages for Schwartz’s Deli, produced herewith as **Exhibit D1**;
3. Once the consumer completes their selection of items, DoorDash Canada then calculates and displays the charges to be paid by the consumer. The screenshots of the app and website “checkout” pages for Schwartz’s Deli, produced herewith as **Exhibit D2**, are an example of this. The video produced by the Plaintiff as Exhibit P-3 is another example that also includes the service fee;
4. The fees charged may include taxes, delivery fees, small order fees, and service fees. The consumer can obtain a detailed explanation of the fees by hovering over the “i” tooltip located to the right of the applicable charges, as illustrated on the screenshots of the app and website tooltip disclosures at checkout for Schwartz’s Deli, produced herewith as **Exhibit D3** and the video produced by the Plaintiff as Exhibit P-3;
5. Small order fees only apply to orders with a subtotal below \$12. This means that DoorDash Canada does not know whether the small order fee will apply to a given transaction until the consumer has completed the selection of the items to be purchased, as the application of this fee depends entirely on the total amount of the items selected.
6. Moreover, once the consumer indicates they have completed their selection of items, DoorDash Canada displays the applicable small order fee if the subtotal is less than \$12. The consumer can then avoid paying that fee by adding additional items to their cart before completing the transaction.
7. Service fees are calculated on a percentage basis according to the total of a transaction. Like the small order fee, DoorDash Canada cannot calculate the amount of the fee until the consumer had completed the selection of the items to be purchased, as the subtotal determines the amount payable.

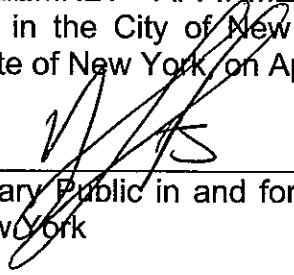
8. Consequently, each consumer is duly informed of the total amount that must be paid to obtain the individual items selected through DoorDash Canada once the consumer has finalized their selection of items. This disclosure includes all fees that must be paid to obtain the selected items through DoorDash Canada and is made in a manner that puts more emphasis on the total price than on the amounts of which the price is made up.
9. At the time where this disclosure is made, the consumer may make a well-informed decision to either (1) proceed with the payment and finalize the order, (2) modify the order to avoid small order fees, or (3) cancel the order.
10. DoorDash Canada decided to discontinue service fees on March 18, 2021 in the Province of Québec.
11. All the facts alleged herein are true.



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**BRENT SEALS**

SOLEMNLY AFFIRMED BEFORE  
ME in the City of New York, in the  
State of New York, on April 9, 2021.



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Notary Public in and for the State of  
New York

DYLAN BROWN  
NOTARY PUBLIC STATE OF NEW YORK  
No. 61366397521  
Qualified in Lewis County  
My Commission Expires 11-20-2021



# Mobile application



## Schwartz's Deli

DashPass • Boucheries • Delicatessen  
4.5 ★ 1 000+ Évaluations • 2.2 km • \$

<b>0,00 \$</b> Frais de livraison	<b>21 min</b> Délai de livraison
--------------------------------------	-------------------------------------

- Livraison**
- À emporter
- Commande de groupe

Obtenez 0\$ de frais de livraison pour les commandes de plus de 10\$

### Articles en vedette



**Sandwich à la viande fumée / Smoked Meat...**  
12,00 \$



**Frites / Fries**  
3,95 \$

- Livraison**
- À emporter
- Rechercher
- Commandes
- Compte

1000 Rue De La Gauchetière Ouest



Search



# Schwartz's Deli

**DashPass** • Meat Shops, Delis • 4.5 ★ (1,000+ ratings) • 1.4 mi • \$

CA\$0.00 delivery fee	16-26 minutes
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[Group Order](#)
[Delivery](#)
[Pickup](#)

Website



Your cart is empty  
Add items to get started

## Full Menu


10:00 am - 9:30 pm

- Popular Items**
- Combos Familiale / Family Combos
- Viande fumée / Smoked Meat
- Poutines
- Les à-côtés / Sides
- Boissons / [Beverages](#)


## Popular Items

The most commonly ordered items and dishes from this store

**Sandwich à la viande fumée / Smoked ...**  
 Sandwich avec viande fumée classique de Schwartz's Deli. / Classic Schwartz's Deli...  
 CA\$12.00



**Frites / Fries**  
 Classique frites dorées et parfaitement salées. / Classic golden fries and perfectly...  
 CA\$3.95



Mobile application



Schwartz's Deli



Vous avez économisé 4,99 \$ avec Promotion pour les nouve...


Livraison À emporter

Articles

1x Poutine 9,75 \$

+ Ajouter plus d'articles

Des gens ont aussi commandé

Boissons gazeuses / So... 2,75 \$  Frites / Fries 3,95 \$

Total

Code promo >

Sous-total 9,75 \$
Frais de livraison (i) 4,99 \$ 0,00 \$
Frais pour petite commande (i) 2,00 \$
Taxes (i) 1,76 \$

Continuer 13,51 \$



**METHOD**

Delivery

Pickup

**TIME**

ASAP · 18 - 28 mins

Schedule for later

**ADDRESS**

[Change](#)



1000 Rue De La Gauchetière Ouest, 1000 De La Gauchetière, 1000 Rue De La Gauchetière O, Montréal, QC H3B 4W5, Canada

Drop-off: Hand it to me [Add / Edit](#)

**PHONE NUMBER**

(514) 242-4267

[Change](#)

**GIFT OPTION**

[Send as a gift](#)

[Learn more](#)

**PAYMENT**

Add New Payment Method

Credit/Debit Card



**Website**



ORDER FROM

**Schwartz's Deli**

Please select valid payment method

[Place Order](#)

Subtotal	\$9.75
Delivery Fee <sup>⓪</sup>	<del>\$4.99</del> \$0.00
Small Order Fee <sup>⓪</sup>	\$2.00
Tax <sup>⓪</sup>	\$1.76

Dasher Tip \$3.00

[\\$2.00](#) **[\\$3.00](#)** [\\$4.00](#) [Other](#)

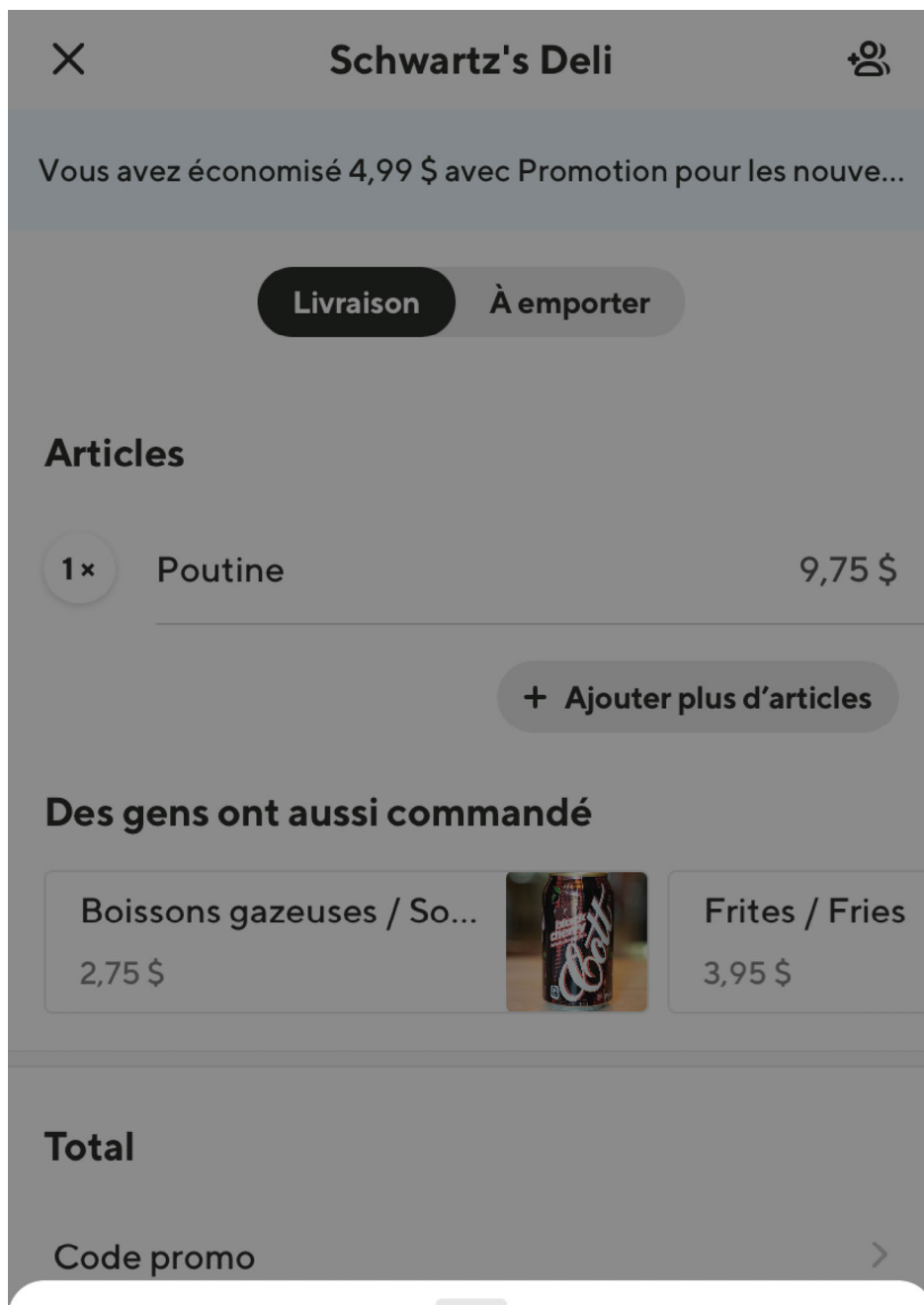
The recommended Dasher tip is based on the delivery distance and effort. 100% of the tip goes to your Dasher. [Learn more](#) about how Dashers are paid.

Total \$16.51

Amount Due \$16.51

You saved \$4.99 with New User Promotion

# Mobile Application




## Frais pour petite commande

Des frais pour petite commande s'appliquent aux commandes dont le sous-total est inférieur à 12,00 \$.

**D'accord**



## Website



ORDER FROM  
**Schwartz's Deli**

Please select valid payment method

Place Order

Subtotal		\$9.75
Delivery Fee ⓘ	<del>\$4.99</del>	\$0.00
Small Order Fee ⓘ		\$2.00
Tax ⓘ		\$1.76
The small order fee applies to orders with subtotal under \$12.00.		
Dasher Tip		\$3.00

\$2.00 **\$3.00** \$4.00 Other

The recommended Dasher tip is based on the delivery distance and effort. 100% of the tip goes to your Dasher. [Learn more](#) about how Dashers are paid.

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Total		\$16.51
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<b>Amount Due</b>		<b>\$16.51</b>
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You saved \$4.99 with New User Promotion

No: 500-06-001112-206

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**SUPERIOR COURT**  
(Class Action)  
**DISTRICT OF MONTRÉAL**

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**FAY LEUNG**

Plaintiff

v.

**DOORDASH TECHNOLOGIES CANADA  
INC.**

Defendant

---

**APPLICATION BY DEFENDANT DOORDASH  
TECHNOLOGIES CANADA INC. FOR LEAVE  
TO ADDUCE RELEVANT EVIDENCE (Art.  
574 CCP) and EXHIBIT R-1 Sworn Statement  
of Brent Seals and EXHIBITS D-1 to D-3**

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**ORIGINAL**

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Code : BO 0323

Our file: 1217472

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## Boulais, France

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**De:** Boulais, France  
**Envoyé:** 12 avril 2021 13:33  
**À:** 'jlambert@lambertavocatinc.com'  
**Cc:** Fallon, Alexandre; Cosneanu, Cristina  
**Objet:** NOTIFICATION BY EMAIL – Fay Leung v. DoorDash Technologies Canada Inc. (500-06-001112-206)  
– APPLICATION BY DEFENDANT DOORDASH TECHNOLOGIES CANADA INC. FOR LEAVE TO ADDUCE RELEVANT EVIDENCE (Art. 574 CCP) and EXHIBIT R-1  
**Pièces jointes:** 2021-04-12 Application by DoorDash for leave to adduce relevant evidence and Exhibit R-1.PDF

### NOTIFICATION BY EMAIL (Art. 134 CCP)

#### SENDER

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**OUR FILE NUMBER:** 1217472

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**Place of transmission:** Montréal  
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**Court file number:** 500-06-001112-206

**OSLER**

**France Boulais**  
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