

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000797-163

(Class Action)  
SUPERIOR COURT

---

DAN ABICIDAN

Applicant

-VS-

**IKEA CANADA LIMITED PARTNERSHIP**, a partnership having its head office at 181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

and

**1137446 ONTARIO INC.**, legal person having its head office at 181 Bay Street, suite 4400, Toronto, Ontario, M5J 2T3

and

**IKEA LIMITED**, legal person having its head office at 181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

and

**IKEA PROPERTIES LIMITED**, legal person having its head office at 181 Bay Street, Suite 4400, Toronto, Ontario, M5J 2T3

and

**INTER IKEA SYSTEMS B.V.**, legal person having its head office at Olof Palmestraat 1 2616 LN Delft, in the Netherlands

Defendants

---

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

---

**TO [...] THE HONOURABLE CHANTAL TREMBLAY, J.C.S., ACTING AS THE DESIGNATED  
JUDGE IN THE PRESENT CASE, YOUR APPLICANT STATES AS FOLLOWS:**

**I. GENERAL PRESENTATION**

**A) THE ACTION**

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

**Group:**

All consumers within the meaning of Quebec's *Consumer Protection Act* (hereinafter the "**CPA**"), who any time before June 28<sup>th</sup>, 2016 (the "**Class Period**"), purchased any of the Chest of Drawers recalled by IKEA Canada, including but not limited to the following models: ASKVOLL, BRIMNES, BRUSALI, BUSUNGE, HEMNES, HURDAL, IKEA PS 2012, KOPPANG, KULLEN, MALM, NORNÄS, STOCKHOLM, STUVA, SUNDVIK, TARVA, TROGEN, TRYSIL, TYSSDAL, UNDREDAL, Alesund, Alleby, Alvesta, Aneboda, Angus, Ånes, Arup, Askedal, Aspelund, Balstar, Bankeryd, Bergsmo, Bialitt, Birkeland, Blimp, Boj, Brett, Boksta, BJÖRN, BÖRKVALLA, Diktad, Edland, Elis, Engan, Eksil, Fjell, Fjord, Flaten, Fridolin, Granås, Gute, Haddal, Hajdeby, Hensvik, Herrestad, Holleby, Hovdal, Hopen, Hosteland, Kabin, Kirkenes, Knot, Kusk, Kurs, Kviby, Leksvik, Lo, Lomen, Mac, Mast, Mammut, Mandal, Meråker, Midsund, Natura, Narvik, Nordli, Nordnes, Nyvoll, Ottenby, Rakke, Ramberg, Ranvik, Rodd, Robin, Rustik, Sala, Skarnes, Sandefjord, Stranda, Sveio, Stavanger, Tassa, Tovik, Trandum, Trondheim, Varde, Vajer, Vallvik, Vestby, Vinstra, Visdalen, Vollen (hereinafter the "**Defective Chests**");

(hereinafter referred to as the "**Group**")

or any other group to be determined by the Court;

2. During the Class Period, Defendants IKEA Canada Limited Partnership, 1137446 Ontario Inc., IKEA Limited, IKEA Properties Limited, and Inter IKEA Systems B.V.

(hereinafter collectively referred to as “**IKEA**”), either directly or through a wholly-owned subsidiary, agent or affiliate, manufactured and sold furniture through its retailer locations and franchises throughout the world, including within the province of Quebec;

3. On June 28<sup>th</sup>, 2016, IKEA announced that it will only sell chests of drawers that meet the voluntary North American ASTM standard requirements on free-standing stability and issued a recall for all chests of drawers that were sold to Group members by IKEA Canada but that did not meet the ASTM standard, Applicant disclosing the notice posted on Ikea Canada’s website as **Exhibit P-1** (hereinafter the “**Recall Notice**”);

3.1 In the Recall Notice, Exhibit P-1, IKEA made the following false statements:

“...As part of this announcement, IKEA has also issued a recall for repair **or refund** on unattached chests of drawers that do not meet the free-standing stability requirements of the ASTM standard...

To demonstrate the importance of securely anchoring furniture to the wall, IKEA Canada has issued a recall for repair **or refund** of those unattached chests of drawers in consumers’ homes that do not comply with the free-standing stability requirements of the North American ASTM standard and are above 60cm for children’s chests of drawers and above 75cm for adult chests of drawers.

3.2 These statements are false and in violation of sections 41, 219 and 228 CPA because IKEA did not issue any refunds at all. Rather, IKEA issued gift cards redeemable at its retail stores (as more fully detailed below);

4. The Defective Chests are listed and pictured in a document issued by Defendant IKEA Canada, Applicant disclosing **Exhibit P-2**;
5. The Defective Chests were designed with an increased risk of tip-overs (hereinafter the “**Safety Defect**”) and were responsible for at least 5 infant deaths from 2003 to 2014;
6. IKEA was thus aware of the Safety Defect in the Defective Chests since at least 2003 but it did not issue the Recall Notice until 13 years later, on June 28<sup>th</sup>, 2016;
7. It is only in the **summer of 2015**, that Defendant IKEA Canada launched its “*Secure It*” campaign to educate consumers on the best way to prevent tip-over accidents, but did not recall the Defective Chests and continued selling the Defective Chests to

Group members, while failing to inform them of the serious dangers related to said chests (i.e. death and injury from tip-overs);

8. This failure is evidenced by the fact that on or around June 28<sup>th</sup>, 2016, the president of Ikea USA, Lars Peterson, told NBC News that the “*Secure it*” campaign was not enough, referring to the Defective Chests by saying: “***Please, take them out of your room***”, Applicant disclosing the NBC News video as Exhibit P-5 and the article containing the video as **Exhibit P-6**;

8.1 On June 28<sup>th</sup>, 2016, Lars Peterson admitted the following about the products IKEA was recalling: “*The products are not designed to be freestanding; they are designed to be attached to the wall*”, Applicant disclosing the news article from the NPR website as Exhibit P-7;

9. Notwithstanding the foregoing, from the first infant death recorded in 2003 until the summer of 2015 (and even until the recall on June 28<sup>th</sup>, 2016, based on the declaration made by Lars Peterson), IKEA Canada operated in flagrant violation of section 228 of the CPA, by failing to mention an important fact in its representations made to Group members (i.e. of the serious risks of death/injury from tip-overs of the Defective Chests);

9.1 On November 21<sup>st</sup>, 2017 (approximately 5 months after the Recall Notice was issued), CBC News reported the following about IKEA’s recall program: “*Retailer says only 111,642 chests of drawers have been returned in Canada out of 4.5 million recalled*” and “*Ikea is offering full refunds for anyone who no longer wants the furniture. Customers can bring them to a store, and Ikea will pick them up from U.S. customers, but in Canada the company offers a less iron-clad guarantee*”, Applicant disclosing the article as **Exhibit P-8**;

#### **Latent Defects:**

10. As manufactures, distributors, suppliers, wholesalers and/or importers of the Defective Chests, IKEA is bound to warrant Group members that its furniture and its accessories are, at the time of the sale, free of latent defects which render them unfit for the use for which it was intended or which so diminish its usefulness that the buyer would not have bought it or paid so high a price if he had been aware of them;

11. According to many accounts, IKEA said it sold more than 147 million recalled dressers in the world and 4.5 million in Canada over the past 13 years;

12. In its Recall Notice, Exhibit P-1, IKEA admits to selling chests to Group members that contained a Safety Defect since 2002 and even before;

13. The Safety Defect in the Defective Chests is latent, sufficiently serious, existed at the time of the sale and was unknown to the Group members;
14. A reasonable buyer in the same circumstances could not have detected the Safety Defect at the time of the sale;
15. As professional sellers, IKEA is presumed to have known about the Safety Defect since the date that the Defective Chests were manufactured and sold;
16. Group members benefit from the legal presumption that the Safety Defect existed at the time of the sale, since the Defective Chests sold by IKEA to Group members [...] are at risk of tipping over and causing injury/death [...];
17. IKEA cannot rebut this presumption because it has admitted in the Recall Notice, Exhibit P-1, that it was recalling the Defective Chests it designed, manufactured and sold because they did not meet the North American ASTM standard requirements on free-standing stability, and not due to improper use of the Defective Chests by Group members;
18. Moreover, IKEA's claim that *"In summer 2015, IKEA Canada launched the "Secure It" campaign to educate consumers on the best way to prevent tip-over accidents and to provide tools to help them achieve that"* only underscores the fact that IKEA failed to adequately design the Defective Chests, which should have never been sold to Group members (other furniture companies do not need to *"educate"* consumers on the best way to prevent tip-over accidents that could be caused by the furniture they sell!);
19. IKEA knew that it should have manufactured the Defective Chests so that they do not tip-over, and so that they would be fit for the purposes for which these kind of chests are ordinarily used (that is, to store clothes);
20. IKEA admits that the Defective Chests were not durable in normal use for a reasonable length of time, and this having regard to their price, the terms of the contracts and the conditions of their use by Group members;
21. As a result of the foregoing, IKEA violated Title I of the CPA (arts. 37, 38 and 53) because the Defective Chests were not fit for the purposes for which goods of that kind are ordinarily used (i.e. for storing clothes);
22. Group members are entitled to exercise directly against IKEA a recourse based on a latent defect in the Defective Chests, because they could have never discovered the Defect by an ordinary examination of their respective chests;
23. Section 53 of the CPA bars IKEA from pleading that it was unaware of the Safety

Defect;

24. IKEA not only put the lives of Group members and their children in danger, but the Safety Defect may actually be the cause of a number of infant deaths to date;

**IKEA's failure to mention an important fact in its representations (s. 228 CPA):**

25. IKEA committed prohibited business practices by its false or erroneous representations concerning the quality of the Defective Chests, as well as by its omission to divulge an important fact on concerning the safety of the Defective Chests (a chest that can tip-over with normal use is an important fact) for which it was, or should have been, aware of since at least 2003 and likely before;
26. The fact that IKEA "voluntarily" chose to issue a recall does not deprive Group members from asking this honorable Court for an award of compensatory damages, as well as punitive damages on the grounds that IKEA failed in its obligation to mention an important fact in its representations made to consumers (pursuant to section 228 and section 272 CPA);
27. Offering a store credit (after promising a cash refund in Exhibit P-1) to Group members who take the time (and perhaps incur the costs) to bring their Defective Chests back to an IKEA store (which are limited in number in Quebec), does not fully compensate the damages suffered by Group members kept in the dark by IKEA, who failed to mention an important fact to Group members at the time of they acquired their Defective Chests;
28. Nor does this solution offer a remedy to Group members who paid additional fees to have the Defective Chests delivered to their residence by IKEA at the time of purchase;
- 28.1 The Court of Appeal has already ruled that the voluntary performance by a merchant of its obligations does not deprive a consumer of his/her right to resort to the remedy best suited to his/her situation;
29. As a result of the foregoing, Applicant and Group members are justified in claiming compensatory damages, as well as punitive damages based on several sections of the CPA, including but not limited to sections 37, 38, 41, 53, 219, 228 and 272;
30. Pursuant to article 1728 CCQ, IKEA is bound not only to restore the price of the Defective Chests, but also to make reparation for the injury suffered by Group members under the general rules of civil law;

## B) THE PARTIES

31. The Applicant is a consumer within the meaning of the *CPA*;
32. Defendant **IKEA Canada Limited Partnership** is limited partnership constituted under the *Ontario Limited Partnerships Act*, having its head office in Toronto, Ontario, as it appears from an extract of the enterprise's information statement from the enterprise register (CIDREQ), Applicant disclosing **Exhibit P-3**;
33. Defendant **1137446 Ontario Inc.** is a general partner of Defendant **IKEA Canada Limited Partnership**, with its head office in Toronto, Ontario, as it appears from Exhibit P-3;
34. Defendant **IKEA Limited** is a special partner of Defendant **IKEA Canada Limited Partnership**, with its head office in Toronto, Ontario, as it appears from Exhibit P-3;
35. Defendant **IKEA Properties Limited** is a special partner of Defendant **IKEA Canada Limited Partnership**, with its head office in Toronto, Ontario, as it appears from Exhibit P-3;
36. Defendant **Inter IKEA Systems B.V.** is [...] established under the laws of the Netherlands, is the new holding company for all IKEA-related businesses that were previously part of Inter IKEA Group. Defendant Inter IKEA Systems B.V. is the owner of the IKEA Concept and the worldwide IKEA franchisor. Inter IKEA Systems B.V. is owned by Inter IKEA Holding B.V.;
37. The Defendants are "professional sellers" within the meaning of article 1729 *CCQ*;
38. The Defendants are "merchants" within the meaning of the *CPA*, and operate an enterprise within the meaning of the *CCQ*, and their activities are governed by these legislation, among others;
39. Given the close ties between the Defendants and considering that their obligations were contracted for the operation of an enterprise, they are presumed solidarily liable for the acts and omissions of the other;

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

### 1) The facts alleged appear to justify the conclusions sought:

40. On **April 30<sup>th</sup>, 2015**, Applicant purchased three of the Defective Chests (one Malm 6-drawer dresser model 502.145.55 and two 3-drawer chests Askvoll model 202.708.02) as well as a Malm Glass Top (model 602.238.23), from IKEA [...], as it appears from **Exhibit P-4** (which shows that \$313.22 of the total amount was

charged to Applicant's debit card – Applicant cannot find his original invoice and consents in advance to it being produced by IKEA);

41. Applicant purchased said chests at the IKEA store in Ville St-Laurent, in the district of Montreal;
42. Applicant purchased these chests because he liked their design and they were within his budget;
43. At the time of sale, Applicant was under the impression that he was purchasing chests that were free of any production or safety issues, as well as any design, manufacturing and/or safety defects;
44. Unbeknownst to him, he overpaid for the purchase price, as the Defective Chests he purchased were all, in fact, suffering from a serious Safety Defect;
45. Applicant never heard anything about IKEA's "Secure It" campaign (which in any event began in the summer of 2015, after his purchase);
46. The Applicant was entitled to expect, and rightly expected, that IKEA guarantee the quality of the products it designs, markets and sells;
47. Applicant discovered the existence of the Safety Defect on June 28<sup>th</sup>, 2016, when learning from the news that IKEA issued a Recall Notice, Exhibit P-1, informing him of the Safety Defect in his chests;
48. After reading the Recall Notice Applicant immediately stopped using the chests he purchased because he has a young infant at home (and his young nephews visit often as well);
49. Consequently, Applicant not only suffered a loss of use after the recall, but also before the recall because his chests never afforded him the security it was supposed to and which he relied upon when purchasing them (IKEA admits that his chests could have tipped over at any given time);
- 49.1 From June 29<sup>th</sup>, 2016 through July 28<sup>th</sup>, 2016, the Applicant sent multiple emails to IKEA and tried contacting IKEA's customer service by telephone at least 10 times (often waiting on hold for more than 30 minutes) to arrange for his items to be picked up and in order to obtain what he thought would be a refund pursuant to IKEA recall program, Applicant disclosing the thread of emails *en liasse* as **Exhibit P-9**;
- 49.2 This situation caused Applicant a lot of stress, inconvenience, frustration and loss of time. For instance, on July 12, 2016, Applicant called IKEA's customer service and

waited on hold for 2 hours without being connected to a live agent (see Exhibit P-9 at PDF-page 3);

49.3 Additionally, IKEA continued to mislead Applicant in its written communications. For instance, in the July 1<sup>st</sup>, 2016 email sent at 12:30 p.m., Kevin from IKEA Canada Customer Service made the following false statement to Applicant (Exhibit P-9 at PDF-page 7):

*“...Our customers are entitled to a full refund for chests and dressers manufactured between January 2002 and June 2016.”*

49.4 On August 3<sup>rd</sup>, 2016, a representative from IKEA called the Applicant to schedule a date/time for IKEA to pick up his chests. During this call, the Applicant requested – and made it clear that he wanted to receive – a cash refund (as he understood it to be from reading the Recall Notice, Exhibit P-1, as well as from the information provided by “Kevin” by email on July 1<sup>st</sup>, 2016), but the agent informed him that IKEA will only issue him a store credit (by way of an IKEA gift card) for this recall;

49.5 The Applicant accepted the gift card in order to mitigate his damages, but has still not been made whole by IKEA to this date;

49.6 During the same August 3<sup>rd</sup>, 2016 telephone call, IKEA’s agent informed Applicant that he (or someone else) would have to be home for a 4-hour window on Sunday, August 7<sup>th</sup>, 2016 and that if he was not there when the delivery truck arrives he would be charged by IKEA (because IKEA contracts a third-party company for deliveries and pick-ups);

49.7 Applicant spent the entire day waiting at home on Sunday, August 7<sup>th</sup>, 2016 and IKEA’s truck never arrived, forcing him to re-schedule the pick-up;

49.8 On August 18<sup>th</sup>, 2016, IKEA finally retrieved the 4 items from the Applicant’s house, as it appears from his pick-up confirmation disclosed herewith as **Exhibit P-10**;

49.9 On August 23<sup>rd</sup>, 2016, Applicant received an IKEA gift card by regular mail in the amount of \$470.23, as it appears from a picture of the gift card attached to the receipt dated August 20<sup>th</sup>, 2016, disclosed as **Exhibit P-11**;

50. Applicant has suffered ascertainable loss as a result of IKEA’s omissions and/or misrepresentations associated with the Safety Defect, including, but not limited to: (i) overpayment for the chests themselves; (ii) loss of value (in an amount to be determined) because IKEA refused to make him whole by not reimbursing him in cash; (iii) moral damages; and (iv) trouble and inconvenience;

51. Had Applicant been aware of the Safety Defect, he would have never purchased

these chests (and certainly not paid such a high price);

52. Applicant's damages are a direct and proximate result of IKEA's misconduct;
53. Quebec consumer law is a matter of protective public order;
54. IKEA operates in the province of Quebec by unlawfully derogating from the *CPA* and is therefore in violation of ss. 37, 38, 41, 53, 219 and 228 CPA;
55. In consequence of the foregoing, the Applicant is justified in claiming compensatory damages, as well as punitive damages;

**(i) Applicant's claim for punitive damages (arts. 37, 38, 41, 53, 219, 228 and 272 CPA)**

56. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
57. Not only did IKEA violate the *CPA* by failing to inform the Applicant of an important fact (section 228 violation), they intentionally continued selling the Defective Chests, and this despite the increase of the number of death reported to IKEA between 2003 and 2014;
58. IKEA's violations were intentional, malicious, vexatious, and dangerous;
59. IKEA demonstrated through its behavior that it was more concerned about its bottom line than about the safety of Group members and others that they share their homes with;
- 59.1 The above allegation is substantiated by the fact that IKEA led the Applicant and the general public to believe that it was issuing cash refunds to Canadians, which is false;
60. Considering the whole of IKEA's conduct at the time of and after the violations, the record shows that IKEA:
  - a) displayed ignorance and negligence well before 2002, by produced chests with a Safety Defect;
  - b) was careless by not reacting earlier to the reports of infant deaths caused by the Defective Chests;
  - c) was negligent overall with respect to its obligations and consumers' rights under the *CPA* (from the date of conception of the Defective Chests until the Recall Notice was sent on June 28<sup>th</sup>, 2016); and

- d) mislead Group members in the Recall Notice by stating they would issue cash refunds.

61. In these circumstances, Applicant's claim for punitive damages is justified;

**2) The claims of the members of the Group raise identical, similar or related issues of law or fact:**

62. IKEA's Defective Chests were sold around the world, including in the province of Quebec (Group members can purchase the chests online or in-store);

63. Every Group member purchased a Defective Chest;

64. In light of the foregoing, the questions of fact and law raised and the recourse sought by this Application are very similar with respect to each Group member;

65. IKEA failed to mention an important fact in its representation to all Group members (which it had knowledge of years before the 2016 Recall Notice was sent, the exact date to be determined by this honourable Court);

65.1 In its Recall Notice, Exhibit P-1, IKEA led all Group members to believe they would receive a cash refund, which was false;

66. All Group members are entitled to expect that IKEA guarantee the quality of the products it designs and markets, and that IKEA inform the public of important facts concerning the chests it sells;

67. Consequently, all Group members not only overpaid IKEA when they purchased one of the Defective Chests, but were also at risk of injury;

68. By reason of IKEA's unlawful conduct, Applicant and members of the Group have suffered damages, which they may collectively claim against IKEA;

69. Each member of the Group is justified in claiming at least one or more of the following as damages:

- Diminished value of the Defective Chests in terms of an overpayment for the purchase price (alternatively, the transport costs to return the chests to an IKEA store, included gas or delivery fees);
- Lower resale value of the Defective Chests, if any at all;
- Loss of use of the Defective Chests;
- Trouble and inconvenience;

- Moral damages; and
  - Punitive damages;
70. All of these damages to the Group Members are a direct and proximate result of IKEA's misconduct;
71. The claims of every Group member are founded on very similar facts to the Applicant's claim;
72. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
73. The damages sustained by the Group members flow, in each instance, from a common nucleus of operative facts, namely, IKEA's misconduct with respect to the withholding of an important fact from Group members concerning the Defective Chests;
74. The recourses of the Group members raise identical, similar or related questions of fact or law, namely:
- a) IKEA having admitted that the Defective Chests suffer from a Safety Defect, does this constitute false representations and/or an illegal practice within the meaning of the CPA (Title I and Title II)?
  - b) If so, does IKEA's false representations and/or IKEA's illegal practice constitute a fault resulting in IKEA's liability?
  - c) In its Recall Notice, did IKEA commit a fault in leading Group members to believe they would receive cash refunds?
  - d) If IKEA'S responsibility is engaged, are Group members entitled to:
    - i. a reduction of their obligations and, if so, in what amount?
    - ii. damages for trouble and inconvenience resulting from IKEA's misrepresentations and illegal practice and, if so, in what amount?
    - iii. moral damages and, if so, in what amount?
    - iv. punitive damages and, if so, in what amount?
  - e) Did IKEA make a false representation to Group members in the Recall Notice (Exhibit P-1) concerning the issuance of refunds and, if so, are Group members entitled to damages?

- f) Did IKEA act in bad faith?
- g) Was IKEA negligent in the management of its recall program?
- h) Does the establishment by IKEA of a recall program impede on the claims of Group members?
- i) When does prescription start for Group members and what are the factors common to the Group members regarding the impossibility in fact to act?
- j) to k) [...];

**3) The composition of the group:**

- 75. The composition of the Group 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;
- 76. According to IKEA, it has sold over 143 million Defective Chests to date, of which 4.5 million were sold in Canada (Exhibit P-8);
- 77. The number of persons included in the Group could be in the **hundreds of thousands**;
- 78. The names and addresses of all persons included in the Group are not known to the Applicant, however, many could be obtained by IKEA (including, for instance, the names and contact information for Group members who have participated in the recall program);
- 79. Group members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 80. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Group member to obtain mandates and to join them in one action;
- 81. In these circumstances, a class action is the only appropriate procedure for all of the members of the Group to effectively pursue their respective rights and have access to justice without overburdening the court system;

**4) The class member appointed as representative plaintiff is in a position to properly represent the class members:**

- 82. Applicant requests that he be appointed the status of representative plaintiff;

83. Applicant is a member of the Group;
84. Applicant was flabbergasted to learn that a company of IKEA's stature would keep its customers in the dark about important facts, such as product safety!
85. Applicant has a young child at home and was very disturbed to learn that other children died as a result of the Safety Defects;
86. Applicant feels that IKEA should be held accountable for its misconduct and is taking this action so that he and the Group members can be compensated for their damages;
87. Applicant also feels that an example should be made of how IKEA handled this situation, as to dissuade and deter other companies from acting with the same carelessness and negligence when it comes to product safety;
88. Applicant wants to lend his voice to protect the safety of other Group members and believes that the filing of this action will have the additional effect of: (i) encouraging IKEA to contact all affected Group members and perhaps offer a pick-up service in the same way that it offers a delivery service, and this, sooner rather than later; and (ii) raising awareness for other Defective Chest owners who never received the Recall Notice to begin with (Applicant knows of other Group members and is actively informing them of the Safety Defect);
- 88.1 To date, Applicant and his attorneys have been able to identify over 30 other Group members who "signed-up" on Class Counsel's website <https://lpclex.com/ikea>), Applicant disclosing the redacted list as **Exhibit P-12**;
89. As for identifying other Group members, the Applicant draws certain inferences from the situation, and this based on the information provided by IKEA, that 4.5 million Defective Chests have been sold in Canada to date. Applicant realizes that by all accounts, there are is an important number of consumers that find themselves in an identical situation, and that it wouldn't be useful for him to attempt to identify them given their sheer number;
90. Applicant is ready and available to manage and direct the present action in the interest of the members of the Group that he 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 Group, as well as, to dedicate the time necessary for the present action and to collaborate with his attorneys;
91. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;

92. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Group;
93. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Group and to keep them informed;
94. Applicant is in good faith and has instituted this action for the sole purpose of having his rights, as well as the rights of other Group members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of IKEA's misconduct;
95. Applicant understands the nature of the action;
96. Applicant's interests are not antagonistic to those of other members of the Group;
97. Applicant's interest and competence are such that the present class action could proceed fairly;

### III. DAMAGES

98. During the Class Period IKEA has generated significant revenues while intentionally choosing to ignore the law in Quebec, failing to inform Group members of an important fact and neglecting to recall Defective Chests in a timely fashion;
99. IKEA's misconduct is unconscionable and to the detriment of vulnerable Quebec consumers;
100. IKEA's misconduct is so malicious, oppressive and high-handed that it offends any sense of decency;
101. Consequently, IKEA has breached several obligations imposed on its by legislation in Quebec, including:
  - a) Quebec's *Consumer Protection Act*, including sections 37, 38, 41, 53, 215, 219 and 228, thus rendering [...] s. 272 applicable;
  - b) The *Civil Code of Quebec*, including sections 1399-1401, 1407, 1726, 1728, 1729, 1730;
102. Moreover, IKEA failed in its obligation and duty to act in good faith and with honesty in their representations and in the performance of their obligations;
103. In light of the foregoing, the following damages may be claimed solidarily against the

Defendants:

- 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 IKEA pursuant to section 272 CPA;

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

104. The action that the Applicant wishes to institute on behalf of the members of the Group is an action in damages [...];

105. The conclusions that the Applicant wishes to introduce by way of an Originating Application [...] are:

**GRANT** Plaintiff's action against Defendants on behalf of all the members of the Group;

[...];

[...];

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each of the members of the Group;

**CONDEMN** the Defendants solidarily to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the members of the Group punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**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;

**ORDER** the Defendants 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 Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily 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;

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

## **V. JURISDICTION**

107. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because he resides in Montreal [...];

## **VI. PRESCRIPTION AND IMPOSSIBILITY TO ACT**

108. Prescription should not run against Group members until June 28<sup>th</sup>, 2016 (should the present class action be authorized), because it was impossible in fact for Group members to act;
109. Indeed, Group members could not have acted previously as they had no reason to doubt, prior to the Recall and the subsequent admissions made by IKEA, that such safety risks were associated to IKEA's chests;
110. In the present case, IKEA'S conduct (consisting of waiting until the summer of 2015 to launch its "Secure-it" campaign and until June 28<sup>th</sup>, 2016 to issue the Recall so that it can serve its commercial interests) misleads Group members and the courts have found that such conduct causes an impossibility to act.

### **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 Applicant the status of representative plaintiff of the persons included in the Group herein described as:

#### **Group:**

All consumers within the meaning of Quebec's *Consumer Protection Act* (hereinafter the "**CPA**"), who any time before June 28<sup>th</sup>, 2016 (the "**Class Period**"), purchased any of the Chest

of Drawers recalled by IKEA Canada, including but not limited to the following models: ASKVOLL, BRIMNES, BRUSALI, BUSUNGE, HEMNES, HURDAL, IKEA PS 2012, KOPPANG, KULLEN, MALM, NORNÄS, STOCKHOLM, STUVA, SUNDVIK, TARVA, TROGEN, TRYSIL, TYSSedal, UNDREDAL, Alesund, Alleby, Alvesta, Aneboda, Angus, Ånes, Arup, Askedal, Aspelund, Balstar, Bankeryd, Bergsmo, Bialitt, Birkeland, Blimp, Boj, Brett, Boksta, BJÖRN, BÖRKVALLA, Diktad, Edland, Elis, Engan, Eksil, Fjell, Fjord, Flaten, Fridolin, Granås, Gute, Haddal, Hajdeby, Hensvik, Herrestad, Holleby, Hovdal, Hopen, Hosteland, Kabin, Kirkenes, Knot, Kusk, Kurs, Kviby, Leksvik, Lo, Lomen, Mac, Mast, Mammut, Mandal, Meråker, Midsund, Natura, Narvik, Nordli, Nordnes, Nyvoll, Ottenby, Rakke, Ramberg, Ranvik, Rodd, Robin, Rustik, Sala, Skarnes, Sandefjord, Stranda, Sveio, Stavanger, Tassa, Tovik, Trandum, Trondheim, Varde, Vajer, Vallvik, Vestby, Vinstra, Visdalen, Vollen (hereinafter the “**Defective Chests**”);

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

or any other group to be determined by the Court;

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

- a) IKEA having admitted that the Defective Chests suffer from a Safety Defect, does this constitute false representations and/or an illegal practice within the meaning of the CPA (Title I and Title II)?
- b) If so, does IKEA’s false representations and/or IKEA’s illegal practice constitute a fault resulting in IKEA’s liability?
- c) In its Recall Notice, did IKEA commit a fault in leading Group members to believe they would receive cash refunds?
- d) If IKEA’S responsibility is engaged, are Group members entitled to:
  - i. a reduction of their obligations and, if so, in what amount?
  - ii. damages for trouble and inconvenience resulting from IKEA’s misrepresentations and illegal practice and, if so, in what amount?
  - iii. moral damages and, if so, in what amount?

- iv. punitive damages and, if so, in what amount?
- e) Did IKEA make a false representation to Group members in the Recall Notice (Exhibit P-1) concerning the issuance of refunds and, if so, are Group members entitled to damages?
- f) Did IKEA act in bad faith?
- g) Was IKEA negligent in the management of its recall program?
- h) Does the establishment by IKEA of a recall program impede on the claims of Group members?
- i) When does prescription start for Group members and what are the factors common to the Group members regarding the impossibility in fact to act?
- j) to k) [...];

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

**GRANT** Plaintiff's action against Defendants on behalf of all the members of the Group;

[...];

[...];

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each of the members of the Group;

**CONDEMN** the Defendants solidarily to pay to each member of the Group a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each of the members of the Group punitive damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**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;

**ORDER** the Defendants 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 Group members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily 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 Group 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 Group 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 Group in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, Le Journal de Montreal and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice of a Class Action";

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Group member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**ORDER** the Defendants to send an Abbreviated Notice by regular mail and email (when the email address is available) to each Group member who participated in the Recall campaign 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.

Montréal, September 21, 2018

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

**PER: ME JOEY ZUKRAN**

Counsel for Applicant

500-06-000797-163

---

(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

---

DAN ABICIDAN

*Applicant*

-VS.-

IKEA CANADA LIMITED PARTNERSHIP

ET ALS.

*Defendants*

---

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

---

**ORIGINAL**

---

Me Joey Zukran  
**LPC AVOCAT INC.**  
Avocats • Attorneys  
5800 blvd. Cavendish, Suite 411  
Montreal, Quebec, H4W 2T5  
Telephone: (514) 379-1572 • Fax: (514) 221-4441  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**BL 6059**

**N/D: JZ-108**

---