

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001164-215

**SUPERIOR COURT**  
**(Class Actions)**

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**STEVEN** [REDACTED]  
[REDACTED]

Applicant

vs.

**LIGHTSPEED COMMERCE INC.**, legal person having its head office at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**LIGHTSPEED POS INC.**, legal person having its head office at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**DAX DASILVA**, CEO, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**JEAN PAUL CHAUVET**, President, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**MARIE-JOSÉE LAMONTHE**, Director, having her place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**PATRICK PICHETTE**, Chairman of the Board, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**ROB WILLIAMS**, Director, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**PAUL McFEETERS**, Director, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**MERLINE SAINTIL**, Director, having her place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**DANIEL MICAÏK**, Secretary, having his place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**ASHA BAKSHANI**, Executive Vice President Finance, having her place of employment at 700 Saint-Antoine Street East, Suite 300, City and District of Montreal, Quebec, H2Y 1A6

and

**PRICEWATERHOUSECOOPERS LLP**, legal person having a principal establishment at

1250 René-Lévesque Boulevard West, Suite  
2500, City and District of Montreal, Quebec,  
H3B 4Y1

Defendants

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**APPLICATION FOR AUTHORIZATION OF A CLASS ACTION AND FOR  
AUTHORIZATION TO BRING AN ACTION PURSUANT TO SECTION 225.4  
OF THE QUEBEC SECURITIES ACT**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks to institute a class action on behalf of the following class of which he is a member, namely:

**Class:**

All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities.

or any other Class to be determined by the Court.

**I. THE DEFENDANTS**

2. The Defendant, Lightspeed Commerce Inc., formerly Lightspeed POS Inc., (hereinafter "**Lightspeed**") is a dual-listed U.S. and Canadian roll-up publicly traded corporation on the Toronto Stock Exchange (TSX:LSPD) and on the New York Stock Exchange (NYSE:LSPD);
3. Lightspeed is a reporting issuer in Quebec and is closely and significantly connected to Quebec for the purposes of Title VIII, Chapter II, Division II of Quebec's *Securities Act*, CQLR c V-1.1 (the "**QSA**");
4. Lightspeed's head office is located at 700 Saint-Antoine Street East, Suite 300, in the City and District of Montreal, province of Quebec, H2Y 1A6, as it appears from the Quebec Business Registry, **Exhibit P-1**, as well as Lightspeed's Annual Report for the fiscal year ended March 31, 2019, **Exhibit P-2**;
5. All of Lightspeed's business operations and decision-making take place in the judicial district of Montreal, in the province of Quebec;
6. The Defendant PricewaterhouseCoopers LLP (hereinafter "**PwC**") was Lightspeed's auditor during the relevant period. The extract of the Quebec

Business Registry for PwC is communicated herewith as **Exhibit P-3**;

7. The remaining Defendants are directors and/or officers of Lightspeed and were all directors or officers of Lightspeed at the relevant times of the release of the documents purporting to have contained misrepresentations (as alleged herein) and they authorized, permitted or acquiesced in the release of these documents;

## II. THE ISSUES

8. On September 29, 2021, Spruce Point Capital Management LLC published a report titled "*Putting the Brakes on Lightspeed*", disclosing, *inter alia*, that prior to becoming public in 2019 Lightspeed overstated its customer accounts by greater than 80%, overstated its gross transaction volume by over 10%, and was projecting over an \$100 billion TAM (total addressable market) that was recently revised down to \$16 billion (and that's even after Lightspeed made over \$2.5 billion in acquisitions), the whole as it appears from a copy of the report communicated herewith as **Exhibit P-4** (hereinafter the "**Report**");
9. The Reported notably states the following, Exhibit P-4:
  - We find irrefutable evidence that LSPD overstated its customer count by 85%, while GTV, a measure of payment volume through its platform was overstated by at least 10%. Using the Wayback Machine to scrape customer and GTV counts suggests that LSPD's business was already stalling pre-IPO. LSPD has shifted its discussion from customers to locations:
    - ⇒ GTV overstatement identified as early as 2014 and revisions were made pre-IPO, reducing it by ~\$1.5 billion. A former employee told us to be careful of GTV as a metric, and that it is "smoke and mirrors"
    - ⇒ Customer overstatement from 50k to 27k verified by two methods, using GTV per customer and ARPU per customer
  - At its IPO, LSPD's prospectus promoted a Total Addressable Market (TAM) of \$113bn to grow to \$542bn:
    - ⇒ Yet, after \$2.5bn spent on acquisitions since its IPO, its recent prospectus showed a current TAM of just \$16 billion (85% less)
  - A compensation clawback policy was formally adopted at IPO for material misstatement of financials

- After its IPO, LSPD laid out its organic growth plan and listed “attracting new merchants” as its first objective in its year end conference call. On the following call it reported 2,000 net new merchants on its system. Thereafter, LSPD stopped disclosing net new merchant adds and it began a string of acquisitions
  - Hardware margins have recently turned negative and deferred revenue quality has deteriorated. Hardware sales, formerly a profit center, is now a cost center as competition gives it away for free. LSPD used to get upfront payments from customers for long-term contracts and reported long-term deferred revenue. Now, it charges monthly payments and long-term deferred revenue is declining. **A former employee told us definitively LSPD’s ARPU has been declining, but management claims it is growing**
  - LSPD initially told investors that operating cash flow was the best way to measure its growth. **However, it quickly suspended its cash flow guidance and didn’t promptly call out the change to investors**
  - LSPD’s income statement disclosures make it difficult to determine organic growth. However, balance sheet allocation from recent acquisitions gives us some insights:
    - ⇒ In Q3 2021, LSPD shifted towards larger acquisitions: ShopKeep (\$545m), Upserve (\$412m), and Vend (\$372m). **By backing out each acquisition’s contributions to deferred revenue and receivables, we find evidence of double digit organic decline. This contrasts with LSPD’s claims of 42% organic software and payments revenue growth in its core business**
10. At all relevant times during the class period, the Defendants made misrepresentations of material facts through affirmative false and/or misleading statements and through their failure to disclose the above. These include misrepresentations giving rise to the Applicant’s claims under the QSA;
11. By September 30, 2021, Lightspeed’s share price lost more than 15% (representing more than \$2 billion in shareholder value), as reported in a CBC News article titled “*Canadian tech firm Lightspeed walloped by short-seller attack*”, disclosed herewith as **Exhibit P-5**:

“Fast-growing Canadian technology company Lightspeed is pushing back after a short seller alleged the company has misled investors about its financial health, causing a \$2 billion plunge in the company’s value.

On Wednesday, Spruce Point Management, an American short-selling investment firm with a history of targeting Canadian companies, put out a lengthy report on Montreal-based Lightspeed Inc., alleging the company has covered up “**massive inflation**” of how many customers it has, how much money it makes from them, and how much growth potential it has.

...

**Lightspeed “baits investors with its massive potential in its payments solution, but we believe it has not been transparent about competitive pressures and material margin decline,”** the report says, among other allegations.

...

Spruce Point says the company is massively overvalued, and is poised to plummet to as low as \$22 a share.

...

**“Investor doubts persist around [Lightspeed] because management is not providing enough high-quality disclosure.”**

Investors don’t seem to know who to believe on Thursday, as Lightspeed shares jumped up when the stock market opened, but late in the trading day the shares were changing hands at about \$120 each, **bringing the two day sell-off to 15 per cent and wiping out \$2 billion off the value of the company.**

For its part, Spruce Point called Lightspeed’s defence “laughable.”

Lightspeed “provided a total dodge and deflect response and effectively told all its investors to go buzz off with that boilerplate non-response PR late yesterday,” Spruce Point said in a tweet on Thursday morning.”

12. The Defendants, based out of and operating from Montreal, Quebec, duped investors, including the Applicant and caused them financial losses. This includes them making misrepresentations in core documents (such as in their prospectuses, filings and reports, including the annual report filed for

demonstration purposes – at this stage – as Exhibit P-2);

13. These misrepresentations were consistently made by Lightspeed to the public in several ways, including on its website and in public documents;

### **III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**

#### **A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:**

14. The Applicant owns 50 shares of LSPD.TO in his RRSP account and 46 shares of LSPD.TO in his TFSA account, as it appears from his transaction confirmation statements communicated herewith *en liasse* as **Exhibit P-6**;
15. The Applicant most recently purchased Lightspeed shares on March 12, 2021 (see transaction confirmations communicated as Exhibit P-6);
16. On September 28, 2021, LSPD.TO shares closed at \$142.76. The Applicant's 96 shares were worth \$13,704.96. On that date, the Applicant had no reason to suspect that anything was offside at Lightspeed;
17. On September 29, 2021, following the release of the Report, LSPD.TO shares closed at \$126.00 and by September 30, 2021, Lightspeed's share price had plummeted by 15%, closing at \$122.22;
18. As of market closing on September 30, 2021, the Applicant's 96 LSPD.TO shares were worth \$11,733.12 (i.e. 15% less) due to the allegations contained in the Report;
19. At the time of his purchase of Lightspeed's shares, the Applicant was unaware that Lightspeed had made misrepresentations such as materially overstating its customer count and materially misrepresenting its TAM, among other fabrications it made to the public and to its shareholders;
20. The misrepresentations appear in core documents;
21. Lightspeed's directors, officers and employees failed to disclose material information regarding Lightspeed's business, as required by the *Quebec Securities Act* and other securities laws;
22. Lightspeed and the individual Defendants knew, at the time that each of the documents referred to above were released, that they contained a misrepresentation or deliberately avoided acquiring such knowledge at or before that time;
23. As it concerns PwC, the Applicant alleges that PwC should have detected the problems raised in the Report and hereby asserts his claim under section

225.8(3) QSA with respect to Lightspeed's annual statements and others financial disclosure documents;

24. The Applicant alleges that PwC is liable in its capacity of an expert whose reports, statements or opinions were included, summarized or quoted from, with its written consent, in Lightspeed's documents containing the misrepresentations alleged above;
25. The Applicant is entitled to and hereby does claim damages as a result of Lightspeed's (and the other Defendants') misrepresentations and faults on his behalf and on behalf of all class members, including those available under the QSA;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

26. By reason of Lightspeed's and PwC's unlawful conduct, the Applicant and Class members have suffered a prejudice, which they wish to claim;
27. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
28. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
  - a) Are class members entitled to damages and in what amount?
  - b) Did any of the Defendants commit a fault, including under article 1457 C.C.Q.?
  - c) Did the impugned documents contain one or more misrepresentations within the meaning of the QSA?
  - d) Are any of the Defendants liable to Class Members under Title VIII, Chapter II (Division I or Division II) of the QSA?

**C) THE COMPOSITION OF THE CLASS**

29. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
30. Lightspeed is a large corporation trading on the NYSE and on the TSX with an average volume of more than 600,000 shares traded daily;
31. There are likely tens of thousands of class members who can sue in the province of Quebec pursuant to article 3148(1) C.C.Q.;



32. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
33. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
34. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

35. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
  - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
  - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) His interests are not antagonistic to those of other Class members;

**IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

36. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
37. The conclusions that the Applicant wishes to introduce by way of an originating application are:
  1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  2. **GRANT** the Applicant's action against the Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and article 1457 C.C.Q.;
  3. **CONDEMN** the Defendants, solidarily, to pay the Plaintiff and the Class Members damages in an amount to be determined;
  4. **ORDER** that the above condemnation be subject to collective recovery;
  5. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the

Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

6. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
  7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  8. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of 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;
38. The interests of justice favour that this Application be granted in accordance with its conclusions;

#### **V. JURISDICTION**

39. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Defendants have their domicile in this district (art. 3148(1) C.C.Q.).

#### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

##### **Class:**

All persons and entities who acquired Lightspeed Commerce Inc. or Lightspeed POS Inc. securities.

or any other Class to be determined by the Court.

3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
  - a) Are class members entitled to damages and in what amount?
  - b) Did any of the Defendants commit a fault, including under article 1457 C.C.Q.?
  - c) Did the impugned documents contain one or more

misrepresentations within the meaning of the QSA?

- d) Are any of the Defendants liable to Class Members under Title VIII, Chapter II (Division I or Division II) of the QSA?

4. **IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
2. **GRANT** the Applicant's action against the Defendants in respect of the rights of action asserted against Defendants under Title VIII, Chapter II, Divisions I and II of the QSA and, if necessary, the concordant provisions of the other Securities Legislation, and article 1457 C.C.Q.;
3. **CONDEMN** the Defendants, solidarily, to pay the Plaintiff and the Class Members damages in an amount to be determined;
4. **ORDER** that the above condemnation be subject to collective recovery;
5. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
6. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
8. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of 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;

**ORDER** the publication of a notice to the class members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;

**FIX** the delay of exclusion at sixty (60) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by law;

**THE WHOLE** with costs including publication fees.

Montreal, October 1, 2021

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran

Attorney for the Applicant

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**SUMMONS**  
(ARTICLES 145 AND FOLLOWING C.C.P)

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**Filing of a judicial application**

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court of Quebec** 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 Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

**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 Applicant 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 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 Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the Quebec Business Registry for Lightspeed;
- Exhibit P-2:** *En liasse*, copies of Lightspeed's Annual Reports;
- Exhibit P-3:** Copy of Quebec Business Registry for PwC;
- Exhibit P-4:** Copy of the Spruce Point Capital Management LLC report titled "*Putting the Brakes on Lightspeed*", dated September 29, 2021;
- Exhibit P-5:** Copy of CBC News article *Canadian tech firm Lightspeed walloped by short-seller attack*", dated September 30, 2021;
- Exhibit P-6:** Copy of Applicant's transaction confirmations for a total of 96 LSPD.TO shares;

These exhibits 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, October 1, 2021

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Mtre Joey Zukran

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