

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

N^o.: 500-06-001041-207

CHAFIK MIHOUBI

Plaintiff

v.

**BENJAMIN & BROTHERS, L.L.C.
(RESERVATIONS.COM)**

and al.

Defendants

**APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE FROM THE
DEFENDANT BENJAMIN & BROTHERS L.L.C. (RESERVATIONS.COM)
(ART. 574 al. 3 CCP)**

**TO THE HONOURABLE MARTIN F. SHEEHAN OF THE SUPERIOR COURT, ACTING
AS THE DESIGNATED JUDGE IN THE PRESENT CASE, DEFENDANT BENJAMIN &
BROTHERS L.L.C. (RESERVATIONS.COM) RESPECTFULLY SUBMITS AS
FOLLOWS:**

Introduction

1. The Defendant Benjamin & Brothers, L.L.C. (Reservations.com) ("**Benjamin & Brothers**") is seeking leave from this Honourable Court to file relevant evidence to be used in the context of the hearing of the *Demande pour autorisation d'exercer une action collective et pour être représentant* filed on January 27, 2020 and amended on December 16, 2020 and on July 14, 2021 (the "**Application for Authorization**"), the whole pursuant to article 574 al. 3 of the *Code of Civil Procedure* (the "**CCP**").
2. More specifically, Benjamin & Brothers seeks leave to adduce a solemnly affirmed declaration from Mr. Yatin Patel (the "**Declaration**"), together with **Exhibit YP-1** and **Exhibit YP-2**, in order to ensure that the Court has the necessary facts to fairly consider the criteria for authorization set out at article 575 CCP. The Declaration is communicated thereto as **Exhibit R-1**.

The Application for Authorization

3. By way of the Application for Authorization, Mr. Mihoubi seeks to initiate a class action proceeding against various Defendants, including Benjamin & Brothers, on behalf of the following class:

Tous les consommateurs qui ont réservé, à partir du Québec, un hébergement par internet auprès des défenderesses et qui ont payé un prix supérieur au prix initialement annoncé, à l'exception des droits exigibles en vertu d'une loi fédérale ou provinciale lorsque, en vertu de cette loi, ces droits doivent être perçus directement du consommateur pour être remis à une autorité publique.

4. He alleges that all Defendants would have contravened to section 224 c) of the *Consumer Protection Act* (“CPA”).

The Usefulness of the Proposed Declaration for Authorization Assessment

5. The allegations contained in the Application for Authorization only partially depict the factual matrix of the case, with respect to:
 - i. The specific booking process of Benjamin & Brothers through the website Reservations.com, since Exhibit P-17 attached to the Application for Authorization only displays some of the steps;
 - ii. The details of the rates’ display on the Reservations.com website and, in particular, the fact that the fees are displayed on multiple occasions before the booking is finalized;
 - iii. The operations of Benjamin & Brothers’ website and, in particular, the legal relationship between Benjamin & Brothers and the different hotels and booking partners; and
 - iv. The impossibility for Benjamin & Brothers to provide a final price until the user has chosen his booking parameters.
6. The Declaration and the exhibits attached thereto will permit to clarify, complete and correct the factual elements and allegations raised in the Application for Authorization with respect to the above-mentioned elements.
7. This will also allow this Honourable Court to have all of the necessary facts in its assessment of the criteria provided at Article 575 CCP.
8. The evidence Benjamin & Brothers wishes to file is necessary for this Honourable Court to determine:
 - i. Whether the claims of the class members raise identical, similar or related issues of law or fact (art. 575 (1) CCP);

- ii. Whether the facts alleged appear to justify the conclusions sought (art. 575 (2) CCP);
- iii. Whether the Class Applicant has a viable personal claim with regards to the facts alleged and is in a position to properly represent the class members (575 (4) CCP); and
- iv. The scope and definition of the proposed class, if any.

Conclusion

9. In light of the foregoing, Benjamin & Brothers respectfully submits that the Declaration and exhibits are necessary, useful and reasonable in order for this Honourable Court to take cognizance of relevant facts in order to determine whether Class Applicant has an “arguable case” and whether the authorization criteria set out at article 575 CCP are met.
10. Under the circumstances, the present application is proportional and in the interest of justice.
11. Moreover, such evidence will be helpful to determine the appropriate class description and identify the questions to be dealt with collectively, if necessary, as required by article 576 CCP.
12. This application is well founded in fact and in law.

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present *Application for Leave to Adduce Relevant Evidence of the Defendant, Benjamin & Brothers L.L.C. (Reservations.com)*;

AUTHORIZE the Defendant, Benjamin & Brothers L.L.C. (Reservations.com), to submit and file into the Court’s record the Declaration of Mr. Yatin Patel (**Exhibit R-1**), together with Exhibit YP-1 and Exhibit YP-2;

THE WHOLE without costs, except in the event of contestation.

MONTREAL, September 2, 2021

McMillan LLP

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Brothers, L.L.C. (Reservations.com)

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NOTICE OF PRESENTATION

<p>To:</p>	<p>Me Bruce W. Johnston Me Mathieu Charest-Beaudry Me Lex Gill TRUDEL JOHNSTON & LESPÉRANCE S.E.N.C.</p> <p>bruce@tjl.quebec mathieu@tjl.quebec lex@tjl.quebec</p> <p>Me Bruno Grenier Me Cory Verbauwhede GRENIER VERBAUWHEBE AVOCATS INC.</p> <p>bgrenier@grenierverbauwhede.ca cverbauwhede@grenierverbauwhede.ca</p> <p>Me Peter Shams HADEKEL SHAMS S.E.N.C.R.L.</p> <p>peter@hadekelshams.ca</p> <p><u>Attorneys for the Plaintiff, Chafik Mihoubi</u></p>	
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TAKE NOTICE that the present *Application for leave to Adduce Evidence from the Defendant, BENJAMIN & BROTHERS L.L.C. (RESERVATIONS.COM)*, will be presented for adjudication before the Honourable Justice Martin F. Sheehan of the Superior Court of Quebec, at the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6, at a time and in a room to be designated by the Honourable Justice Sheehan.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 2, 2021

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LIST OF EXHIBIT

Exhibit R-1:	Solemnly affirmed declaration of Mr. Yatin Patel, and exhibits YP-1 and YP-2
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MONTREAL, September 2, 2021

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(RESERVATIONS.COM) (ART. 574 AL. 3
C.C.P.), NOTICE OF PRESENTATION, LIST
OF EXHIBITS, EXHIBIT R-1 (SWORN
DECLARATION OF YATIN PATEL AND
EXHIBITS YP-1 TO YP-2)**

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Procureur pour / Attorney for

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