

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001332-242

SUPERIOR COURT
(Class Actions)

EMIL [REDACTED]

Applicant

v.

HYDROSOLUTION, S.E.C., legal person
having its head office at 110-7100 Jean-Talon
Street East, Anjou, District of Montreal,
Province of Quebec, H1M 3S3

and

**ENERCARE RECHARGE LIMITED
PARTNERSHIP**, legal person having its head
office at 7400 Birchmount Road, Markham,
Province of Ontario, L3R 5V4

and

HYDROSOLUTION LTÉE, legal person
having its head office at 110-7100 Jean-Talon
Street East, Anjou, District of Montreal,
Province of Quebec, H1M 3S3

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(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. The Applicant seeks to institute a class action on behalf of the following class of which he is a member, namely:

Class: All persons who leased a water heater from HydroSolution; or any other Class to be determined by the Court.	Groupe : Toutes les personnes qui ont loué un chauffe-eau auprès de HydroSolution; ou tout autre groupe à être déterminé par la Cour.
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I. THE PARTIES

2. The Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* ("**CPA**") and the Civil Code;
3. The Defendant, **HydroSolution S.E.C.**, is registered as a limited partnership, whose economic activities notably consists of the "*vente et locaton de chauffe-eau*", as it appears from its information statement from the Quebec Enterprise Register disclosed as **Exhibit P-1**;
4. The Defendant, **Enercare Recharge Limited Partnership**, is a special partner in the limited partnership, and the Defendant, **HydroSolution Ltée**, is a general partner in the limited partnership, the whole as appears from Exhibit P-1;
5. On August 22, 2022, Enercare Inc. issued a press release titled "*Enercare accelerates Canadian Growth with acquisition of HydroSolution*", boasting that HydroSolution serves more than 275,000 customers, Applicant disclosing **Exhibit P-2**;
6. Curiously, the HyrdoSolution homepage (www.hydrosolution.com/) provides a much higher number of customers: "*Ce n'est pas pour rien que **plus de 850 000 Québécois** nous choisisent*", Applicant disclosing **Exhibit P-3**;
7. Together, the three Defendants (collectively referred to herein as "**HydroSolution**") carry on an organized economic activity in the province of Quebec and are therefore solidarily liable toward all Class Members (art. 1525 C.C.Q.);
8. On the "About Us" section of its website, HydroSolution describes itself as follows, Applicant disclosing **Exhibit P-4**:

Over the years, HydroSolution has gained an unmatched reputation for excellence and has become the company of choice in the field thanks to its turnkey service, which includes the rental, sale, installation and maintenance of HydroSolution appliances, as well as a repair service for almost any other brand on the market.

HydroSolution was created by Hydro-Québec in 1958 to promote

the use of electricity throughout the province by offering an electric water heater rental service to all Quebecers.

In 2005, HydroSolution became a privately-owned company, but its original purpose remained the same: to offer water heater rentals, sales and installation services.

HydroSolution's service offering is designed to meet the specific needs of a variety of customers; such as homeowners, tenants, condo managers, real estate investors and contractors. Specific programs for each customer type are designed to save time and offer a customized and orderly service.

9. In its advertising and on its website up until August 2023 (i.e. contemporaneous to Applicant contracting with HydroSolution), HydroSolution made the following representations, without any footnotes, conditions, caveats or exclusions, Applicant disclosing **Exhibit P-5** (in English and French):

A graphic consisting of a large, thin-lined zero followed by a dollar sign (\$).

ALWAYS FREE OF CHARGE

You'll never have to pay to repair a rented water heater

The average cost to repair a water heater is \$175, excluding parts. When you rent your water heater from HydroSolution, repairs are free of charge. Peace of mind guaranteed!

A graphic consisting of a large, thin-lined zero followed by a dollar sign (\$).

TOUJOURS SANS FRAIS

Vous n'aurez jamais rien à payer en réparation à la location

Une réparation sur un chauffe-eau coûte en moyenne 175\$, excluant les pièces. En louant votre chauffe-eau avec HydroSolution, il n'y a aucuns frais pour les réparations. La vraie tranquillité d'esprit!

10. Applicant emphasizes that the above representations are clear and unambiguous undertakings by HydroSolution that repairs are “**ALWAYS FREE OF CHARGE**” and that customers will **NEVER** have to pay for repairs when a water heater rented from HydroSolution breaks down;
11. Applicant notes that HydroSolution recently modified the above language on its website (www.hydrosolution.com/en/repairs/) notably by removing the word “never”, and now makes the following representations, without any footnotes, conditions, caveats or exclusions, Applicant disclosing **Exhibit P-6** (in English and French):

Because you have so many other priorities!

The appliances we install come with the best warranties, and should your water heater break down, just give us a call and we'll take care of the rest! This kind of service is designed for your peace of mind and gives you time for what's most important to you.



REPAIRS

for rented water heaters

When you rent a water heater from HydroSolution, you'll enjoy peace of mind. Maintenance and repairs are free. We'll even replace the water heater if needed.

Benefits of rental



If your water heater cannot be repaired

If your water heater needs to be replaced, we have different options for you. A water heater rental with multiple benefits or the purchase of a new HydroSolution water heater backed by a 10-year tank warranty, an 8-year heating elements warranty and a 1-year labour warranty. The purchase of a new water heater also includes the installation carried out by our expert installers.



What are the repair costs?

HydroSolution water heater rentals are repaired without cost. Customers owning HydroSolution water heaters will have to pay for the repairs unless the parts are still covered under the manufacturer's warranty of 10 years on the tank, 8 years on the heating elements and thermostat and 1 year on the labour. Water heaters from other manufacturers can be repaired according to the rates currently in place at HydroSolution. Call us for more information at [1877-353-0077](tel:1877-353-0077).



Solving problems related to water heaters

Generally, water heaters are designed to last as long as the warranty period and even longer; however, they can still break down or lose their efficiency. If you are fed up of dealing with a water heater, a rental is possibly the best solution for you: no initial payment required, service available at all times, emergency repair provided within 3 hours (when the hot water tank is leaking), replacements are free, etc. Think about it!

12. On the same webpage (Exhibit P-6), HydroSolution declares that its service agreement "*will prevent unpleasant surprises*" and that "*your water heater will be covered!*". This statement appears just after the text (reproduced above) where HydroSolution states that for its leased water heaters "*repairs are free*", and "*without cost*", and that "*replacements are free*", once again without any footnotes, conditions, caveats or exclusions:

SERVICE AGREEMENT

A repair agreement that will prevent unpleasant surprises!

Regardless of its manufacturer, once you subscribe to our service agreement, your water heater will be covered!

This is an essential kind of agreement when you keep in mind that one heating element is bound to fail before the water heater itself and an emergency service call costs, on average, \$175.

13. When customers click on the “Benefit of rental” link from Exhibit P-6, the next webpage they are directed to (www.hydrosolution.com/en/rent-or-purchase/#benefits-renting) contains the following representations, including that HydroSolution will “*replace your water heater for free if needed*” and that “*we can repair it within three hours!*”, once again without any footnotes, conditions, caveats or exclusions, Applicant disclosing **Exhibit P-7**:



Goodbye maintenance fees

No deposit. No maintenance or repair costs. We'll even replace your water heater for free if needed.



Support is only a phone call away

Our advisors are available 24/7 for repairs and emergencies. If your water heater leaks, we can repair it within three hours!

14. HydroSolution repeats these representations monthly on the statements it sends to its customers, once again without any footnotes, conditions, caveats or exclusions, Applicant disclosing **Exhibit P-8**:

“A water heater leased from HydroSolution guarantees peace of mind!

- Emergency service 24 hours a day, 7 days a week.
- Repair or replacement at no charge”

15. This class action authorization application is brought for three main reasons: **(i)** HydroSolution failed to honour its contractual undertakings and representations with respect to replacing or repairing leased water heaters free of charge; **(ii)** HydroSolution failed in its legal obligations to perform the services stipulated in the contract; and **(iii)** HydroSolution charges an indemnity that far exceeds its injury upon termination of the lease, thereby generating an illegal profit post-resiliation;

16. As to the first point, HydroSolution recently left many of its customers without hot water for weeks, and did not repair the water heaters “*within three hours*” and did not repair or replace them at no charge as promised, Applicant disclosing the August 26, 2024, Journal de Montréal article titled “« *Ça n’a aucun bon sens* »: une famille forcée de vivre sans eau chaude depuis la tempête Debby” as **Exhibit P-9**:

Leur maison a été inondée le 9 août dernier lors de la tempête Debby, ce qui a brisé **leur chauffe-eau loué chez HydroSolution. Malgré de nombreuses démarches auprès de l'entreprise pour le faire remplacer, ils doivent toujours patienter, deux semaines plus tard.**

... Le couple dit avoir informé HydroSolution le dimanche 11 août qu'il avait besoin d'un remplacement de chauffe-eau.

Le prochain rendez-vous a donc été fixé au vendredi suivant, soit le 23 août. Or, HydroSolution ne s'est pas présenté alors que M. Lavoie attendait chez lui.

... « Chaque fois qu'on appelle, on nous sort qu'il y a une inondation, qu'ils sont achalandés et qu'ils sont désolés. Ça n'a pas aucun bon sens. Je pense qu'on a été patients »...

17. The above situation is not unique and is exactly what happened to the Applicant and the other Class Members similarly situated;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION

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

18. On or around June 1, 2023, the Applicant moved into the townhouse he purchased in Dollard-Des-Ormeaux which already had a water heater lease with HydroSolution since October 13, 2017, as it appears from a copy of said lease that was since put into the Applicant's name, Applicant disclosing **Exhibit P-10**;

i) Cause of action #1 – False Representations:

19. On June 22, 2023, HydroSolution sent a "Proposal no. S1054688" to the Applicant, in which it repeated the same "repairs are free during the rental" representations as those reproduced at paragraphs 9 to 14 above, and further declared "**RENT: FREE REPLACEMENT OF YOUR WATER HEATER AT THE END OF ITS LIFE**", once again without any footnotes (other than "**Applicable to rent only*"), conditions, caveats or exclusions, Applicant disclosing **Exhibit P-11**;
20. The actual water heater that Applicant was leasing had a sticker on it (with the HydroSolution logo) also specifically stating "**Free repair or replacement***", once again without any footnotes (other than "**Rented water heaters only*"), conditions, caveats or exclusions Applicant disclosing **Exhibit P-12**:

1 877 353-0077

- Service d'urgence disponible jour et nuit
 - Réparation ou remplacement sans frais*
- *S'applique aux chauffe-eau loués seulement

1 877 353-0077

- Emergency service, 24 hours a day, 7 days a week
 - Free repair or replacement*
- *Rented water heaters only

21. The Applicant, based on his contractual obligations and the representations made by HydroSolution as alleged herein, always made his payments of \$23.77 every two months (i.e. \$11.89 per month) as per the invoices he received every two months which he always paid in full by credit card;
22. On August 9, 2024, the Applicant's basement was flooded by a hurricane known as Tropical Storm Debby (hereinafter "**Hurricane Debby**");
23. There is no doubt that Hurricane Debby was akin to an event of *force majeure* within the meaning of section 150.10 CPA (which is reproduced in the HydroSolution contract, Exhibit P-10, at pages 5 and 6-PDF) which stipulates:

150.10 The merchant assumes the risk of loss or deterioration of the goods by superior force; however, the merchant is not required to assume those risks while the consumer withholds the goods without right or after the merchant has transferred ownership of the goods to the consumer, where such is the case.	150.10 Le commerçant assume les risques de perte ou de détérioration du bien par cas de force majeure; toutefois, le commerçant n'est pas tenu d'assumer ces risques pendant que le consommateur détient le bien sans droit ou, le cas échéant, après qu'il a transféré la propriété du bien au consommateur.
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24. Indeed, the Superior Court of Quebec concluded that the 1998 ice storm was a force majeure event (*Lareau c. Régie du logement*, 1999 CanLII 11291 (QC CS), par. 11; Appeal dismissed: *Lareau c. Régie du logement*, 2003 CanLII 71871 (QC CA)) and the damages caused by Hurricane Debby event surpassed the 1998 ice storm event, as it appears from the statement published on September 13, 2024, by the Insurance Bureau of Canada titled "*The costliest severe weather event in Quebec's history – August flooding caused nearly \$2.5 billion in insured damage*", disclosed as **Exhibit P-13**:

Remnants of Hurricane Debby devastated Montreal and parts of Quebec

The remnants of Hurricane Debby that travelled across southern Quebec on August 9 and 10 are estimated to have caused nearly **\$2.5 billion in insured damage**, according to initial estimates from Catastrophe Indices and Quantification Inc. (CatIQ). **This flood event now ranks as the costliest insured event in Quebec's history, even surpassing the 1998 ice storm.**

25. On August 13, 2024, the Applicant contacted HydroSolution given that the water tank in his basement was exposed to around 9" of water, and he wanted to be sure that it was still safe to use;
26. It was during that phone call (which Applicant hereby calls upon HydroSolution to preserve and produce) that the HydroSolution representative informed the Applicant of the following:

- 1) to turn off the breaker and cease using the water heater;
 - 2) that HydroSolution was terminating his contract; and, as a result thereof
 - 3) that he is forced to buyback the water heater at the residual price imposed by HydroSolution at its discretion.
27. Applicant explained to the HydroSolution representative that his lease agreement and their website state that HydroSolution is responsible for repairs and replacement, including if it is damaged by *force majeure*, but HydroSolution essentially ignored the Applicant's pleas;
28. Over the course of several weeks, Applicant tried to convince HydroSolution to honour their contract with him (by emails which HydroSolution ignored and by phone during which HydroSolution refused), as well as their representations concerning their water heaters (including those on their website, his invoices and on the heater itself), to no avail;
29. Finally, on September 6, 2024, the Applicant recorded his phone call with HydroSolution, in which he reiterated all of the above, as it appears from the recording disclosed as **Exhibit P-14** (which will be transcribed for the hearing);
30. The HydroSolution agent initially referred him to **clause 11** of the contract (Exhibit P-10) as grounds for HydroSolution refusing to repair/replace the water heater:

<p>11. -TERMINATION: In the event of a termination of this agreement by the OWNER or by HYDROSOLUTION following a failure by the OWNER to comply with all the terms of the lease, this agreement shall be terminated on the date upon which HYDROSOLUTION receives effective control of the water heater. In the event of a termination of this agreement, the OWNER and as the case may be the paying third party shall remain liable to pay to HYDROSOLUTION all amounts owed and unpaid until effective delivery of the water heater in addition to all other damages incurred by HYDROSOLUTION including the depreciated value of the water heater and the 150\$ fee mentioned at section 10.</p>	<p>11. -RESILIATION: Advenant la résiliation du présent contrat par le PROPRIÉTAIRE ou par HYDROSOLUTION suite au défaut du PROPRIÉTAIRE d'en respecter les termes, le contrat sera résilié à la date à laquelle HYDROSOLUTION reçoit la remise effective du chauffe-eau. En cas de résiliation du présent contrat, le PROPRIÉTAIRE et, le cas échéant, le tiers demeureront tenus de payer à HYDROSOLUTION toute somme due et impayée jusqu'à la remise effective du chauffe-eau, en sus des autres dommages subis par HYDROSOLUTION dont la valeur dépréciée du chauffe-eau et les frais de 150\$ mentionnés à l'article 10.</p>
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31. Applicant reiterated to the HydroSolution agent that he did, in fact, comply with all of the terms of his lease and asked her to specify which clause in particular

HydroSolution considered that he failed to comply with. After putting him on hold, the agent returned and referred the Applicant to clauses 2e) and 4 of the lease:

<p>2. -LEASING CONDITIONS: HYDROSOLUTION agrees to lease a water heater if all of the following conditions are satisfied at all times: ... e) The existing conditions in the area where the water heater is to be installed are not likely to shorten the life expectancy nor to damage the components and tank of the water heater;</p>	<p>2. -CONDITIONS DE LOCATION: HYDROSOLUTION accepte de louer un chauffe-eau si toutes les conditions suivantes sont respectées: ... e) Les conditions prévalant dans l'espace ou doit être installé le chauffe-eau ne sont pas susceptibles d'entraîner un vieillissement accéléré ni un endommagement des composantes et du réservoir du chauffe-eau;</p>
<p>4. -OWNERSHIP: Although HYDROSOLUTION is the owner of the water heater, the OWNER undertakes to carefully keep and maintain the water heater as would a careful and diligent owner. The OWNER undertakes to inform in writing and without delay HYDROSOLUTION of any loss, damages, break or malfunction of the water heater and of any damage caused by it.</p>	<p>4. -PROPRIÉTÉ: Bien qu'HYDROSOLUTION soit le propriétaire du chauffe-eau, le PROPRIÉTAIRE s'engage à conserver et à entretenir soigneusement le chauffe-eau, comme le ferait un propriétaire prudent et diligent. Le PROPRIÉTAIRE s'engage ainsi à aviser, par écrit et sans délai, HYDROSOLUTION de toute perte, dommage, bris ou dysfonctionnement du chauffe-eau et de tout sinistre causé par ce dernier.</p>

32. With respect to clause 2e), Applicant reiterates that HydroSolution actually installed the water heater in that space and, clearly, the space HydroSolution, as professionals, installed the water heater in was not likely to shorten the life expectancy nor to damage its components (if so, it was their doing for installing the heater in that space). Clearly, invoking this clause is a pretext and done in bad faith, especially since HydroSolution did not come to inspect the space where the heater is installed;
33. As to clause 4, Applicant reiterates that he kept and maintained the water heater as would a careful and diligent owner. In fact, HydroSolution refused to inspect the unit and the agent told the Applicant to dispose of it. As such, claiming that he was not a diligent owner is without any basis in fact or law, and, once again a pretext and done in bad faith;
34. HydroSolution clearly failed to honor their obligations under the Applicant's contract and their own advertising which form part of the contract under Quebec law (see *Abicidan c. Bell Canada*, 2017 QCCS 1198, par. 17);
35. Instead of sending a technician to inspect or repair the water heater, or simply replacing it as per their advertising and contract, the HydroSolution agent told the Applicant that he should claim the damage from his insurance company (which

HydroSolution repeated to many Class Members);

36. HydroSolution's insistence for the Applicant and other Class Members to claim from their insurance is without basis in fact or law. Indeed, the law provides that HydroSolution **could have** made participation in an insurance as a condition for entering into their contract for the lease of goods, in which case the contract must contain certain compulsory clauses that were **not** mentioned anywhere in the HydroSolution lease, Exhibit P-10 (see section 32 of the *Regulation respecting the application of the Consumer Protection Act*, CQLR c P-40.1, r 3);
37. There is therefore no doubt that by refusing to repair (or even inspect) or replace the water heater, HydroSolution's representations as alleged herein did not conform to reality;

ii) Cause of action #2 – Failure to perform the service:

38. For his part, Applicant refers the Court to **clause 3** of the lease titled ("Services") and the section on the last page titled "Clause required under the *Consumer Protection Act*"). Applicant also refers the Court to **section 16 CPA**:

<p>16. The principal obligation of the merchant is to deliver the goods or to perform the service stipulated in the contract.</p> <p>In a contract involving sequential fulfilment, the merchant is presumed to be performing his principal obligation when he begins to perform it in accordance with the contract.</p>	<p>16. L'obligation principale du commerçant consiste dans la livraison du bien ou la prestation du service prévus dans le contrat.</p> <p>Dans un contrat à exécution successive, le commerçant est présumé exécuter son obligation principale lorsqu'il commence à accomplir cette obligation conformément au contrat.</p>
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39. By refusing to repair (or even inspect) or replace the water heater, HydroSolution violated its obligation under Title I of the CPA (section 16) to perform the service stipulated in the contract. The Supreme Court has held that a violation of Title I CPA gives rise to an absolute presumption of prejudice without the consumer having to prove more;

iii) Cause of action #3: the buyback is prohibited and exceeds the injury

40. Instead of repairing or replacing the water heater for free as advertised and as required under the contract and the law, HydroSolution is – shockingly and egregiously – demanding that the Applicant pay them **\$599.48** to "buyback" the water heater after *they* unilaterally cancelled the lease (see Exhibit P-8);
41. Applicant is aware of several of his neighbors that are in the same situation, with HydroSolution demanding \$386.40 as the indemnity to "buyback" one of his neighbor's heater as a result of HydroSolution not respecting the agreement/law

and cancelling that Class Member's lease, as it appears from **Exhibit P-15**;

42. This "buyback" fee is illegal for two reasons. First, it contravenes another Title I provision, namely section 12 CPA:

12. No costs may be claimed from a consumer unless the amount thereof is precisely indicated in the contract.	12. Aucuns frais ne peuvent être réclamés d'un consommateur, à moins que le contrat n'en mentionne de façon précise le montant.
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43. Second, the \$599.48 indemnity requested of the Applicant far exceeds HydroSolution's injury, as will be proven on the merits. To demonstrate this at the authorization stage, Applicant communicates herewith evidence that the exact same model water heater that HydroSolution leased to him retails for \$895.00 at Rona, as it appears from **Exhibit P-16**;
44. Assuming HydroSolution's has a 20% volume discount versus what retail customers pay at Rona (although the discount is likely more), then its cost is \$716.00 per heater. According to the contract, Exhibit P-10, HydroSolution was to receive \$1,130.78 for Applicant's heater as of the date that it terminated the lease (\$13.79 x 82 months) and is now demanding \$599.48 more for a total of \$1,730.26;
45. \$1,730.26 for a heater that costs HydroSolution approximately \$716.00 (and likely less) is abusive within the meaning of article 1437 CCQ and section 8 CPA, and clearly far exceeds any injury it sustained (see: *Rogers Communications, s.e.n.c. (Rogers Sans-fil, s.e.n.c.) c. Brière*, 2016 QCCA 1497, par. 28);
46. In any event, the "injury" is self-imposed because HydroSolution unilaterally terminated the contract and failed to honour its obligations thereunder, and it was not the adherent who chose to terminate the contract. As such, HydroSolution should not be entitled to any indemnity at all;
47. HydroSolution left the Applicant, his wife and their newborn baby (3-month-old) without hot water for several weeks, causing them compensatory and moral damages, in addition to breaching its contractual obligations;
48. Up until September 15, 2024, the Applicant and his family are forced to shower at his brother's house and to do their laundry at his brother's house as well. Simple tasks, like access to hot water, have been complicated by the situation (i.e. must use a kettle to boil water instead of from the faucet);
49. When the water heater is not functioning, it is also possible for bacteria to spread (such as legionnaires and cause a rare form of pneumonia) and HydroSolution is well aware that this situation poses serious health risks to its customers (see the clause on last page of contract, Exhibit P-10, titled "Important Notice"), as well as the sticker on Applicant's heater, Exhibit P-12;

iv) **Damages**

50. The Applicant's damages are a direct and proximate result of HydroSolution's illegal conduct and its violations of sections 8, 12, 16, 37, 38, 40, 41, 42, 150.10, 215, 219, 228 CPA, thus rendering sections 253 and 272 CPA applicable;
51. The Applicant was entitled to expect, and rightly expected, that HydroSolution guarantee the quality and service of the heaters they lease and sell, and that they honour its advertising and contractual obligations regarding same;
52. Given that HydroSolution did not honour its lease agreement, Applicant hereby demands a refund of the premiums that he paid since he took over the lease in June of 2023, namely \$174.19 as follows:

\$23.77 x 6 (paid on Oct. 5, 2023, Dec. 5 2023, Feb. 5 2024, Apr. 5, 2024, June 4, 2024, Aug. 5 2024)	\$142.62
\$10.57 (paid in July 2023)	\$10.57
\$21.00 (paid in August 2023)	\$21.00
Total:	\$174.19

53. Applicant further claims **\$2,500.00** on account damages, including for moral damages and damages for trouble and inconvenience (section 272 CPA);
54. Applicant also invokes section 272 CPA to claim punitive damages of **\$1,000.00**, subject to adjustment;
55. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
56. In the present situation, the amount of punitive damages must be significant because HydroSolution is a repeat offender. Indeed, the Court of Quebec has already condemned HydroSolution to reimburse a resiliation penalty that was unduly paid in the case of *Raad c. Hydrosolution Itée*, 2019 QCCQ 446, filed herewith as **Exhibit P-17**;
57. Moreover, during the phone conversation with HydroSolution (Exhibit P-14), the Applicant informed the agent that he would file this class action if his situation was not resolved, and this went completely ignored;
58. Had the Applicant been aware that HydroSolution would not comply with its contractual undertakings and advertising, that is to repair or replace the heater free of charge, and to offer service calls 24/7, he would have never contracted with HydroSolution. Applicant benefits from the presumption of fraud under section 253 CPA;

59. Quebec consumer law is a matter of protective public order;
60. HydroSolution's violations are self-interested (placing profits first, even ahead of safety), intentional, malicious, vexatious, and dangerous (leaving vulnerable people without hot water and exposed to bacteria);
61. In consequence of the foregoing, the Applicant is justified in claiming the damages requested herein, on his behalf and on behalf of every Class Member similarly situated, pursuant to section 272 CPA and the Civil Code;

v) Injunctive relief

62. Applicant refuses to pay the \$599.48 being unlawfully claimed by HydroSolution from him and other Class Members similarly situated;
63. However, in the contract (Exhibit P-10, last page under the title "Credit verification and authorisation"), HydroSolution "*reserves its right to inform authorities such as Equifax and TransUnion*", which would of course negatively affect the Applicant's credit file. Throughout all of his phone conversations with HydroSolution, he was repeatedly told that he must pay this outstanding amount to HydroSolution;
64. As such, Applicant seeks a Court order prohibiting HydroSolution from reporting him or any Class Members to any credit agencies *such as Equifax and TransUnion*, until a final judgment is rendered on the merits of the present action;

B) COMMON QUESTIONS

65. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
66. **The recourses of the Class members raise identical, similar or related questions of fact and law, namely:**
 - a) Did HydroSolution engage in false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the lease/sale of its water heaters? If so, are Class Members entitled to damages?
 - b) Did HydroSolution conceal or fail to mention an important fact in any of the representations made to its customers concerning its water heaters? If so, are Class Members entitled to damages?
 - c) Did HydroSolution fail in its obligation to perform the services stipulated in the contract?
 - d) Is HydroSolution liable to the Class Members for reimbursement of all or a portion of the monthly price paid as a result of its fault(s)?

- e) Is HydroSolution responsible to pay compensatory, moral and/or punitive damages to Class Members and in which amount?
- f) Is HydroSolution entitled to claim an indemnity (or any amount) for leases that it unilaterally cancelled? If so, does the indemnity claimed by HydroSolution exceed its injury? If so, are Class Members entitled to compensation?
- g) Is the amount charged by HydroSolution to buyback the water heaters abusive within the meaning of article 1437 CCQ or section 8 CPA?
- h) Is the Applicant entitled to the injunctive relief sought prohibiting HydroSolution from reporting the Class Members to any credit agencies until a judgment is rendered on the merits?

C) THE COMPOSITION OF THE CLASS

- 67. 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;
- 68. As mentioned in Exhibit P-3, HydroSolution claims to have more than 850,000 customers in Quebec;
- 69. Applicant is aware of several of his neighbors in the same situation as him, and has researched Google reviews with people facing the same situation (and being told by HydroSolution to claim from their insurance, even though the contract makes no reference or obligation regarding same. Many people either do not have insurance for this type of event, have limits that they can claim, or simply do not want to claim to avoid increasing their premiums);
- 70. Applicant also refers to the Journal de Montréal article (Exhibit P-9);
- 71. Class Members are very numerous and are dispersed across the province and country;
- 72. 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;
- 73. 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) ADEQUATE REPRESENTATIVE

- 74. The 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 in conflict with those of other Class members;
75. As for identifying other Class Members, the Applicant draws certain inferences from the situation, and this based on the information he personally has (friends and neighbors in the same situation, and the information publicly available in the news, Google reviews and community forums with people sharing stories of being in the same situation as Applicant finds himself in with HydroSolution). The Applicant realizes that by all accounts, there is an important number of Class Members that find themselves in a similar situation, and that it would not be useful for him to attempt to identify them given their sheer number;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

76. The action that the Applicant wishes to institute on behalf of the Class Members is an action in damages and injunctive relief;
77. The conclusions that the Applicant wishes to introduce by way of an originating application are:
1. **ALLOW** the class action of the Representative Plaintiff and the Class Members against the Defendants;
 2. **PROHIBIT** the Defendants from reporting any of the Class Members to credit agencies such as Equifax or TransUnion until a final judgment is rendered on the merits of the present action, and **RESERVE** the Class Members' rights to claim damages, solidarily from the Defendants, in the event that they are reported and their credit file is impacted;
 3. **CONDEMN** the Defendants, solidarily, to pay to each Class Member compensatory damages (or a reimbursement) in an amount to be determined, and **ORDER** collective recovery of these sums;
 4. **CONDEMN** the Defendants, solidarily, to pay to each Class Member moral damages and damages from trouble and inconvenience in amounts to be determined and **ORDER** collective recovery of these sums;
 5. **CONDEMN** the Defendants, solidarily, to pay to each Class Member and amount to be determined in punitive damages and **ORDER** collective recovery of these sums;
 6. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the

Application to authorize a class action;

7. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
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. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

IV. JURISDICTION

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

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

Class: All persons who leased a water heater from HydroSolution; or any other Class to be determined by the Court.	Groupe : Toutes les personnes qui ont loué un chauffe-eau auprès de HydroSolution; ou tout autre groupe à être déterminé par la Cour.
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3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
 - a) Did HydroSolution engage in false, misleading, or deceptive acts or practices regarding the marketing, distribution and/or the lease/sale of its water heaters? If so, are Class Members entitled to damages?
 - b) Did HydroSolution conceal or fail to mention an important fact in any of the representations made to its customers concerning its water heaters? If so, are Class Members entitled to damages?

- c) Did HydroSolution fail in its obligation to perform the services stipulated in the contract?
- d) Is HydroSolution liable to the Class Members for reimbursement of all or a portion of the monthly price paid as a result of its fault(s)?
- e) Is HydroSolution responsible to pay compensatory, moral and/or punitive damages to Class Members and in which amount?
- f) Is HydroSolution entitled to claim an indemnity (or any amount) for leases that it unilaterally cancelled? If so, does the indemnity claimed by HydroSolution exceed its injury? If so, are Class Members entitled to compensation?
- g) Is the amount charged by HydroSolution to buyback the water heaters abusive within the meaning of article 1437 CCQ or section 8 CPA?
- h) Is the Applicant entitled to the injunctive relief sought prohibiting HydroSolution from reporting the Class Members to any credit agencies until a judgment is rendered on the merits?

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

1. **ALLOW** the class action of the Representative Plaintiff and the Class Members against the Defendants;
2. **PROHIBIT** the Defendants from reporting any of the Class Members to credit agencies such as Equifax or TransUnion until a final judgment is rendered on the merits of the present action, and **RESERVE** the Class Members' rights to claim damages, solidarily from the Defendants, in the event that they are reported and their credit file is impacted;
3. **CONDEMN** the Defendants, solidarily, to pay to each Class Member compensatory damages (or a reimbursement) in an amount to be determined, and **ORDER** collective recovery of these sums;
4. **CONDEMN** the Defendants, solidarily, to pay to each Class Member moral damages and damages from trouble and inconvenience in amounts to be determined and **ORDER** collective recovery of these sums;
5. **CONDEMN** the Defendants, solidarily, to pay to each Class Member and amount to be determined in punitive damages and **ORDER** collective recovery of these sums;
6. **CONDEMN** the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date

of service of the Application to authorize a class action;

7. **ORDER** the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
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. **CONDEMN** the Defendants, solidarily, to bear the costs of the present action including the cost of notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

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;

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;

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;

THE WHOLE with costs including publication fees.

Montreal, September 16, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Lea Bruyere

Attorneys for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

T: (514) 379-1572 / F: (514) 221-4441

Email: jzukran@lpclex.com /

lbruyere@lpclex.com

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

Filing of a judicial application

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

Defendant's answer

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

Failure to answer

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

Content of answer

In your answer, you must state your intention to:

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

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

Change of judicial district

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

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

Transfer of application to Small Claims Division

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

Calling to a case management conference

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

Exhibits supporting the application

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

- Exhibit P-1:** *En liasse*, information statements from the Quebec Enterprise Register for the Defendants;
- Exhibit P-2:** August 22, 2022, press release issued by Enercare Inc. titled "Enercare accelerates Canadian Growth with acquisition of HydroSolution";
- Exhibit P-3:** Extract of HydroSolution's homepage (www.hydrosolution.com);
- Exhibit P-4:** "About Us" section of the HydroSolution website (<https://www.hydrosolution.com/en/about-us/>);
- Exhibit P-5:** *En liasse*, extracts of HydroSolution's English and French webpages concerning water heaters from June and August 2023, using the Wayback Machine;
- Exhibit P-6:** *En liasse*, extracts of HydroSolution's English and French webpages concerning water heaters from September 2024 (www.hydrosolution.com/en/repairs/);

- Exhibit P-7:** Extract of HydroSolution’s website titled “Benefit of rental” (www.hydrosolution.com/en/rent-or-purchase/#benefits-renting);
- Exhibit P-8:** Applicant’s HydroSolution monthly statement issued on August 14, 2024;
- Exhibit P-9:** August 26, 2024, Journal de Montréal article titled “« Ça n’a aucun bon sens »: une famille forcée de vivre sans eau chaude depuis la tempête Debby”;
- Exhibit P-10:** Applicant’s lease agreement with HyrdoSolution;
- Exhibit P-11:** Proposal no. S1054688 sent by HydroSolution to the Applicant dated June 22, 2023;
- Exhibit P-12:** *En liasse*, pictures of Applicant’s water heater;
- Exhibit P-13:** Insurance Bureau of Canada’s statement dated September 13, 2024, titled “*The costliest severe weather event in Quebec’s history – August flooding caused nearly \$2.5 billion in insured damage*”;
- Exhibit P-14:** Audio recording of the phone conversation between the Applicant and HydroSolution on September 6, 2024;
- Exhibit P-15:** Copy of invoice dated August 19, 2024, issued by HydroSolution to another Class Member;
- Exhibit P-16:** *En liasse*, photos of Applicant’s heater and extract of Rona’s website for same water heater (<https://www.rona.ca/en/product/giant-super-cascade-60-gal-23-1-2-in-4500-w-electric-water-heater-172e-3-f8m-0135002>);
- Exhibit P-17:** Copy of judgment rendered on January 29, 2019, in Court of Quebec file no. 500-32-704328-188.

These exhibits are available on request.

Notice of presentation of an application

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

Montreal, September 16, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Lea Bruyere

Attorneys for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

Email: jzukran@lpclex.com /

lbruyere@lpclex.com

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

TO: HYDROSOLUTION, S.E.C.
110-7100 Jean-Talon Street East
Anjou, Quebec, H1M 3S3

ENERCARE RECHARGE LIMITED PARTNERSHIP
7400 Birchmount Road
Markham, Ontario, L3R 5V4

HYDROSOLUTION LTÉE
110-7100 Jean-Talon Street East
Anjou, Quebec, H1M 3S3

Defendants

TAKE NOTICE that the Applicant's *Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action Division.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, September 16, 2024

(s) LPC Avocats

LPC AVOCATS

Mtre Joey Zukran / Mtre Lea Bruyere
Attorneys for the Applicant
276 Saint-Jacques Street, Suite 801
Montréal, Québec, H2Y 1N3
Telephone: (514) 379-1572
Telecopier: (514) 221-4441
Email: jzukran@lpclex.com /
lbruyere@lpclex.com