

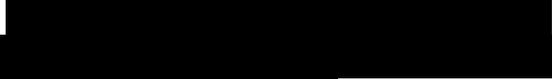
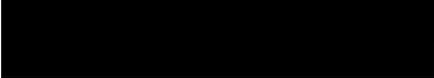
CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-001199-229

SUPERIOR COURT  
(Class Actions)

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**SHAY**   


Applicant

v.

**SHAKEPAY INC.**, legal person having its head office at 500 place d'Armes, suite 1800 District of Montreal, province of Quebec, H2Y 2W2

and

**SHAKE LABS INC.**, legal person having its head office at 500 place d'Armes, suite 1800 District of Montreal, Quebec, H2Y 2W2

and

**WEALTHSIMPLE DIGITAL ASSETS INC.**, legal person having its head office at 400-80 Spadina Avenue, Toronto, Ontario, M5V 2J4

and

**WEALTHSIMPLE FINANCIAL CORP.**, legal person having its head office at 400-80 Spadina Avenue, Toronto, Ontario, M5V 2J4

and

**WEALTHSIMPLE INVESTMENTS INC.** (previously dba **CANADIAN SHAREOWNER INVESTMENTS INC.**), legal person having its head office at 201-80 Spadina Avenue, Toronto, Ontario, M5V 2J4

Defendants

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**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)**

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

**I. GENERAL PRESENTATION**

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

**Shakepay Class:**

All consumers and businesses in Canada who made a transaction using Shakepay's mobile application or website for the purchase or sale of Bitcoin and/or Ethereum.

(hereinafter the "**Shakepay Class**")

**Wealthsimple Class:**

All consumers and businesses in Canada who made a transaction using Wealthsimple's mobile application, website or by telephone, for the purchase or sale of any cryptocurrency (digital currency).

(hereinafter the "**Wealthsimple Class**")

(collectively the "**Class members**")

or any other Class to be determined by the Court;

2. Over the past few years, the popularity of cryptocurrencies (also known as digital currencies, virtual currencies and *crypto*) such as Bitcoin and Ethereum, to name a few, has skyrocketed;
3. Many different platforms have popped up in recent years enabling Canadians to buy and sell cryptocurrencies. Obviously, the creators of these platforms (including the Defendants') are in this business to make a profit;
4. The Defendants are two of the most popular cryptocurrency platforms in Canada, engaging, notably, in cryptocurrency exchange and transfer services;
5. Defendant Shakepay Inc. (hereinafter "**Shakepay**") boasts on its Twitter page as being referred to as "*the Canadian Coinbase*". Defendant Wealthsimple Digital Assets Inc. (hereinafter "**Wealthsimple**") refers to itself on its website as a "*Robinhood Canada alternative*" (<https://www.wealthsimple.com/en-ca/learn/robinhood-canada>);

6. The Defendants are being sued for three main reasons. *First*, they bait customers in by telling them that they can buy and sell crypto on their platforms by using terms such as “commission-free at market-leading prices”, “sans frais aux meilleurs prix” (Shakepay’s language), “commission fees: \$0”, or “frais de commission: 0 \$” and “best execution” (Wealthsimple’s language);
7. These statements are false and misleading (under Quebec law and the *Competition Act*) because they give the general impression that there are no fees or out-of-pocket costs for buying or selling crypto on these Defendants’ platforms when, in reality, they charge their customers some of the highest fees in the industry. As such, the Defendants provide misleading information to their customers about the true costs of choosing to trade with them and mislead their customers about their order execution quality;
  - 7.1 In Shakepay’s case in particular, it does not offer crypto “aux meilleurs prix” / “at market leading prices” as proven herein below (at paras. 48-49 for instance), nor can it substantiate its advertising that it sells or buys crypto “aux meilleurs prix”, thereby confirming that there is no doubt that its statements to this effect are false;
  - 7.2 As for Wealthsimple’s crypto transactions, they are certainly not at “best execution” prices for Class members, as proven herein below (at paras. 90-91 for instance);
8. *Second*, the Defendants keep the spreads between their “bid/sell” and “ask/buy” prices of the cryptocurrencies offered on their platforms intentionally large which enables them to collect a hidden commission/fee from the Class members;
  - 8.1 Moreover, the “bid/sell” and “ask/buy” prices displayed by the Defendants on their platforms are not determined by the market, but by the voluntary decision of the Defendants as to how much money they want to make on a transaction, which makes their “bid/sell” and “ask/buy” prices false representations in and of themselves;
  - 8.2 As will be shown below (paras. 48-49 and 90-91 for instance), when the Defendants advertise their “bid/sell” and “ask/buy” prices, these are their own discretionary prices, not the prices determined by the market which is the false impression given by their platforms;
9. *Third*, the Defendants fail to disclose the precise cost for their services to their customers, contrary to s. 12 of Quebec’s *Consumer Protection Act* (the “CPA”) and charge a higher price than that advertised at the first step contrary to s. 224 c) CPA (they bait Class members by advertising a lower price at the first step – one which is closer to the real market price – and then charging a higher price which is set by the Defendants at their own discretion at the last step);
10. As for Defendant Wealthsimple, in addition to these three items, their contract mentions “*Operations Fee: 1.5-2% per transaction*”. Expressing a range of fees and charging a price that exceeds the lowest of those expressed is prohibited by both section 54 of the *Competition Act* and section 12 CPA (see *Salko c.*

*Financière Banque Nationale inc.*, 2022 QCCS 3361, para. 128);

11. Should Wealthsimple claim that the CPA does not apply to it given the AMF's decision of August 7, 2020 (decision N° 2020-SACD-1039458), its "Operations Fee" of 1.5% to 2% is still unlawful because it was charged by Wealthsimple and paid by Class members contrary to Wealthsimple's undertakings to the AMF and the decision rendered based on those undertakings, as it appears from paragraphs 35 and 45 of the AMF decision communicated as **Exhibit P-1**:

**45.** Le demandeur sera rémunéré par l'écart (spread) sur les transactions. Le demandeur **ne facture** actuellement aucuns frais d'ouverture ou de maintien de compte, **aucune commission, ni aucun autre frais de quelque nature que ce soit.**

12. Wealthsimple made an identical undertaking to the Canadian Securities Administrators ("**CSA**"), as it appears from paragraphs 35 and 45 of the CSA's August 7, 2020 decision (in response to Wealthsimple's Regulatory Sandbox application) communicated as **Exhibit P-2**:

**45.** The Filer is compensated by the spread on trades. It **does not currently charge** any account opening or maintenance fees, **commissions, or other charges of any kind.**

13. Wealthsimple subsequently applied for the revocation of the exemptive relief of the decisions dated August 7, 2020 (the Prior CSA Decision) and sought and obtained replacement relief, as it appears from the June 18, 2021 CSA decision communicated as **Exhibit P-3** (the Prior Quebec Decision was also revoked that same day by decision No 2021-SACD-1036367). Once again, Wealthsimple's undertakings were identical concerning the fees it undertook to charge and *not* to charge (see paragraphs 49 and 57 of Exhibit P-3);

14. Remarkably, on its website (<https://help.wealthsimple.com/hc/en-ca/articles/360060805574-Why-did-my-cryptocurrency-order-fill-at-a-price-I-didn-t-expect->) Wealthsimple admits that it charges *an additional fee* of 1.5% to 2% **on top** of the spread of Class members' transactions, contrary to its undertaking to the CSA and AMF, as well as the decisions rendered by these authorities, as it appears *en liasse* from screen captures of Wealthsimple's website taken on September 27, 2022 and on October 23, 2021 (using a Wayback machine), communicated as **Exhibit P-4**:

"There are two primary factors that may impact the price your order is filled at. These factors are the bid/ask prices and the market spread.

**Bid/Ask Spread.** The price you see in the app is the last traded price and we use this to help you estimate the price point of your order. Similar to stock markets, there is a bid price (the best offer for purchase) and an asking price (the best offer for sale). **Your submitted buy order always**

**gets executed at the asking price.** While this price may be different from the last traded price, we use a liquidity partner to source global cryptocurrency markets to help find the best price at that time.

**Spread.** There is a 1.5% - 2% charge on each order that helps cover the operational and custodial costs of executing your order. This means **the average price of your order would be the bid or ask price with an additional 1.5% - 2% fee added on top.**”

15. Wealthsimple is hereby called upon to explain what the difference is between what it qualifies as the “Bid/Ask **Spread**” and the “**Spread**”, which appears to just be a play of words to justify the imposition of an additional charge to Class members;
16. The receipt of a payment not due provisions of the Civil Code of Quebec (i.e. arts. 1491, 1492 and 1554 para. 1), as confirmed by the Supreme Court in *Amex Bank of Canada v. Adams*, 2014 SCC 56, apply to any fees paid to Wealthsimple “on top” of the spread (while Wealthsimple claims that these fees are 1.5% to 2% “on top” of the spread, as shown below these extra fees often exceed the 1.5% to 2% mentioned at Schedule B of the Wealthsimple contract);
17. The Defendants’ deceptive practice of advertising its crypto exchange/trading services as “commission-free” is also contrary to the *Competition Act*. In its Bulletin titled “*The Deceptive Marketing Practices Digest*”, the Competition Bureau refers to a common problem in digital commerce to which consumers fall prey, known as “*drip-pricing*”, Applicant disclosing **Exhibit P-5**:

Another growing problem in the digital economy is the tendency of some advertisers to trumpet a very appealing price for a product, **while concealing the true total cost**. In one common technique, referred to as “*drip-pricing*”, advertisers offer an attractive price for a good or service, but consumers who respond to the representation discover that unexpected additional costs are added to the prominently advertised price. The true total cost may only be revealed after the consumer has initially responded to the advertisement. [...]

There is a significant body of research that shows that hiding or obscuring costs significantly affects consumers’ ability to make well informed decisions, and has a negative impact on the proper functioning of the marketplace. The international consumer protection community, through the Committee on Consumer Policy of the Organization for Economic Cooperation and Development (OECD), has identified similar concerns.

18. Given that the Defendants are merchants and are either performing a “service” (cryptocurrency exchange) or selling “goods” (cryptocurrency) within the meaning of the CPA, it is strictly prohibited for them to claim any costs from consumers, unless the amounts thereof are precisely indicated in the contract;

19. The Defendants' industry competitors such as Kraken, Binance, Bitbuy, Coinbase and Coinsmart, to name a few, do indicate the precise commissions/fees for exchanging/trading cryptocurrency on their respective platforms, as it appears *en liasse* from **Exhibit P-6**. An example from Exhibit P-6 of another major Canadian cryptocurrency platform – and Shakepay competitor – called “Bitbuy” ([www.bitbuy.ca](http://www.bitbuy.ca)), claiming to have served more than 400,000+ Canadians and traded more than \$ 5 billion in crypto, is reproduced below:



### Transparent and Competitive

We don't hide our fees (like other platforms). We provide the best prices and **transparent fee structure**.

20. Unlike their competitors (Exhibit P-6), the Defendants not only conceal the real fees/costs from Class members, but give them the false impression that they do not charge any commission and that there are therefore no out-of-pocket costs to them for using their platforms (that is that the spread is a neutral factor that does not impact the effective costs to the customer since their service is “commission-free”);
21. The purpose of this class action is to force the Defendants to modify their business practices so that they are transparent about their fees and the real costs to their customers for using their services, as well as to obtain restitution or a reimbursement for the Class members representing the total cryptocurrency exchange/conversion fees unlawfully collected by the Defendants, as well as punitive damages;

## II. THE PARTIES

22. Applicant is a consumer within the meaning of the *Consumer Protection Act*, the *Civil Code of Quebec* and the *Competition Act*;

### i) Shakepay Defendants

23. Defendant Shakepay Inc. has its head office in Montreal, Quebec and is a fintech company carrying on in the industry of information technology and services. Defendant Shake Labs Inc. is the developer of the Shakepay app and majority shareholder of Shakepay Inc., also headquartered at the same address, the whole as appears from extracts of the Quebec Business Registry communicated herewith *en liasse* as **Exhibit P-7**;

24. In a January 20, 2022 press release, Shakepay stated that it is “a leading Canadian bitcoin technology company enabling customers to easily buy and earn bitcoin through financial applications”, and announced a \$44 million CAD Series A investment, giving the company a \$313M CAD valuation. The funding was led by QED Investors, an American venture capital firm and Shakepay shareholder that “invests in businesses that disrupt and empower the financial technology industry”, the whole as appears from **Exhibit P-8**;
25. Shakepay Inc. operates the [www.shakepay.com](http://www.shakepay.com) website and the Shakepay mobile application, as it appears from Shakepay Inc.’s Terms of Use communicated as **Exhibit P-9**;
26. Shakepay’s Terms of Use stipulate at its section 24 that:
- “Any disputes related to this agreement shall be heard exclusively in the courts of the City of Montreal, Quebec, and the law of the Province of Quebec shall apply”*
27. On its website, Shakepay boasts of the following, as it appears from the extract communicated as **Exhibit P-10**:
- a) “The easiest way for Canadians to buy and sell bitcoin”;
  - b) “\$7B+ in digital currency bought & sold”;
  - c) “1,000,000+ Canadians served”;
- and, most relevantly to this case,
- d) “**Commission-free**” (in the French version “**sans frais**” and “**aucun frais**”) and
  - e) “**market-leading prices**” (“**meilleurs prix**” in French).
28. The terms “*Commission-free*” and “*sans frais*” appear in large bold letters next to a “\$” symbol emphasized in blue (“*aucun frais*” in the French version in blue) in Exhibit P-10, a portion of which is reproduced below:



### **Commission-free**

Buy & sell bitcoin and ethereum  
**commission-free** at market-leading prices



### **Aucuns frais**

Achetez et vendez des bitcoin et ethers  
**sans frais** aux meilleurs prix

29. Clicking on the words in blue “commission-free” or “sans frais” redirects the user to another webpage (<https://shakepay.com/fees>) on Shakepay’s website titled “Commission-free” (“Sans frais” in French), communicated in both languages herewith *en liasse* as **Exhibit P-11**;
30. On this page, once again, Shakepay advertises in large bold font “Commission-Free” and “Buy & sell commission-free from your phone or desktop”, in French “Acheter & Vendre depuis votre téléphone ou ordinateur sans frais” (Exhibit P-11):

## Commission-free                      Sans frais

Buy & sell commission-free from your  
phone or desktop.

Acheter & Vendre depuis votre  
téléphone ou ordinateur sans frais.

31. There is no doubt that the general impressions conveyed by Shakepay to the public are that: **(i)** it is “free” (i.e. “sans frais”) for them to buy and sell cryptocurrencies using Shakepay’s platform; and (ii) Shakepay offers the best prices on the market i.e. the “meilleurs prix”. However, these impressions do not conform to reality as Shakepay charges around 1.2% to 2.5% per transaction (and sometimes even more), a fact which it has admitted to the Applicant (see paragraphs 99-100 below) and Shakepay’s prices are simply not the “meilleurs prix/market-leading prices” (see paragraphs 48-49 below). For example, Shakepay charged the Applicant a fee of 1.2% when he purchased \$200 CAD worth of bitcoin from Shakepay, as it appears from the screen captures communicated *en liasse* herewith as **Exhibit P-12**;
32. Shakepay’s website (Exhibit P-11) contains a hyperlink to a webpage titled “*How Shakepay makes money*”, communicated *en liasse* in French and English as **Exhibit P-13**. On this webpage Shakepay candidly states:

**Étant donné que Shakepay ne prélève aucuns frais, comment Shakepay fait pour gagner de l'argent?**

Shakepay n'est pas un marché où vous achetez et vendez auprès d'autres utilisateurs.

Comme un **détaillant local qui achète et vend des marchandises**, Shakepay est une plateforme qui offre des cryptomonnaies (bitcoin et ethereum) directement à ses clients. Quand un client achète des bitcoins sur Shakepay, nous vendons nous-mêmes ces bitcoins. De même, quand un client souhaite vendre des bitcoins, nous les lui achetons directement.

**Afin de gagner de l'argent, nous fixons le prix auquel vous pouvez acheter et vendre de la cryptomonnaie avec Shakepay.**

À tout moment, il y aura une petite différence entre le prix auquel les utilisateurs peuvent acheter et celui auquel ils peuvent vendre de la cryptomonnaie chez nous.



**Shakepay perçoit cette différence en guise de revenu** afin de couvrir nos coûts d'opération, d'entretenir notre plateforme et d'offrir le meilleur service possible à nos clients.

33. First, Applicant notes that Shakepay claims that it is akin to a merchant selling goods (digital goods in this case) and the CPA applies as the purchase or sale of a Bitcoin or Ethereum coin, from or to Shakepay, are not transactions governed by the *Derivatives Act* (chapter I-14.01) or the *Securities Act* (chapter V-1.1), so the exemption at article 6 CPA does not apply to Shakepay;
34. Second, a webpage buried on Shakepay's website titled "*Comment Shakepay gagne de l'argent*" is irrelevant to Class members, especially when it contains misleading information about the true costs of choosing to trade with Shakepay. What matters is that Shakepay prominently displays and states everywhere that it "*ne prélève aucuns frais*", when it in fact does;
35. To give a concrete example, the Applicant communicates herewith *en liasse* a simulation of the Bitcoin purchase process using the Shakepay mobile application taken on September 29, 2022 as **Exhibit P-14** (for greater clarity, it is worth noting that customers can purchase fractions of a Bitcoin or Ethereum coin on Shakepay);
36. Using the Bitcoin purchase simulation, Exhibit P-14, the following facts are observed:
  - Step 1:** Shakepay's main page shows that the price of a Bitcoin is \$26,372.26;
  - Step 2:** Shakepay displaying the "**Current Price**" of a Bitcoin as \$26,372.26;
  - Step 3:** After pressing the blue circle at the bottom centre of Step 2, Shakepay gives the option to "Buy and sell at **current prices**";
  - Step 4:** The "Buy price" now displays as \$26,735.22 (i.e. \$362.96 more than the previous step) and the Sell price is listed at \$26,096.89), representing a significant spread between the buy and sell of \$638.33 or 2.39%).

37. Although Shakepay displays a “Current Price” for Bitcoin and Ethereum, which appears to represent the midpoint of the spread fixed by Shakepay depending on how much money it wants to make on a given transaction, Shakepay’s system will automatically execute what it describes as “market” orders at the highest end of its spread (i.e. the “Buy price”), from which Shakepay pockets secret commissions or fees;
- 37.1 This proves that the “Buy price” and “Sell price” advertised by Shakepay are in themselves false representations because they are not actually the “market” prices, rather Shakepay’s own discretionary prices;
38. What Shakepay in fact does, which is not mentioned anywhere on its website or contract, is that it executes its customers’ orders on another exchange (where the real market prices are) and keeps for itself the “spread” which it decides on its own and charges to its customers (in the case of a Bitcoin/Ethereum purchase, this fee is the difference between the midpoint price advertised by Shakepay at Step 1 and the “Buy Price” set by Shakepay and disclosed at Step 4; in the case of a Bitcoin/Ethereum sale, this fee is the difference between the midpoint advertised by Shakepay at Step 1 and the “Sell Price” set by Shakepay and disclosed at Step 4), as it appears from a response published by Shakepay on Reddit on August 6, 2018 communicated as **Exhibit P-15**:
- “We don't speculate with user funds so **when a transaction occurs on Shakepay, we do an equivalent transaction on an exchange to cover it in our system**. When we calculate rates, we’re using an illiquid market (CAD<>BTC) so naturally this creates a large buy/sell spread. We're now building a hop through USD which allows us to calculate rates through USD/BTC pairs, which is a much more liquid market. Operationally, it's much more difficult because of the added complexity but given the state of Canadian marketplace exchanges and other exchanges that support CAD, it results in better rates and a better service for everyone.
- So that's what we're working on right now and plan to have in place shortly. **It should reduce the buy/sell spread and make the rates more favourable on both sides.**”
39. This *modus operandi* was also confirmed by Shakepay’s CEO, Jean Amiouny, during a podcast on October 26, 2019, in which he admitted that “...*we’ll source them [the transactions] from a third party. We haven’t published who our trading partners are but they’re the household names that you’ll hear about*”, as it appears from the relevant portion of the podcast communicated as **Exhibit P-16**;
40. An August 24, 2020 report prepared by *CipherBlade*, commissioned by Shakepay, sheds more light on how Shakepay wheels and deals crypto to Canadians, as it appears from **Exhibit P-17**:

“CipherBlade reviewed the **two entities Shakepay sources cryptocurrency from as needed, which they often do on a daily basis**. Typically, as Shakepay has higher buying (and withdrawal) demand for cryptocurrency than selling demand, Shakepay sends wire transfers to these entities as needed from their Canadian bank account, and receives cryptocurrency in their wallets in return. **CipherBlade has verified that both are registered under the Nationwide Multistate Licensing System (NMLS) in the United States**. CipherBlade does not assess the involvement of these entities as being a risk factor.” (page 12)

41. In reality, Shakepay acts as a middleman and therefore has a financial interest to keep the spreads intentionally wide on the cryptocurrencies listed on its platform and to mislead Class members as to the actual “market” rates. Keeping the spreads high allows Shakepay to bake its commission/*frais* into the transaction, despite marketing itself as “commission-free” and “sans frais” with the “meilleurs prix”;

42. During the podcast communicated as Exhibit P-16, Mr. Amiouny made a Freudian slip when responding to the interviewer’s question of “*how do you make money*”:

“So, we make money on our posted rates essentially. We’re marketed as commission-free, so what you see is what you get. There’s a buy rate and there’s a sell rate and the difference between that rate is essentially where we make our money...”

When the interviewer asks: “*but you don’t publish the difference? You just publish a rate and that’s it?*” Mr. Amiouny slips:

“...both rates are visible, we’re quite clear with **how we charge – sorry – we’re quite clear with our buy and sell rates...**”

43. Recall that in Exhibit P-13 Shakepay mentions that there is a “*petite différence*” between the Buy Price and Sell Price, which is entirely false and misleading because the spread Shakepay creates at its sole discretion is remarkably high compared to its industry peers such as Kraken and Binance, where the spreads for Bitcoin (BTC) are of just a few dollars, while Shakepay’s are in the hundreds of dollars (which confirms that the “market” rates posted by Shakepay are in themselves misleading);

44. Shakepay states that it uses the spread in order to “*capture this difference as revenue to cover our costs as a business, maintain our platform, and offer great service to customers*”, which is just fluff language that essentially means the same thing as charging a commission. Obviously, the higher the spread – which Shakepay sets at its sole discretion – the more “revenue” (or commissions/*frais*) it generates from a transaction;

45. To prove that Shakepay arbitrarily and excessively jacks up its spreads, and that its prices are not the “meilleurs” or “market-leading” as advertised, the Applicant

communicates herewith the BTC/CAD spread that appeared on Kraken, another leading crypto platform operating in Canada, on September 29, 2022, as **Exhibit P-18**:

Open Orders		Positions		Order book				Group: - + None	
Cm. Cost (CAD)	Cm. Vol.	Cost (CAD)	Volume	Bid price (CAD)	Ask price (CAD)	Volume	Cost (CAD)	Cm. Vol.	Cm. Cost (CAD)
2,241.89	0.085	2,241.89	0.085	26,375.2	26,379.0	1.074	28,336.85	1.074	28,336.85
2,504.72	0.095	263.66	0.010	26,365.5	26,385.4	0.085	2,242.76	1.159	30,586.48
4,745.77	0.180	2,241.06	0.085	26,365.4	26,385.9	0.047	1,228.43	1.206	31,815.50
5,745.14	0.218	999.62	0.038	26,364.0	26,388.0	0.283	7,479.15	1.489	39,297.18
7,985.65	0.303	2,240.82	0.085	26,362.6	26,388.5	0.085	2,243.02	1.574	41,540.95
10,225.35	0.388	2,240.57	0.085	26,359.7	26,391.1	0.034	905.18	1.609	42,450.22
15,849.97	0.601	5,625.71	0.213	26,356.9	26,391.2	0.085	2,243.25	1.694	44,693.64
58,943.28	2.236	43,093.37	1.635	26,356.8	26,394.4	0.100	2,639.44	1.794	47,338.50
61,183.38	2.321	2,240.32	0.085	26,356.7	26,395.4	0.085	2,243.61	1.879	49,583.90
63,416.48	2.406	2,240.06	0.085	26,353.7	26,399.0	0.085	2,243.92	1.964	51,834.58

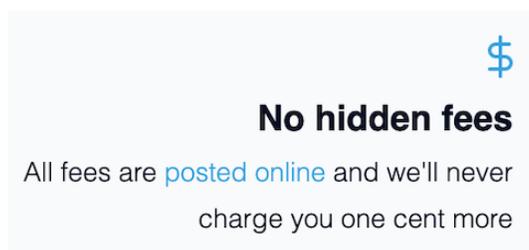
46. As appears from the image above of the Kraken order book (Exhibit P-18) displaying real market prices, there is about a \$5-\$10 spread for BTC/CAD on Kraken, as compared to Shakepay's spread of more than \$600! (shown at Exhibit P-14, Step 4);
  - 46.1 It is thus evident that Shakepay is neither selling at true market prices (contrary to what its platform lets believe) nor that its prices are the best as it so advertises;
47. And, unlike Shakepay, Kraken does *not* advertise itself as commission-free and specifically indicates the true nature of the commissions (*taux des frais*) that they charge for purchasing and selling crypto. Kraken charges a maximum fee of 0.26% per transaction (see Exhibit P-6);
48. To further prove how Shakepay is pocketing a significant hidden fee and using misleading "Buy"/"Sell" prices and presenting them as if they reflect real market prices, the Applicant refers the Court to a screen capture of the split-screen view of the Kraken order book for BTC/CAD and the Shakepay BTC/CAD order page taken at the same moment on September 29, 2022 at 12:02 p.m. EST. What sticks out is that – at the exact same second – a user can purchase BTC/CAD from Kraken for \$26,412.60, while Shakepay sells BTC/CAD to Class members for \$26,766.58 (which it falsely advertises as being the market price), the whole as appears from **Exhibit P-19**, a portion of which is reproduced below (Shakepay's price above on top of the blue bar, and Kraken's price below in red):

PRICE  
1 BTC = 26,766.58 CAD

Continue

Volume	Bid price (CAD)	Ask price (CAD)
0.170	26,404.3	26,412.6
0.085	26,401.4	26,412.7

49. In the example in Exhibit P-19, the difference between the price that Shakepay advertises and sells Bitcoin to its customers for (\$26,766.58) minus its cost to purchase that Bitcoin at real market prices on an exchange like Kraken (\$26,412.60) is its commission or “frais” generated from that transaction (i.e. \$353.98, or 1.34%). It is also proof that it does not off the “meilleurs prix”, contrary to its advertising;
50. There is nothing inherently wrong with this business model in theory (i.e. buying low and selling high), except for the fact that Shakepay falsely advertises that its prices are the best and that Shakepay is not transparent about the real costs/fees that it charges Class members – and which are hidden in the spread, and advertises a false and misleading “market” price. In other words, by marketing its services as “commission-free” / “sans frais” and the “meilleurs prix”, Shakepay misleads Class members about the true costs of choosing to trade with them and also misleads them about their order execution quality;
51. It is worth mentioning that, during its early years, Shakepay did disclose that it charged a commission of **1.75%** on top of BTC-to-CAD market rates, as it appears from its **February 22, 2018** press release communicated as **Exhibit P-20**:
52. Around that time, Shakepay’s website disclosed that there were no hidden fees and that it charged a 1.75% “*trading fee*”, as appears from a capture of its website from **August 23, 2018** using the Wayback machine, communicated *en liasse* as **Exhibit P-21**:



## Trading fees

Shakepay charges a **1.75%** trading fee when buying or selling cryptocurrency.

53. On **November 20, 2018**, Shakepay announced that it was reducing its trading fee from 1.75% to 0.75%, as it appears from Mr. Amiouny's post that day communicated as **Exhibit P-22**;
54. A screen capture taken from Shakepay's website on February 5, 2019 using the Wayback machine shows that Shakepay's website then displayed the lower fee of 0.75%, **Exhibit P-23**:

## Simple pricing

Shakepay charges a simple **0.75%** trading fee when buying or selling cryptocurrency.

55. On January 24, 2019, Mr. Amiouny, who is particularly active on Reddit, responded to a Reddit post by a user who was confused about the 0.75% trading fee, as it appears from **Exhibit P-24** and the relevant exchanges reproduced below:

**Reddit user:** ...I'm just wondering if anyone else has noticed that the going rate on the wallet tab is less then (*sic*) the going rate on the exchange tab? Right now I'm seeing \$4750 and \$4820. They advertise 0.75% fee, but that's more like a 0.98% fee.

**Mr. Amiouny:** Hey /u/FrozenJester, the rate on the wallets page is a mid-market rate (rate between the buy and sell rate) while the rate on the exchange page is the effective rate including all fees. **It's likely at that time the spread was ~0.25%** (ie the buy rate off the mid-market) + our 0.75% which comes out to your 0.98%.

How can we make that clearer in app?

**Reddit user:** I've been thinking about this and the only thing I could think of after your explanation would be on the exchange page if a user touches the "1 BTC = 4,600 CAD" that a popup bubble shows the calculation behind that value... ?

**Mr. Amiouny:** This is a great idea. Added to our todo.

56. Mr. Amiouny's statement in Exhibit P-24 about a spread of "**~0.25%**" at that time (i.e. January 2019) is relevant because, as will be shown below, Shakepay was still able to deceitfully collect commissions/fees by simply widening the spreads on its platform and effectively baking its commission into the spread. For example,

Exhibit P-14 shows that Shakepay's total spread is now closer to 2.39% (or 1.38% to buy), which is significantly more than the 0.25% spread referred to by Mr. Amiouny in his Reddit reply, at a time when Shakepay was advertising a 0.75% trading fee;

57. Indeed, on many occasions prior to switching to the "commission-free" marketing, Mr. Amiouny publicly boasted about Shakepay having competitive spreads and that they "were *working on lowering this spread for our customers by sourcing rates from more liquid markets trading US dollars*", as it appears from his August 16, 2018 article titled "Improved buy and sell rates — Product Update #11", communicated as **Exhibit P-25**;
58. It is unclear at this stage of the proceedings whether Shakepay was/is also charging a foreign exchange fee to class members for Bitcoin or Ethereum transactions, but it is clear that it did not inform the Class members of any such foreign exchange fees in the contract;
59. On June 24, 2019, Shakepay announced that "Shakepay is now commission-free!", as it appears from **Exhibit P-26**. However, in reality, Shakepay simply increased their spreads and continued charging a hidden commission/fee;
60. In this announcement (Exhibit P-26), Shakepay indicates that the old fee was 0.75% and the new fee is 0%, thereby confirming that it considers the term "**fee**" synonymous with "**commission**":



We're super excited to share some updates with the community today. Shakepay is now commission-free!

### **Pricing update**

Old fee: 0.75%

**New fee: 0%**

61. As of June 24, 2019, Shakepay's website removed all references concerning any transaction fees and advertised "Commission-Free trading", as notably appears from a May 13, 2020 screen capture taken with the Wayback machine, communicated as **Exhibit P-27**:

## **Commission-free trading**

Trade bitcoin and ethereum commission-free from your phone or desktop.

[How does Shakepay make money?](#)

62. Clicking the blue “How does Shakepay make money?” hyperlink in Exhibit P-27 directs users to Shakepay’s webpage titled “How Shakepay makes money”, the August 7, 2020 version of which, using the Wayback machine, is communicated as **Exhibit P-28**;
63. There are several notable differences in the language of previous version of the text (Exhibit P-28) and the current version (Exhibit P-13), for instance:
- The previous version states “*This means we do not charge **any fees** for buying or selling crypto*”, whereas the current version states: “*This means we do not charge **a commission** for buying or selling crypto*”;
  - The graph in the previous version refers to a “mid-market price” and “buy price” and shows a difference of “\$150”. The current version refers to a “buy price” and “sell price” and shows the difference of “\$250”. This confirms that the difference shown in the previous version was misleading because it did not capture the full spread, only 50%;
  - The previous version also refers to a “**spread**”, while the current version mentions only the “**difference**”, which makes the current version misleading because it gives the false impression that this “difference” is out of Shakepay’s control and at no additional cost to their customers.
64. To demonstrate his allegations that Shakepay continued to charge a hidden commission even after the June 24, 2019 “commission-free” announcement, the Applicant reiterates his allegations at paragraphs 48-49 above and that in Exhibit P-24 Mr. Amiouny refers to a spread of “~0.25%”. Almost immediately after these changes to “commission-free” marketing, Class members started documenting and complaining about Shakepay’s unusually large spreads;
65. For example, in a December 20, 2020 Reddit post, a Class member made the following statements, as it appears from **Exhibit P-29**:
- “Has anyone else noticed Shakepay's spreads getting absurdly high recently? I DCA'd in twice this past week and I got hit with 3% spreads. I don't even bother checking the fees before buying anymore but I did this time and it's insane. I checked newton and their spreads are still sitting at 0.5-1% for btc/eth. I don't have an account with them yet though.”**
66. A February 8, 2021 Reddit thread included the following mention of a buy spread of about 8.18% on Shakepay, as it appears from **Exhibit P-30**:
- “I used to defend Shakepay, but this spread is just insane. Actual price is 55k CAD and they charged me for 59,9k.”**
67. The Reddit thread filed as Exhibit P-30 is relevant because it contains comments from many Class members discussing Shakepay’s fees and Shakepay’s CEO

Jean Amiouny – still very active on Reddit forums – publicly admitted that the accusation cited in the paragraph above was correct, as it appears from the extract reproduced below:



aiouy · 2 yr. ago

Shakepay CEO

Hey guys, spread went up when volatility shot up (BTC price went up +10%) and only stayed there momentarily.

13 Reply Share Report Save Follow

68. A February 22, 2021 Reddit thread included another admission by Mr. Amiouny that there were indeed issues on Shakepay with high spreads (8.57% buy spread in that instance), as it appears from **Exhibit P-31**:

User: “What’s going on with the spread?? I’m trying to buy this dip... **price shows 64,000 currently but the buy price is \$70,000 still??** Wtf is this?”

Mon, Feb 22, 2021, 05:58:50 PM Eastern Standard Time



aiouy · 2 yr. ago

Shakepay CEO

This is very fair criticism, we need to do better pricing when the price moves quickly.

This is not us being greedy, though it's obvious why another comment could think that. Our prices to acquire/sell bitcoin soar when volatility spikes and the prices we offer customers to buy/sell are a function of those and they stay this high only for a moment.

We're prioritizing a fix for this.

69. An April 18, 2021 Reddit thread documented spreads of 12% on that date (including an 8% buy spread), as it appears from **Exhibit P-32**:

“Why the large spread between the price? Just tried to buy the dip but luckily I paid attention. Why is their a **12% spread between the buy and sell price and to buy the premium is 8%**”

...

“Yep...65k price...55k sell price and 74k buy price...I uploaded screenshots but they were deleted”

...

“Dude i was wondering the same thing. **Shake pay is not following the actual price of the coins**”

...

“Noticed this too - they scrambled to raise fees when the dip happened because they saw volumes go up.

**Where is the ShakePay Reddit rep with their diplomatic comments and a perfectly reasonable explanation now?**

**Does “~1.5%” mean they can charge 20% if they felt like it? Come on now.”**

70. There is no doubt that since marketing itself as “commission-free”, Shakepay simply increased the spreads and continues to bake in the same 1.75% commission it initially advertised, and likely more. Its explanations on its website are insufficient to justify not disclosing the exact costs to consumers, which is notably contrary to section 12 CPA and article 1491 CCQ;
71. Since Shakepay did not disclose the exact fee it charged Class members, it was not allowed to charge them and must reimburse the difference between the price it charged Class members to buy/sell crypto and the hidden surcharge it generated from each transaction;
- 71.1 Furthermore, since Shakepay advertises that it offers the “*meilleurs prix*” Class members should not have paid anything more than the best price available in the market. As such, Shakepay ought to be ordered to reimburse that difference to Class members as well;

**ii) Wealthsimple Defendants**

72. To avoid repetition, we refer to paragraphs 6 to 21 above concerning the Applicant’s claims against the Wealthsimple Defendants;
73. Although the Applicant’s contract is with Wealthsimple Digital Assets Inc. as it appears from **Exhibit P-33** (including Schedule B accessible by hyperlink in the contract), paragraphs 2 and 12 of the CSA June 18, 2021 decision refer to Defendant Wealthsimple Digital Assets Inc. and Defendant Wealthsimple Investments Inc. (previously doing business as Canadian ShareOwner Investments Inc.) as working “*actively and diligently with IIROC to transition the operation of the Platform from the Filer to ShareOwner*” (Exhibit P-3);
74. Defendant Wealthsimple Financial Corp. is the parent company of the other two Wealthsimple Defendants;

**III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (575 C.C.P.):**

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

**(i) Applicant's causes of action against Wealthsimple**

75. On October 12, 2021, using Wealthsimple's platform, the Applicant purchased 100 units of the *Dogecoin* cryptocurrency for \$0.2861/unit, for a total transaction amount of \$28.61, as it appears from his trade confirmation communicated as **Exhibit P-34**;
76. Dogecoin is one of many cryptocurrencies offered on Wealthsimple. On its website, Wealthsimple describes Dogecoin as "*the cryptocurrency as a way to poke fun at the cryptocurrency industry.*" Wealthsimple describes "Shiba Inu", another cryptocurrency, as "*a meme coin inspired by Dogecoin. Meme coins are cryptocurrencies inspired by jokes. Their value is determined more by the social media presence of the groups that back them than by the intrinsic value of the coins themselves*", as it appears *en liasse* from **Exhibit P-35**;
77. Dogecoin is currently worth about \$0.08 CAD per unit;
78. Wealthsimple cannot seriously argue that the use of its platform to purchase cryptocurrencies – and certainly the purchase of "*cryptocurrencies inspired by jokes*" – would somehow be excluded by section 6 CPA. It is respectfully submitted that cryptocurrencies are not securities or derivatives within the meaning of the transactions governed by the *Derivatives Act* (chapter I-14.01) or the *Securities Act* (chapter V-1.1) and that the CPA therefore applies to the services offered by Wealthsimple to Class members concerning cryptocurrency transactions;
79. The Applicant used Wealthsimple because it promoted itself as a commission-free and easy-to-use service;
80. As such, Applicant was under the impression that using Wealthsimple's platform to purchase crypto would not result in any commissions or surcharges and that he would be obtaining a competitive, market price (and best trade execution) for his Dogecoin purchases, without any hidden Wealthsimple fees baked in;
81. Indeed, his trade confirmation (Exhibit P-34) indicates "**commission: \$0.00**" and there is no mention anywhere in this document that would lead a reasonable person to expect or understand that there was any other fee baked into the price;
82. Moreover, on its website, Wealthsimple provides a "Best Execution and Order Handling Disclosure" and undertakes to obtain the best possible rates for its customers, as it appears from **Exhibit P-36**:

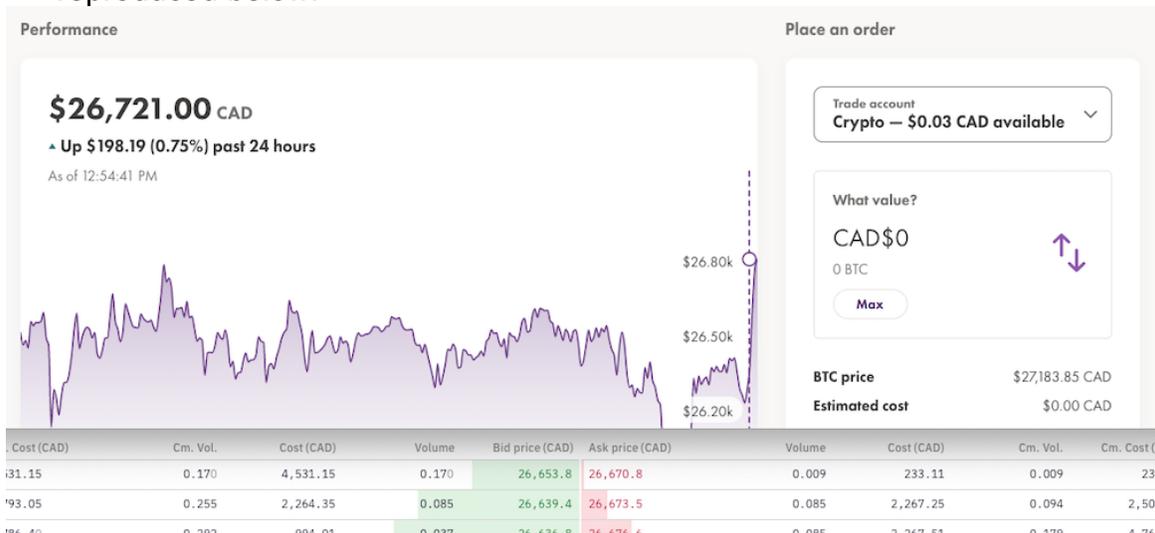
"Wealthsimple Investments Inc. ("WSII") is a registered investment dealer and member of the Investment Industry Regulatory Organization of Canada ("IIROC"). Under IIROC Rules, WSII is required to have policies

and procedures that are designed to achieve “best execution” for client orders and provide its clients with information on those policies and procedures.

Best execution is defined as “obtaining the most advantageous execution terms reasonably available under the circumstances.” **WSII will take all reasonable steps to achieve best execution for client orders**, taking into consideration the kind of security to be traded and the nature of the order and in accordance with applicable regulatory requirements and marketplace rules.”

83. However, Wealthsimple keeps its cryptocurrency spreads intentionally large and its platform is configured to create a hidden commission for Wealthsimple. For instance, when the Applicant purchased Dogecoin for \$0.2861/unit, although it advertised and indicated in the contract that it did not charge any “**commission**”, Wealthsimple charged the Applicant with an “**Operations fee**” in an unknown amount (which it claims in Schedule B of the contract ranges between “1.5-2% per transaction”) in addition to its inflated spread between the bid and ask prices. This is misleading (because the “Operations fee” is just a fluffy word for commission) and illegal (because contrary to the CSA and AMF decisions in which Wealthsimple undertook not to charge any fees other than the spread (see also paragraphs 11-14 above));
84. Wealthsimple controls the spreads and the “buy”/“ask” prices it advertises on its platform for cryptocurrencies at its own discretion. The prices Wealthsimple charges are not determined by the market, but by its voluntary decision as to how much money it wants to make on a transaction, which makes its advertised “buy” and “sell” prices false representations in and of themselves;
85. Obviously, if Wealthsimple inflates the “ask price” by 2% or much more in some cases, it is simply baking its commission/fee into its spread. To demonstrate this, at this stage, the Applicant communicates a simulation of the purchase process for a Bitcoin on Wealthsimple’s app taken on September 28, 2022 as **Exhibit P-37**;
86. The Bitcoin purchase simulation on Wealthsimple’s app, Exhibit P-37, shows [...]:
  - Step 1:** The price of Bitcoin (BTC-CAD) is indicated as \$26,423.50;
  - Step 2:** After pressing the black buy button in Step 1, the BTC price is now listed at \$26,885.92;
  - Step 3:** Pressing the “i” icon at Step 2 for information shows Wealthsimple’s spread as \$26,896.09 (buy price) and \$25,980.79 (sell price). The spread is a whopping \$915.30 (or 3.40%)!
  - Step 4:** The “BTC Buy price” now displays as \$30,000.00 CAD (i.e. \$3,103.91 more than the previously already inflated spread at Step 3).

87. From the above, two things are clear: (i) Wealthsimple systemically fails in its “best execution” undertaking for its crypto transactions, as it did not obtain for the Applicant and for its customers the “most advantageous execution terms reasonably available under the circumstances”. In fact, it obtains some of the worst; and (ii) there are significant hidden costs imposed on Class members by Wealthsimple when executing cryptocurrency transactions that are identical to what other competing platforms qualify as – and what evidently is – a commission;
88. Moreover, by advertising itself as a “no commission” platform, it is simply impossible for Wealthsimple to provide its customers with the best execution, because all of its fees are hidden in the spread prices set by Wealthsimple at its own discretion, and which do not reflect the real market prices;
89. The Applicant submits that the above simulation (Exhibit P-37) demonstrates his cause of action against Wealthsimple. He intends to file an expertise on the merits after Wealthsimple communicates the appropriate documents/data in discovery to prove that the situation was similar with his purchase of Dogecoin (i.e. that the spreads did not reflect the real market prices, were set at Wealthsimple’s discretion and unreasonably large at the time, thereby enabling Wealthsimple to pocket a hidden commission/fee while creating the false impression that the Applicant was purchasing Dogecoin at the “market” price);
90. The allegations above at paras. 48 to 49 with respect to Shakepay apply *mutatis mutandis* to Wealthsimple. Indeed, using a spread of 3.40% (P-37 at Step 3) allows Wealthsimple to purchase Bitcoin (and other cryptocurrencies) for significantly less at the very instant that it sells Bitcoin (or any other cryptocurrency) to its customers;
91. For example, a screen capture of the split-screen view of Wealthsimple’s BTC-CAD price and Kraken’s order book, taken on September 29, 2022 at 12:54 p.m. EST, shows the “BTC price” listed on Wealthsimple at \$27,183.85 CAD (bottom right), whereas Wealthsimple can purchase BTC-CAD at that very instant from Kraken for \$26,670.80, as it appears from **Exhibit P-38**, a portion of which is reproduced below:



92. On October 22, 2021, still under the false impression that Wealthsimple did not charge any commissions and was advertising and selling crypto at real market prices, the Applicant purchased an additional 85 units of *Dogecoin* for \$0.29929411/unit, for a total transaction cost of \$25.44, as it appears from **Exhibit P-39**;

93. Unbeknownst to the Applicant, he overpaid Wealthsimple for both of his Dogecoin transactions (Exhibits P-34 and P-39) because Wealthsimple charged a hidden commission by using an unreasonably large spread (at its discretion) and adding at least 1.5% **on top** on the already inflated spread price, contrary to its undertakings with the AMF and the CSA, as well as its undertaking to Class members to “achieve best execution for client orders” (Exhibit P-36);

(ii) **Applicant’s cause of action against Shakepay**

94. To avoid repetition, we refer to the allegations at paragraphs 23 to 71 above that are incorporated herein by reference and add the following;

95. On September 22, 2022, the Applicant purchased \$200.00 worth of Bitcoin from Shakepay, as it appears from his purchase confirmation filed as **Exhibit P-40**;

96. The Applicant purchased Bitcoin because it had dropped to its lowest price in the last 2 years and he wished to purchase a small amount. He chose Shakepay because it advertised itself as “*commission-free*” and “*sans frais*” and advertised that it had the best prices “*meilleurs prix*”;

97. As such, Applicant was under the impression that, since Shakepay advertised that it supposedly did not charge commissions or fees (*frais*), his \$200 CAD would be worth \$200 CAD immediately after his purchase. However, the Applicant noticed that his **\$200.00** balance instantly dropped by 1.2% after his Bitcoin purchase, as his account then immediately showed a balance of **\$197.60** CAD (Exhibit P-12);

97.1 Shakepay’s advertising on its website that it had the “*meilleurs prix*” for crypto also gave the Applicant the false impression that he would be paying the best price for Bitcoin (i.e. he would get more Bitcoins for his buck with Shakepay);

98. Applicant had no way to suspect that he would lose 1.2% instantly on account of a fee/commission charged – and not disclosed precisely – by Shakepay;

99. On September 27, 2022, the Applicant sent a message to Shakepay’s online chat support explaining the above situation and asking for an explanation, as it appears from the chat transcript communicated as **Exhibit P-41**;

100. During this exchange in Exhibit P-41, Shakepay’s representative notably confirmed that Shakepay’s fees are calculated in terms of a percentage, which Shakepay does not mention anywhere in its contract or on its website (including in the example it gives in Exhibit P-13). The Shakepay representative wrote:

“...So I'm going to buy 1 BTC for 55 000 CAD, which at this exact moment **is actually worth 54 175 CAD**. The difference is therefore 825 CAD, or about **1.5% difference** for this example.”

- 100.1 Applicant takes note of Shakepay's admission that, in the example it provided, 1 Bitcoin is worth \$54,175, but Shakepay sets the price at which it wishes to charge for that Bitcoin at \$55,000. If Shakepay decided that it wants to make more money that day, it can charge \$56,000 or \$57,000. The point here is that the price Shakepay advertises as the market "Buy price" (\$55,000 in the example above) is not the real market price (\$54,175) contrary to the impression its platform gives to Class members (i.e. that they are purchasing Bitcoin at market prices "commission-free" and at the "meilleurs prix");
101. The rest of the transcript (Exhibit P-41) confirms the Applicant's cause of action against Shakepay, namely that the commission/fee (in the form of a "percentage") is "essentially" baked into the spread and charged by Shakepay to Class members:

So in your example I would be charged a 1.5% fee that is just baked into your total price?

Hi shay,

Essentially, yes. The spread percentage is included.

Please let us know if you have any further questions or concerns and we'll be happy to help!



102. Shakepay violates sections 12, 219, 224c), 225c), 228 and 239a) CPA and the Applicant is entitled to claim a reimbursement in the amount of \$2.40 pursuant to section 272 CPA, or article 1491 CCQ. The Applicant also claims punitive damages pursuant to section 272 as discussed below;
103. Shakepay also violated sections 52 and 54 of the *Competition Act*;
104. Applicant has suffered ascertainable loss as a result of Shakepay's misconduct and failure to comply with the applicable laws, notably the overpayment in the amount of \$2.40 (i.e. 1.2%);
105. While in itself the Applicant's personal damages are minor, the damages to the Class are significant (for example, 1.2%-1.5% on \$7 billion in Shakepay transactions = **\$84 to \$105 million**);
106. Applicant's damages are a direct and proximate result of Shakepay's misconduct;
107. A sufficient nexus exists between the lower price advertised by Shakepay at the first step and its misleading "commission-free" / "sans frais" / "meilleurs prix"

claims. By falsely advertising its services as “*sans frais*” / “*meilleurs prix*”, as well as showing the lower price at the first step, Shakepay’s platform influences a consumer’s behaviour with respect to the formation of the contract;

108. Notwithstanding the paragraph above, given that the CPA creates prohibitions on: **(i)** claiming costs that were not precisely indicated in the contract (s. 12); [...] **(ii)** advertising an incomplete or fragmented price (224c); **(iii)** falsely letting it be believed that the price of certain goods or services is advantageous (225c); and **(iv)** distorting the meaning of any information (239a), the issue of whether there was a violation of these CPA provisions must be addressed objectively, and there is no reason to assess whether the Applicant and Class members understood the various elements of the actual price or even whether they were misled. It is thus irrelevant to consider whether a consumer, even a credulous and inexperienced one, would have understood that the actual price charged by Shakepay for Bitcoin was the one posted at the last step by Shakepay;

**(iii) Applicant’s claim for punitive damages (272 CPA)**

109. Shakepay and Wealthsimple entice Class members to contract with them by advertising that their services are “commission-free” / “*sans frais*”, when in reality there is a commission/frais baked into their spreads and ultimately charged to Class members;
- 109.1 Shakepay and Wealthsimple also entice Class members to contract with them by giving the general impression that their prices are competitive or the “best” and reflect the real market prices, which is manifestly untrue as shown above;
110. We know that Shakepay is able to express this fee as a percentage (as it has done in the past as alleged above at paragraphs 51-56 and confirmed by its own agent in Exhibit P-41), but now chooses not to in order to gain an advantage against its competitors and to mislead/entice people into using its services;
111. In Schedule B to its contract (Exhibit P-33), Wealthsimple stipulates that it charges \$0.00 in commissions, but then uses the fluffy term “Operations fee” to charge a fee of 1.5% to 2%, that is effectively no different from a commission (especially when it is described and used by Wealthsimple as a spread charged on top of a spread – see paragraph 14 above and Exhibit P-4);
112. The Defendants set the buy and sell prices for crypto on their respective platforms at their sole discretion, which is misleading and which enables them to collect *le beurre et l’argent du beurre*;
113. There is therefore no doubt that Shakepay and Wealthsimple market their services this way intentionally because they could easily disclose their commissions (just as Shakepay used to and just as Wealthsimple refers to an “Operations fee”) or show an “all-in” price at the first step;

- 113.1 Obviously, they can also stop falsely advertising their prices as the “best” / “meilleurs prix”;
114. Experts have publicly warned cryptocurrency trading platforms like Shakepay and Wealthsimple notably that: (i) advertising that they do not charge any commissions, while taking a spread when acting as a market maker, means that the statement saying that they do not charge commissions is “probably misleading”; and (ii) using claims like the “best” must be substantiated by adequate testing under Canadian competition law, as it appears from Exhibit P-42;
115. As such, Shakepay and Wealthsimple’s overall conduct before and during the violations is lax, careless, passive and ignorant with respect to consumers’ rights and to their own obligations;
116. Shakepay and Wealthsimple’s disregard for consumers’ rights and to their own obligations under the *CPA* is in and of itself an important reason for this Court to enforce measures that will punish these Defendants, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Canadian and Quebec consumers;
117. Even if the Defendants modify their practice after the filing of the present application, Applicant is still justified in claiming punitive damages for a breach of the *CPA*;
118. The punitive damages provided for in section 272 *CPA* have a preventive objective, that is to discourage the repetition of such undesirable conduct (and not to give a free pass to merchants who comply with the law only once they get caught off-side);
119. In these circumstances, Applicant’s claim for a total of \$10 million in punitive damages against Shakepay and \$10 million against Wealthsimple is justified. Both Shakepay’s and Wealthsimple’s patrimonial situations are so significant that the foregoing amount of punitive damages is appropriate in the circumstances;

## **B) THE CLAIMS OF THE MEMBERS RAISE COMMON ISSUES:**

120. The Applicant and Class members have suffered a prejudice, which they wish to claim, every time they made a transaction on Shakepay or Wealthsimple and for which hidden cryptocurrency transaction/exchange fees were baked into the spread, as well as when the prices were not the “meilleurs prix” or the “best” as advertised;
121. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
- a) Is the Defendants’ use of the terms “*commission free*” / “*sans frais*” (Shakepay) or “*We don’t charge commission on trades*” / “*commission: \$0.00*” (Wealthsimple) concerning cryptocurrency transactions made on

their platforms misleading?

- b) In connection with cryptocurrency transactions, do the Defendants charge a fee, the amount of which is not precisely indicated in their contracts with Class members?
- c) Does either the *Civil Code of Québec* or the *Consumer Protection Act* impose an obligation on the Defendants to disclose the existence of these fees to Class members?
- d) When the Defendants advertise a buy and sell price, is this price the Defendants' asking price or the price determined by the market?
- e) Do the market buy/sell prices as advertised by the Defendants constitute a false representation because they are not determined by the market but by the voluntary decision of the Defendants based on how much money they want to make on a transaction?
- f) Are the prices at which Shakepay buys/sells crypto from/to Class members in fact the "meilleurs prix" / "market-leading prices" as advertised by Shakepay?
- g) Are Class members entitled to restitution or to a reimbursement of these fees under articles 1491 and 1554 C.C.Q.?
- h) Did the Defendants violate sections 12, 219, 224c), 225c), 228 or 239a) CPA and, if so, are Class members entitled to a reimbursement and punitive damages pursuant to section 272 CPA?
- i) Did the Defendants violate sections 52 or 54 of the *Competition Act*?
- j) Did the Defendants fail to achieve "best execution" for the cryptocurrency orders placed by Class members on their platforms?
- k) Did the Defendants act in bad faith in marketing and performing cryptocurrency transactions?
- l) Are Class members entitled to the collective recovery of the damages equal to the amount of such fees they have paid and of the punitive damages?
- m) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate the unfair, deceitful and illegal practice?

### **C) THE COMPOSITION OF THE CLASS**

122. 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;

123. Shakepay boasts that it has over 1 million Canadian users (Exhibit P-10), while Wealthsimple claims to have more than 2.5 million Canadian users. The Class is large;
124. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of Shakepay and Wealthsimple since an email address must be provided in order to open an account and transact on these platforms;
125. Class members are very numerous and are dispersed across the province and across Canada;
126. 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;
127. 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 APPLICANT CAN ADEQUATELY REPRESENT THE CLASS MEMBERS**

128. Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
  - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
  - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) His interests are not antagonistic to those of other Class members;
129. Additionally, Applicant respectfully adds that:
  - a) He mandated his attorneys to file the present application for the sole purpose of having his 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 the Defendants' faults and so that they can be held accountable;
  - b) He has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
  - c) He was previously the lead plaintiff in two class actions which resulted in favourable settlements for the class members as approved by the Court;
  - d) He cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection-related class actions;

- e) He has read this Application prior to its court filing;
- f) He understands the nature of the action;

#### **IV. DAMAGES**

130. It appears that the Defendants have generated aggregate amounts in the hundreds of millions of dollars while intentionally choosing to ignore the law in Quebec and Canada;
131. The Defendants must be held accountable for the breach of obligations imposed on it by the legislation in Quebec and Canada, including:
- a) Quebec's *Consumer Protection Act*, notably sections 12, 219, 224c), 225c), 228 and 239a);
  - b) The *Civil Code of Quebec*, arts. 6, 7, 1375, 1401, 1499 and 1554; and
  - c) The *Competition Act*, sections 52 and 54;
132. In light of the foregoing, the following may be claimed against the Defendants:
- a) restitution or compensatory damages, in an amount to be determined; and
  - b) punitive damages, in the aggregate amount of \$10 million against Shakepay and \$10 million against Wealthsimple, pursuant to section 272 *CPA*;

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

133. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in restitution or reimbursement, with injunctive relief;
134. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
  2. **ORDER** the Defendants to cease marketing their cryptocurrency transactions as commission-free and with the "meilleurs prix" / "market-leading prices";
  3. **ORDER** the Defendants Shakepay Inc. and Shake Labs Inc., solidarily, to make restitution or a reimbursement to all Shakepay Class members for the cryptocurrency transaction fees they have paid, plus interest and the additional indemnity provided for by law from the date of service of this application and ORDER Shakepay Inc. and Shake Labs Inc., solidarily, to reimburse all Shakepay Class members the difference between Shakepay's crypto price and what the "meilleurs prix" really was for their transactions;

4. **CONDEMN** the Defendants, Shakepay Inc. and Shake Labs Inc., solidarily, to pay to the Shakepay Class members \$10 million, subject to adjustment, on account of punitive damages;
5. **ORDER** the Defendants Wealthsimple Digital Assets Inc., Wealthsimple Investments Inc. and Wealthsimple Financial Corp., solidarily, to make restitution or a reimbursement to all Wealthsimple Class members for the cryptocurrency transaction fees they have paid, plus interest and the additional indemnity provided for by law from the date of service of this application and **ORDER** these Defendants, solidarily, to reimburse all Wealthsimple Class members the difference between Wealthsimple's crypto price and what the "best execution" price really was for their transactions;
6. **CONDEMN** the Defendants Wealthsimple Digital Assets Inc., Wealthsimple Investments Inc. and Wealthsimple Financial Corp., solidarily, to pay to the Wealthsimple Class members \$10 million, subject to adjustment, on account of punitive damages;
7. **ORDER** the collective recovery of the claims of the Shakepay Class members and of the Wealthsimple Class members;
8. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
9. **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;
10. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
11. **RENDER** any other order that this Honourable Court shall determine;

## **VI. JURISDICTION**

135. The Applicant requests that this class action be exercised as a national class before the Superior Court of the province of Quebec, in the district of Montreal, because he is a consumer within the meaning of the CCQ and the CPA, and resides in this district, and because jurisdiction is anchored through a valid connecting factor under article 3148 C.C.Q;

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

1. **AUTHORIZE** the bringing of a class action in the form of an originating

application in restitution or reimbursement and injunctive relief;

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

**Shakepay Class:**

All consumers and businesses in Canada who made a transaction using Shakepay's mobile application or website for the purchase or sale of Bitcoin and/or Ethereum.

(hereinafter the "**Shakepay Class**")

**Wealthsimple Class:**

All consumers and businesses in Canada who made a transaction using Wealthsimple's mobile application, website or by telephone, for the purchase or sale of any cryptocurrency (digital currency).

(hereinafter the "**Wealthsimple Class**")

(collectively the "**Class members**")

or any other Class to be determined by the Court;

3. **IDENTIFY** the main issues of fact and law to be treated collectively as the following:

- a) Is the Defendants' use of the terms "*commission free*" / "*sans frais*" (Shakepay) or "*We don't charge commission on trades*" / "*commission: \$0.00*" (Wealthsimple) concerning cryptocurrency transactions made on their platforms misleading?
- b) In connection with cryptocurrency transactions, do the Defendants charge a fee, the amount of which is not precisely indicated in their contracts with Class members?
- c) Does either the *Civil Code of Québec* or the *Consumer Protection Act* impose an obligation on the Defendants to disclose the existence of these fees to Class members?
- d) When the Defendants advertise a buy and sell price, is this price the Defendants' asking price or the price determined by the market?
- e) Do the market buy/sell prices as advertised by the Defendants constitute a false representation because they are not determined by

the market but by the voluntary decision of the Defendants based on how much money they want to make on a transaction?

- f) Are the prices at which Shakepay buys/sells crypto from/to Class members in fact the “*meilleurs prix*” / “*market-leading prices*” as advertised by Shakepay?
- g) Are Class members entitled to restitution or to the reimbursement of these fees under articles 1491 and 1554 C.C.Q.?
- h) Did the Defendants violate sections 12, 219, 224c), 225c), 228 or 239a) CPA and, if so, are Class members entitled to a reimbursement and punitive damages pursuant to section 272 CPA?
- i) Did the Defendants violate sections 52 or 54 of the *Competition Act*?
- j) Did the Defendants fail to achieve “best execution” for the cryptocurrency orders placed by Class members on their platforms?
- k) Did the Defendants act in bad faith in marketing and performing cryptocurrency transactions?
- l) Are Class members entitled to the collective recovery of the damages equal to the amount of such fees they have paid and of the punitive damages?
- m) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate the unfair, deceitful and illegal practice?

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

1. **ALLOW** the class action of the Plaintiff and the members of the Class against the Defendants;
2. **ORDER** the Defendants to cease marketing their cryptocurrency transactions as commission-free and with the “*meilleurs prix*” / “*market-leading prices*”;
3. **ORDER** the Defendants Shakepay Inc. and Shake Labs Inc., solidarily, to make restitution or a reimbursement to all Shakepay Class members for the cryptocurrency transaction fees they have paid, plus interest and the additional indemnity provided for by law from the date of service of this application and **ORDER** Shakepay Inc. and Shake Labs Inc., solidarily, to reimburse all Shakepay Class members the difference between Shakepay’s crypto price and what the “*meilleurs prix*” really was for their transactions;

4. **CONDEMN** the Defendants, Shakepay Inc. and Shake Labs Inc., solidarily, to pay to the Shakepay Class members \$10 million, subject to adjustment, on account of punitive damages;
  5. **ORDER** the Defendants Wealthsimple Digital Assets Inc., Wealthsimple Investments Inc. and Wealthsimple Financial Corp., solidarily, to make restitution or a reimbursement to all Wealthsimple Class members for the cryptocurrency transaction fees they have paid, plus interest and the additional indemnity provided for by law from the date of service of this application and **ORDER** these Defendants, solidarily, to reimburse all Wealthsimple Class members the difference between Wealthsimple's crypto price and what the "best execution" price really was for their transactions;
  6. **CONDEMN** the Defendants Wealthsimple Digital Assets Inc., Wealthsimple Investments Inc. and Wealthsimple Financial Corp., solidarily, to pay to the Wealthsimple Class members \$10 million, subject to adjustment, on account of punitive damages;
  7. **ORDER** the collective recovery of the claims of the Shakepay Class members and of the Wealthsimple Class members;
  8. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
  9. **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;
  10. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
  11. **RENDER** any other order that this Honourable Court shall determine;
5. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
  6. **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 judgment to be rendered herein;
  7. **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 judgment to be rendered

herein in the “News” sections of the Saturday editions of La Presse, the Journal de Montréal, the Montreal Gazette, the National Post, the Toronto Star and the Globe & Mail;

8. **ORDER** that said notice be published on the Defendants’ websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating “Notice of a Class Action”;
9. **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”;
10. **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;
11. **RENDER** any other order that this Honourable Court shall determine;
12. **THE WHOLE** with costs including publication fees.

Montreal, October 4, 2022

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

Me Joey Zukran

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