

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000809-166

NAOMI ZOUZOUT

Plaintiff

-vs-

WAYFAIR LLC

Defendant

**AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**
(ARTICLE 571 AND FOLLOWING C.C.P)

TO THE HONOURABLE MICHÈLE MONAST, J.C.S., DESIGNATED TO HEAR THE PRESENT CLASS ACTION, YOUR PLAINTIFF STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Plaintiff wishes to institute a class action on behalf of the following class, of which she is a member, namely:

All persons in Quebec who, since January 4th, 2016 (the “Class Period”), ordered one of the following goods from the Wayfair.ca website (hereinafter “Wayfair”) and had their purchase cancelled by Wayfair as a result of a pricing error in the advertised price:

- i) Montgomery Loveseat listed on January 12th, 2016;
- ii) Laguna 8-piece seating group listed on July 15th, 2016;
- iii) Milano 5-piece deep seating group listed on September 6th, 2016.

or any other class to be determined by the Court.

(hereinafter referred to as the “**Class**”)

2. The Defendant, Wayfair LLC (“**Wayfair**”), is a publicly traded Delaware corporation (NYSE: W), having its principal office in Boston, Massachusetts;
3. Wayfair sells home improvement goods online via its websites, notably:
 - <https://www.wayfair.com>
 - <https://www.wayfair.ca>
 - <https://www.jossandmain.com>
 - <https://www.allmodern.com>
 - <https://www.dwellstudio.com>
 - <https://www.birchlane.com>
 - <http://www.wayfairsupply.com>
4. In its *2015 Annual Report*, Wayfair describes itself as follows, Plaintiff disclosing Wayfair’s 2015 Annual Report as **Exhibit P-1**:

Wayfair is one of the world's largest online destinations for the home. Through our e-commerce business model, we offer visually inspired browsing, compelling merchandising, easy product discovery and attractive prices for over seven million products from over 7,000 suppliers across five distinct brands: Wayfair.com, Joss & Main, AllModern, DwellStudio and Birch Lane.
5. Wayfair’s online presence enables it to enter into distance contracts with consumers and thus carry on business in the province of Quebec and across Canada;
6. In the course of its business, Wayfair publicly admits (see paragraph 31 below) that it **occurs 5-10 per week** that Wayfair advertises goods for a specific price (hereinafter the “**Advertised Price**”), processes Class members’ orders and purchases at the Advertised Price, sends the Class members an order confirmation showing the Advertised Price, charges the Class members’ credit card and then unlawfully cancels the Class members’ purchase, claiming that the Advertised Price was an error;
7. Wayfair has the obligation to sell the goods at the Advertised Price, as well as to deliver the goods stipulated in the contract;

8. Under Quebec consumer protection law, Wayfair is deemed to have made an offer to enter into a distance contract since its proposal comprised all the essential elements of the intended contract (including the price and detailed item description), and this regardless of whether Wayfair indicates its willingness to be bound in the event the proposal is accepted by the consumer and even if there is an indication to the contrary;
9. Consequently, Wayfair violates Quebec's *Consumer Protection Act* (hereinafter the "**CPA**"), notably paragraph c of section 224 *CPA*, every time that it cancels a Class member's purchase, and defaults on its obligation to sell the goods at the Advertised Price;
10. Additionally, Wayfair operates in Canada in violation of section 52 the *Competition Act* (hereinafter the "**Competition Act**"), as well as in violation of the consumer protection and trade practice legislation in the various Canadian jurisdictions (more fully described herein at paragraph 139 below), because it recklessly makes a representation to the public that is false or misleading in a material respect;
11. Egregiously, these violations occur 5-10 per week (see paragraph 31 below)!
12. Class members and consumers are justified in presuming that products listed on Wayfair's various websites have gone through a serious price verification process before being offered for sale by Wayfair on its websites to millions of people across Canada and worldwide;
13. Since at least **February 14th, 2012**, Wayfair acknowledges that it has, **repeatedly**, incorrectly advertised the price of its products by error, by sending Class members an email whenever they cancel an order due to so-called pricing errors, in which Wayfair admits, *inter alia*, that: "*We are very sorry to inform you that we listed the [product name] with **the incorrect pricing**. As a result of **our error**, we are **unable to fulfill your order**. To ensure your refund is processed right away, we have cancelled the item(s) listed below...*"
14. In some of the email messages (one of which was sent to Plaintiff and reproduced below), Wayfair then goes on to offer consumers the following: "*We truly appreciate your business, and would like to **extend a 15% promo** code to use towards a future purchase...*";
15. In its Terms of Use Wayfair inserts the following clause, Plaintiff disclosing Wayfair's most up to date Terms of Use pages (in English and French) as **Exhibit P-2**:

Order Acceptance

The receipt of an order number or an email order confirmation **does not**

constitute the acceptance of an order or a confirmation of an offer to sell. Wayfair.ca reserves the right, without prior notification, to limit the order quantity on any item and/or to refuse service to any customer. Verification of information may be required prior to the acceptance of an order. Prices and availability of products on the Sites are subject to change without notice. **Errors will be corrected when discovered and Wayfair.ca reserves the right to revoke any stated offer and to correct any error, inaccuracy, or omission (including after an order has been submitted).** Certain orders constitute improper use of the Sites and the Wayfair.ca Rewards Program described below. **Wayfair.ca reserves the right, at its sole discretion, to refuse or cancel any order for any reason.** Your account may also be restricted or terminated for any reason, at Wayfair.ca's sole discretion.

16. Wayfair's "Order Acceptance" clause cannot be setup against Quebec consumers because it violates section 54.1 of the CPA, which is of protective public order:

54.1 A distance contract is a contract entered into without the merchant and the consumer being in one another's presence and preceded by an offer by the merchant to enter into such a contract.

A merchant is deemed to have made an offer to enter into a distance contract if the merchant's proposal comprises all the essential elements of the intended contract, regardless of whether there is an indication of the merchant's willingness to be bound in the event the proposal is accepted and even if there is an indication to the contrary.

17. Wayfair is a merchant within the meaning of the CPA, or "suppliers" under the consumer protection and trade practice legislation in other Canadian jurisdictions, and their activities are governed by these legislation, among others;

(i) WAYFAIR IS A REPEAT OFFENDER:

18. Wayfair is a repeat offender for more than 3 years now;
19. Some of the items advertised by Wayfair and charged to Class members at prices which Wayfair ultimately failed to honor, are detailed in the following paragraphs;
20. On **February 14th, 2012**, a Facebook user by the name of "Ann Putnam" posted the following message in a Facebook group titled "*Baby Cheapskate*", Plaintiff disclosing **Exhibit P-3:**



Ann Putnam
▶ **Baby Cheapskate**

February 14, 2012 · 🌐

So [Wayfair.com](#) just cancelled my order for the leapfrog stuff that was posted on Sunday. They claim the pricing was a mistake and too far below market value. I think it's pretty crummy for them to cancel the order because of their mistake. If that had been an in-store error I would have been able to purchase as marked. Thumbs down for Wayfair for not honoring their advertised prices.

2 Likes 8 Comments

➦ Share

21. A Facebook user named “Michaela Krestenic” responded to Ann Putnam’s Facebook post, Exhibit P-3, confirming that she too was a victim of cancelled orders by Wayfair:

*they canceled my order too ... **I ordered some 8 or 9 different items and all got canceled for pricing errors!** ... not to say I didn't expect that happening ... but still ... **so many different items priced wrong? come on!***

22. On **October 1st, 2013**, a consumer posted the following complaint concerning her purchase of 2 **3x night vision scopes** from Wayfair, Plaintiff disclosing **Exhibit P-4**, which includes the following, the whole which is accessible online at <https://wayfair.pissedconsumer.com/cancelled-order-after-taking-payment-said-they-listed-the-wrong-price-20131001450476.html>:

I ordered 2 ATN 3x night vision scopes, paid via CC, a day later I get an email saying my order was cancelled. I call customer service & they say "sorry, we had the wrong price" & I tell them "but you took my order & money?" & they say that they have a policy (that was not posted anywhere or made clear during the transaction) that they can cancel your order at anytime, even though you already paid...How come stores & other businesses have to honor listed prices, but these guys just can take your money then change their minds?

23. On **January 16th, 2014**, another customer posted a complaint concerning her purchase of a rug from Wayfair’s website, Plaintiff disclosing **Exhibit P-5**, which includes the following, the whole which is accessible online at: <http://incomplaint.com/miscellaneous/757556-wayfai-wayfair-canceled-my-orde.html>:

Run from these people. I had been looking at a rug on their site, but could not afford it. I saw one of their pop up ads, and checked and it was greatly reduced.

Was so excited.

I even checked several times before ordering to make sure it was not a temporary glitch. The price stayed the same for several days. They charged my credit card, and then I started getting weird messages on my order status. Customer service people were nice via email, but kept saying they would get back to me and that the warehouse could not tell them anything. No information.

10 days later, I finally pinned them down and asked if they were really going to ship my rug. THEN I got a form letter saying they had made a mistake on the price and they would not sell it to me. They offered a nothing discount, but did not offer to sell it for half off or anything reasonable. I was a realtor for many years. I can just imagine had I written a contract for a house, and then come back and said...". Nope, you only get the house if you pay much more.

We made a mistake in the pricing" (which I don't even believe) I wonder how many people got drawn into this scam. I read that others have had similar experiences with other products...

24. During the past few months, many Wayfair clients have publicly complained about the same facts underpinning the present class action;
25. In **January of 2016**, a number of Canadian consumers using the RedFlagDeals website (www.redflagdeals.com) wrote several posts concerning a *Montgomery Loveseat* advertised by Wayfair on its website for \$20.99. Many of these consumers purchased and paid for the Loveseat, only to have Wayfair cancel their orders as well, the whole as it appears from the posts on the *RedFlagDeals* website, Plaintiff disclosing **Exhibit P-6**, which includes the following posts concerning Quebec consumers:

Jan 12th, 2016 1:40 pm #216

Ferinthul
Deal Addict
Dec 16, 2013
1178 posts
338 upvotes
Mississauga

koontzy wrote:
deal dead !
at least this is gonna be honored in Quebec !! Thanks op !!

My French friend, did you also receive a cancellation email?

Jan 12th, 2016 1:47 pm #217

Seifer
Deal Addict
Jan 14, 2007
4150 posts
631 upvotes
Quebec

Ferinthul wrote:
My French friend, did you also receive a cancellation email?

I'm in Quebec and got cancellation email too.

26. On **January 28th, 2016**, a website titled the “Ripoff Report” published a report titled: “Wayfair Supply Price is great but they will do anything to get out from under a mistake in pricing!”, Plaintiff disclosing the report as **Exhibit P-7**, which includes the following claims against Wayfair Supply (owned by Wayfair):

*I have ordered from Wayfair before and have been very pleased. I saw a price for black stone tile and it was too good to be true, but the price was on the website the next day. I ordered and paid for 600 square feet. The order was processed and I knew that it would take a while to get the tile. **This was 12/29/15 that I ordered the tile.** I was notified of the shipping time frame and when the tile got here I had 55 sq ft. Not even a decimal point issue. I checked the invoice and the invoice had 60 boxes of tile to be delivered. I had paid \$1.09/sq ft. This was over \$700 for the tile. I emailed the company and they got right back to me and stated that I did not know how to order tile and when I stated that I had ordered 600 sq ft and received 55 sq ft **then Jeffrey A stated that there was a pricing error. Wayfair had accepted the order and the money and sent the wrong amount without ever contacting me. The pricing error was not discovered until the customers started calling about the tile shipments. Wayfair then tried the bait and switch on me, also known as fraud, and stated that they could sell the rest of the tile at \$5+ per square foot. Wanting more money, when the amount that I received was at about \$14 sq ft. I then reported Wayfair to the Arizona Attorney General for Consumer Fraud. I also reported Wayfair to the Federal Trade Commission and the Consumer Website.***

27. On **April 20th, 2016**, a Twitter user named Laura o’Brien (@LOBrien77) tweeted the following concerning her cancelled purchase of a patio set from the Joss & Main website (owned by Wayfair), Plaintiff disclosing **Exhibit P-8**:



Laura o'Brien
@LOBrien77

Follow

ordered Joss & Main patio set paid & received order conf. now they are cancelling due to pricing error. Bad business [#jossandmain](#) [. #wayfair](#)

12:35 PM - 20 Apr 2016



28. Closer to home, on **July 22nd, 2016**, a Facebook user named “Jenny Lauzon” (residing in Ontario) tagged Wayfair in a Facebook post, in which she made the following statement concerning her cancelled purchase of a **Laguna 8 Piece Seating Group with Cushion by TK**, that she purchased for \$461.99, Plaintiff disclosing Jenny’s Facebook post in its entirety as **Exhibit P-9**:

*I often shop online at Wayfair.ca, on July 15th, I was looking to buy patio furniture, a conversation set to be exact. I surfed the website's numerous pages of patio furniture looking for a good deal. Then I found it! A TK Classic, 7 piece conversation set for \$462.00 Canadian. I was so happy. I thought this was too good to be true. **I place the order and received confirmation.***

*On July 18th, I was out for dinner with friends and I took my phone out to show them the conversation set I purchased, **only to see "cancelled" by the order. I was totally embarrassed after telling my friend how great of a deal I got from Wayfair.ca.***

*I immediately called Wayfair.ca. I spoke with a representative who looked up the order. **She apologized and explained that a pricing error had occurred.** I have never had this happen before with any online retailer before. I was really upset that they cancelled my order without any notification or communication (sic). She then said I would be receive (sic) an email with an apology and a %15 off discount code. I did not think that was fair and did not equate to what I was going to receive. I asked to speak with a manager. **The manager explained and read Wayfair.ca's policy.** This is it, so buyers beware!*

[...]

I told the manager that I felt this policy was extremely unfair to their customers...

29. On **July 25th, 2016, at 6:42 a.m.**, Wayfair acknowledged Jenny Lauzon’s Facebook post of July 22nd, 2016, Exhibit P-9, by responding as follows using Wayfair’s verified Facebook account titled “Wayfair”:



Wayfair.ca - Online Home Store for Furniture, Decor, Outdoors & More | Wayfair.ca

Shop Wayfair.ca for A Zillion Things Home across all styles and budgets. 5,000 brands of furniture, lighting, cookware, and more. Free Shipping on most items.

WAYFAIR.CA

1 Like 4 Comments

Share

Jeff Coff likes this.

Top Comments ▾

Wayfair Hi Jenny! We're sorry to hear you had bad experience. If you don't mind, please send us your order number in a direct message. We'd love to look into this further for you. Thanks!

July 25 at 6:42am

Lisa Marie Sorry you had to go through that. So frustrating!

July 25 at 3:25pm

Jenny Lauzon Not sure what you mean by direct message.

July 25 at 9:20am

Heather Free-Phillips Private message on fb or email

July 25 at 12:07pm

30. On **July 26th, 2016**, “Colleen” from Wayfair’s *Customer Advocacy Team* admitted to Jenny in an email that the matter has been brought to Wayfair’s attention:

Dear Jenny,

I hope this email finds you well. Your Wayfair order for the TK Classics – Laguna 8 Piece Seating Group with Cushions was recently brought to my attention by our social media team. I recently left you a voicemail, but I also wanted to personally follow up with you by email to **apologize for the pricing error on this order.** I am very sorry for the inconvenience this has been causing you and cannot apologize enough for the trouble.

I will be taking over your order from here and am more than happy to find you some similar options. **We never want to have to cancel orders, but unfortunately in this case we did have to.** However, we have many

different outdoor seating groups that **I am able to offer a significant discount on for you.**

We greatly value your business and **appreciate you bringing this matter to our attention.** By the end of the day, I will follow up with some seating group options for you and a reduced price options. In the meantime, please do not hesitate to call or email me with any questions or concerns.

Kind Regards,

COLLEEN

Customer Advocacy Team

WAYFAIR

4 Copley Place - Floor 7

Boston, MA 02116

P: 857-317-7087

customeradvocacy@wayfair.com

31. On **July 27th, 2016**, Colleen once again wrote to Jenny on behalf of Wayfair, **admitting that 5 to 10 items per week are listed with the incorrect price on Wayfair's websites** (and presumably purchased by consumers at this incorrect price and subsequently cancelled by Wayfair):

Hello Jenny,

*I completely understand your frustration and hesitation to order from us in the future. **We do host over 7 million different items on our site, and every so often there may be a pricing error.***

*Our team is always working to prevent this from happening, especially as it is an inconvenience to our customers. **Obviously, I cannot guarantee that this will never happen, however they are rare. My team handles outreach for all of them and we typically only see about 5 -10 items a week that are affected by these.** That is out of over 7 million items.*

I have found some other options that I can price to \$600 and are closer to what you were initially looking for:

<https://www.wayfair.ca/Belle-6-Piece-Deep-Seating-Group-with-Cushion-BELLE-06a-TKCL1386.html>

<https://www.wayfair.ca/Gran-Melia-4-Piece-Seating-Group-with-Cushions-BRSD6294-BRSD6294.html>

<https://www.wayfair.ca/Belle-7-Piece-Deep-Seating-Group-with-Cushion-BELLE-07a-TKCL1389.html>

<https://www.wayfair.ca/South-Hampton-6-Piece-Wicker-Sectional-Seating-Group-with-Cushions-SH2C2MTO-B-BRSD6614.html>

I definitely want to help you, and my team is always here if there is a pricing error to help customers find something to fit there (sic) needs.

Please let me know if there is any more I can do for you.

COLLEEN

Customer Advocacy Team

WAYFAIR

4 Copley Place - Floor 7

Boston, MA 02116

P: 857-317-7087

customeradvocacy@wayfair.com

32. Despite the matter admittedly brought to Wayfair's attention and despite the same issue admittedly reoccurring 5-10 times per week, the very same "pricing error" issues did not cease;
33. On **August 15th, 2016**, yet another consumer posted a complaint, this time at: <https://wayfair.pissedconsumer.com/wayfair-canceled-order-and-refunded-credit-card-they-claim-pricing-error-20160818902796.html>, Plaintiff disclosing **Exhibit P-10**, which includes the following:

so i order several pieces of furniture - 3 days later i get an email stating the order has been canceled and credit card is being refunded - they reason given was "the engineers entered the wrong prices on the website." i go back to view the web pages and they are still being sold for the price i wanted to pay. I called customer service - what a joke...
34. And yet on **September 6th, 2016**, despite all of the preceding "pricing errors", Wayfair supposedly still managed to make another "pricing error" when the Plaintiff - and others - purchased the *Milano 5 Piece Deep Seating Group* from Wayfair's ".ca" website;
35. Wayfair is negligent in allowing these pricing errors to occur 5-10 times per week and its unlawful behavior must be tamed;
36. As a repeat offender, even if Wayfair does in fact make mistakes, such mistakes must be characterized as inexcusable, since the repetition of the mistakes (**admittedly 5 to 10 times per week**) on the Advertised Price demonstrates **gross negligence** on the part of Wayfair;
37. Wayfair unlawfully operates in the province of Quebec by derogating from the CPA by private agreement or by invoking its own terms and policies in violation of Quebec consumers' rights;
38. By proceeding in this manner, Wayfair engages in false/misleading advertising and

forces Class members to pay a higher price than the one it advertises for its goods, should Class members still wish to acquire the goods after their purchase was cancelled by Wayfair (as more fully described herein at paragraph 55 below);

39. By reason of Wayfair's unlawful conduct, the Plaintiff and the members of the Class have suffered a prejudice, which they now wish to claim, every time a Class member or consumer made a purchase which Wayfair unilaterally cancelled, especially after sending a confirmation order to Class members after each purchase;
40. Class members in Quebec benefit from an **absolute presumption of prejudice** and the prohibited practice is deemed to have had a fraudulent effect on Class members because:
 - a) Wayfair failed to fulfill one of the obligations imposed by Title II of the *CPA* (section 219 and paragraph c of section 224);
 - b) all Class members saw the representation (the price offered by Wayfair) that constituted a prohibited practice;
 - c) the Class members' seeing of that representation resulted in the formation of a consumer contract (a distance contract in this case); and
 - d) a sufficient nexus existed between the content of the representation (the price offered and item description) and the goods covered by the contract (the prohibited practice was *capable* of influencing the behaviour of Class members with respect to the formation of the contract);
41. In taking the foregoing into account, all members of the Class are justified in claiming the sums which represent the Lost Value, as well as punitive damages;

B) THE PARTIES

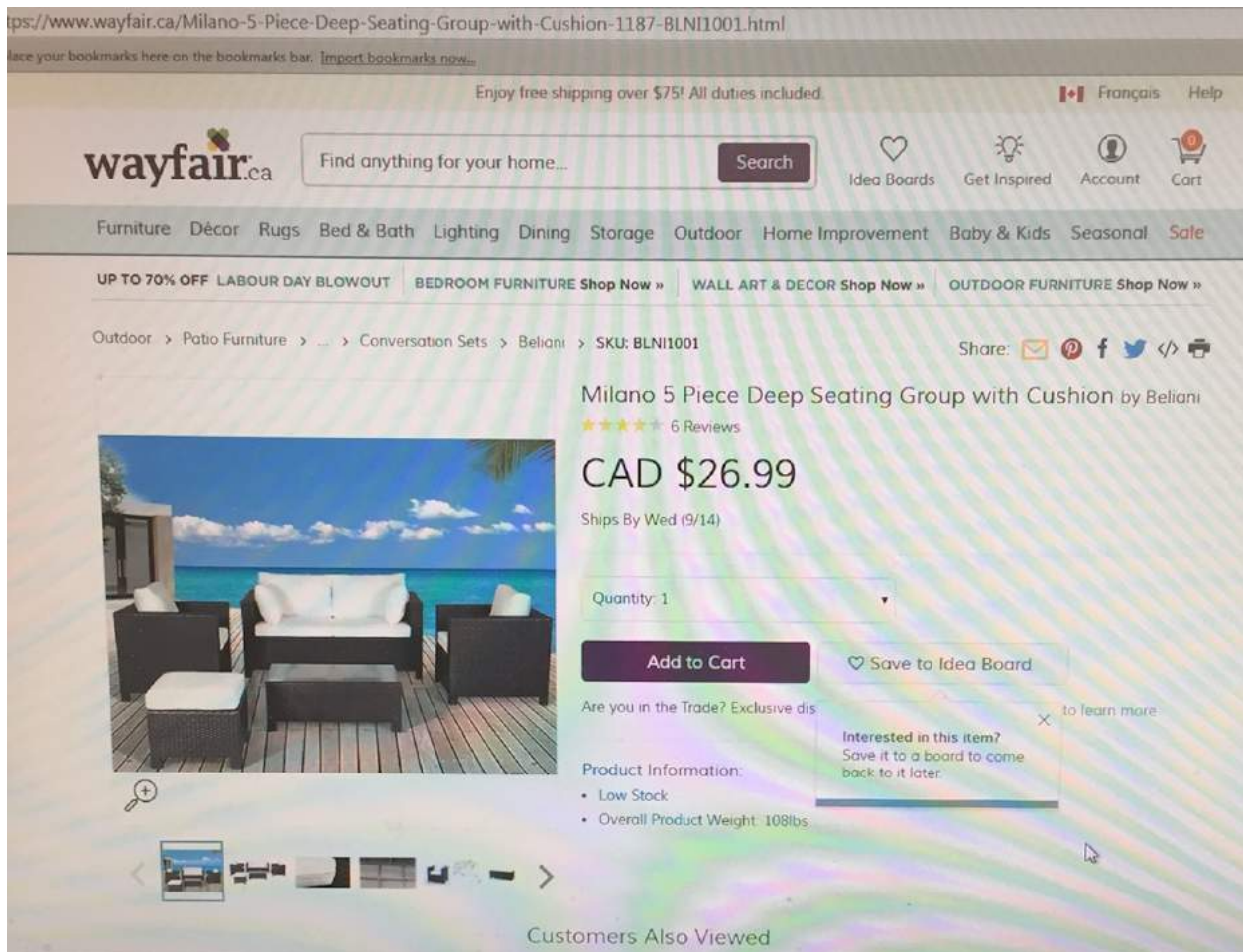
42. Plaintiff is a consumer within the meaning of the *CPA*, as well as within the consumer protection and trade practice legislation in other Canadian jurisdictions;
43. The Defendant, Wayfair LLC., is carrying on the business of e-commerce and sells home improvement goods online via several of its websites;
44. Wayfair boasts on its website that: "***With one of the world's largest online selections of furniture, home furnishings, décor and goods, including more than seven million products from over 7,000 suppliers, Wayfair helps people find the perfect product at the right price***" (<http://www.wayfair.com/v/about/Wayfair>);

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

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

Plaintiff's Claim against Wayfair

45. On **September 6th, 2016**, Plaintiff saw a “*Milano 5 Piece Deep Seating Group with Cushion by Beliani*” advertised on Wayfair’s Canadian website (<https://www.wayfair.ca/Milano-5-Piece-Deep-Seating-Group-with-Cushion-1187-BLNI1001.html>), Plaintiff disclosing **Exhibit P-11**, reproduced below:



46. On **September 6th, 2016**, Plaintiff purchased one (1) *Milano 5 Piece Deep Seating Group with Cushion by Beliani* (hereinafter the “**Seating Group**”), from Wayfair;

i. Circumstances of Plaintiff's Purchase

47. Plaintiff was interested in this specific Seating Group because she saw it advertised

on Wayfair's website at an excellent price and she was in the market for a Seating Group;

48. Seeing that the Seating Group was offered by Wayfair at \$26.99 plus taxes, and seeing that she needed a Seating Group, Plaintiff decided to immediately accept the Defendant's offer and purchase one Seating Group (Wayfair advertised that there was "Low Stock" as it appears from the image above, Exhibit P-11);
49. Plaintiff accepted the offer made by Wayfair on said website and then paid Wayfair the price it advertised of \$26.99 plus applicable taxes, for one Seating Group (for a total of **\$32.18**), upon which Plaintiff received an e-mail confirmation of the order from Wayfair, Plaintiff disclosing a copy of the proof of purchase and order **confirmation #2185962105** from Wayfair dated **September 6th, 2016**, as **Exhibit P-12**;
50. On **September 6th, 2016**, Wayfair charged the Plaintiff's RBC Visa credit card in the amount of \$32.18, which corresponds to the total amount of her purchase appearing on the email confirmation of her order, Exhibit P-12, as it appears from an excerpt of Plaintiff's RBC Visa statement below, Plaintiff disclosing **Exhibit P-13**:

The image shows a screenshot of a credit card statement with two tabs: "Overview" and "Transactions". The "Transactions" tab is selected. A transaction is listed for "Sep 06, 2016" with a description "WAYFAIR*Wayfair.ca 800-5081737 MA" and a total amount of "32.18".

Transaction Date	Description	Amount
Sep 06, 2016	WAYFAIR*Wayfair.ca 800-5081737 MA	32.18

ii. Wayfair's Cancellation of Plaintiff's Order

51. The regular price of said Seating Group is listed at \$2849.99 plus applicable taxes;
52. On **September 7th, 2016**, Wayfair sent Plaintiff the following generic script by email:

"Dear Naomi,

We are writing in regard to your recent Wayfair order for the Milano 5

Piece Deep Seating Group with Cushion (Order # 2185962105).

*We are very sorry to inform you that we listed the seating group with the **incorrect pricing**. As a result of our error, we are unable to fulfill your order. To ensure your refund is processed right away, we have cancelled the item(s) listed below:*

- *Milano 5 Piece Deep Seating Group with Cushion*

Please allow 1-3 business days for all pending charges to be voided. If you paid with PayPal or a debit card, please allow 2-4 business days for your refund to be processed.

*We truly appreciate your business, and would like to **extend a 15% promo code** to use towards a future purchase: Coupon Code: CBB6701164437 (expires: 12/7/2016).*

Our Sincerest Apologies,

Daniel

53. Plaintiff immediately responded to Wayfair as it appears below and from the email trail between the parties disclosed as Plaintiff's **Exhibit P-14**:

Hi Daniel

I understand that this was a mistake but that isn't my fault, I purchased an item at a price and you need to respect that price or else it is false advertising. The amount was deducted from my account and I got 2 confirmation emails.

Please advise

Thank you

Naomi

54. As of the filing of this Application, Wayfair has not yet responded to the Plaintiff's email;
55. Plaintiff then visited the same hyperlink for the Seating Group on Wayfair's website, which, as of the eve of the filing of this Application, was still listed at \$2,849.99 plus taxes, Plaintiff disclosing **Exhibit P-15**, a screenshot of which is reproduced below:



Milano 5 Piece Deep Seating Group with Cushion by Beliani

★★★★☆ 6 Reviews

CAD \$2,849.99

Quantity: 1

Add to Cart

♥ Save to Idea Board

Are you in the Trade? Exclusive discounts may be available. [Click here to learn more](#)

Product Information:

- 6 in Stock
- Overall Product Weight: 108lbs

***iii. Damages suffered by Plaintiff***

56. Wayfair's misconduct is to the detriment of vulnerable Canadian consumers, who rightfully presume that a product has gone through a serious price verification process before being offered for sale by Wayfair on its website to millions of people across Canada, including to the Plaintiff;
57. By all accounts, Wayfair's price verification process is not stringent enough because, as Wayfair publicly admits, 5 to 10 items per week are still listed incorrectly on their websites;
58. Plaintiff suffered damages equal to the difference between the Advertised Price by Wayfair for the Seating Group (\$26.99) and the price subsequently requested by Wayfair for the Seating Group (\$2849.99), representing the "**Lost Value**" to the Plaintiff;
59. On **September 11th, 2016**, if Plaintiff wanted to purchase the exact same item she initially saw advertised and which she purchased for \$26.99 on September 6th, 2016, Wayfair would charge her \$2,849.99 plus applicable taxes;

60. Plaintiff suffered a Lost Value before applicable taxes of \$2849.99 minus \$26.99, for a Lost Value of **\$3,244.60**;¹

61. Wayfair clearly violates paragraph c of section 224 CPA which provides:

English Version

224. No merchant, manufacturer or advertiser may, by any means whatever,

[...]

(c) **charge**, for goods or services, a higher price than that advertised.

French Version

224. Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit:

[...]

c) **exiger** pour un bien ou un service un prix supérieur à celui qui est annoncé.

62. In its email sent to Plaintiff on September 7th, 2016, Exhibit P-14, Wayfair claims that **“we are unable to fulfill your order”**, which is false;

63. The reality is that Wayfair was unable to fulfill the Plaintiff’s order for the Seating Group at the price Plaintiff legally purchased it for;

64. Instead of delivering Plaintiff a Seating Group as it initially promised to do (and as it was legally bound to do), Defendant offered Plaintiff a 15% discount towards a future purchase;

65. By proceeding in this manner, Wayfair unlawfully attempts to charge (“*exiger*” in French) consumers a higher price than the one it advertises for its goods;

66. Plaintiff declined Wayfair’s offer of a 15% discount towards a future purchase;

67. Even if Plaintiff did accept the 15% discount towards a future purchase, Wayfair would still have charged her **\$2,422.49** plus taxes for the exact same Seating Group (\$2,849.99 minus 15% = \$2,422.49);

68. As such, Plaintiff’s true Lost Value, after applying the 15% discount, is thus

¹ \$2,849.99 plus GST and QST = \$3,276.78;

\$3,276.78 (present value after taxes) - \$32.18 (Advertised Price after taxes) = \$3,244.60

\$2,753.07;²

69. Wayfair did not deliver the Seating Group to Plaintiff at the Advertised Price of \$26.99 plus taxes, but it instead attempted to interest the Plaintiff into purchasing anything from Wayfair (including but not limited to the same Seating Group), by offering her a 15% rebate towards a future purchase from Wayfair;
70. Wayfair's conduct constitutes prohibited business practices as defined in sections 215, 219 and paragraph c of section 224 of the *CPA*;
71. Moreover, Wayfair fails to fulfill the general obligations imposed on it under sections 10 and 16 of the *CPA*;
72. Consequently, Wayfair is liable to reimburse Plaintiff the following amounts, inclusive of sales taxes:
 - Value of Seating Group (\$2,785.25) minus price advertised/charged (\$32.18)
= **\$2,753.07**

- Amount on account of punitive damages (section 272 *CPA*):
= **TBD**

Total: \$2,753.07 (tentatively)

iv. Plaintiff's claim for compensatory damages (arts. 224 c) and 272 c) CPA)

73. Plaintiff has suffered an ascertainable loss as a result of Wayfair's misconduct and failure to comply with paragraph c of section 224 *CPA*, including, but not limited to: (i) a Lost Value of in the amount of \$2,753.07; and (ii) trouble and inconvenience;
74. Plaintiff benefits from an absolute presumption of prejudice because:
 - a) Plaintiff is a consumer within the meaning of the *CPA*;
 - b) Wayfair is a merchant within the meaning of the *CPA*;
 - c) Wayfair charges ("*exige*" in French) a higher price than the one it advertised and for the *Milano 5 Piece Deep Seating Group with Cushion*;
 - d) Plaintiff saw Wayfair's representations on its website concerning the *Milano 5 Piece Deep Seating Group with Cushion* (when said Seating Group was

² \$2,785.25 (actual present value after taxes and after applying 15% discount) - \$32.18 (Advertised Price after taxes) = \$2,753.07;

advertised and charged to Plaintiff's credit card by Wayfair at \$26.99 plus taxes);

- e) After seeing Wayfair's representations, Plaintiff entered into a consumer contract with Wayfair by purchasing said Seating Group with her credit card;
- f) There existed a sufficient nexus between the content of Wayfair's representation and the Seating Group covered by the contract (Wayfair's practice influenced the Plaintiff's behavior with respect to the formation of the consumer contract);

75. Plaintiff's damages are a direct and proximate result of Wayfair's misconduct;

v. Plaintiff's claim for punitive damages (arts. 224 c) and 272 CPA)

- 76. Wayfair breached paragraph c of section 224 CPA;
- 77. Plaintiff immediately gave Wayfair the opportunity to remedy the situation **after** its violation of paragraph c of section 224 CPA, as it appears from her September 7th, 2016, email response to Wayfair, Exhibit P-14;
- 78. Wayfair should have delivered to Plaintiff the goods she lawfully purchased, instead of offering her a 15% discount towards future purchases;
- 79. Wayfair's overall conduct before, during and after the violation, was lax, careless, negligent, passive and ignorant with respect to consumers' rights and to its own obligations;
- 80. This complete disregard for consumers' rights and to its own obligations under the CPA, under other consumer protection and trade practice legislation in Canada and under the *Competition Act* on the part of Wayfair, is in and of itself an important reason for this Court enforce measures that will punish Wayfair, as well as deter and dissuade Wayfair and other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Quebec and Canadian consumers;
- 81. The reality is that Wayfair's revenues – which is in likely in the **billions of dollars** during the Class Period (and this, based on Wayfair's 2015 Annual Report, Exhibit P-1³), would be adversely effected if Wayfair charged the Advertised Price instead of demanding ("*exiger*" in French) the higher price from consumers;

³ See bottom of page 29 of the *2015 Annual Report*, Exhibit P-1, in which Wayfair boasts: "In the year ended December 31, 2015, **we generated net revenue of \$2.2 billion**, up 70.6% over the year ended December 31, 2014."

82. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
83. Wayfair's violations were intentional, calculated, malicious, and vexatious;
84. Even worse, Wayfair's violations are repetitive, with no end-date in sight;
85. In fact, Wayfair appears to be comfortable with the idea that they "**typically only see about 5 -10 items a week that are affected**" by self-caused pricing errors (see paragraph 31 above);
86. Wayfair demonstrates through its behavior (before, during and after the violation) that it is more concerned about its bottom line than about consumers' rights and its own obligations under the *CPA*, as well as under other consumer protection and trade practice legislation in Canada;
87. In these circumstances, Plaintiff's claim for both compensatory and punitive damages against Wayfair is justified;

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

88. All Class members have a common interest both in proving the commission of a prohibited businesses practice (notably, the violation of paragraph *c* of section 224 *CPA* in the present case) by Wayfair and in maximizing the aggregate of the amounts of their respective Lost Value as a result of Wayfair's violations;
89. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether Wayfair violates paragraph *c* of section 224 *CPA*, by cancelling validly formed contracts that were concluded at the Advertised Price and then requiring ("*exiger*" in French) that Class members pay a higher price should they wish to receive the items they initially purchased at the Advertised Price;
90. The claims of every member of the Class are founded on very similar facts to the Plaintiff's claim (the only variable being the specific item purchased);
91. Class members were attracted to Wayfair's website by false and misleading representations within the meaning of section 219 of the *CPA* (as well as the other consumer protection legislation in Canada and the *Competition Act*);
92. Wayfair failed in its obligation to honour all Class members' purchases at its own Advertised Price;

93. The prohibited practices committed by Wayfair was virtually identical vis-a-vis each Class member;
94. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, which can be summarized as follows:
 - a) Class member is attracted to Wayfair by a false and misleading representation (in this case, the Advertised Price);
 - b) Class member purchases an item from Wayfair at the false and misleading price;
 - c) Class member's order is confirmed via a confirmation email sent by Wayfair;
 - d) Class member's credit card is charged by Wayfair;
 - e) Class member is later informed by Wayfair (generally by email) that their purchase will not be honoured (Wayfair will not deliver the items sold at the price which it advertised and charged);
 - f) Class member's credit card is refunded;
95. By reason of Wayfair's unlawful conduct, Plaintiff and members of the Class have suffered damages, which they may collectively claim against Wayfair;
96. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
97. All class members were justified in presuming that the following products advertised by Wayfair have gone through a serious price verification process, prior to being offered for sale online by Wayfair to tens of millions of consumers, including, but not limited to the:
 - (i) Plaintiff's ***Milano 5 Piece Deep Seating Group with Cushion***;
 - (ii) ***Laguna 8 Piece Seating Group with Cushion by TK***;
 - (iii) to vi [...];
 - (vii) ***Montgomery Loveseat***
98. All Class members, regardless of the individual item they purchased (be it a patio set, a toy, a rug, night vision scopes, etc.) have a common interest both in proving the commission of prohibited businesses practices by Wayfair and in maximizing the

amount of the resulting Lost Value;

99. Any disparity between the actual item purchased by each Class member does not alter the fact that they have a collective interest in these questions of fault and liability;
100. Wayfair had a legal obligation to honour the price it advertised and contracted for, but instead was more concerned about its bottom line than about honouring its contractual and legal obligations;
101. Requiring a separate class action based on the exact same *CPA* violations by Wayfair (notably paragraph c of section 224), solely based on the specific item purchased from one of Wayfair's websites, would be an important waste of resources;
102. Regardless of the specific item(s) purchased by the numerous Class Members, they all face very similar issues of fact and identical questions of law;
103. Every Class member purchased goods from Wayfair, only to subsequently have their purchase cancelled, allegedly due to a pricing error;
104. Every Class member was forced (*exigé* in French) to pay a higher price should they wish to purchase the same item that Wayfair had just cancelled;
105. Consequently, each member of the Class lost value as a result of Wayfair's failure to fulfill its contractual obligations;
106. Every member of the Class has suffered damages equivalent to the difference between the cost of repurchasing a "cancelled" product and the Advertised Price of the "cancelled" product;
107. All of the damages to the Class members are a direct and proximate result of Wayfair's misconduct;
108. **The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:**
 - a) Does Wayfair's publicity, on the item purchase page, constitute an offer comprising all the essential elements of the intended contract (and this even if Wayfair indicates in its Terms and Conditions that it is not willing to be bound in the event of the consumer's acceptance)?
 - b) If so, is Wayfair deemed to have made an offer to enter into a contract pursuant to section 54.1 *CPA*?
 - c) Is a consumer contract entered into upon the consumer's acceptance of the price

- offered by Wayfair and, if so, must Wayfair honor the terms of said contract?
- d) Can Wayfair contractually liberate itself from the consequences of its own act or the act of its representatives?
 - e) Did Wayfair in fact make a mistake in the advertised prices?
 - f) Does the repetition of the mistake (**5 to 10 times per week**) in the advertised prices demonstrate gross negligence on the part of Wayfair?
 - g) If so, should Wayfair's mistake be characterized as inexcusable under article 1400, paragraph 2, C.C.Q?
 - h) Did Wayfair have the principal obligation to deliver the goods stipulated in the contract?
 - i) Did Class members unlawfully lose value as a result of the Wayfair's failure?
 - j) If so, is the "Lost Value" formula the appropriate remedy where the Defendant fails to deliver the goods stipulated in the contract in these circumstances?
 - k) Did Wayfair commit a prohibited business practice as defined by section 219 *CPA*?
 - l) Did Wayfair violate paragraph c of section 224 *CPA*?
 - m) Did Wayfair knowingly or recklessly make a representation to the public that was false or misleading in a material respect, in violation of section 52(1) of the *Competition Act* and of the consumer protection and trade practice legislation in the other Canadian provinces?
 - n) Are the Class members entitled to compensatory damages and, if so, in what amount?
 - o) Are the Class members entitled to punitive damages and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

- 109. 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;
- 110. According to Wayfair's 2015 Annual Report, Exhibit P-1 (at page 4), Wayfair has a "**customer base of 5.4 million active customers**". At page 9 of the Annual Report,

Wayfair states that “in 2015 we launched Wayfair.ca in Canada”. Based on the 5.4 million active customer figure, combined with the fact that Wayfair launched a “.ca” (Canadian version) of its website (most likely to meet demand from Canadian consumers previously purchasing on the “.com” website), it is safe for Plaintiff to presume that Wayfair has hundreds of thousands of customers in Canada;⁴

111. Plaintiff is unaware of the total number of Wayfair’s “active” or “non-active” clients who had their purchases unilaterally cancelled by Wayfair due to a pricing error, but based on Wayfair’s admission that pricing errors occur 5 to 10 times per week, Plaintiff estimates that the number of persons included in the Class is likely in the **tens of thousands** across Canada, if not more;
112. The names and addresses of all persons included in the Class are not known to the Plaintiff, however, are in the possession of Wayfair;
113. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
114. 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;
115. 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

116. Plaintiff requests that she be appointed the status of representative plaintiff;
117. Plaintiff is a member of the Class;
118. Plaintiff was very upset when her order was cancelled by Wayfair and insisted, in vain, that Wayfair honour its Advertised Price;
119. After inquiring with friends, work colleagues and family, Plaintiff received confirmation that at least 6 other people she knew were victims of Wayfair’s unlawful cancellation of their respective consumer contracts;

⁴ At page 67 of the 2015 Annual Report Wayfair provides geographic net revenue figures indicating that 94.92% of its net revenue derives from United States sales. However, it is likely that many Canadian customers purchased from Wayfair using the “.com” site until the “.ca” went live some time in 2015. It is *possible* that the Canadian sales are incorporated into the U.S.A. sales prior to the .ca launch.

120. Once Wayfair made its final position clear (that is, that they refuse to sell the Seating Group at the Advertised Price), Plaintiff felt as if she was up against a corporate giant, without much she or the others can do to defend their rights as consumers;
121. Plaintiff had researched online and found out that Wayfair routinely makes pricing errors and then cancels consumers' orders;
122. Plaintiff decided to contact her attorney, who she knew practices primarily in consumer protection law and who has experience in consumer protection-related class actions, to determine whether she had a cause of action;
123. Plaintiff then gave the mandate to her attorney to take the present action on her behalf and for the interest of the Class members;
124. As for identifying Class members, other than the 6 she personally knew of, Plaintiff drew certain inferences from the situation, notably because Wayfair is one of the *world's largest online destinations for the home* and because of the many consumer complaints she came across during her online investigation. Plaintiff realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for her to attempt to identify them given their sheer number;
125. Plaintiff actively participated in the research required for drafting the present Application and reviewed this procedure before it was filed and served;
126. Plaintiff feels that Wayfair should be held accountable for its misconduct and is taking this action so that she and the Class members can recover their Lost Value and punitive damages, as well as in order to put an end to Wayfair's prohibited business practice;
127. Plaintiff is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as to dedicate the time necessary for the present action and to collaborate with her attorney;
128. Plaintiff has given the mandate to her attorney to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
129. Plaintiff has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Class;
130. Plaintiff, with the assistance of her attorney, is ready and available to dedicate the

time necessary for this action and to collaborate with other members of the Class and to keep them informed;

131. Plaintiff is active on social media and is available to inform and to respond to Class members on platforms such as Facebook;
132. Plaintiff is in good faith and has instituted this action for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Wayfair's misconduct;
133. Plaintiff understands the nature of the action;
134. Plaintiff's interests are not antagonistic to those of other members of the Class;
135. Plaintiff's interest and competence are such that the present class action could proceed fairly;

III. DAMAGES

136. During the Class Period Wayfair has generated **billions of dollars** while intentionally choosing to ignore the law in Quebec as well as in other Canadian provinces;
137. Wayfair's misconduct is unconscionable and to the detriment of vulnerable Canadian consumers;
138. Wayfair's misconduct is so malicious, oppressive and high-handed that it offends any sense of decency (Wayfair admits that pricing errors occur on their websites 5 to 10 times per week!);
139. Consequently, Wayfair has breached several obligations imposed on it by consumer protection and trade practice legislation in Quebec [...], notably:
 - a) Quebec's CPA, including sections 10, 16, 215, 219 and 224(c), thus rendering sections 253 and/or 272 applicable;
 - b) to j [...];
140. Wayfair also failed in its obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
141. Moreover, Wayfair violated section 52 of the *Competition Act* by recklessly making representations to the public that were false or misleading in a material respect, while promoting the supply of its products;

142. In light of the foregoing, the following damages may be claimed against Wayfair:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Wayfair pursuant to section 272 CPA as well as the consumer protection and trade practice legislation in the other Canadian jurisdictions;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

143. The action that the Plaintiff wishes to institute on behalf of the members of the Class is an action in damages and declaratory judgment;
144. The conclusions that the Plaintiff wishes to introduce by way of an originating Application are:

GRANT Plaintiff’s action against Defendant;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;

CONDEMN the Defendant to pay Naomi Zouzout the amount \$2,753.07, itemized as follows:

-Seat Group Value (\$2,785.25) - price advertised/charged (\$32.18):	\$2,753.07
-Amount on account of punitive damages (section 272 CPA):	TBD

Total:	\$2,753.07

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of 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;

RENDER any other order that this Honourable Court shall determine;

145. The interests of justice favour that this Application be granted in accordance with its conclusions;

V. JURISDICTION

146. The Plaintiff suggests that this class action be exercised before the Superior Court in the district of Montreal for the following reasons:

- a) A great number of the members of the Class, including the Plaintiff, reside in the judicial district of Montreal;
- b) Wayfair's online presence enables it to conduct business in the District of Montreal;
- c) Plaintiff's attorney practices his profession in the judicial district of Montreal;
- d) The consumer contract between the Plaintiff and Wayfair is deemed to be entered into at the address of the Plaintiff, in the judicial district of Montreal;
- e) There exists a real and substantial connection between the province of Quebec and the damages suffered by Plaintiff and Class members;

VI. [...]

147. Plaintiff wishes to represent a [...] provincial class [...];

- a) to f) [...];

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the bringing of a class action in the form of an originating Application in

damages;

APPOINT the Plaintiff the status of representative of the persons included in the Class herein described as:

All persons in Quebec who, since January 4th, 2016 (the “Class Period”), ordered one of the following goods from the Wayfair.ca website (hereinafter “Wayfair”) and had their purchase cancelled by Wayfair as a result of a pricing error in the advertised price:

- i) Montgomery Loveseat listed on January 12th, 2016;
- ii) Laguna 8-piece seating group listed on July 15th, 2016;
- iii) Milano 5-piece deep seating group listed on September 6th, 2016.

or any other class to be determined by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Does Wayfair’s publicity, on the item purchase page, constitute an offer comprising all the essential elements of the intended contract (and this even if Wayfair indicates in its Terms and Conditions that it is not willing to be bound in the event of the consumer’s acceptance)?
- b) If so, is Wayfair deemed to have made an offer to enter into a contract pursuant to section 54.1 CPA?
- c) Is a consumer contract entered into upon the consumer’s acceptance of the price offered by Wayfair and, if so, must Wayfair honor the terms of said contract?
- d) Can Wayfair contractually liberate itself from the consequences of its own act or the act of its representatives?
- e) Did Wayfair in fact make a mistake in the advertised prices?
- f) Does the repetition of the mistake (**5 to 10 times per week**) in the advertised prices demonstrate gross negligence on the part of Wayfair?
- g) If so, should Wayfair’s mistake be characterized as inexcusable under article 1400, paragraph 2, C.C.Q?

- h) Did Wayfair have the principal obligation to deliver the goods stipulated in the contract?
- i) Did Class members unlawfully lose value as a result of the Wayfair's failure?
- j) If so, is the "Lost Value" formula the appropriate remedy where the Defendant fails to deliver the goods stipulated in the contract in these circumstances?
- k) Did Wayfair commit a prohibited business practice as defined by section 219 CPA?
- l) Did Wayfair violate paragraph c of section 224 CPA?
- m) Did Wayfair knowingly or recklessly make a representation to the public that was false or misleading in a material respect, in violation of section 52(1) of the *Competition Act* and of the consumer protection and trade practice legislation in the other Canadian provinces?
- n) Are the Class members entitled to compensatory damages and, if so, in what amount?
- o) Are the Class members entitled to punitive damages and, if so, in what amount?

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

GRANT Plaintiff's action against Defendant;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;

CONDEMN the Defendant to pay Naomi Zouzout the amount \$2,753.07, itemized as follows:

-Seat Group Value (\$2785.25) - price advertised/charged (\$32.18): **\$2,753.07**

-Amount on account of punitive damages (section 272 CPA): TBD

Total: \$2,753.07

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of 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;

RENDER any other order that this Honourable Court shall determine;

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 the law;

FIX the delay of exclusion at thirty (30) 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;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein [...];

[...]

ORDER the Defendant to send said Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

RENDER any other order that this Honourable Court shall determine;

The whole with costs including publications fees.

Montreal, May 3rd, 2017

(s) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran

Attorney for Plaintiff

N°: 500-06-000809-166

(Class Action)
SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NAOMI ZOUZOUT

Plaintiff

-VS-

WAYFAIR LLC

Defendant

**AMENDED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A
CLASS ACTION AND TO APPOINT
THE STATUS OF REPRESENTATIVE
PLAINTIFF**
(ARTICLES 571 AND FOLLOWING
C.C.P)

ORIGINAL



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