

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001121-215

(Class Action)
SUPERIOR COURT

9343-4678 QUEBEC INC. (d.b.a. Restaurant Déli Boyz), legal person having its place of business at 5800 Cavendish boulevard, unit E4, district of Montreal, province of Quebec, H4W 2T5

Applicant

-vs-

UBER CANADA INC., legal person having a principal establishment at 1751 Richardson Street, district of Montreal, province of Quebec, H3K 1G6

and

UBER B.V., legal person having its head office at Mr. Treublaan 7, 1097 DP Amsterdam, Netherlands

and

UBER PORTIER B.V., legal person having its head office at Mr. Treublaan 7, 1097 DP Amsterdam, Netherlands

and

DOORDASH, INC., legal person having its head office at 303 2nd Street, South Tower, 8th Floor, San Francisco, California, 94107, United States

and

DOORDASH TECHNOLOGIES CANADA INC., legal person having a place of business at 1700-1055, West Hastings Street, Vancouver, province of British Columbia, V6E 2E9

and

JUST EAT CANADA INC. (d.b.a. SkipTheDishes Restaurant Services Inc.), legal person having its head office at 800-515 DR Legget, Kanata, province of Ontario, K2K 3G4

and

SKIPTHEDISHES RESTAURANT SERVICES INC., legal person having its head office at 800-515 DR Legget, Kanata, province of Ontario, K2K 3G4

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)**

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

I. GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following class:

Class:

All restaurants in the province of Quebec who, since January 8, 2018, paid a commission in excess of 15% of the total cost of the customer order to Uber Eats, DoorDash or SkipTheDishes.

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

or any other Class to be determined by the Court;

2. The Defendants are companies that operate mobile applications and websites enabling them to deliver food from restaurants to customers;
3. The Defendants make their money by charging delivery and service fees to the customers ordering the food, as well as by charging a commission to the

restaurants which is as high as **30%** of the order;

4. The Applicant, 9343-4678 Quebec inc. d.b.a. Restaurant Déli Boyz (hereinafter "**Déli Boyz**") is a restaurant in Montreal, as it appears from **Exhibit P-1**;
5. In order to survive during the Covid-19 pandemic, Déli Boyz especially uses the "Uber Eats" service offered by Defendants Uber Portier B.V., Uber Canada Inc. and Uber B.V. (hereinafter referred to as "**Uber Eats**"). An extract of the Quebec corporate register for Uber Canada Inc. is communicated as **Exhibit P-9**. Uber is a publicly traded company (NYSE: UBER) with a market cap of more than \$100 billion;
6. The contract between Déli Boyz and Uber Eats (as well as between the Defendants and all restaurants) is a contract of adhesion, where the commission cannot be negotiated and is imposed on the restaurant;
7. The Defendants, DoorDash, Inc. and DoorDash Technologies Canada Inc. (hereinafter "**DoorDash**") are registered as a logistics delivery platform, as it appears from **Exhibit P-10**. DoorDash offers a similar platform and charges similar commissions to the restaurants, as it appears from DoorDash's Canadian "Merchant Sign-Up Sheet" imposing a "Marketplace Delivery Commission Rate" of **29%** on restaurants (clause 3), communicated as **Exhibit P-11**. A copy of DoorDash's Terms of Service for Merchants is communicated as **Exhibit P-12**. DoorDash is a publicly traded company (NYSE: DASH) with a market cap of more than \$50 billion;
8. The Defendants Just Eat Canada Inc. and SkipTheDishes (hereinafter "**Skip**") merged on January 1st, 2019, as it appears from an extract of the Quebec corporate register communicated as **Exhibit P-2**. On its website, Skip boasts that "Skip is Canada's leading and largest food delivery network, with tens of thousands of restaurants coast-to-coast in hundreds of communities across Canada", as it appears from **Exhibit P-3**. Skip offers a similar platform and charges similar commissions to the restaurants, as it appears from Skip's "Restaurant Agreement" and "Terms and Conditions" imposing a Commission of **25%** on restaurants (page 1), communicated *en liasse* as **Exhibit P-13**. Skip's parent, Just Eat Takeaway.com NV (AMS: TKWY), is a publicly traded company with a market cap of approximately \$15 billion;
9. The commissions charged to the restaurants by Uber Eats, DoorDash and Skip (collectively referred to herein as the "**Defendants**"), in excess of 15%, are exorbitant and abusive within the meaning of article 1437 of the Civil Code of Quebec;
10. Indeed, the Defendants are well aware that the commissions which they impose on restaurants in excess of 15% can be considered abusive in law, as the provinces of British Columbia recently set a maximum charge on food delivery fees by food delivery services to restaurants, as it appears from Ministerial Order

No. M480, which includes the following, communicated as **Exhibit P-4**:

Maximum charge

3 A food delivery services provider must not charge a restaurant more than the following amounts for each customer order for which the food delivery services provider provides or facilitates food and beverage delivery services, or related services, to the restaurant:

(a) **15% of the total cost of the customer order**, before taxes, for the delivery services;

(b) 5% of the total cost of the customer order, before taxes, for the related services.

10.1 Similar caps on commissions of 15% were imposed in Ontario, as well as in American cities such as New York, Chicago, Los Angeles and San Francisco;

11. A news article published in the *Journal de Montréal* on January 7, 2021, titled “*Plateformes de livraison: les restaurateurs veulent payer moins*” highlights the problem faced by the restaurants, especially during the pandemic, as it appears from **Exhibit P-5**:

« La livraison sera à peu près la seule bouée de sauvetage à notre disposition, du moins, pour les quatre prochaines semaines, alors ça met encore plus en relief les frais exorbitants exigés par les tiers», poursuit-il.

En ce moment, **les plateformes de livraison comme Uber Eats et DoorDash prennent des commissions d'environ 30 % sur chaque livraison effectuée.**

L'ARQ cite en exemple l'Ontario et la Colombie-Britannique qui ont **réduit les commissions pour ce type de livraison à 15 %.**

...

« Ce serait un gain majeur. Présentement, du take-out, on n'en fait presque pas, car les gens se déplacent de moins en moins. **Avec les plateformes, c'est 30 % qui s'envole. Si on est capable de se rendre à 15 %, c'est certain que ça aiderait »**

11.1 On January 9, 2021 (a day after this action was initially filed), the Mayor of Montreal, Valérie Plante, tweeted about the “very high” (*très élevés*) commissions charged by the Defendants, as it appears from **Exhibit P-14**:



12. The Applicant submits that the commissions charged by the Defendants in excess of 15% of the customer order are disproportionate, exploitative and abusive;
13. This class action seeks damages in the amount of the commissions paid by the restaurants to UberEats, DoorDash and Skip in excess of 15% of the total cost of the customer order, as well as an injunction ordering the Defendants to cease charging them commissions in excess of 15% of the total cost of the customer order;

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

Déli Boyz's Claim against Uber Eats

14. Déli Boyz is a restaurant situated in the food court of the Cavendish Mall, in the city of Côte St-Luc, in the province of Quebec;
15. Déli Boyz has been using the Uber Eats food delivery service for several years;
16. Uber Eats imposes all of the contractual conditions on Déli Boyz, who cannot negotiate the commission of 30% imposed and charged by Uber Eats, as it appears from clause 3b) of the Uber Eats standard form agreement, Exhibit P-6;
- 16.1 Uber Eats' services are a necessity for Déli Boyz and the contract of adhesion between Déli Boyz and Uber Eats (Exhibit P-6) leaves no doubt that there was an inequality of bargaining power between the parties;
- 16.2 Uber Eats (and the other Defendants) are corporate giants – with a total market cap of more than \$165 billion – that have taken over the food delivery business to such an extent that Déli Boyz is wholly dependent on Uber Eats in order to have a viable take-out business;

- 16.3 For example, Uber Eats (and the other Defendants) send promotional emails and pop-up notifications to their users offering them discounts (such as 30% off of orders over \$50.00) that incentive them to order take-out from Uber Eats instead of delivery directly from the restaurant (Déli Boyz offers its own delivery service, but still cannot compete with the Uber Eats' promotions);
- 16.4 Had Déli Boyz not contracted with Uber Eats (or one of the other Defendants), it would have been at a serious disadvantage given that: i) the Defendants have cornered the market for food delivery and have changed the way people order take-out; and ii) its competitors use one or more of the Defendants' platforms and it would lose out on a significant amount of orders. Further, the survival of its business depends on Uber Eats, especially during the pandemic lockdowns – and even more so during the curfew decreed from January 9 to February 8, 2021;
- 16.5 In light of the above, there is an important disparity between the parties that impaired Déli Boyz's ability to contract freely and autonomously with Uber Eats (clearly Déli Boyz would have accepted almost any of Uber Eats' terms, as the consequences of not accepting them would be disastrous);
17. During the pandemic, its Uber Eats orders increased significantly because Déli Boyz's customers were prohibited from eating in the food court by government decree, such that all of its orders were either take-out or delivery;
18. To demonstrate its cause of action at this stage, Déli Boyz uses the example of the period of December 27, 2020 to January 4, 2021 (the "**Weekly Period**"), where Uber Eats charged Déli Boyz a commission of **\$737.17** for 67 orders totaling **\$2,449.76** before taxes, as it appears from the Uber Eats statement filed as **Exhibit P-7**;
19. Had Uber Eats provided the exact same services to Déli Boyz for the same 67 orders in British Columbia, in Ontario, or in other North American cities, it would have charged a commission of only **\$367.46** for this same Weekly Period (i.e. 15% of \$2,449.76). Charging one restaurant commissions of 100% more than the commissions charged to another restaurant – for the exact same food delivery services – is objectively abusive. It is also in bad faith because the Defendants are taking advantage of the lack of regulations specifically capping their commission in the province of Quebec, thus far, as other governments have been doing;
20. Despite the lack of specific regulation to this effect, article 1437 of the Civil Code of Quebec still operates to prohibit abusive clauses in contracts of adhesion, such as Exhibit P-6, and provides the following:

1437. An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to the requirements of good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.

21. Déli Boyz submits that the imposition of commissions of 30% are abusive in normal times (notably because they are double the commissions charged to restaurants in other Canadian and American cities), but had less of an impact given the lower volume of Uber Eats orders prior to Covid-19. However, there can be no doubt that by maintaining these same high commissions during the pandemic and curfew period – when food delivery orders skyrocketed – that Uber Eats’ commissions are abusive and that it acted contrary to the requirements of good faith (especially when they are aware that other Canadian provinces and American cities set a maximum commission amount of 15% of the total cost of the customer order);
22. It is important to note that in addition to the 30% commission charged to Déli Boyz and all restaurants, Uber Eats also generates revenues by charging delivery and service fees to the customers ordering the food (as do the other Defendants);
23. Déli Boyz was always unhappy about paying 30% commissions, which Uber Eats imposes in its contract of adhesion, but certainly has no choice other than to continue doing so if it is to survive in general – and particularly so during the pandemic (see Exhibit P-5 for instance);
24. To decide whether the 30% commission is abusive, the jurisprudence requires a comparison of what the adherent paid for the delivery service (in this case, \$737.17 for the period of December 27, 2020 to January 4, 2021) and the “wholesale” cost to the merchant providing the delivery service in Quebec (in this case, close to nothing since service and delivery fees are paid by the customers ordering the food);
25. There is an important disproportion between the **\$737.17** commission paid to Uber Eats by Déli Boyz for 67 orders totaling \$2,449.76 for the Weekly Period and the food delivery services provided by Uber Eats. This disproportion is all the more obvious when Uber Eats would have charge a restaurant in British Columbia only **\$367.46** for the exact same services during the identical Weekly Period;
26. Consequently, an excessive disproportion exists when the Defendants charge restaurants commissions in excess of 15%;
27. Déli Boyz believes that further evidentiary support for its allegations will come to

light after a reasonable opportunity for discovery;

28. Déli Boyz's damages for the Weekly Period is \$369.71, but is in the tens of thousands of dollars since during the class period, as it appears from **Exhibit P-8**;
29. Déli Boyz's damages are a direct and proximate result of Uber Eats' abusive conduct;
30. As a result of the foregoing, Déli Boyz and Class members are justified in claiming damages and a declaratory judgment pursuant to article 1437 CCQ;

Déli Boyz's Request for Injunctive Relief

- 30.1 In addition to the damages sought above, Déli Boyz and Class members are entitled to seek injunctive relief against Uber Eats and the other Defendants in order to prohibit them from charging commissions above 15% of the total cost of the customer order, pursuant to article 509 of the Code of Civil Procedure, chapter C-25.01;
- 30.2 Indeed, as appears from the allegations above, the commissions imposed by Uber Eats, DoorDash and Skip are objectively abusive ("*tres élevés*" to use the words of Mayor Valérie Plante, Exhibit P-14) and cause substantial harm to the restaurants who have become dependent on them as a result of their sheer dominance of the food delivery market;
- 30.3 As such, Deli Boyz is well-founded in asking for injunctive relief in order to bar the Defendants from continuing to engage in the same abusive, unfair and illegal conduct;

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

31. Given that Déli Boyz hereby seeks to have the abusive clauses declared null, Déli Boyz is accordingly entitled to claim and does hereby claim from Uber Eats and the other Defendants the aggregate of the commissions paid above 15% of the total cost of the customer order;
32. All Class members, regardless of which of the Defendants they contracted with (some restaurants contract with more than one), have a common interest both in proving the violation of article 1437 CCQ by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants, as well as in obtaining injunctive relief;
33. The nature of the interest necessary to establish the standing of the Applicant must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the Applicant;

34. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the commissions above 15% charged by Uber Eats, DoorDash and Skip are abusive under Quebec law;
35. The claims of every member of the Class are founded on very similar facts to the Déli Boyz's claim against Uber Eats;
36. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;
37. Every member of the Class was charged an abusive commission of more than 15% of the total cost of the customer order;
38. The same legal issues are present in the action of each Class member against each Defendant (each Defendant faces more or less the same issues regarding the interpretation and application of article 1437 *CCQ* and article 509 *C.C.P.*);
39. By reason of Defendants' abusive conduct, Déli Boyz and every Class member have suffered damages, which they may collectively claim against the Defendants;
40. Although the Déli Boyz itself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
41. 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;
42. In taking the foregoing into account, all members of the Class are justified in claiming the abusive commissions which they unlawfully overpaid to Defendants and in obtaining an injunction;
43. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
44. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
45. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Are the commissions above 15% of the total cost of the customer order charged by Uber Eats, DoorDash and Skip to the restaurants abusive under article 1437 of the *CCQ*?
 - b) If so, are the Class members entitled to damages for the commissions that they paid to Uber Eats, DoorDash or Skip above 15% of the total cost of

the customer order?

- c) Does the Defendants' conduct constitute a failure of their obligation to act in good faith under articles 6, 7 and 2805 CCQ?
- d) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to charge restaurants commissions above 15% of the total cost of the customer order?

C) THE COMPOSITION OF THE CLASS

- 46. 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;
- 47. The size of the Class is conservatively estimated to include thousands of restaurants in the province of Quebec;
- 48. The names and addresses of all restaurants included in the Class are not known to the Applicant, however, are in the possession of the Defendants;
- 49. Class members are very numerous and are dispersed across the province;
- 50. 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;
- 51. 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

- 52. Déli Boyz requests that it be appointed the status of representative plaintiff, for the following reasons:
 - a) it is a member of the Class and has a personal interest in seeking the conclusions proposed herein;
 - b) it is competent, in that it has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) its interests are not antagonistic to those of other members of the Class;
- 53. As for identifying other Class members, it draws certain inferences from the situation and realizes that by all accounts, there is a very important number of restaurants that find themselves in an identical situation, and that it would not be

useful to attempt to identify them given their sheer number (Exhibit P-5, for instance);

54. For the above reasons, Déli Boyz respectfully submits that its interest and competence are such that the present class action could proceed fairly and in the best interest of the Class;

III. DAMAGES AND REMEDIES

55. During the Class Period, the Defendants have generated and continue to generate substantial revenues by imposing abusive commissions on restaurants. Their revenues were amplified by the pandemic and the curfew period in Quebec, which forced customers to order meals by take-out and delivery instead of dining in. Additionally, during the curfew period customers could not even pick-up their food from restaurants after 8:00 p.m., but the Defendants were able to continue their business as usual, since food delivery was deemed an essential service;
56. All of the Defendants must be held accountable for the breach of obligations imposed on them by the *Civil Code of Quebec*, notably articles 6, 7 and 1437;
57. In light of the foregoing, the following remedies may be claimed against the Defendants:
 - a) compensatory damages, in an amount to be determined, on account of the aggregate of the commissions charged to restaurants above 15% of the total cost of the customer order; and
 - b) an injunction ordering the Defendants to cease imposing commissions on Class members in excess of 15% of the total cost of the customer order.

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

58. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief and declaratory judgment;
59. 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 Class members;

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class members;

ORDER the Defendants (Uber Eats, DoorDash and SkipTheDishes) to cease charging restaurants commissions in excess of 15% of the total cost of the customer order;

DECLARE that the commissions charged by the Defendants are excessively and unreasonably detrimental to the restaurants and are therefore not in good faith under article 1437 of the CCQ;

DECLARE abusive and null the clauses in the Defendants' respective agreements which impose commissions in excess of 15% of the total cost of the customer order;

CONDEMN the Defendants to pay the Representative Plaintiff and Class members compensatory damages for the aggregate of the amounts charged in commissions during the Class Period; **SUBSIDIARILY, REDUCE** the obligations of the Representative Plaintiff and Class members to 15% of the total cost of the customer order;

ORDER the collective recovery of all damages owed to the Class members for the amounts overcharged;

CONDEMN the Defendants 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 Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

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

V. JURISDICTION

61. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because its restaurant is located in the district and an important number of Class members are in Montreal;

62. Furthermore, the Superior Court of the province of Quebec has jurisdiction to hear this case notwithstanding the Defendants' respective arbitration clauses in Exhibits P-6, P-11 and P-13. This is notably because the Supreme Court of Canada has already held that the arbitration agreement provided for in the Uber Eats contract (Exhibit P-6) is unconscionable and invalid (*Uber Technologies Inc. v. Heller*, 2020 SCC 16). It follows that the Defendants' respective arbitration

agreements here are also null pursuant to article 622 al. 2 CCP, as they effectively preclude Class members from advancing any claims against the Defendants in the province of Quebec, no matter how substantial or meritorious, and demonstrates that the intended purpose of the arbitration agreements is “not to arbitrate”;

63. Similarly, the United States District Court for the Northern District of California recently concluded that DoorDash attempted to prevent access to arbitration provided for in its own contract of adhesion, as it appears from a copy of DoorDash’s “Opposition to Motion for Temporary Restraining Order” in case no. 3:19-cv-07545-WHA communicated as **Exhibit P-15**, and the judgment of February 10, 2020, communicated as **Exhibit P-16**, mentioning the following:

“For decades, the employer-side bar and their employer clients have forced arbitration clauses upon workers, thus taking away their right to go to court, and forced class-action waivers upon them too, thus taking away their ability to join collectively to vindicate common rights. The employer-side bar has succeeded in the United States Supreme Court to sustain such provisions. The irony, in this case, is that the workers wish to enforce the very provisions forced on them by seeking, even if by the thousands, individual arbitrations, the remnant of procedural rights left to them. **The employer here, DoorDash, faced with having to actually honor its side of the bargain, now blanches at the cost of the filing fees it agreed to pay in the arbitration clause. No doubt, DoorDash never expected that so many would actually seek arbitration. Instead, in irony upon irony, DoorDash now wishes to resort to a class wide lawsuit, the very device it denied to the workers, to avoid its duty to arbitrate. This hypocrisy will not be blessed, at least by this order.**”

64. To conclude, the arbitration agreements are manifestly disproportionate in the context of the parties’ relationships, as only the Class members (i.e. restaurants located in the province of Quebec) will experience undue hardship in being forced to incur the costs, travel expenses and time required to arbitrate outside of the province of Quebec, where their businesses are located. Therefore, the arbitration clauses here are “unconscionable” and abusive within the meaning of article 1437 CCQ;
65. In light of all of the above, the Court can infer that Uber Eats, DoorDash and Skip knowingly and intentionally imposed their arbitration clauses in order to favour themselves and to take advantage of Class members, who are vulnerable to their market dominance. This is abusive, unfair and in bad faith;

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, injunctive relief and for declaratory judgment;

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

Class:

All restaurants in the province of Quebec who, since January 8, 2018, paid a commission in excess of 15% of the total cost of the customer order to Uber Eats, DoorDash or SkipTheDishes.

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

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) Are the commissions above 15% of the total cost of the customer order charged by Uber Eats, DoorDash and Skip to the restaurants abusive under article 1437 of the CCQ?
- b) If so, are the Class members entitled to damages for the commissions that they paid to Uber Eats, DoorDash or Skip above 15% of the total cost of the customer order?
- c) Does the Defendants’ conduct constitute a failure of their obligation to act in good faith under articles 6, 7 and 2805 CCQ?
- d) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to charge restaurants commissions above 15% of the total cost of the customer order?

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 Class members;

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class members;

ORDER the Defendants (Uber Eats, DoorDash and SkipTheDishes) to

cease charging restaurants commissions in excess of 15% of the total cost of the customer order;

DECLARE that the commissions charged by the Defendants are excessively and unreasonably detrimental to the restaurants and are therefore not in good faith under article 1437 of the CCQ;

DECLARE abusive and null the clauses in the Defendants' respective agreements which impose commissions in excess of 15% of the total cost of the customer order;

CONDEMN the Defendants to pay the Representative Plaintiff and Class members compensatory damages for the aggregate of the amounts charged in commissions during the Class Period; **SUBSIDIARILY, REDUCE** the obligations of the Representative Plaintiff and Class members to 15% of the total cost of the customer order;

ORDER the collective recovery of all damages owed to the Class members for the amounts overcharged;

CONDEMN the Defendants 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 Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

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 in the “News” sections of the Saturday editions of Le Journal de Montréal 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 to Quebec Restaurants”;

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

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

THE WHOLE with costs including publication fees.

Montréal, January 11, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

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Counsel for Applicant

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

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of **Montreal** situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

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

- Exhibit P-1:** Extract of the CIDREQ for 9343-4678 Quebec Inc. (Déli Boyz);
- Exhibit P-2:** Extract of the CIDREQ for Fido Solutions Just Eat Canada Inc. (SkipTheDishes);
- Exhibit P-3:** “About us” section of Skip’s website;
- Exhibit P-4:** British Columbia Ministerial Order No. M480;
- Exhibit P-5:** Copy of January 7, 2021 *Journal de Montréal* article titled “Plateformes de livraison: les restaurateurs veulent payer moins”;
- Exhibit P-6:** Copy of the Uber Eats standard form agreement;
- Exhibit P-7:** Copy of Déli Boyz’s Uber Eats statement for the period of December 27, 2020 to January 4, 2021;
- Exhibit P-8:** Copy of statement detailing total commissions charged to Déli Boyz by Uber Eats;

- Exhibit P-9:** Extract of the CIDREQ for Uber Canada Inc.;
- Exhibit P-10:** Extract of the CIDREQ for DoorDash Technologies Canada Inc.;
- Exhibit P-11:** Copy of DoorDash’s “Merchant Sign-Up Sheet” imposing a “Marketplace Delivery Commission Rate” of 29% on restaurants;
- Exhibit P-12:** En liasse, copies of DoorDash’s Terms of Service for Merchants in English and French;
- Exhibit P-13:** En liasse, copies of Skip’s “Restaurant Agreement” and “Terms and Conditions” imposing a Commission of 25% on restaurants;
- Exhibit P-14:** Copy of Mayor Valérie Plante’s tweet of January 9, 2021;
- Exhibit P-15:** Copy of DoorDash’s “Opposition to Motion for Temporary Restraining Order” dated November 22, 2019, case no. 3:19-cv-07545-WHA, in the United States District Court for the Northern District of California;
- Exhibit P-16:** Copy of the February 10, 2020 judgment by Judge William Alsup in case no. 3:19-cv-07545-WHA, in the United States District Court for the Northern District of California.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, January 11, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Me Joey Zukran

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Fax: (514) 221-4441

Email: jzukran@lpclex.com

Counsel for Applicant

AMENDED NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.C.P.)

TO: UBER CANADA INC.
1751 Richardson Street
Montreal, Quebec, H3K 1G6

UBER B.V.
Mr. Treublaan 7, 1097 DP
Amsterdam, Netherlands

UBER PORTIER B.V.
Mr. Treublaan 7, 1097 DP
Amsterdam, Netherlands

SkipTheDishes Restaurant Services Inc.
800-515 DR Legget,
Kanata, Ontario, K2K 3G4

DOORDASH, INC.
303 2nd Street, South Tower,
8th Floor,
San Francisco, CA, 94107 USA

**DOORDASH TECHNOLOGIES CAN-
ADA INC.**
1700-1055, West Hastings Street
Vancouver, British Columbia, V6E 2E9

**JUST EAT CANADA INC. (d.b.a.
SkipTheDishes Restaurant Services
Inc.)**
800-515 DR Legget,
Kanata, Ontario, K2K 3G4

TAKE NOTICE that Applicant's *Amended Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, January 11, 2021

(s) LPC Avocat Inc.

LPC AVOCAT INC.
Me Joey Zukran
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Montréal, Québec, H2Y 1N3
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Counsel for Applicant

500-06-001121-215

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

9343-4678 QUEBEC INC. (d.b.a. Restaurant Déli Boyz)

Applicant

v.

UBER CANADA INC.
UBER B.V.
UBER PORTIER B.V.
DOORDASH, INC.
DOORDASH TECHNOLOGIES CANADA INC.
JUST EAT CANADA INC.

and

SKIPTHEDISHES RESTAURANT SERVICES INC.

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

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N/D : JZ-223
