

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

500-06-000865-176

(Class Action)
SUPERIOR COURT

MOSHE CHETRIT, domiciled at 6869 Holland road,
Montreal, district of Montreal, Province of
Quebec, H4W 1L4

Applicant

-vs-

SOCIÉTÉ EN COMMANDITE TOURAM, having its
head office at 1440 Sainte Catherine Street West,
suite 600, Montreal, district of Montreal,
Province of Quebec, H3G 1R8

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLE 571 AND FOLLOWING C.C.P)**

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

I. GENERAL PRESENTATION

A) THE ACTION

1. Applicant wishes to institute a class action on behalf of the following class, of which he is a member, namely:

All consumers within the meaning of Quebec's Consumer Protection Act who, from April 19th to 20th, 2016 (the "**Class Period**"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant, who did not respect the price it initially

advertised.

or any other class to be determined by the Court.

(hereinafter referred to as the "**Class**")

2. Applicant is a consumer within the meaning of Quebec's *Consumer Protection Act* (hereinafter the "**CPA**");
3. Defendant is a limited partnership carrying on any activity without restriction as a travel agency and offers tour operator services, as it appears from extracts of the enterprise's information statements from the enterprise register (CIDREQ), Applicant disclosing **Exhibit P-1**;
4. The Defendants are merchants within the meaning of the *CPA* and their activities are governed by this legislation, among others;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

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

i. Circumstances of Applicant's Purchase

5. Applicant's brother was getting married in Israel on July 20th, 2016, and so the Applicant was searching several months in advance for a flight and hotel in Israel for his wife, himself and their three children;
6. On **April 20th, 2016**, Applicant saw a vacation package offered on Defendant's website for a flight from Montreal to Tel-Aviv, and for two hotel rooms at the Dan Panorama hotel in Tel-Aviv, all for \$3,527.35 including taxes (for 2 adults and 3 children);
7. Applicant decided to immediately accept the Defendant's offer and completed the purchase for the flights and hotel rooms;
8. The package was advertised at \$700.69 per person for an economy class flight from Montreal to Tel-Aviv from July 18th, 2016, returning on August 1st, 2016, Applicant disclosing *en liasse* the email confirmation he received from Defendant on April 20th, 2016, at 6:25 a.m., along with the invoice #1440162-1 attached thereto in PDF format as **Exhibit P-2**;
9. As it appears from his invoice, Exhibit P-2, Applicant purchased a total of five (5) tickets for his family (for himself, his wife and 3 children) for a total of **\$3,527.35**;

10. As it further appears from his invoice, Exhibit P-2, the package also included two hotel rooms and the Dan Panorama hotel in Tel-Aviv from July 19th, 2016, to August 1st, 2016;
11. On **April 20th, 2016**, Defendant charged the Applicant's American Express credit card in the amount of \$3,527.35 (posted to his account on April 21st, 2016), which corresponds to the total amount of his purchase appearing on his invoice #1440162-1, Exhibit P-2, as it appears from a copy of the Applicant's American Express statement, Applicant disclosing **Exhibit P-3**;

ii. Defendant's Cancellation of Applicant's Purchase

12. On **April 21st, 2016**, at 6:23 a.m. Defendant sent Applicant an email with a PDF attachment containing "*information pertaining to a new or revised transaction*", Applicant disclosing *en liasse* the email dated April 21st, 2016, along with what appears to be a revised invoice bearing the #1440162-2 as **Exhibit P-4**;
13. On **April 22nd, 2016**, Defendant refunded the Applicant's American Express credit card in the amount of \$3,527.35, as it appears from Exhibit P-3;
14. On **April 22nd, 2016**, at 23h10 in the evening, Defendant sent Applicant an e-mail confirming that they were cancelling his purchase due to a pricing error and offered him compensation, Applicant disclosing *en liasse* a copy of the email sent to him, as well the 5 travel credits offered to him and the members of his family as **Exhibit P-5**;
15. Applicant refused the compensation offered to him by Defendant and insists that his contract be honoured, or that he be compensated for the difference between the price he paid and what he would have to pay for the same package following Defendant's cancellation of his purchase (hereinafter the "**Lost Value**");

iii. Damages suffered by Applicant

16. Following the cancellation of his contract by Defendant, Applicant then visited Defendant's website and recalls seeing virtually identical flights and hotel packages then listed at approximately \$4,500.00 per person (including taxes), for an approximate total of \$22,500.00 for his reservation of five;
17. Applicant suffered compensatory damages equal to the difference between the Advertised Price (which was charged to his American Express) by Defendant (\$3,527.35) and the price subsequently requested by Defendant for the same itinerary ($\$4,500.00 \times 5 = \$22,500.00$), representing a Lost Value to Applicant in the amount of \$18,972.65;
18. Applicant's damages are a direct and proximate result of the Defendant's violation

and in these circumstances, Applicant's claim for both compensatory and punitive damages against Defendant is justified;

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

19. All Class members have a common interest both in proving the commission of a prohibited businesses practice (notably, the violation of paragraph c of section 224 CPA in the present case) by Defendant and in maximizing the aggregate of the amounts of their respective Lost Value as a result of Defendant's violations;
20. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether Defendant violated the CPA, by cancelling validly formed contracts that were concluded at the Advertised Price and then requiring ("*exiger*" in French) that Class members pay a higher price should they wish to receive the vacation packages they initially purchased (and were charged for on their credit cards) at the Advertised Price;
21. The claims of every member of the Class are founded on very similar facts to the Applicant's claim (the only variable being the specific itinerary);
22. Defendant failed in its obligation to honour all Class members' purchases at their own Advertised Price;
23. The prohibited practices committed by Defendant were virtually identical vis-a-vis each Class member;
24. The damages sustained by the Class members flow, in each instance, from a common nucleus of operative facts, which can be summarized as follows:
 - a) Class member is attracted to Defendant's website;
 - b) Class member purchases a vacation package from Defendant;
 - c) Class member's order is confirmed via a confirmation email sent by Defendant, along with an official invoice and itinerary attached to the confirmation email in PDF format;
 - d) Class member's credit card is charged by Defendant in the full amount of the purchase price;
 - e) Class member is later informed by Defendant (generally by email) that their purchase will not be honoured due to a pricing error;

- f) Class member's credit card is refunded;
- 25. By reason of Defendant's unlawful conduct, Applicant and members of the Class have suffered damages, which they may collectively claim against Defendant;
- 26. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
- 27. All Class members, regardless of their specific itinerary, have a common interest both in proving the commission of prohibited businesses practices by Defendant and in maximizing the amount of the resulting Lost Value;
- 28. Any disparity between the actual vacation package purchased by each Class member does not alter the fact that they have a collective interest in these questions of fault and liability;
- 29. Requiring a separate class action based on the exact same CPA violations by Defendant (notably paragraph c of section 224), solely based on the specific vacation package purchased from the Defendant, would be an important waste of resources;
- 30. Regardless of the specific vacation package purchased by the numerous Class members, they all face very similar issues of fact and identical questions of law;
- 31. Each member of the Class lost value as a result of Defendant's failure to fulfill their contractual obligations;
- 32. Every member of the Class has suffered damages equivalent to the difference between the cost of repurchasing a "cancelled" vacation package and the Advertised Price of the "cancelled" vacation package;
- 33. All of the damages to the Class members are a direct and proximate result of Defendant's misconduct;
- 34. **The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class, namely:**
 - a) Did Defendant violate sections 10, 12, 16, 40, 41, 215, 219 and/or paragraph c of section 224 CPA?
 - b) Did Class members unlawfully lose value as a result of the Defendant's violation?
 - c) If so, is the "Lost Value" formula the appropriate remedy in these circumstances?
 - d) Are the Class members entitled to compensatory damages and, if so, in what

amount?

e) Are the Class members entitled to punitive damages and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

35. 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;
36. It is safe for Applicant to presume that Defendant has a very important number of customers across Canada;
37. Applicant is unaware of the total number of Defendant's clients who had their purchases unilaterally cancelled by Defendant during the Class Period due to a pricing error, but Applicant estimates that the number of persons included in the Class is likely in the hundreds;
38. Applicant himself is aware of over a dozen other consumers in the same situation as himself;
39. The names and addresses of all the other consumers included in the Class are not known to the Applicant, however, are in the possession of Defendant;
40. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
41. 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;
42. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

43. Applicant requests that he be appointed the status of representative plaintiff;
44. Applicant is a member of the Class;
45. Applicant was very upset when his order was cancelled unilaterally by Defendant and is leading the present action because he wants to hold Defendant accountable;

46. After inquiring with friends and family members, Applicant discovered at least a dozen other people he knew who had their purchase cancelled by Defendant during the Class Period;
47. Once Defendant made its final position clear (that is, that its refuses to provide the vacation packages to consumers at the Advertised Price), Applicant felt as if he was up against a corporate giant, without much he or the others can do to defend their rights as consumers;
48. Applicant decided to contact his attorney, who he knew practices primarily in consumer protection law and who has experience in consumer protection-related class actions, to determine whether he had a cause of action;
49. Applicant then gave the mandate to his attorney to take the present action on his behalf and in the interest of the Class members;
50. Applicant is in good faith and is taking this action so that he and the Class members can recover their Lost Value and punitive damages;
51. Applicant participated in the research required for drafting the present Application;
52. Applicant is bilingual and reviewed this procedure before it was filed and served;
53. Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as to dedicate the time necessary for the present action and to collaborate with his attorney;
54. Applicant has given the mandate to his attorney to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
55. Applicant has the capacity and interest to fairly and adequately protect and represent the interests of the members of the Class;
56. Applicant, with the assistance of his attorney, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;
57. Applicant understands the nature of the action;
58. Applicant's interests are not antagonistic to those of other members of the Class;
59. Applicant's interest and competence are such that the present class action could

proceed fairly;

III. DAMAGES

60. Defendant has breached several obligations imposed on them by consumer protection and trade practice legislation in Quebec, notably:
- a) Quebec's *CPA*, including sections 10, 12, 16, 40, 41, 215, 219 and 224(c), thus rendering section 272 applicable;
61. In light of the foregoing, the following damages may be claimed against Defendant:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Defendants pursuant to section 272 *CPA*;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

62. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and declaratory judgment;
63. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT Plaintiff's action against Defendant;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;

CONDEMN the Defendant to pay Moshé Chetrit the amount \$18,972.65, save for adjustment, itemized as follows:

Vacation package value: \$22,500.00

- price advertised/charged: \$3,527.35

= \$18,972.65

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to the members of the Class an amount to be

determined in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

CONDEMN the Defendant 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;

RENDER any other order that this Honourable Court shall determine;

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

V. JURISDICTION

65. Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal for the following reasons:
- a) A great number of the members of the Class, including the Applicant, reside in the judicial district of Montreal;
 - b) Defendant has its head in the judicial district of Montreal;
 - c) Applicant's attorney practices in the judicial district of Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

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

All consumers within the meaning of Quebec's Consumer Protection Act who, from April 19th to 20th, 2016 (the "**Class Period**"), purchased a vacation package (flight, hotel, or both) from Defendant, and who, after receiving a purchase confirmation from Defendant at the price which Defendant initially advertised, subsequently had their purchase cancelled by Defendant, who did not respect the price it initially advertised.

or any other class to be determined by the Court.

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did Defendant violate sections 10, 12, 16, 40, 41, 215, 219 and/or paragraph c of section 224 CPA?
- b) Did Class members unlawfully lose value as a result of the Defendant's violation?
- c) If so, is the "Lost Value" formula the appropriate remedy in these circumstances?
- d) Are the Class members entitled to compensatory damages and, if so, in what amount?
- e) Are the Class members entitled to punitive damages and, if so, in what amount?

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

GRANT Plaintiff's action against Defendant;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the Class;

CONDEMN the Defendant to pay Moshé Chetrit the amount \$18,972.65, save for adjustment, itemized as follows:

Vacation package value: \$22,500.00
- price advertised/charged: \$3,527.35
= \$18,972.65

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in compensatory damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to the members of the Class an amount to be determined in punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative*;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

CONDEMN the Defendant 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;

RENDER any other order that this Honourable Court shall determine;

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

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notices to Class members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of LA PRESSE, the NATIONAL POST and the MONTREAL GAZETTE;

ORDER that said notices be published on the Defendant's website, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Consumers who Purchased a Vacation Package on April 19-20, 2016";

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

RENDER any other order that this Honourable Court shall determine;


The whole with costs including publications fees.

Montreal, June 6th, 2017



LPC AVOCAT INC.
Per: Me Joey Zukran
Attorney for Applicant

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LPC AVOCAT INC.

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 applicant.

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

Transfer of application to Small Claims Division

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

Calling to a case management conference

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

Exhibits supporting the application

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

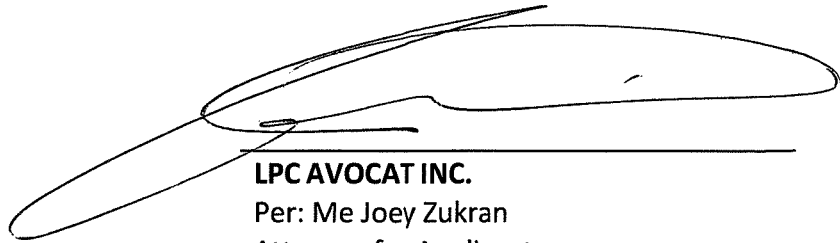
- Exhibit P-1:** Extract of the enterprise's information statements from the enterprise register (CIDREQ) for Société en commandite Touram;
- Exhibit P-2:** *En liasse*, copies of the email confirmation received by Applicant from Defendant on April 20th, 2016, at 6:25 a.m., along with invoice #1440162-1;
- Exhibit P-3:** Redacted copy of Applicant's American Express statement for April 2016;
- Exhibit P-4:** *En liasse*, copies of the email sent by Defendant to Applicant on April 21st, 2016, along with what appears to be a revised invoice bearing the #1440162-2;
- Exhibit P-5:** *En liasse*, copy of the email sent to Applicant by Defendant, along with the 5 travel credits of \$100.00 each;

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, June 6th, 2017



LPC AVOCAT INC.
Per: Me Joey Zukran
Attorney for Applicant

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LPC AVOCAT INC.

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

TO: SOCIÉTÉ EN COMMANDITE TOURAM
1440 Sainte Catherine Street West, suite 600
Montreal (Quebec) H3G 1R8

Defendant

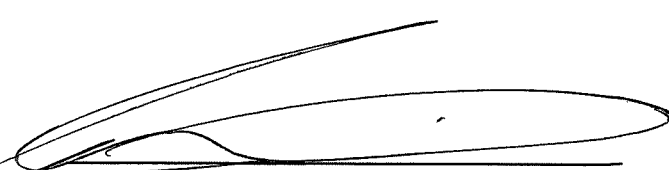
TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 6th, 2017

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LPC AVOCAT INC.


LPC AVOCAT INC.
Per: Me Joey Zukran
Attorney for Applicant

N 500-06-000865-176

(Class Action)
SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

MOSHE CHETRIT, domiciled at 6869
Holland road, Montreal, district of Montreal,
Province of Quebec, H4W 1L4

Applicant

-vs-

SOCIÉTÉ EN COMMANDITE TOURAM,
having its head office at 1440 Sainte
Catherine Street West, suite 600, Montreal,
district of Montreal, Province of Quebec,
H3G 1R8

Defendant

APPLICATION TO AUTHORIZE THE
BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF
REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)

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