

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001203-229

SUPERIOR COURT
(Class Actions)

KARINE [REDACTED]

Applicant

v.

COUCHE-TARD INC.

and

ALIMENTATION COUCHE-TARD INC.

and

LE GROUPE JEAN COUTU (PJC) INC.

and

WAL-MART CANADA CORP.

and

CANADIAN TIRE CORPORATION, LIMITED

and

BEST BUY CANADA LTD.

and

SHOPPERS DRUG MART INC.

and

PARKLAND CORPORATION

and

GIANT TIGER STORES LIMITED

and

METRO INC. (a.d.b.a. SuperC)

and

SOBEYS CAPITAL INCORPORATED
(a.d.b.a. IGA)

and

LOBLAWS INC.

and

[...]

and

DOLLARAMA S.E.C.

and

STAPLES CANADA ULC

and

HOME DEPOT OF CANADA INC.

and

CANADA POST CORPORATION

and

PEOPLES TRUST COMPANY

and

**PEOPLES CARD SERVICES LIMITED
PARTNERSHIP**

and

[...]

Defendants

RE-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:

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

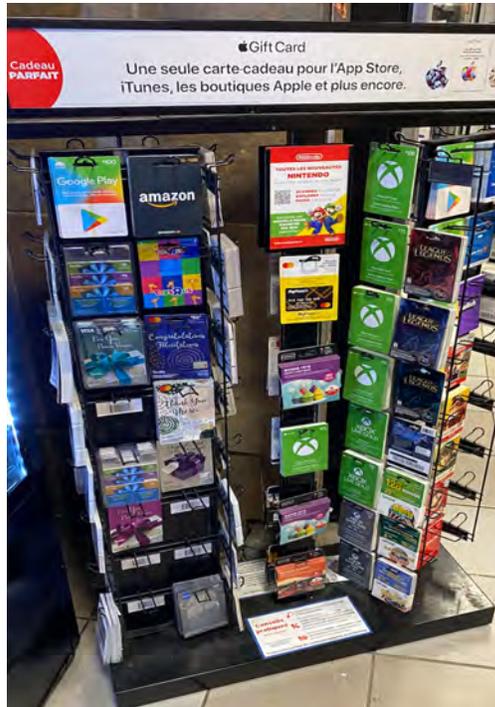
All consumers pursuant to the Québec <i>Consumer Protection Act</i> who purchased a prepaid card from any of the Defendants and who paid a price higher than the price advertised on the card (excluding sales tax);	Tous les consommateurs au sens de la <i>Loi sur la protection du consommateur</i> du Québec qui ont acheté une carte prépayée de l'une des défenderesses et qui ont payé un prix supérieur au prix annoncé sur la carte (excluant la taxe de vente);
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(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

2. This class action concerns the sale of prepaid Visa, Mastercard and American Express cards, such as the “Vanilla”, “Perfect Gift” and “American Express” cards issued by Defendant Peoples Trust Company and distributed by Defendant Peoples Card Services LP (collectively “**Peoples**”) [...] (the “**Prepaid Cards**” or “**Cards**”), that are sold by the retail Defendants¹ to Class members in their brick-and-mortar locations across Quebec and Canada (hereinafter the “**Retail Stores**” or “**Stores**”);
3. [...];
4. The Prepaid Cards are generally advertised by the Defendants on display racks in their Stores, similar to the one in the image reproduced below taken at a Couche-Tard in Montreal where the Applicant purchased a “\$25 Mastercard Prepaid Card”, as it appears from a picture of the Prepaid Card and of the display taken on October 18, 2022, communicated *en liasse* as **Exhibit P-2**:

¹ Dans l'arrêt *Oratoire Saint-Joseph*, la Cour suprême valide la technique de rédaction de la demande d'autorisation qui reproche les mêmes torts à une pluralité de défendeurs, torts adressés collectivement « aux défendeurs », sans distinguer parmi eux (*Abihisira c. Stubhub inc.*, 2020 QCCS 139, para. 37).



5. On the www.vanillaprepaid.com and www.theperfectgift.ca websites, Peoples lists the Canadian retailers where their Prepaid Cards can be purchased, as it appears from **Exhibit P-3**;
6. Peoples also lists the different types of Cards it issues, advertises and sells, as it appears from the list of some of Prepaid Cards included in the present class action, communicated as **Exhibit P-4**:
 - Vanilla Mastercard Gaming Prepaid Cards (including the “Joker” card)
 - Vanilla Mastercard Prepaid Cards
 - Vanilla Visa Prepaid Cards
 - OneVanilla Mastercard Prepaid Cards
 - Shell Prepaid Mastercard
7. Peoples admits that it issues these Prepaid Cards and other Prepaid Cards in Quebec, pictures of which it filed as exhibits in the present case, namely:
 - (a) The Vanilla Prepaid Visa (**Exhibit MC-1A**);
 - (b) The Vanilla Prepaid MasterCard (**Exhibit MC-1B**);
 - (c) The Canada Post Single Load Prepaid Card (**Exhibit MC-1C**);
 - (d) The Perfect Gift Prepaid Visa (**Exhibit MC-1D**);
 - (e) The Perfect Gift Prepaid MasterCard (**Exhibit MC-1E**);

(f) The PayPower Prepaid MasterCard (Exhibit MC-1F);

(g) The American Express Prepaid Card (Exhibit MC-1G); and

(h) The Joker Prepaid MasterCard (Exhibit MC-1H).

8. The issue is that the Defendants, in concert with Peoples [...], display these **predetermined spending limit** Prepaid Cards in their stores in violation of sections 12, 40, 41, 223, 223.1, 224c) and 228 of the *Consumer Protection Act* (“CPA”) (and 91.1 to 91.5 of the *Regulations*);
9. In particular, Applicant raises two main issues: **First**, regarding fragmented pricing, the Defendants illegally omit to indicate the **real price** to purchase their Prepaid Cards and only indicate the **name and predetermined spending limit** of the Prepaid Cards available to the user of the Card (which is different than the real price Defendants charge for the purchase of the Prepaid Card);
10. The following products sold by the Defendants are named and advertised after their predetermined spending limits (left column). However, the real price to purchase these Prepaid Cards (right column) is never displayed or advertised anywhere on the Prepaid Cards or in their Stores:

Prepaid Card Name	Real Price for Consumer to Purchase this Product
“\$25 Visa Prepaid Card”	\$29.95
“\$25 Prepaid Mastercard”	\$28.95
“\$50 Visa Prepaid Card”	\$55.95
“\$50 Prepaid Mastercard”	\$55.95
“\$50 American Express Prepaid Card”	\$54.95
“\$75 Visa Prepaid Card”	\$80.50
“\$100 Prepaid Mastercard”	\$105.95
“\$150 Visa Prepaid Card”	\$156.50
“\$200 Prepaid Mastercard”	\$206.95
“\$250 Visa Prepaid Card”	\$257.50

11. The above list is not exhaustive and are examples observed by the Applicant;
12. When displaying products in their Stores, the Defendants must display and emphasize the total price of the product – including the mandatory activation (or purchase) fees which is never done for their predetermined spending limit Prepaid Cards;
13. In the picture above (Exhibit P-2) there can be no debate that the price advertised (“*annoncé*” in the French version of the law) within the meaning of s. 224c) CPA is \$25.00. Yet, a consumer who purchases this predetermined spending limit Prepaid

Card will be charged an additional amount of \$3.95 plus taxes on account of an “activation fee” at the cash (see small font on bottom left). Since the activation fee is mandatory, the actual purchase price for this Prepaid Card is \$28.95 (plus applicable taxes on the \$3.95) and should be advertised/*annoncé*/emphasized as such;

14. However, the real price of \$28.95 (plus applicable tax) is not indicated anywhere on the Prepaid Cards, neither by Peoples [...] nor any of the retail Defendants in their Stores;
15. The product supplied by Peoples and sold by the Defendants or their agents to Class members is a Prepaid Card with a predetermined spending limit of **\$25.00** (in the Exhibit P-2 example). The actual cost of this product to a consumer is **\$28.95** plus taxes on the \$3.95 activation fee (the syllogism is the same regardless of the predetermined spending limit on the Prepaid Card which can be, for example, \$25, \$50, \$75, \$100, \$150, \$200 or \$250 – there is always an additional mandatory cost charged on top of these predetermined spending limits);
16. It is trite law that displaying fragments of the total price – and placing the onus on consumers to add them up – is an illegal practice, because s. 224c) CPA stipulates:

<p>224. No merchant, manufacturer or advertiser may, by any means whatever, ... (c) charge, for goods or services, a higher price than that advertised. ... For the purposes of subparagraph c of the first paragraph, the price advertised must include the total amount the consumer must pay for the goods or services. However, the price advertised need not include the Québec sales tax or the Goods and Services Tax. More emphasis must be put on the price advertised than on the amounts of which the price is made up.</p>	<p>224. Aucun commerçant, fabricant ou publicitaire ne peut, par quelque moyen que ce soit: ... c) exiger pour un bien ou un service un prix supérieur à celui qui est annoncé. ... Aux fins du paragraphe c du premier alinéa, le prix annoncé doit comprendre le total des sommes que le consommateur devra déboursier pour l’obtention du bien ou du service. Toutefois, ce prix peut ne pas comprendre la taxe de vente du Québec, ni la taxe sur les produits et services du Canada. Le prix annoncé doit ressortir de façon plus évidente que les sommes dont il est composé.</p>
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- 16.1 **Second**, on the issue of charging an illegal cost: while the Prepaid Card in Exhibit P-2 does mention “**plus \$3.95**” in very small font size at the bottom left of the card (whereas the \$25.00 amount is predominantly displayed at the top right of the card in much larger and bold font), many of the other Prepaid Cards issued by Peoples and sold in the Defendants’ stores (including the Visa Prepaid Card which Applicant also purchased during the Class Period) **do not mention** the word “**plus**” or show the “**+**”. For these Prepaid Cards, the Defendants also violated sections 12, 40, 41 (Title I) and 228 CPA which stipulate:

<p>12. No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract.</p>	<p>12. Aucuns frais ne peuvent être réclamés d'un consommateur, à moins que le contrat n'en mentionne de façon précise le montant.</p>
<p>40. The goods or services provided must conform to the description made of them in the contract.</p>	<p>40. Un bien ou un service fourni doit être conforme à la description qui en est faite dans le contrat.</p>
<p>41. The goods or services provided must conform to the statements or advertisements regarding them made by the merchant or the manufacturer. The statements or advertisements are binding on that merchant or that manufacturer.</p>	<p>41. Un bien ou un service fourni doit être conforme à une déclaration ou à un message publicitaire faits à son sujet par le commerçant ou le fabricant. Une déclaration ou un message publicitaire lie ce commerçant ou ce fabricant.</p>
<p>228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.</p>	<p>228. Aucun commerçant, fabricant ou publicitaire ne peut, dans une représentation qu'il fait à un consommateur, passer sous silence un fait important.</p>

16.2 Applicant here refers to the following exhibits filed by Peoples: **MC-1C, MC-1D, MC-1E** and **MC-1H**. Unlike how the Prepaid Cards are advertised in their other exhibits, these Prepaid Cards do **not** mention “plus” or “+”, neither on the front of the Card nor on the back of the Card (which is the only documentation the consumers can consult before purchasing the Card) – which is obviously an “important fact” within the meaning of section 228 CPA;

16.3 Unlike the situation of their other Prepaid Cards where the violation is fragmented pricing contrary to section 224(c), for the Prepaid Cards mentioned in the previous paragraph (16.2), the Defendants had no legal basis to claim an additional amount for activation/purchase fees because they never stated that these fees would be charged in addition to the amount displayed on the Prepaid Card, not even in small font, as it appears from some extracts reproduced below:

Exhibit MC-1D (filed by Peoples)



Exhibit MC-1E (filed by Peoples)



- 16.4 Section 17 CPA stipulates that in the case of doubt or ambiguity, the contract must be interpreted in favour of the consumer, and in the case of the Prepaid Cards reproduced above, the Defendants chose to use different language (or to omit certain language and important facts) and the contract must therefore be interpreted in favour of the consumer, that is for the Court not to add the “plus” or “+” for the Defendants’ benefit;
17. In Quebec, the Retail Store Defendants are bound by their undertaking to comply with the *Order in Council respecting the Policy on accurate pricing for merchants who use optical scanner technology* (the “**Accurate Pricing Policy**”), and as such, owe Class members statutory damages of \$10.00 for each Prepaid Card purchased, plus the amount of the activation fee charged pursuant to section 1(1)(b) of the *Accurate Pricing Policy*, which stipulates:

<p>1. For each establishment in which the merchant intends to use the exemption prescribed in section 91.4 of the <i>Regulation respecting the application of the Consumer Protection Act</i> (chapter P-40.1, r. 3), the merchant shall adopt and apply an accurate pricing policy offering consumers compensation in the case of an unfavourable error corresponding to the following minimum standards:</p> <p>(1) where the price of the good rung in at the check-out is higher than the price advertised, the lower price shall be honoured and:</p> <p>...</p> <p>(b) the merchant shall correct the price and grant the consumer a discount of \$10 on the corrected price, if the accurate price of the good is higher than \$10;</p> <p>...</p> <p>(3) the accurate pricing policy shall apply</p>	<p>1. Le commerçant doit adopter et appliquer, pour chacun des établissements dans lequel il entend se prévaloir de l'exemption prévue à l'article 91.4 du <i>Règlement d'application de la Loi sur la protection du consommateur</i> (chapitre P-40.1, r. 3), une politique d'exactitude des prix offrant aux consommateurs une indemnisation correspondant aux normes minimales suivantes en cas d'erreur défavorable au consommateur :</p> <p>1° lorsque le prix d'un bien enregistré à la caisse est supérieur au prix annoncé, le prix le plus bas prévaut et:</p> <p>...</p> <p>b) le commerçant corrige le prix et accorde au consommateur un rabais de 10 \$ sur le prix ainsi corrigé, si le prix exact du bien est supérieur à 10 \$;</p> <p>...</p> <p>3° la politique d'exactitude des prix s'applique même si l'erreur est constatée</p>
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even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good;	avant que la transaction ne soit complétée, à la condition toutefois que le consommateur achète le bien;
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18. Therefore, using the example of the Prepaid Card in Exhibit P-2 above, every Class member who purchased a Peoples issued Prepaid Card from one of the Defendants is entitled to statutory damages of \$10.00 + \$3.95 (plus taxes on the latter amount);
19. All Class members can also claim a reduction of their obligations, pursuant to section 272(c) CPA, equivalent to the amount of the hidden or fragmented activation/purchase fees (plus taxes). The Court of Appeal has held the consumer benefits from an absolute presumption of prejudice that exempts the consumer from having to prove the prejudice suffered based on such a recourse (*Vidéotron c. Union des consommateurs*, 2017 QCCA 738, par. 56). Despite this absolute presumption, and as alleged below (par. 36-39), the Applicant and Class members did in fact suffer quantifiable damages);
20. [...];
21. [...];
22. In its Bulletin titled “*The Deceptive Marketing Practices Digest*”, the Competition Bureau refers to a common deceitful practice to which consumers fall prey, known as “*drip-pricing*”, and how this practice has a fraudulent effect on a consumer’s decision-making process, Applicant disclosing **Exhibit P-7**:

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.
23. Every Prepaid Card sold by the Defendants in their Stores to each Class member is sold in a virtually identical manner as to the display and Prepaid Card in Exhibit P-2, and in Exhibit MC-1D and Exhibit MC-1E, for example. As such, every Defendant sold these Cards to Class members in violation of the CPA, and each Class member has a right to claim statutory damages of \$10.00 plus the amount of the activation fee;
24. The statutory damages to the Class members can be calculated as an aggregate amount based on the following formula:

$$[\text{total Prepaids Cards sold}] \times [\$10.00 + \text{activation fee}] = \text{aggregate damages}$$

25. Class members are also entitled to claim an aggregate amount in punitive damages to be determined on the merits based on the Defendants' total sales (the current request is \$10 per Card sold). Punitive damages are appropriate in this case where the Defendants are sophisticated retailers and are well aware that they should be displaying/emphasizing the real price of the products they are selling, not just the predetermined spending limit of the Prepaid Cards they sell;
- 25.1 Since the original filing of this action on October 25, 2022, none of the Defendants have modified their prohibited practices and continue to display and sell the Prepaid Cards in violation of the CPA, which goes to the assessment of punitive damages according to the Supreme Court, i.e. their conduct after the violation;
26. For instance, Wal-Mart shows the total price for their Prepaid Cards when selling them on their USA website. As appears from the picture below, Wal-Mart advertises the "\$25 Visa Prepaid Card" for \$28.44, Applicant communicating **Exhibit P-8**:



27. Other American retailers advertise these same Prepaid Cards the same way (i.e. predetermined spending limit + activation fee), as it appears from screen captures of the Target and Amazon USA websites disclosed *en liasse* as **Exhibit P-9**;
28. Applicant notes that while Walmart does not sell Prepaid Cards on its Canadian website, it still advertises the fragmented price which is contrary to ss. 223 and 224c) CPA, as it appears from a screen capture of Walmart's Canadian website communicated as **Exhibit P-10**;
29. Applicant has also observed that the other prepaid cards sold by the retail Defendants that are specific to a given store/retailer do not have any activation fees. For example, a \$25 Amazon prepaid card costs \$25 (all-in); a \$50 Wal-Mart prepaid card costs \$50 (all-in) and so on;

30. For clarity, Applicant is not contesting the general legality or the Defendants' business decision to charge an activation fee (s. 187.4 CPA prohibits the charge of activation fees for the issue or use of a prepaid card, subject to the Regulations. Section 79.6 of the *Regulation* exempts the Peoples [...] Prepaid Cards in dispute); the issue is that the Defendants are dissimulating essential information by not prominently displaying the real price that they charge consumers for their Prepaid Card products, contrary to ss. 12, 223, 224c) and 228 CPA;
31. For example, Target stores in the United States use a label right on top of these Prepaid Cards to display the real price that consumers must pay for Prepaid Cards, as it appears from the pictures communicated *en liasse*, including the one taken at the Target on Sunrise Highway in Sayville, New York on October 22, 2022, as well as others posted online, Applicant communicating **Exhibit P-11**:



32. As appears from the pictures above (Exhibit P-11), Target announces the prices of: **\$29.00** for the “\$25 Mastercard gift card”; **\$55.00** for the “\$50 Mastercard card”; and **\$106.00** for the “\$100 Mastercard gift card”;
33. This class action seeks: (i) the reimbursement of the aggregate amounts that the Class members paid beyond the price advertised on and for the Prepaid Cards (i.e. the amounts of the activation fees, excluding the sales tax); (ii) compensation of the aggregate amounts of \$10.00 per Card owed to each Class member pursuant to the Accurate Pricing Policy; and (iii) payment of the aggregate amount of \$10.00 per Card purchased per Class member on account of punitive damages;

I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (s. 575 CCP):

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

(i) ***Applicant's claims against Couche-Tard and Peoples for violations of ss. 12, 40, 41 and 223 and 224c) CPA, and the Accurate Pricing Policy:***

34. On October 14, 2022, Applicant went to the Couche-Tard on Alexis-Nihon in Ville St-Laurent in order to purchase a Prepaid Card to gift to her niece;
35. The Applicant chose the "\$25 Prepaid Card Mastercard" (see picture in Exhibit P-2 and reproduced at paragraph 4 above), which happens to be issued by Peoples;
36. Applicant understood that she was purchasing a "Mastercard" prepaid card, with a predetermined \$25 spending limit, that would cost her \$25.00 in total, based on the way the price is advertised/*annoncé* on the Card and in the store (there is no other label or sticker indicating the price like in the Target stores as reproduced at paragraph 31 above and in Exhibit P-11);
37. Applicant chose this "Mastercard" over the other cards in the Couche-Tard display – at what she initially thought was the same \$25.00 price – because she wanted her niece to be able to use the card at different stores or online;
38. As it appears from Exhibit P-2, only the name of the card ("*\$25 Prepaid Card Mastercard*") and the predetermined spending limit ("*\$25*") are prominently advertised on the Card. If one has good enough eyesight or looks very closely, they may also see that the additional and **mandatory** activation fee of \$3.95 plus taxes is indicated at the bottom left of the Card, in much smaller font than the \$25 advertised/emphasized price (or the *prix annoncé*);
39. When she got to the cash, Applicant was surprised that the clerk asked her for \$29.55 (instead of the \$25 prominently displayed), but nonetheless purchased this Prepaid Card because she is used to paying 15% more in taxes for goods she purchases (i.e. the sales taxes) so did not think very much of it on the spot, as it appears from a copy of the receipt communicated as **Exhibit P-55**;
40. Over that weekend, Applicant researched whether merchants can charge taxes on the purchase of prepaid cards and, if not, whether merchants are allowed to advertise fragmented prices this way. Applicant came across a webpage on the Consumer Protection Office's website concerning the Accurate Pricing Policy, titled "*Indication et exactitude des prix – Questions et réponses*", communicated as **Exhibit P-12**;
41. Applicant realized that by emphasizing only the name and predetermined spending limit on the Prepaid Card, without ever displaying the real price, and then charging Applicant (and all consumers) \$3.95 more than the price announced on the Card, Couche-Tard violate ss. 12, 40, 41, 223 and 224c) CPA (Couche-Tard also sells Prepaid Card like those filed by Peoples as Exhibit MC-1E that do not state "plus" or show the "+" symbol concerning activation/purchase fees);
42. Couche-Tard is also bound by the Accurate Pricing Policy (as are all the Retail Store Defendants);

43. Given that the price charged at the cash (\$28.95 before taxes) is higher than the price advertised on the Card (\$25.00), Couche-Tard must compensate the Applicant statutory damages of \$10.00 + \$3.95 (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy (alternately pursuant to ss. 12, 40, 41, 223, 224c, 228 and 272 CPA);
- 43.1 Applicant also benefits from – and hereby raises – the legal presumption of prejudice provided for by section 253 CPA;
44. Applicant notes that the Consumer Protection Office’s website (Exhibit P-12) specifies that the request for compensation does not have to be made on the spot:

32. Un consommateur qui constate chez lui qu'une erreur a été commise peut-il retourner chez le commerçant et demander l'application de la Politique d'exactitude des prix?

Oui, il n'y a pas de délai particulier pour faire la demande. Cependant, il faut tenir compte des règles générales de prescription, c'est-à-dire des règles légales déterminant le délai pendant lequel une personne peut faire valoir ses droits.

- 44.1 On October 31, 2022, Applicant returned to the same Couche-Tard (on Alexis-Nihon in Ville St-Laurent) where she purchased the Prepaid Card on October 14, 2022, showed the clerk her receipt and asked for Couche-Tard to apply the Accurate Pricing Policy. Couche-Tard refused her request, thereby failing to respect its statutory obligations;
45. Applicant has decided to exercise her rights by way of a class action given that there are likely tens of thousands of people, if not more, entitled to compensation and because she wants to hold the Defendants accountable for selling their Prepaid Cards in this deceitful manner;
46. Applicant also specifies that section 1(3) of the Accurate Pricing Policy provides:
- (3) the accurate pricing policy shall apply even if the error is noticed before the transaction is completed, on the condition however that the consumer buys the good.
47. Therefore, whether the Applicant or Class members had knowledge of the activation fee is irrelevant, as the statutory provisions raised in this application must be analyzed objectively as to whether or not the real price is prominently displayed; if not, Defendants are liable for damages to Class members and cannot raise any defence to exonerate themselves in the circumstances;
48. Indeed, given that the CPA creates a prohibition on advertising an incomplete or fragmented price, the issue of whether there was a violation of ss. 12, 40, 41, 223, 224c or 228 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 real price to pay at the cash was the sum of the Card's spending limit plus the activation fee displayed discretely in small font (or if they even saw the latter);

49. Applicant has suffered ascertainable loss as a result of Couche-Tard's and Peoples' [...] misconduct and failures to comply with the law, notably the amounts of \$10.00 + \$3.95 (plus taxes);
- 49.1 Applicant also claims a reduction of her obligations pursuant to article 272(c) CPA, in the amount of \$3.95 plus taxes (should the Court dismiss her claim for statutory damages under the *Accurate Pricing Policy*);
50. Peoples are solidarily liable because they issue, design and distribute the Prepaid Cards and are the ones who deliberately choose to emphasize and fragment the predetermined spending limit and name of the card (ex: "\$25 Mastercard"), instead of emphasizing the real price that consumers must pay at the cash. For some of their Prepaid Cards sold in the Defendants' Stores (such as Exhibits MC-1C, MC-1D, MC-1E and MC-1H), Peoples did not even fragment the pricing and deliberately omitted to disclose that these activation/purchase fees would be charged on top, contrary to sections 12, 40, 41 and 228 CPA);
51. [...];
52. Applicant's damages are a direct and proximate result of these Defendants' misconduct;

(ii) Applicant's claim for punitive damages (s. 272 CPA)

53. There is no doubt that Couche-Tard and Peoples [...] intentionally put more emphasis on the name and predetermined spending limit of the Prepaid Card than on the real price that consumers are charged at the cash, as both could easily advertise the "all-in" price prominently and legally;
54. Couche-Tard could use a similar label as the one used by Target to display the real price (see para. 31 and Exhibit P-11), but do not because they make more money selling these Prepaid Cards than the other cards that do not charge activation fees;
55. Peoples [...] use the deceitful design because their Prepaid Cards are on the same displays/racks as the prepaid cards for other merchants that do not charge activation fees, such as Amazon, Apple, Google, Xbox, etc. (see Exhibit P-2);
56. They are therefore competing with these other cards to catch a consumer's attention and conclude a sale;
57. The Defendants are sophisticated merchants with legal departments who know or ought to know that the CPA applies, especially given their undertaking to comply with the Accurate Pricing Policy;

58. Some merchants in the United States appear to have received the memo and do advertise the real price prominently (i.e. predetermined spending limit + activation fee) for these virtually identical prepaid cards (see Exhibits P-8, P-9 and P-11);
59. The Defendants' overall conduct before and during the violation is lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations. They have defiantly still not modified their practice since the original filing of this action on October 25, 2022;
60. The Defendants' disregard for consumers' rights and to their own obligations under the CPA is in and of itself an important reason for the Court to enforce measures that will punish Defendants, as well as deter and dissuade others – both local and foreign – from engaging in similar reprehensible conduct to the detriment of consumers;
61. 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;
62. 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);
63. In these circumstances, Applicant's claim for \$10.00 in punitive damages per Class member per Prepaid Card purchased, subject to adjustment depending on when/if the Defendants modify their prohibited practice, is justified;
64. The patrimonial situation of Couche-Tard, Peoples and the other Defendants is significant enough that the foregoing amount of punitive damages are appropriate in the circumstances;

B) THE CLAIMS OF THE CLASS MEMBERS RAISE SIMILAR ISSUES:

65. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
 - a) Do the Defendants violate ss. 12, 40, 41, 223, 224c) or 228 of the CPA, or its *Regulations*?
 - b) Must Defendants compensate all Class members \$10 plus the activation/purchase fee (plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy?
 - c) Are Class entitled to a reduction of their obligations pursuant to s. 272(c)?
 - d) Are Class members entitled to punitive damages of \$10 per Prepaid Card purchased?
 - e) Are Peoples [...] solidarily liable with each of the respective Defendants for the Prepaid Cards sold in their stores?

66. Applicant submits that all Class members have a common interest both in proving the commission of a prohibited business practice (the violations of ss. 12, 40, 41, 223, 224c) and/or 228 CPA and its Regulations by the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by the Defendants;
67. In this case, the legal and factual backgrounds at issue are common to all the Class members, namely whether the Defendants advertised a lower price and then charged a higher price at the cash for the purchase of Prepaid Cards (and whether they omitted to disclose that there was an additional fee on some of the Cards);
68. Every Class member purchased a Prepaid Card that prominently announced one price (the name and predetermined spending limit of the Card), but were charged a higher price by the Defendants on account of the “activation fee” when they got to the cash. Additionally, many Class Members (including the Applicant) purchased from the Defendants a Peoples issued Prepaid Card that did not expressly stipulate that the activation/purchase fees were charged on top of the price indicated prominently on the Card;
69. By reason of the Defendants’ unlawful conduct, the Applicant and Class members have suffered a prejudice, that are claimed collectively, every time they purchased a Prepaid Card from one of the Defendants’ stores (the demonstration of a valid cause of action vis-à-vis each of the Defendants is presented in the following section);
70. Applicant and Class members and are entitled to statutory damages that they may collectively claim from the Defendants, as well as punitive damages pursuant to section 272 CPA;
71. Each Class member has objectively suffered damages equivalent to the amount of the activation fee that was not included in the advertised price, as well as the sum of \$10 as provided for at s. 1(1)(b) of the Accurate Pricing Policy. Each Class member also benefits from the presumption of prejudice provided for by section 253 CPA and can claim a reduction of their obligation pursuant to s. 272(c) CPA;
72. All of the damages to the Class members are a direct and proximate result of the Defendants’ fault;
73. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, namely, the Defendants’ charging of a higher price than the one advertised (by fragmenting the “activation fee” from the real price or not disclosing that the fees was charged on top, i.e. not mentioning “plus” or “+”;
74. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
75. 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 and could result in conflicting judgments;

76. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants or their individual stores, the Class contains enough members with personal causes of action against each of the Defendants and their stores, given that these Prepaid Cards are sold in their locations (or the locations they control) across Quebec;

C) THE COMPOSITION OF THE CLASS

77. 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;
78. For example, on its website, Couche-Tard alone describes itself as “*the leader in the convenience store industry and road transportation fuel retail in Canada, with a network of close to 2,100 stores from the Maritimes to Western Canada*”, including approximately 650 Couche-Tard brand stores in the province of Quebec, and its global Circle K brand in the other provinces. The other Defendants combine for thousands of more locations where the Prepaid Cards are sold, including gas stations, pharmacies, retail, department and discount stores;
79. The size of the class is conservatively estimated in the tens of thousands of members, if not more. Class members are very numerous and are dispersed across the province and across Canada;
80. The names of all persons included in the Class are not known to Applicant;
81. 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;
82. 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 REPRESENTATIVE PLAINTIFF

83. Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
- a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;
 - b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) her interests are not antagonistic to those of other Class members;
84. Additionally, Applicant respectfully adds that:

- a) she mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Defendants' fault and so that the Defendants can be held accountable;
- b) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- c) she has read this Application prior to its court filing and reviewed the exhibits;
- d) she understands the nature of the action;
- e) To date, she has been able to identify 1,802 putative Class members who signed-up to class counsel's bilingual website dedicated to this class action (www.lpclex.com/prepaidcards and www.lpclex.com/fr/cartesprepayees);

II. DEMONSTRATION OF A CAUSE OF ACTION AGAINST EACH DEFENDANT

A) The Couche-Tard Defendants

- 85. To avoid repetition, we refer to paragraphs 34 to 64 above and add that Defendants Couche-Tard Inc. and Alimentation Couche-Tard Inc. (collectively "**Couche-Tard**") have their head office in Laval, Quebec, as appears from an extract of the CIDREQ communicated herewith as **Exhibit P-13**;
- 86. As it appears from the Business Registry, Exhibit P-13, the other names used by Couche-Tard include: Provi-Soir, Shell, Ultramar, bannière Pétro-Canada, bannière Esso; the Prepaid Cards sold in those locations are sold in an identical manner and are also included in the present class action;
- 87. The Prepaid Cards are sold by Couche-Tard in their convenience stores located across Quebec and Canada;

B) Le Groupe Jean Coutu (PJC) Inc.

- 88. Le Groupe Jean Coutu (PJC) Inc. ("**Jean Coutu**") has its head office in Montreal, Quebec, as appears from an extract of the CIDREQ communicated as **Exhibit P-14**;
- 89. According to its website, the Jean Coutu network counts 423 franchised stores in Quebec, New Brunswick and Ontario. It further states that "*The Jean Coutu Group, a subsidiary of METRO Inc., oversees METRO's pharmaceutical operations and provides franchise stores with a range of professional and technical support services, as well as supply, warehousing and delivery of pharmaceutical and parapharmaceutical products **and consumer goods***", as appears from **Exhibit P-15**;
- 90. Some of the consumer goods that Jean Coutu supplies to its franchise stores are the

“Visa Prepaid Cards” and “Mastercard Prepaid Cards”, as it appears from Jean Coutu’s corporate website <https://www.jeancoutu.com/magasiner/cartes-prepayees/>, a screen capture of which is communicated as **Exhibit P-16**;

91. The Jean Coutu corporate website lists the various denominations of those Prepaid Cards at the top of the popularity section of its website (Exhibit P-16). The Jean Coutu website also has an individual item page for each of the different Prepaid Cards (for example: <https://www.jeancoutu.com/magasiner/produit/carte-prepayee-vanilla-visa-de-100--1-unite/883358/>) which contain product and UPC numbers created by Jean Coutu (the individual franchise stores cannot change these items or sell the cards at a different price; these items are imposed by Jean Coutu who generates a revenue from each sale), as appears from **Exhibit P-17**;
92. Jean Coutu is listed as a retailer on the Peoples website (Exhibit P-3). The Prepaid Cards are sold in the hundreds of Jean Coutu franchise stores;
93. Jean Coutu is liable as supplier of the Prepaid Cards to its franchise stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
94. On October 18, 2022, Applicant purchased the “\$25 Mastercard Prepaid Card” from the Jean Coutu in Ville St-Laurent. Jean Coutu only advertises the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures of the Cards, the receipt and display communicated *en liasse* as **Exhibit P-18**;
95. Applicant is entitled to claim from Jean Coutu statutory damages of \$10 plus the amount of the activation fee (\$3.95 + taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Jean Coutu (alternately pursuant to ss. 12, 40, 41, 223, 224c) & 228 CPA);

C) Wal-Mart Canada Corp.

96. Applicant communicates an extract of the CIDREQ for Wal-Mart Canada Corp. (“**Wal-Mart**”) as **Exhibit P-19**. According to its website, Wal-Mart owns and operates more than 400 stores across Canada and serves more than 1.2 million customers daily;
97. On its Canadian website, Wal-Mart displays the “Mastercard Prepaid Cards” and the “Visa Prepaid Cards”, but in Canada, they can only be purchased in Wal-Mart stores (<https://www.walmart.ca/cp/browse/gifts-holidays/gifts/gift-cards/vanilla-prepaid-mastercard-visa-cards/6000188914393-6000197172377-6000197915574-6000197915579> (already Exhibit P-10));
98. Wal-Mart is listed as a retailer on the Peoples website (Exhibit P-3);

99. On October 18, 2022, Applicant purchased the “\$25 *Mastercard Prepaid Card*” from the Wal-Mart store in Ville St-Laurent. Wal-Mart only advertises the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-20**;
100. Applicant is entitled to claim from Wal-Mart statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Wal-Mart (alternately pursuant to ss. 12, 40, 41, 223, 224c and 228 CPA);
101. The Prepaid Cards are sold in the hundreds of Wal-Mart stores across Quebec and Canada, in the displays similar to the one shown in Exhibit P-20;
102. We reiterate the allegation at para. 26 regarding Wal-Mart’s American website and how the real price is accurately displayed online for its American customers (Exhibit P-8), but not for its Canadian customers (Exhibit P-10);

D) Canadian Tire Corporation Limited

103. Applicant communicates an extract of the CIDREQ for Canadian Tire Corporation Limited (“*Canadian Tire*”) herewith as **Exhibit P-21**;
104. According to its website, Canadian Tire has over 1700 retail locations across Canada. The Prepaid Cards are sold using in-store displays at Canadian Tire locations;
105. On October 18, 2022, Applicant purchased the “\$25 *Mastercard Prepaid Card*” from the Canadian Tire in Ville St-Laurent. Canadian Tire advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-22** (including a picture of the Prepaid Card in-store display);
- 105.1 Additionally, this Prepaid Card (Exhibit P-22) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
106. Applicant is entitled to claim from Canadian Tire statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to section 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Canadian Tire (alternately pursuant to ss. 12, 40, 41, 223, 224c and 228 CPA);

E) Best Buy Canada Ltd.

107. Applicant communicates an extract of the CIDREQ for Best Buy Canada Ltd. (“**Best Buy**”) herewith as **Exhibit P-23**;
108. According to its website, Best Buy operates more than 160 stores across Canada;
109. Best Buy is listed as a retailer on the Peoples website (Exhibit P-3). The Prepaid Cards are sold using in-store displays at Best Buy locations;
110. On October 23, 2022, Applicant purchased the “\$25 *Mastercard Prepaid Card*” from the Best Buy store on l’Acadie in Montreal. Best Buy advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-24** (including a picture of the in-store display);
111. Applicant is entitled to claim from Best Buy statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Best Buy (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

F) Shoppers Drug Mart Inc. (a.d.b.a. Pharmaprix Inc.)

112. Applicant communicates an extract of the CIDREQ for Shoppers Drug Mart Inc. (a.d.b.a. and referred to herein as “**Pharmaprix**”) as **Exhibit P-25**;
113. According to its website, “*Shoppers Drug Mart is Canada’s leading pharmacy retailer with more than 1,300 pharmacist-owned locations across the country*” and “*is the licensor of full-service retail drug stores operating under the name Shoppers Drug Mart (Pharmaprix in Québec)*”;
114. Pharmaprix supplies its franchise stores with consumer goods, such as the Prepaid Cards issued by Peoples Trust and Amex;
115. Pharmaprix’s corporate website lists the various denominations and types of Prepaid Cards it offers. The Pharmaprix website also has an individual item page for each of the different Prepaid Cards (for ex: https://shop.giftofchoice.ca/deal/mastercard-egift-15?utm_source=sdm&utm_medium=redirect&utm_campaign=shoppers), as appears from **Exhibit P-26**;
116. The individual franchise stores cannot change the descriptions of these items or sell the Prepaid Cards at a different price; these items are imposed by Pharmaprix who generates a revenue from each sale (Exhibit P-26);
117. The Prepaid Cards are sold in the hundreds of Pharmaprix and Shoppers Drug Mart locations;

118. Pharmaprix is liable as supplier of the Prepaid Cards to its franchise stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
119. On October 18, 2022, Applicant purchased the “\$25 Mastercard Prepaid Card” from the Pharmaprix in Ville St-Laurent. Pharmaprix advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-27**;
- 119.1 Additionally, this Prepaid Card (Exhibit P-27) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
120. Applicant is entitled to claim from Pharmaprix statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Pharmaprix (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);
121. to 136 [...];

G) Parkland Corporation

137. Applicant communicates an extract of the CIDREQ for Parkland Corporation, a.d.b.a. Ultramar, Dépanneur du coin, Dépan Express and Marché Express (“**Parkland**”) as **Exhibit P-33**;
138. According to its website: “*Parkland Retail Canada supplies and supports a network of 1,860 retail gas stations in Canada operating under many key retail brands including Ultramar, Esso, Fas Gas Plus, Chevron, Pioneer and Race Trac. In addition, Parkland owns and operates Canada’s leading convenience store brand, On the Run / Marché Express, along with other known convenience store brands*”;
139. Parkland’s brands (Ultramar, Dépanneur du coin and Dépan Express) are listed as retailers on the Peoples website (Exhibit P-3). The Prepaid Cards are sold using in-store displays at these locations;
140. Parkland supplies its locations with the Prepaid Cards. The individual location cannot change these items or sell the Cards at a different price; these items are imposed by Parkland who generates a revenue from each sale;
141. The Prepaid Cards are sold in the hundreds of Parkland brand locations in Quebec and Canada;

142. Parkland is liable as supplier of the Prepaid Cards to its stores and because it allows the stores to use its brand names for the formation and conclusion of a contract (art. 2163 CCQ);
143. On October 18, 2022, Applicant purchased the “\$25 *Mastercard Prepaid Card*” from the Ultramar gas station in Ville St-Laurent. Ultramar advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this item, as appears from the pictures communicated *en liasse* as **Exhibit P-34** (including a picture of the in-store display);
144. Applicant is entitled to claim from Ultramar/Parkland statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Ultramar/Parkland (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

H) Giant Tiger Stores Limited

145. Applicant communicates an extract of the CIDREQ for Giant Tigers Stores Limited (“**Giant Tiger**”) herewith as **Exhibit P-35**. According to its website, Giant Tiger is a leading discount store with over 260 locations across Canada;
146. Giant Tiger is listed as a retailer on the Peoples website (Exhibit P-3). The Prepaid Cards are sold using in-store displays at Giant Tiger locations;
147. Giant Tiger supplies its stores with the Prepaid Cards, also displayed and advertised on the Giant Tiger website <https://www.tigregeant.com/gift-cards>, as appears from **Exhibit P-36**;
148. Giant Tiger is liable as supplier of the Prepaid Cards to its stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
149. On October 23, 2022, Applicant purchased the “\$25 *Mastercard Prepaid Card*” from the Giant Tiger store in Ville St-Laurent. Giant Tiger advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-37** (including a picture of the in-store display);
150. Applicant is entitled to claim from Giant Tiger statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Giant Tiger (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

I) Metro Inc. (a.d.b.a. SuperC)

151. Metro Inc., a.d.b.a. as SuperC (“**Metro**”) has its head office in Montreal, Quebec, as appears from an extract of the CIDREQ communicated as **Exhibit P-38**;
152. Metro describes itself as “*A network of some 950 food stores under several banners including Metro, Metro Plus, Super C and Food Basics*” with locations in Quebec and Ontario;
153. Metro is liable as supplier of the Prepaid Cards to its stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
154. On October 18, 2022, Applicant purchased the “*\$25 Mastercard Prepaid Card*” from the SuperC location in Ville St-Laurent. SuperC/Metro prominently advertises only the predetermined spending limit amount of \$25 and never expressly indicated the real price of \$28.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-39** (including a picture of the in-store display);
155. Applicant is entitled to claim from Metro statutory damages of \$10 plus the amount of the activation fee (\$3.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Metro (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

J) Sobeys Capital Incorporated (a.d.b.a. IGA)

156. Applicant communicates an extract of the CIDREQ for Sobeys Capital Incorporated (a.d.b.a. and referred to herein as “**IGA**”) as **Exhibit P-40**;
157. There are several hundred IGA and Sobeys grocery stores across Canada;
158. IGA is liable as supplier of the Prepaid Cards to its stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);
159. On October 23, 2022, Applicant purchased the “*\$25 Mastercard Prepaid Card*” from the IGA location in Ville St-Laurent. IGA prominently advertises only the predetermined spending limit amount of \$25 and never expressly indicated the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this item, as it appears from the pictures communicated *en liasse* as **Exhibit P-41** (including a picture of the in-store display);
- 159.1 Additionally, this Prepaid Card (Exhibit P-41) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);

160. Applicant is entitled to claim from IGA statutory damages of \$10 plus the amount of the activation fee (\$4.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from IGA (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

K) Loblaws Inc. (a.d.b.a. Provigo and Maxi)

161. Applicant communicates an extract of the CIDREQ for Loblaws Inc. a.d.b.a. Provigo and Maxi ("**Loblaws**") as **Exhibit P-42**. According to its website, there are more than 2400 Loblaws stores across Canada;

162. Loblaws is liable as supplier of the Prepaid Cards to its stores and because it allows the stores to use its name for the formation and conclusion of a contract (art. 2163 CCQ);

163. On October 22, 2022, Applicant purchased the "\$50 Mastercard Prepaid Card" from the Provigo location on Monkland in Montreal. Loblaws prominently advertises only the predetermined spending limit amount of \$50 and never expressly indicates the real price of \$55.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-43** (including a picture of the in-store display);

163.1 Additionally, this Prepaid Card (Exhibit P-44) did not mention on the front or back of the Card that the "purchase fee" was "plus" or "+" \$5.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);

164. Applicant is entitled to claim from Loblaws statutory damages of \$10 plus the amount of the activation fee (\$5.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Loblaws (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

165. to 170 [...];

L) Dollarama S.E.C.

171. Dollarama S.E.C. ("**Dollarama**") has its head office in Montreal, Quebec, as it from an extract of the CIDREQ for Dollarama communicated as **Exhibit P-46**;

172. According to its website, Dollarama operates a chain of 1444 dollar stores across Canada known as *Dollarama*. Dollarama stores offer general merchandise, consumables, and seasonal products and also sells its products online at www.dollarama.com;

173. Dollarama sells the Prepaid Cards in its stores across Canada and never displays

the real price that it charges customers at the cash for these products;

174. On October 23, 2022, Applicant purchased the “\$25 Visa Prepaid Card” from the Dollarama store in Ville St-Laurent. Dollarama prominently advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-47** (including a picture of the in-store display);
- 174.1 Additionally, this Prepaid Card (Exhibit P-47) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
175. Applicant is entitled to claim from Dollarama statutory damages of \$10 plus the amount of the activation fee (\$4.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Dollarama (alternately pursuant to ss. ss. 12, 40, 41, 223, 224c) and 228 CPA);

M) Staples Canada ULC (a.d.b.a. Bureau en Gros)

176. Applicant communicates an extract of the CIDREQ for Staples Canada ULC, a.d.b.a. Bureau en Gros (“**Staples**”) as **Exhibit P-48**. According to its website, Staples has a network of over 300 stores across Canada, including in Quebec;
177. Staples sells the Prepaid Cards in its stores and never displays the real price that it charges customers at the cash for these products;
178. On October 24, 2022, Applicant purchased the “\$25 Visa Prepaid Card” from the Bureau en Gros in Ville St-Laurent. Bureau en Gros prominently advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-49** (including a picture of the in-store display);
- 178.1 Additionally, this Prepaid Card (Exhibit P-49) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
179. Applicant is entitled to claim from Staples statutory damages of \$10 plus the amount of the activation fee (\$4.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Staples (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

N) Home Depot of Canada Inc.

180. Applicant communicates an extract of the CIDREQ for Home Depot of Canada Inc. ("**Home Depot**") as **Exhibit P-50**. According to its website, Home Depot operates 182 stores across Canada, including in Quebec;
181. Home Depot sells the Prepaid Cards in stores and never displays the real price that it charges customers at the cash for these products;
182. On October 24, 2022, Applicant purchased the "\$25 Visa Prepaid Card" from the Home Depot in Montreal. Home Depot prominently advertises only the predetermined spending limit amount of \$25 and never expressly indicates the real price of \$29.95 (plus taxes) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures communicated *en liasse* as **Exhibit P-51** (including a picture of the in-store display);
- 182.1 Additionally, this Prepaid Card (Exhibit P-51) did not mention on the front or back of the Card that the "purchase fee" was "plus" or "+" \$4.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
183. Applicant is entitled to claim from Home Depot statutory damages of \$10 plus the amount of the activation fee (\$4.95 plus taxes) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Home Depot (alternately pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA);

O) Canada Post Corporation

184. Canada Post Corporation ("**Canada Post**") is a Crown corporation which functions as Canada's primary operator of postal services. There are more than 6000 Canada Post offices across Canada;
185. The webpage www.slpcard.ca contains Canada Post's name and logo in the header and states: "*Canada Post Single Load Prepaid Card is a prepaid card that you can use anywhere in the world wherever Visa cards are electronically accepted - even online*". This webpage also states that these cards are "*Available at any Canada Post location*", the whole as appears from **Exhibit P-52**;
186. Applicant notes that the www.slpcard.ca webpage (Exhibit P-52) does not mention anything about charges for activation fees for this card, nor does it show that any activation fees are charged in the sample Prepaid Card displayed on this webpage:



187. On October 25, 2022, Applicant purchased the “\$25 Visa Single Load Prepaid Card” from the Canada Post office situated at 1675 Sainte-Catherine West. In its post offices, Canada Post only advertises the predetermined spending limit amounts that range from \$25 to \$500 per card and never expressly indicates the real price for these cards that range from \$28.95 to \$506.95 per card (it appears that no taxes are added on to the activation fees for the Canada Post Prepaid Cards) that the Applicant and all Class members are ultimately charged at the cash for this product, as it appears from the pictures of the Cards, the receipt and display at Canada Post communicated *en liasse* as **Exhibit P-53**;
188. As it appears from Exhibit P-53, the Canada Post Prepaid Cards are issued by Defendant Peoples Trust Company [...];
- 188.1 Additionally, this Prepaid Card (Exhibit P-53) did not mention on the front or back of the Card that the “purchase fee” was “plus” or “+” \$3.95. Since this cost was not specified explicitly as an additional cost, it could not be claimed because contrary to sections 12, 40, 41 and 228 CPA (and the contract must be interpreted in favour of the consumer pursuant to s. 17 CPA);
189. Applicant is entitled to claim from Canada Post statutory damages of \$10 plus the amount of the activation fee (\$3.95) pursuant to s. 1(1)(b) of the Accurate Pricing Policy, on her behalf and on behalf of every Class member for each Prepaid Card purchased from Canada Post (alternately \$3.95 pursuant to ss. 12, 40, 41, 223, 224c) and 228 CPA and \$10 in punitive damages pursuant to s. 272);

P) Peoples Trust & Peoples Card Services LP [...]

190. Defendant Peoples Trust Company is a trust company providing financial services and is one of the issuers of the Prepaid Cards sold by the retail Defendants. It is incorporated and regulated under the federal *Trust and Loan Companies Act*, S.C. 1991, c. 45, as appears from an extract of the CIDREQ, **Exhibit P-54**;
191. Defendant Peoples Card Services LP manages, among other things, the relationships with the distributors of Peoples Trust’s Prepaid Cards that allow access to the Visa or Mastercard payment networks;
192. Both of these Defendants are named as Defendants and solidarily liable herein with their respective distributors (i.e. the retail Defendants) because they create, design,

distribute, promote and sell the Prepaid Cards in a manner which intentionally places more emphasis on the predetermined spending limit of the card, instead of the real price consumers are charged for their products, and in other cases do not disclose that the fee is charged in addition, i.e. they fail to mention “plus” or “+”, as appears from Peoples’ Exhibits MC-1C, MC-1D, MC-1E and MC-1H);

193. It is possible for Peoples to indicate the real price on its Prepaid Cards and it chooses not to in order to generate more sales and profit;
194. Peoples are aware that competing prepaid cards do not charge activation fees (i.e. Amazon, Apple, Google, etc.) and therefore participate and earn money from the commission of an illegal act;
- 194.1 For avoidance of doubt, Applicant alleges that all of the retail Defendants, in concert with Peoples, sell both the Prepaid Cards that mention “plus” or “+” the activation/purchase fees (such as Peoples’ Exhibit MC-1A and Exhibit MC-1B) constituting unlawful fragmented pricing, as well as the Prepaid Cards that omit to mention “plus” or “+” the activation/purchase fees (such as Peoples’ Exhibits MC-1C, MC-1D, MC-1E and MC-1H), constituting a failure to inform (s. 228 CPA) and an illegal cost (s. 12);

III. DAMAGES

195. Applicant estimates that the Defendants have generated aggregate amounts in the tens of millions of dollars while intentionally choosing to ignore the laws in Quebec, including the Accurate Pricing Policy;
196. Applicant has noticed that the activation fees vary from \$3.95 to \$4.95 for the same “\$25 Visa/Mastercard Prepaid Card” and is as much as \$7.95 for the higher predetermined spending limit cards;
197. The Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec, including:
 - a) Quebec’s *Consumer Protection Act*, notably sections 12, 40, 41, 223, paragraph c of section 224 and 228 CPA; and
 - b) Section 1(1)(b) of the *Accurate Pricing Policy*.
198. In light of the foregoing, the following aggregate damages may be claimed by Class members against the Defendants:
 - a) compensatory damages of \$10.00 plus the amount of the activation fee per Class member per Prepaid Card purchased, or a reduction of obligations equivalent to the activation/purchase fee pursuant to s. 272(c) CPA; and
 - b) punitive damages, in the amount \$10.00 per Class member per Prepaid Card purchased, subject to adjustment, for the intentional breach of

obligations imposed on Defendants pursuant to section 272 CPA.

198.2 All Class members benefit from the presumption of damages provided for by section 253 CPA, as well as the presumption of prejudice for a violation of Title I CPA, as confirmed by the Supreme Court of Canada in *Richard v. Time* (at par. 113), and the presumption of prejudice with respect to a claim under s. 272(c) CPA as confirmed by the Court of Appeal in *Vidéotron c. Union des consommateurs*, 2017 QCCA 738, par. 56;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

199. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages (or reduction of obligation pursuant to s. 272(c) CPA), with injunctive relief;

200. 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 prominently advertise the real price that they charge consumers for the purchase of the Prepaid Cards;
3. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the activation fee [...] for each Prepaid Card purchased,

ALTERNATELY, CONDEMN each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP, to pay the Plaintiff and each Class member the total amount of the activation/purchase fees as a reduction of their obligations pursuant to s. 272(c) CPA;

4. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], to pay Plaintiff and each Class member \$10.00 per card purchased on account of punitive damages, subject to adjustment;
5. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], 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;
6. **ORDER** that all of the above condemnations be subject to collective recovery;
7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

8. **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;
9. **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;
10. **RENDER** any other order that this Honourable Court shall determine;

V. JURISDICTION

201. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because she is a consumer and resides in this district;
202. [...];
203. [...];
204. For the Defendants who have franchises or independently owned stores, they allow their name, intellectual property and logos to be used for the creation and conclusion of the purchase contracts; their liability is triggered by the rules of apparent mandate (art. 2163 CCQ);

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and injunctive relief;
2. **APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

All consumers pursuant to the Québec <i>Consumer Protection Act</i> who purchased a prepaid card from any of the Defendants and who paid a price higher than the price advertised on the card (excluding sales tax);	Tous les consommateurs au sens de la <i>Loi sur la protection du consommateur</i> du Québec qui ont acheté une carte prépayée de l'une des défenderesses et qui ont payé un prix supérieur au prix annoncé sur la carte (excluant la taxe de vente);
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(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

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

- a) Do the Defendants violate ss. 12, 40, 41, 223, 224c) or 228 of the CPA, or its *Regulations*?
 - b) Must Defendants compensate all Class members \$10 plus the activation/purchase fee (plus taxes) pursuant to section 1(1)(b) of the *Accurate Pricing Policy*?
 - c) Are Class entitled to a reduction of their obligations pursuant to s. 272(c)?
 - d) Are Class members entitled to punitive damages of \$10 per Prepaid Card purchased?
 - e) Are Peoples [...] solidarily liable with each of the respective Defendants for the Prepaid Cards sold in their stores?
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 prominently advertise the real price that they charge consumers for the purchase of the Prepaid Cards;
 3. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], to pay the Plaintiff and each Class member compensation equal to \$10.00 plus the amount of the activation fee [...] for each Prepaid Card purchased;
- ALTERNATELY, CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP, to pay the Plaintiff and each Class member the total amount of the activation/purchase fees as a reduction of their obligations pursuant to s. 272(c) CPA;
4. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], to pay Plaintiff and each Class member \$10.00 per card purchased on account of punitive damages, subject to adjustment;
 5. **CONDEMN** each Defendant, solidarily with Peoples Trust Company and Peoples Cards Services LP [...], 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;
 6. **ORDER** that all of the above condemnations be subject to collective recovery;
 7. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual

liquidation;

8. **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;
9. **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;
10. **RENDER** any other order that this Honourable Court shall determine;
5. **ORDER** the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
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. **DECLARE** that all Class members 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 law;
8. **RENDER** any other order that this Honourable Court shall determine;
9. **THE WHOLE** with costs including publication fees.

Montreal, February 18, 2025

(s) LPC Avocats

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