

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-001075-205

BARRY NASHEN, domiciled at [REDACTED]
[REDACTED]

Representative Plaintiff

v.

**STATION MONT TREMBLANT SOCIÉTÉ EN
COMMANDITE**, legal person having its head
office at 1000, chemin des Voyageurs, Mont-
Tremblant, District of Terrebonne, Province of
Quebec, J8E 1T1

and

ALTERRA MOUNTAIN COMPANY, legal
person having its head office at 3501 Wazee
Street, Denver, Colorado, 80216, U.S.A.

Defendants

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

THE REPRESENTATIVE PLAINTIFF RESPECTFULLY STATES THE FOLLOWING:

I. INTRODUCTION

1. This class action seeks restitution for the “fixed” ski days paid for by class members and which the Defendants could not perform due to superior force (pursuant to articles 1693, 1694 and 1699 C.C.Q. and section 270 C.P.A.), or a partial reimbursement pursuant to section 272(c) C.P.A., for the Defendants' failure to comply with sections 16, 40, 41 and 42 C.P.A.;
2. On March 23, 2022, the Court of Appeal granted the status of Representative Plaintiff to Mr. Barry Nashen and authorized him to bring a class action for the benefit of the

persons forming part of the following class:

All consumers who purchased a 2019-2020 “Tonik” ski pass for Mont-Tremblant, including persons who also purchased the “Privilege Bundle” / “Tonik Forfait de privilèges” add-on.	Tous les consommateurs ayant acheté une passe de ski « Tonik » 2019-2020 pour le Mont-Tremblant y compris les personnes qui ont également acheté le forfait « Privilege bundle » / « Tonik Forfait de privilèges ».
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3. The Court of Appeal authorized Mr. Nashen to institute a class action:

- for restitution or reimbursement of a portion of the price of the Tonik pass at the Mont-Tremblant ski resort for the 2019-2020 season;	- en restitution ou remboursement d’une partie du prix du laissez-passer Tonik à la station de ski Mont-Tremblant pour la saison 2019-2020;
- for restitution or reimbursement of a portion of the price of the “Privilege bundle” / “Tonik Forfait privileges” at the Mont-Tremblant ski resort for the 2019-2020 season;	- en restitution ou remboursement d’une partie du prix du forfait « Privilège bundle / Tonik Forfait privilèges » à la station de ski Mont-Tremblant pour la saison 2019-2020;
- for punitive damages;	- en dommages-intérêts punitifs;

4. The Court of Appeal identified the principal questions of fact or law to be dealt with collectively in this class action as follows:

a) Are Class members entitled to restitution or at least to a partial reimbursement, and, if so, in what amount?	a) Les membres du groupe ont-ils droit à une restitution ou au moins à un remboursement partiel, et si oui, de quel montant ?
b) Are Class members entitled to punitive damages of 100\$ each pursuant to the C.P.A. [LPC]?	b) Les membres du groupe ont-ils droit à des dommages punitifs de 100 \$ chacun en vertu de la LPC ?

II. THE PARTIES

5. The Representative Plaintiff, Barry Nashen, is a consumer who purchased a “Tonik pass” and “Privilege bundle” for the Mont-Tremblant ski resort for the 2019-2020 season;
6. The Defendant, *Station Mont Tremblant Société en Commandite* (hereinafter “**SMT**”), owns, operates and manages the Mont-Tremblant ski resort, as it appears from an

extract of the CIDREQ disclosed herewith as **Exhibit P-1**;

7. The Defendant, *Alterra Mountain Company* (hereinafter “**AMC**”) purchased the Mont-Tremblant ski resort in 2017 and has it listed as one of the AMC destinations on its website <https://www.alterramtnco.com/tremblant/>, an extract of which is disclosed herewith as **Exhibit P-2**;

III. BACKGROUND

8. In the course of their operations, the Defendants sell a ski pass called the “Tonik Pass” for \$499 plus taxes (for the adults aged 18-69 price category), as it appears from their website https://www.tremblant.ca/planifiez/billets-passes/passes-de-saison-de-ski/passe-tonik?sc_lang=fr, an extract of which is disclosed herewith as **Exhibit P-3**;
9. For clarity, Class members include anyone who purchased a 2019-2020 Tonik Pass, including the following price categories:
 - Adult (18-69)
 - Senior (70+)
 - Master (80+)
 - Student (18-25)
 - Youth (13-17)
 - Child (5-12)
 - Peewee (0-4)
10. For the 2020-2021 version of the Tonik Pass, the Defendants advertise and sell the Tonik Pass by providing skiers with a calendar and promising them “117 fixed days on the snow” (in French: “*117 jours de glisse fixes et 3 jours flottants pour utilisation en tout temps, même durant la période des fêtes*”), Exhibit P-3;
11. For the 2019-2020 version of the Tonik Pass, the Defendants advertised and sold the Tonik Pass as including “113 fixed days on the snow” and provided the Plaintiff and Class members with the 2019-2020 calendar showing 119 “fixed days”, Plaintiff disclosing the calendar as **Exhibit P-4**;
12. Due to the health situation caused by the Covid-19 pandemic, which is a *force majeure* event, the Defendants could not offer 27 of the “fixed days” “*en tout temps*” that they promised to Class members who purchased the 2019-2020 Tonik Pass. However, the Defendants have refused to refund Class members for the portion of the specific days that they purchased the Tonik Pass for and for which the Defendants could not perform their obligations, that is to give access to the ski hill “*en tout temps*”;
13. On March 14, 2020, AMC issued a bilingual (English and French) statement on its website titled “*Alterra Mountain Company Closure Announcement*”, which included the following, as it appears from **Exhibit P-5**:

“After careful thought and deliberation of our duty in the face of

the COVID-19 (Coronavirus) outbreak, and in what I believe is in the best interest of our guests, employees and local communities, Alterra Mountain Company **will suspend operations at our 15 North American ski resorts, starting the morning of Sunday, March 15, until further notice**. All lift operations, food and beverage, retail and rental services will be closed until further notice.

Alterra Mountain Company destinations are... Tremblant in Quebec...

Each resort will work directly with guests in canceling (*sic*) their visit **and will provide refunds** or credits to those who have hotel and other bookings during this closure period...

14. The Defendants have refused to provide restitution according to law or to refund Class members for the unused days that were specifically advertised and offered by the Defendants and specifically paid for by the Class members;

IV. THE PERSONAL EXPERIENCE OF THE REPRESENTATIVE PLAINTIFF

15. On April 16, 2019, the Plaintiff purchased the 2019-2020 Tonik ski pass for \$567.25 (including taxes), as it appears from his receipt disclosed herewith as **Exhibit P-6**;
16. The Defendants advertised the 2019-2020 Tonik Pass as providing skiers (including the Plaintiff) with 113 “fixed days” on the snow “*en tout temps*”, as it appears from a screen grab of the tremblant.ca website from December 21, 2019 disclosed herewith as **Exhibit P-7**;
17. The Plaintiff purchased this specific Tonik Pass because it offered these “fixed days” “*en tout temps*” for skiing and because some of the best skiing is often in the months of March and April (the Plaintiff is aware of this because he has been skiing at Mont-Tremblant for the past 20 years);
18. In 2020, in particular, the Plaintiff intended on skiing twice a week - or more - during the spring skiing season (March and April 2020), due to the fact that he went into semi-retirement after selling 80% of his business effective February 1, 2020. He wanted to use some of his extra free time to ski at Mont-Tremblant;
19. In addition to the free time that the Plaintiff now had as a result of his semi-retirement, his annual two-week mid-March ski trip in Europe was delayed from mid-March to mid-April this year due to the schedules of his ski friends living in France. Therefore, in 2020, his mid-March to mid-April skiing days at Mont-Tremblant were going to be much higher compared to previous years;
20. The Defendants also provided the Plaintiff with a calendar showing that the Tonik Pass actually offers 119 “fixed days” “*Valides en tout temps*” (see Exhibit P-4: *Passe Tonik*

Calendrier 2019-2020);

21. Additionally, on December 22, 2019, the Plaintiff paid the Defendants \$93.55 to purchase the “*Tonik Forfait de privilèges*” (in English the “*Privilege Bundle*”), which is an exclusive offer to Tonik Pass holders (it is an “add-on” to the Tonik Pass) which includes certain pre-paid items added to his Tonik Pass, such as 20 coffees or hot chocolates, valid at certain Mont-Tremblant cafeterias, Plaintiff disclosing his receipt as **Exhibit P-8**;
22. As of March 15, 2020, the Defendants were no longer able to honour their obligations towards the Plaintiff and Class members by reason of superior force (Exhibit P-5) and could not provide them with access to the ski hills “*en tout temps*” (Exhibit P-3 and Exhibit P-4). As of this date, there were 27 “fixed days” remaining on the Tonik Pass Calendar (Exhibit P-4), which the Plaintiff paid for but was unable to use;
23. Also, as of March 15, 2020, the Plaintiff had only used 7 of the 20 coffees or hot chocolates he had pre-paid for with his purchase of the “*Tonik Forfait de privilèges*”, Plaintiff disclosing his account history as **Exhibit P-9** (this evidences the Plaintiff’s allegation that he was planning to come to Mont-Tremblant several more times in March and April of 2020);
24. As a result, the Defendants must provide the Plaintiff with restitution (or a partial reimbursement) in the form of a refund proportional to the 27 “fixed days” which he paid for (March 15 to April 19, 2020) but for which they could not provide him the services for;
25. The Plaintiff is entitled to a reduction of his obligations pursuant to s. 272(c) C.P.A. because the Defendants did not perform the service stipulated in the contract (including Exhibit P-4) for the remaining 27 “fixed days”, contrary to s. 16 C.P.A.;
26. A reduction of the Plaintiff’s obligations – in the form a reimbursement – is also appropriate because as a result of the health situation, the Defendants could not offer the 27 “fixed days” “*en tout temps*” and therefore could not comply with sections 40-42 C.P.A.;
27. The Plaintiff had attempted to request restitution or at least a partial reimbursement from the Defendants in the amount of \$128.71 (representing 22.69% of the 119 “fixed days”), but the Defendants still refuse to refund him. One of these attempts was made by email on April 14, 2020, as it appears from said email communicated herewith as **Exhibit P-10**;
28. Instead of restitution or a partial reimbursement, the Defendants have offered him (and all Class members) a discount of \$50.00 towards a purchase of the 2020-2021 Tonik Pass, which is wholly inadequate and not what is provided for by law in a situation of superior force;
29. The Plaintiff also requested a refund of the unused portion of the “*Tonik Forfait de privilèges*” add-on, but the Defendants refused to reimburse him. The Plaintiff hereby

requests a refund of \$21.23 (representing 22.69% of the 119 “fixed days”);

30. With respect to the “*Tonik Forfait de privilèges*” add-on, Plaintiff adds that, contrary to what the Defendants stated at the authorization stage, he was never offered any compensation or resolution concerning the unused coffees and hot chocolates he paid for and which he could not completely use due to the early closure (he has only used 7 of the 20 at the time of premature closure). He was never informed by the Defendants that the 13 remaining coffees/hot chocolates would carry-over to the following season. Although Mr. Gour declared this at paragraph 5 of his January 18, 2021 affidavit, the Plaintiff was never informed and, in any event, for nearly that entire following ski season (2020-21), the mountain lodges were closed – except for access to the bathrooms and to warm up from the cold – and no food or drinks were sold (the cafeterias were only allowed to be open for approximately the first three weeks of that season);
31. The Plaintiff is entitled to restitution or to a partial reimbursement and does hereby claim the total sum of \$149.94 from the Defendants, solidarily, on his behalf and on behalf of each of the Class members;
32. Lastly, given the Defendants’ conduct following the institution of this class action and their failure to reimburse the Plaintiff up until present, the Plaintiff hereby claims the additional amount of \$100 for himself and per Class member in punitive damages;
33. Punitive damages are appropriate in this case, especially when comparing the conduct of the Defendants with other corporations who actually fully refunded season passes that were prepaid at the beginning of the season and cut short due to COVID-19. For instance, when the Montreal Canadiens’ season was cancelled prematurely on March 12, 2020 with four (4) “fixed” regular season games remaining, the club offered its season pass holders the option of a **100% cash reimbursement** for the games not played, or a **150% credit** towards the price of season tickets for the following year, as it appears from a copy of the email sent by the Sales and Development department to all of their season ticket holders, communicated herewith as **Exhibit P-11**;
34. Additionally, at the authorization stage, the Defendants filed a first affidavit of Mr. Gour (September 29, 2020) in which he swore under oath that “*The Tonik Membership Waiver listed as Exhibit MT-5 is identical to the version **that the Applicant signed on December 21, 2017**. In it, the customer accepts all risks related to closure of the Mont Tremblant ski station*”. This was inaccurate – because Mr. Nashen never signed such a document – and the Defendants misled the Court to believe that he did. In fact, it was only at some point after the filing of his authorization application that the Defendants began telephoning Mr. Nashen to ask him to come to the mountain to sign certain documents, which he still did not sign;
35. The conduct of the Defendants was intentional, calculated, malicious and vexatious and such conduct, as alleged herein, warrants the requested condemnation in punitive

damages;

36. The Defendants' patrimonial situation is significant enough that the foregoing amount of punitive damages is appropriate in the circumstance;

V. THE DEFENDANTS' LIABILITY

37. As a result of the Defendants' breach of the CPA and unjustified refusal to reimburse a *pro rata* amount paid for the Tonik Pass, the Plaintiff is justified in asking that the Defendants be solidarily condemned to pay the Plaintiff and the Class members: (i) restitution or reimbursement of a portion of the price of the Tonik Pass for the 2019-2020 season; (ii) restitution or reimbursement of a portion of the price of the "Privilege bundle" / "Tonik Forfait privileges" for the 2019-2020 season; and (iii) punitive damages of \$100 each;
38. The solidarity between Defendants is presumed as they engage together in the operation of an enterprise;
39. The Defendants must be held accountable, solidarily, for their breach of the legal obligations which were imposed upon them by law including, but not limited to:
 - a) The *Civil Code of Quebec*, notably articles 6, 7, 1693, 1694 and 1699;
 - b) The *Consumer Protection Act*, 16, 40, 41, 42, 270 and 272.

VI. THE PERSONAL CLAIMS OF EACH OF THE CLASS MEMBERS

40. The claims of the Representative Plaintiff and the Class members are founded upon similar facts;
41. The situation is similar for all Class members, regardless of how much they paid for their Tonik Pass (depending on their age category), as the 2019-2020 Tonik calendar (Exhibit P-4) applies the same to all of them, as would the *pro rata* restitution or reimbursement of 22.69%;
42. By reason of Defendants' unlawful conduct, the Representative Plaintiff and Class members have suffered damages and are entitled to a *pro rata* restitution or reimbursement of 22.69% of the price paid for their respective Tonik passes, which they may collectively claim from the Defendants;
43. The Representative Plaintiff is accordingly entitled to claim and does hereby claim from Defendants, solidarily, the following as damages on behalf of each Class Member:
 - a) \$149.94 per Class member, representing 22.69% of the purchase price of the Tonik Pass and "Privilege bundle" / "Tonik Forfait de privileges; and
 - b) \$100 per Class member, on account of punitive damages.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

<p>1. ACCUEILLIR l'action collective du demandeur et de chacun des membres du groupe qu'il représente;</p>	<p>1. GRANT the class action of the Representative Plaintiff and of each of the members of the class that he represents;</p>
<p>2. CONDAMNER les défenderesses solidairement à payer au demandeur Nashen les montants suivants :</p> <p>i. La somme de 149,94 \$ à titre de remboursement de 22,69% du prix d'achat de son laissez-passer Tonik et de son Forfait « Privilege bundle » / « Tonik Forfait de privilèges » à la station de ski Mont-Tremblant pour la saison 2019-2020, avec intérêts au taux légal à compter de la date de signification de la demande d'autorisation d'exercer une action collective et obtenir le statut de représentant, ainsi que l'indemnité additionnelle prévue à l'article 1619 du <i>Code civil du Québec</i> à compter de cette date;</p> <p>ii. La somme de 100 \$ à titre de dommages-intérêts punitifs, avec intérêts au taux légal à compter du jugement à intervenir, ainsi que l'indemnité additionnelle prévue à l'article 1619 du <i>Code civil du Québec</i> à compter de cette date;</p>	<p>2. CONDEMN the Defendants solidarily to pay the Representative Plaintiff Mr. Nashen the following amounts:</p> <p>i. The sum of \$149.94 as reimbursement of 22.69% of the purchase price of his Tonik pass and his "Privilege bundle" / "Tonik Forfait de privileges" at Mont-Tremblant ski resort for the 2019-2020 season, with interest at the legal rate from the date of service of the <i>Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff</i>, as well as the additional indemnity provided for at article 1619 of the <i>Civil Code of Québec</i> from that date;</p> <p>ii. The sum of \$100 as punitive damages, with interest at the legal rate from the date of the judgment to be rendered, as well as the additional indemnity provided for in article 1619 of the <i>Civil Code of Québec</i> from that date;</p>
<p>3. ORDONNER le recouvrement collectif des réclamations des membres au titre du remboursement partiel du prix d'achat de leur laissez-passer Tonik et de leur Forfait ainsi qu'au titre des dommages-intérêts punitifs;</p>	<p>3. ORDER the collective recovery of the members' claims for partial reimbursement of the purchase price of their Tonik Pass and "Privilege bundle" and for punitive damages;</p>
<p>4. LE TOUT avec les frais de justice, incluant les frais d'expert et d'avis aux membres;</p>	<p>4. THE WHOLE with legal costs, including expert fees and notices to members;</p>

Montreal, April 4, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

M^e Joey Zukran

Attorney for Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Fax: (514) 221-4441

Email: jzukran@lpclex.com

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

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:** Extract of the CIDREQ for Station Mont Tremblant Société en Commandite;
- Exhibit P-2:** Extract of the website <https://www.alterramtnco.com/tremblant/>;
- Exhibit P-3:** Extract of the website https://www.tremblant.ca/planifiez/billets-passes/passes-de-saison-de-ski/passe-tonik?sc_lang=fr;
- Exhibit P-4:** Copy of the *Passe Tonik Calendrier 2019-2020*;
- Exhibit P-5:** Copy of the statement titled "Alterra Mountain Company Closure Announcement", dated March 14, 2020;
- Exhibit P-6:** Copy of Plaintiff's receipt dated April 16, 2019 for the Tonik Pass;
- Exhibit P-7:** Copy of the screen grab of the www.tremblant.ca website from December 21, 2019;
- Exhibit P-8:** Copy of Plaintiff's receipt dated December 22, 2019, for the "*Tonik Forfait*

de privilèges”;

Exhibit P-9: Copy of Plaintiff’s account history at Mont-Tremblant as of April 30, 2020;

Exhibit P-10: Mr. Nashen’s response to Defendants’ email of April 14, 2020;

Exhibit P-11: Copy of the email from the *Club de Hockey Canadien* dated May 7, 2020;

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, April 4, 2022

(s) LPC Avocat Inc.

LPC AVOCAT INC.

M^e Joey Zukran

Attorney for Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Fax: (514) 221-4441

Email: jzukran@lpclex.com

500-06-001075-205

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

BARRY NASHEN, domiciled at



Representative Plaintiff

v.

STATION MONT TREMBLANT SEC, 1000, ch.
des Voyageurs, Mont-Tremblant, Terrebonne,
Quebec, J8E 1T1
-and-

ALTERRA MOUNTAIN COMPANY, 3501 Wazee
Street, Denver, Colorado, 80216, U.S.A.

Defendants

ORIGINATING APPLICATION

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

Nature of Suit: Damages

ORIGINAL

M^e Joey Zukran

LPC AVOCAT INC.

276 Saint-Jacques Street, Suite 801
Montreal, Quebec, H2Y 1N3

Telephone: (514) 379-1572 • Fax: (514) 221-4441

Email: jzukran@lpclex.com

BL 6059

N/D: JZ-216
