CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-001351-242

L[redacted] OHAYON, [redacted]

Applicant

v.

STARBUCKS COFFEE CANADA, INC., legal person having a principal establishment at 3724 Taschereau Boulevard, City and District of Longueuil, Quebec, J4V 2H8

and

STARBUCKS CORPORATION, legal person having its head office at 2401 Utah Avenue South, Seattle, Washington, 98134, U.S.A.

and

FOODTASTIC INC., (a.d.b.a. **SECOND CUP**) legal person having its head office at 310-9300 Route Transcanadienne, Saint-Laurent, District of Montreal, Quebec, H4S 1K5

and

THE TDL GROUP CORP., legal person having its establishment at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

RESTAURANT BRANDS INTERNATIONAL INC., legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

and

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP, legal person having its head office at 130 King Street West, Suite 300, Toronto, Ontario, M5X 1E1

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, THE APPLICANT STATES:

1. Approximately 44% of Canadians are lactose intolerant according to a census documented in the *Journal of the Canadian Association of Gastroenterology*. Lactose intolerance is defined as "*a digestive, malabsorption disorder where one is unable to properly digest dairy products*", Applicant disclosing **Exhibit P-1**;

2. For years, Starbucks, Second Cup and Tim Hortons have been price gouging consumers who requested non-dairy substitutes in their beverages, either because of medical reasons (such as lactose intolerance), or other health, personal, social or environmental reasons (such as vegans representing approximately 5% of Canadians);

3. Treating non-dairy substitutes as "extras" instead of as replacements allows Starbucks, Second Cup and Tim Hortons to literally keep "*le beurre et l'argent du beurre*", by charging an additional $0.80 plus taxes (Starbucks and Second Cup) and $0.50 plus taxes (Tim Hortons) for non-dairy substitutes that cost them a fraction of that amount, at most;

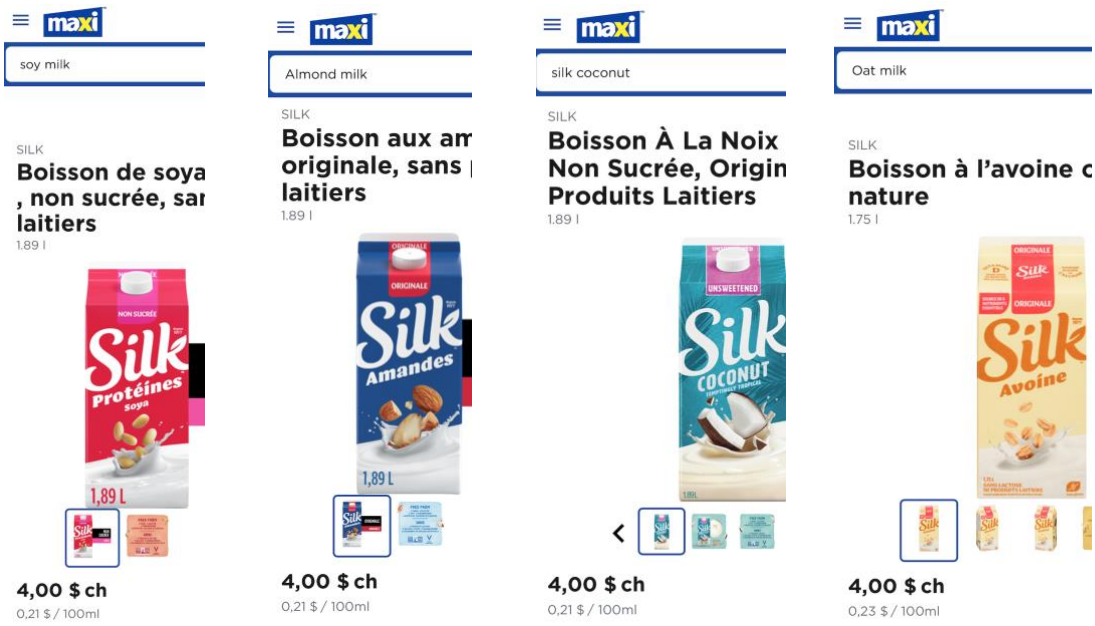
4. On October 30, 2024, Starbucks effectively admitted, or at the very least conceded, that coffee shops should not be charging Canadians for non-dairy substitutes, issuing a public statement titled "Big news about non-dairy milk", notably declaring the following, as appears from **Exhibit P-2**:

> Starting November 7, customers in U.S. and Canada company-owned and operated stores will no longer pay extra for customizing their beverage with non-dairy milk – including soymilk, oatmilk, almondmilk and coconutmilk…
>
> At the heart of the Starbucks Experience has, and always will be, the ability to customize beverages and our baristas' expertise in helping you find, and craft your Starbucks beverage. **Substituting non-dairy milk in a handcrafted beverage is the second most requested customization from our customers**, behind adding a shot of espresso. When this change goes into effect on November 7, **almost half of our customers in the U.S.**

who pay to modify their beverage at company-operated stores will see a price reduction of more than 10%.

5. Applicant and her counsel's preliminary research demonstrates that the cost for non-dairy substitutes (such as almond, soy, oat or coconut milk) at the retail level is not any more expensive than regular milk and sometimes even less expensive. For example, soymilk, almondmilk and coconutmilk retail for **$0.21 per 100 ml** and oatmilk retails for **$0.23 per 100 ml** – all while regular *Québon* milk (the least expensive milk brand) retails for **$0.23 per 100 ml**, as it appears from the Maxi product description pages communicated *en liasse* as **Exhibit P-3**:

Non-dairy substitutes ($0.21-$0.23 per 100 ml):



Milk ($0.23 per 100 ml):

6. Applicant hereby alleges, consistent with Starbucks' declaration (Exhibit P-2) and the evidence above (Exhibit P-3) that the cost for non-dairy substitutes at the wholesale level is the same for the Defendants as regular milk. Applicant consents in advance to the Defendants filing proof of their actual costs as preliminary evidence and invites them to do so at the authorization stage. Finally, there is of course no additional labor costs for the barista to make a latte with a non-dairy substitute versus regular milk. Yet, charging for non-dairy substitutes is ironically a real cash-cow for the Defendants;

7. Consequently, the Applicant seek authorization to institute a class action on behalf of the following classes:

"**Starbucks Class**" All consumers in Canada who, between December 30, 2021 and November 7, 2024, were charged for a non-dairy substitute when purchasing a Starbucks beverage;	« **Groupe Starbucks** » Tous les consommateurs au Canada qui, entre le 30 décembre 2021 et le 7 novembre 2024, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Starbucks;
"**Second Cup Class**" All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Second Cup beverage;	« **Groupe Second Cup** » Tous les consommateurs au Canada qui, depuis le 30 décembre 2021, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Second Cup;
"**Tim Hortons Class**" All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Tim Hortons beverage;	« **Groupe Tim Hortons** » Tous les consommateurs au Canada qui, depuis le 30 décembre 2021, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Tim Hortons;

I. THE PARTIES

8. Applicant resides in the judicial district of Montreal and is a consumer within the meaning of the Civil Code and the *Consumer Protection Act* ("**CPA**");

9. The Defendants are all "*merchants*" within the meaning of the Civil Code and the *CPA* and their activities are governed by these legislation, among others;

(1) Starbucks

10. Defendant Starbucks Coffee Canada, Inc. and Defendant Starbucks Corporation (collectively "**Starbucks**") own and operate the Starbucks coffee shops, Applicant disclosing the extract of the CIDREQ as **Exhibit P-4**. Starbucks sets and imposes the menu prices in the Starbucks coffee shops across Canada (in-

store and on the mobile applications), including the extra charges for non-dairy substitutes;

(2) <u>Second Cup</u>

11. Defendant Foodtastic Inc. owns the Second Cup coffee chain and has its head office in the judicial district of Montreal, Applicant disclosing the extract of the CIDREQ as **Exhibit P-5**. Foodtastic Inc. sets and imposes the menu prices in Second Cup locations across Canada, including the extra charges for non-dairy substitutes (in-store and on the mobile applications). For ease of reading, Foodtastic Inc. is referred to herein as "**Second Cup**";

(3) <u>Tim Hortons</u>

12. Defendant, The TDL Group Corp. ("**TDL**"), is registered as a restaurant and also operates under the name "Tim Hortons", as it appears from copy of its *CIDREQ* report disclosed as **Exhibit P-6**. TDL is the franchisor of the Tim Hortons brand and system in Canada. TDL also owns and operates certain Tim Hortons restaurants in Canada. TDL sets and imposes the menu prices in Tim Hortons locations across Canada (in-store and on the mobile applications), including the extra charges for non-dairy substitutes;

13. Defendant, Restaurant Brands International Inc. (hereinafter "**RBI**"), is a publicly traded company on the Toronto Stock Exchange (symbol: QSR.TO) and on the New York Stock Exchange (symbol: QSR). The Applicant discloses herewith a copy of RBI's *CIDREQ* report as **Exhibit P-7**;

14. Defendant, Restaurant Brands International Limited Partnership ("**RBILP**"), is a subsidiary of RBI and the indirect parent of The TDL Group Corp. The Applicant discloses herewith a copy of RBI LP's *CIDREQ* report as **Exhibit P-8**;

15. Together, the Defendants TDL, RBI and RBILP operate the Tim Hortons coffee chain (including the mobile application) and are collectively referred to herein as "**Tim Hortons**";

16. In the "About Us" section of its website (www.timhortons.ca), Tim Hortons describes itself as "*Canada's largest restaurant chain*" and a "*proud symbol of our country and its values*", Applicant disclosing **Exhibit P-9**:

> "Tim Hortons is now proud to be Canada's largest restaurant chain serving over **5 million cups of coffee** every day with 80% of Canadians visiting a Tims in Canada at least once a month. More than a coffee and bake shop, Tim Hortons is part of the fabric of Canada and a proud symbol of our country and its values."

17. Selling "*5 million cups of coffee every day*" to a population where approximately 44% are lactose intolerant (Exhibit P-1) means that 2.2 million of these coffees are potentially upsold by $0.50 per cup on account of a non-dairy substitute.

Assuming that 50% will take their coffee "black", this leaves 1.1 million cups of coffee x $0.50 surcharge for a non-dairy substitute = $550,000 per day of pure price gouging of non-dairy consuming customers ($550,000 x 365 x 3 years = $602,250,000.00);

18. During their respective class periods, all of the Defendants charged Class members abusive amounts (both on an individual and aggregate basis) to replace milk with a non-dairy substitute in the beverages they sell to consumers across Canada;

19. In the case of Starbucks and Second Cup, the surcharges of $0.80 are objectively lesionary and abusive on their face, because they are almost double the Tim Hortons surcharge of $0.50. Quebec jurisprudence and doctrine state that a sanctionable disproportion exists when it is equivalent to twice the market value of the good. Here, just with a market comparison, there is no doubt that Starbucks and Second Cup sold non-dairy substitutes for twice their normal market value, thereby triggering section 8 CPA and article 1437 CCQ;

20. In the case of Tim Hortons – and as demonstrated above at paragraph 8 (and Exhibit P-3), there is also no doubt that it sells non-dairy substitutes for multiples of its wholesale cost;

II. CONDITIONS REQUIRED TO AUTHORIZE A CLASS ACTION (S. 575 C.C.P.):

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

Applicant's claim against Second Cup

21. During the Class Period, Applicant was a Concordia University student;

22. Applicant has been religiously vegan for nine (9) years (she does not ingest animal source foods such as milk, meat, cheese, etc.);

23. Over the past several years, Applicant has regularly purchased and ingested beverages from Second Cup's Loyola campus location once per week on average (and more during exam periods). She usually orders a medium matcha latte with soy or oat milk and pays a surcharge of $0.80 plus taxes each time. Second Cup describes this drink as follows, Applicant disclosing **Exhibit P-10**:

> Creamy and well balanced, this tea latte tea contains lightly sweetened matcha and **creamy steamed milk**. Try it plant based with Oatmilk* (*Surcharge applies).

24. When Applicant pays Second Cup $6.00 for a regular (i.e. dairy with "*creamy steamed milk*") medium matcha latte, the approximate 280 ml of regular milk is of course included in the price. However, for the Applicant's orders, Second Cup keeps this 280 ml of milk in its fridge and replaces it with 280 ml of soy or oat milk. As alleged at paragraph 5 above and demonstrated in Exhibit P-3, there is

no additional cost to Second Cup to substitute regular milk ($0.23 per 100 ml) for soy milk ($0.21 per 100 ml) or oat milk ($0.23 per 100 ml). Yet, Second Cup systematically takes advantage of the situation and gouges consumers by treating the substitution as an “extra”;

25. Second Cup also thereby increases the sale price by 13.33% ($6.00 to $6.80) without incurring any additional costs;

26. In the circumstances, there is clearly a disproportion (within the meaning of section 8 CPA) between the respective obligations of the parties that amounts to exploitation of the consumer. Additionally, charging consumers 13.33% more for substituting accessory “A” with accessory “B” that costs the merchant the same amount (thereby effectively selling accessory “B” for more than 10 times its wholesale cost) is excessive, harsh and unconscionable;

27. Applicant hereby claims a reduction of her obligations equivalent to the aggregate of the $0.80 surcharges pursuant to s. 272(c) CPA. She also claims punitive damages from Second Cup in an amount to be determined;

28. Applicant adds that she was always unhappy about paying the $0.80 surcharge which is essentially a “vegan tax” in her case, but it was obviously impossible for her to negotiate the price with the barista. Nevertheless, the CPA, which prohibits abusive or unconscionable practices, is of public order and allows the Applicant to request a reduction of her obligations in the circumstances;

Applicant’s claim against Starbucks

29. To avoid repetition, Applicant refers to the above paragraphs (including paragraphs 25-26) that apply *mutatis mutandis* to Starbucks, and adds the following;

30. Applicant has also been purchasing beverages from Starbucks over the past few years, mostly from the location on Queen-Mary in Montreal;

31. Applicant generally purchases one of the seasonal drinks (such as praline iced coffee - with oat milk as an extra) and, up until November 7, 2024, paid an additional $0.80 plus taxes when substituting regular milk with soy or oat milk;

32. Over the past few years, Applicant also regularly ordered iced and hot coffee with caramel syrup sweetener (from the pump) and was charged an extra $0.80 to substitute regular milk with soy or oat milk;

33. Unlike Second Cup and Tim Hortons, it seems that Starbucks had a conscious awakening and finally stopped abusing and penalizing their lactose intolerant and vegan customers, as well as those who choose non-dairy substitutes for personal reasons. As such, Applicant will not claim punitive damages from Starbucks at this stage, and seeks a reduction of her obligations equivalent to the aggregate of the $0.80 surcharges pursuant to section 272(c) CPA;

The claim against Tim Hortons

34. Applicant does not have a direct cause of action against Tim Hortons, but has standing to include them as Defendants herein pursuant to the Supreme Court decision in *Marcotte*;

35. To avoid repetition, Applicant refers to the above paragraphs (including paragraphs 25-26) that apply *mutatis mutandis* to Tim Hortons, and adds the following;

36. Even though Tim Hortons charges $0.30 less than Second Cup and Starbucks, the reality is that there is no corresponding consideration for its $0.50 surcharge;

37. Applicant refers to a June 25, 2020 press release issued by Tim Hortons in which it notably declares that "*Tim Hortons is partnering with* ***Danone to have its Silk®*** *Almond Beverage made available to restaurants and guests*", Applicant disclosing **Exhibit P-11**;

38. Applicant again reemphasizes the allegations at paragraph 5 above (and Exhibit P-3) which are all the more relevant for Tim Hortons because they prove that the price for Danone's Silk almond beverage ($0.21 per 100 ml) costs less than Québon milk ($0.23 per 100 ml);

39. Consequently, Applicant hereby claims, on behalf of all Tim Hortons Class Members, a reduction of their obligations equivalent to the aggregate of the $0.50 surcharges pursuant to section 272(c) CPA. She also claims punitive damages from Tim Hortons on their behalf in an amount to be determined on the merits;

Objective Lesion

40. Applicant suffered objective lesion by paying $0.80 each time for a substitute that should have been provided free of charge as there is no hard cost to the Defendants to substitute milk for the non-dairy substitutes. Indeed, Starbucks has effectively proved this by no longer charging for this (Exhibit P-2);

41. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the non-dairy substitutes (in this case either $0.80 or $0.50) and the "wholesale" cost to the merchant (in this case, the difference in the wholesale cost of milk which is already included in the total price charged to the consumer and the non-dairy substitute is very close to zero or zero, as demonstrated in Exhibit P-3);

42. There is therefore an important disproportion between the $0.50 to $0.80 charged to Class Members and the value of the goods provided by the Defendants;

43. The Applicant believes that further evidentiary support for her allegations will

come to light after a reasonable opportunity for discovery;

44. Applicant's damages are a direct and proximate result of the Defendants' misconduct;

45. As a result of the foregoing, the Applicant and Class members are justified in claiming a reduction of their obligations, as well as punitive damages based on repeated violations of section 8 *CPA* (pursuant to section 272 *CPA*), as well as damages and a declaratory judgment pursuant to article 1437 *CCQ*;

The Level at which the Disproportion becomes Exploitative

46. The fact that Starbucks now charges $0.00 for almost the exact same quantities of non-dairy substitutes that Second Cup and Tim Hortons respectively charge $0.80 and $0.50 for, is representative that the fair market value for this substitution is indeed $0.00;

47. Starbucks has far less market share than Tim Hortons in Canada and now charges $0.00 for a non-dairy substitute that Tim Hortons charges $0.50 for (and which does not cost them any more than the regular milk already being charged to the consumer);

48. As it appears from the foregoing, the available evidence at this stage demonstrates that:

- all of the Defendants intentionally charged for non-dairy substitutes when they could easily – and at no additional cost – include them in the beverage price (just as Starbucks started doing as of November 7, 2024);

- the costs, if any at all, associated to substituting milk for non-dairy are either inexistent or very minimal;

49. The Applicant therefore submits that the amounts of $0.80 or $0.50 charged by the Defendants are disproportionate, exploitative, unconscionable and abusive, and bear no relation to the underlying cost of providing non-dairy substitutes (and are therefore illegal);

50. Given that Applicant hereby seeks to have the abusive surcharges declared null, Applicant is accordingly entitled to claim and does hereby claim from Starbucks, Second Cup and Tim Hortons the aggregate of the sums paid on account of a surcharge for non-dairy substitutes;

B) THE COMMON QUESTIONS

51. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the violation of section 8 of the *CPA* and of 1437 *CCQ* by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;

52. Applicant alleges that all of the Defendants acted in bad faith in gouging consumers by charging them $0.50 to $0.80 for non-dairy substitutes that costs them no more than regular milk (and which Starbucks offers today at no additional cost);

53. The claims of every member of the Class are founded on very similar facts to the Applicant's claims against Second Cup and Starbucks;

54. 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;

55. Every member of the Class was charged an abusive, disproportionate and unconscionable amount to replace milk with a non-dairy option that did not create any additional hard or labor costs for the Defendants;

56. By reason of Defendants' unlawful conduct, Applicant and every Class member have suffered damages, which they may collectively claim against the Defendants;

57. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;

58. In taking the foregoing into account, all members of the Class are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 *CPA*;

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

    a. reimbursement of the whole (or a portion) of the surcharge paid for the non-dairy substitute; and

    b. punitive damages in amount to be determined.

60. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;

61. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;

62. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:

    a) Is there such a disproportion between the surcharge charged to Class members for non-dairy substitutes and the value of the latter compared to regular milk included in the original price, that the charging of such a surcharge constitutes exploitation and objective lesion within the meaning

of section 8 CPA?

b) Do the surcharges for non-dairy substitutes charged by the Defendants cause excessive and unreasonable prejudice to consumers, such that the contractual clauses allowing them to charge such fees are abusive within the meaning of article 1437 of the C.C.Q.?

c) Is the clause concerning surcharges for non-dairy substitutes in the Defendants' various service menus/contracts null, entitling Class members to a full reimbursement of the amounts paid for non-dairy substitutes?

d) In the alternative, must the Class members' obligations be reduced and if so, by how much?

e) Are the Class members entitled to punitive damages and if so, what amounts must the Defendants pay?

f) Did the Defendants act in bad faith?

C) THE COMPOSITION OF THE CLASS

63. 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;

64. The size of the Class is conservatively estimated to include millions of consumers across Canada, including in Quebec;

65. The names and addresses of all persons included in the Class are not known to the Applicant, however, many are in the possession of the Defendants because many orders are placed using their respective mobile applications (Defendants now have the legal obligation to preserve this information, including Class member contact information);

66. 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;

67. 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

68. The Applicant request to 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;

69. Additionally, the 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 the other members, recognized and protected so that they can receive an adequate compensation according to the law;

b) she is determined to do her part in order to hold the Defendants accountable and is taking this action to obtain both financial compensation and a practice change from Second Cup and Tim Hortons;

c) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action; and

d) she cooperates and will continue to fully cooperate with her attorneys;

70. As for identifying other Class members, Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for her to attempt to identify them given their sheer number;

III. DAMAGES

71. During the Class Period, the Defendants have generated many millions of dollars by price gouging consumers as alleged herein;

72. All of the Defendants' misconduct is reprehensible and to the detriment of vulnerable consumers;

73. All of the Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec and across Canada, including:

a) Quebec's *Consumer Protection Act*, notably sections 8 and 272;

b) The *Civil Code of Quebec*, notably articles 6, 7 and 1437;

74. In light of the foregoing, the following damages may be claimed against the Defendants:

a) compensatory damages (or reduction of obligations), in an amount to be determined (i.e. the aggregate of the surcharges for non-dairy substitutes

charged by Defendants to Class members during the Class period); and

b) punitive damages in amounts to be determined, for the breach of obligations imposed on Defendants pursuant to section 272 *CPA*;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

75. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and declaratory judgment;

76. The conclusions that the Applicant wishes to introduce by way of an originating application are:

1. GRANT Plaintiff's action against Defendants on behalf of all the Class members;

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

3. DECLARE that the surcharges for non-dairy substitutes charged by the Defendants amount to exploitation under section 8 of the *CPA*;

4. DECLARE that the surcharges for non-dairy substitutes charged by the Defendants are excessively and unreasonably detrimental to consumers and are therefore not in good faith under article 1437 of the *CCQ*;

5. DECLARE abusive and null the clauses in the Defendants' contracts which provide for surcharges for non-dairy substitutes;

6. CONDEMN the Defendants to pay the Plaintiff and Class members compensatory damages for the aggregate of the amounts charged as surcharges for non-dairy substitutes;

SUBSIDIARILY,

REDUCE the obligations of the Plaintiff and Class members to pay the Defendants for the surcharges for non-dairy substitutes charged to their fair market value;

7. ORDER the collective recovery of all amounts owed to the Class members on account of surcharges for non-dairy substitutes;

8. CONDEMN the Defendants to pay to each Class member an amount to be determined on account of punitive damages, and **ORDER** collective recovery of these sums;

9. CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to

authorize a class action;

10. **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;

11. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

V. JURISDICTION

77. 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 has her domicile and residence in Montreal;

78. Additionally, Second Cup has its head office in the district of Montreal, triggering the application of article 3148(1) CCQ.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **GRANT** the present application;

2. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages and declaratory judgment;

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

"**Starbucks Class**" All consumers in Canada who, between December 30, 2021 and November 7, 2024, were charged for a non-dairy substitute when purchasing a Starbucks beverage;	« **Groupe Starbucks** » Tous les consommateurs au Canada qui, entre le 30 décembre 2021 et le 7 novembre 2024, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Starbucks;
"**Second Cup Class**" All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Second Cup beverage;	« **Groupe Second Cup** » Tous les consommateurs au Canada qui, depuis le 30 décembre 2021, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Second Cup;
"**Tim Hortons Class**"	« **Groupe Tim Hortons** »

All consumers in Canada who, since December 30, 2021, were charged for a non-dairy substitute when purchasing a Tim Hortons beverage;	Tous les consommateurs au Canada qui, depuis le 30 décembre 2021, ont été facturés pour un substitut non laitier lors de l'achat d'une boisson Tim Hortons;

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

    a) Is there such a disproportion between the surcharge charged to Class members for non-dairy substitutes and the value of the latter compared to regular milk included in the original price, that the charging of such a surcharge constitutes exploitation and objective lesion within the meaning of section 8 CPA?

    b) Do the surcharges for non-dairy substitutes charged by the Defendants cause excessive and unreasonable prejudice to consumers, such that the contractual clauses allowing them to charge such fees are abusive within the meaning of article 1437 of the C.C.Q.?

    c) Is the clause concerning surcharges for non-dairy substitutes in the Defendants' various service menus/contracts null, entitling Class members to a full reimbursement of the amounts paid for non-dairy substitutes?

    d) In the alternative, must the Class members' obligations be reduced and if so, by how much?

    e) Are the Class members entitled to punitive damages and if so, what amounts must the Defendants pay?

    f) Did the Defendants act in bad faith?

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

    1. **GRANT** Plaintiff's action against Defendants on behalf of all the Class members;

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

    3. **DECLARE** that the surcharges for non-dairy substitutes charged by the Defendants amount to exploitation under section 8 of the *CPA*;

    4. **DECLARE** that the surcharges for non-dairy substitutes charged by the

Defendants are excessively and unreasonably detrimental to consumers and are therefore not in good faith under article 1437 of the *CCQ*;

5. **DECLARE** abusive and null the clauses in the Defendants' contracts which provide for surcharges for non-dairy substitutes;

6. **CONDEMN** the Defendants to pay the Plaintiff and Class members compensatory damages for the aggregate of the amounts charged as surcharges for non-dairy substitutes;

   SUBSIDIARILY,

   REDUCE the obligations of the Plaintiff and Class members to pay the Defendants for the surcharges for non-dairy substitutes charged to their fair market value;

7. **ORDER** the collective recovery of all amounts owed to the Class members on account of surcharges for non-dairy substitutes;

8. **CONDEMN** the Defendants to pay to each Class member an amount to be determined on account of punitive damages, and **ORDER** collective recovery of these sums;

9. **CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

10. **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;

11. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

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

6. **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 Defendant to pay for said publication costs;

7. **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;

8. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

9. **THE WHOLE** with costs including publication fees.

Montreal, December 30, 2024

(s) LPC Avocats

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

Filing of a judicial application

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

Defendant's answer

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

Failure to answer

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

Content of answer

In your answer, you must state your intention to:

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

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

Change of judicial district

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

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

Transfer of application to Small Claims Division

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

Calling to a case management conference

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

Exhibits supporting the application

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

Exhibit P-1: Copy of article titled “Lactose Intolerance” from the Canadian Digestive Health Foundation;

Exhibit P-2: Copy of public statement issued by Starbucks on October 30, 2024, titled “Big news about non-dairy milk”;

Exhibit P-3: *En liasse*, screen captures taken from the Maxi website on December 29, 2024, showing the prices for non-dairy substitutes and Quebon milk;

Exhibit P-4: Business Information Statement for Starbucks Coffee Canada, Inc.;

Exhibit P-5: Business Information Statement for Foodtastic Inc.;

Exhibit P-6: Business Information Statement for The TDL Group Corp.;

Exhibit P-7: Business Information Statement for Restaurant Brands International Inc.;

Exhibit P-8: Business Information Statement for Restaurant Brands International Limited Partnership;

Exhibit P-9: About Us" section of Tim Hortons website (www.timhortons.ca);

Exhibit P-10: Second Cup webpage for its matcha latte;

Exhibit P-11: June 25, 2020, press release issued by Tim Hortons concerning its partnership with Danone to have its Silk non-dairy beverages.

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, December 30, 2024

(s) LPC Avocats

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

TO: STARBUCKS COFFEE CANADA, INC.
3724 Taschereau Boulevard
Longueuil, Quebec, J4V 2H8

STARBUCKS CORPORATION
2401 Utah Avenue South
Seattle, Washington, 98134, U.S.A.

FOODTASTIC INC., (a.d.b.a. **SECOND CUP**)
310-9300 Route Transcanadienne
Saint-Laurent, Quebec, H4S 1K5

THE TDL GROUP CORP.
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

RESTAURANT BRANDS INTERNATIONAL INC.
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP
130 King Street West, Suite 300
Toronto, Ontario, M5X 1E1

DEFENDANTS

TAKE NOTICE that Applicants' *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 a date and time to be set by the Court.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, December 30, 2024

(s) LPC Avocats

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