

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(Class Action)

N° 500-06-000996-195

RÉAL CHARBONNEAU

Applicant

v.

LOCATION CLAIREVIEW S.E.N.C.

Respondent

**LOCATION CLAIREVIEW S.E.N.C.'S MOTION TO ADDUCE RELEVANT EVIDENCE
AT THE AUTHORIZATION HEARING
(Art. 574 of the *Code of Civil Procedure*)**

TO THE HONOURABLE JUSTICE LUSSIER, IN AND FOR THE DISTRICT OF MONTREAL, DESIGNATED TO HEAR THE APPLICATION FOR AUTHORIZATION IN THE PRESENT FILE, THE RESPONDENT LOCATION CLAIREVIEW S.E.N.C. RESPECTFULLY SUBMITS THE FOLLOWING:

I. OBJECT OF THIS APPLICATION

1. Location Claireview S.E.N.C. ("**Location Claireview**") seeks leave to file the following evidence at the hearing of the Applicant's *Demande remodifiée d'autorisation d'exercer une action collective et pour être représentant conformément au jugement rendu le 8 octobre 2019* (the "**Re-Amended Application**"):
 - a) A copy of Location Claireview's Road Vehicle Dealer Permit issued by the *Office de la protection du consommateur* (the "**OPC**") valid from January 1, 2018 to December 21, 2019 (**Exhibit RS-1**);
 - b) A copy of a photograph of a car uploaded to Location Claireview's Facebook page on May 2, 2019 (**Exhibit RS-2**);
 - c) A copy of photographs taken of some of Location Claireview's cars while they were on its property and in its showroom between May 17, 2018 and March 6, 2019 (**Exhibit RS-3**);

- d) A copy of the cover of the Applicant's Facebook page as well as one of his Facebook posts (**Exhibit RS-4**);
 - e) An affidavit from Mr. Ron Salzman, President of Location Claireview (the "**Affidavit**"), a copy of which is communicated herewith as **Exhibit R-2** to this Motion;
2. The evidence that Location Claireview seeks to adduce will enable the Court to undertake an appropriate analysis of the authorization criteria set out in Article 575 of the *Code of Civil Procedure* ("**CCP**");

II. PROCEDURAL CONTEXT

3. On April 17, 2019, the Applicant filed a *Demande d'autorisation d'exercer une action collective et pour être représentant* (the "**Originating Application**") whereby he seeks permission to institute a class action on the behalf of the following class:

Toute personne qui a conclu un contrat de location ou de vente d'automobile auprès de la défenderesse.

4. The Applicant alleges, *inter alia*, that Location Claireview is violating various provisions of the *Consumer Protection Act* ("**CPA**");
5. On June 18, 2019, the Applicant made significant amendments to his proceedings and sought permission to amend his Originating Application on September 8, 2019 as appears from the Court record;
6. On October 8, 2019, this honourable Court dismissed several of the amendments that the Applicant had sought, dismissed the Applicant's *Motion for Permission to Obtain Evidence* filed on June 21, 2019 and partially granted the Respondent's *Motion for Permission to Adduce Relevant Evidence* filed on June 26, 2019;
7. On January 24, 2020, the Applicant filed a *Demande modifiée d'autorisation d'exercer une action collection et pour être représentant conformément au jugement rendu le 8 octobre 2020* (the "**Amended Application**");
8. On May 21, 2020, the Applicant once again made significant amendments to his proceedings and sought permission to amend his Amended Application;
9. The Respondent will be contesting the Re-Amended Application;
10. Pursuant to Section 575 CCP, at the authorization stage, this Honourable Court will have to determine if the four conditions to exercise a class action are satisfied;
11. When it facilitates such analysis, the Court may allow evidence to be submitted by the Respondent, pursuant to Section 574 CCP, if it is relevant and appropriate for the purposes of assessing whether those criteria are met;

12. Location Claireview submits that the documents communicated as Exhibits RS-1 to RS-4, as well as the Affidavit, are relevant and appropriate to respond to the Applicant's new allegations and exhibits and ultimately to demonstrate that the proposed class action should not be authorized;

III. ROAD VEHICLE DEALER PERMIT NUMBER

13. The Applicant's Re-Amended Application now alleges Location Claireview's permit from the OPC (Exhibit P-1.a) in order to support its contention that Location Claireview's sales contracts violate Section 158 a) CPA (Re-Amended Application, paras. 2.2, 2.28, 3.9 & 5.3);
14. Location Claireview's position is that its sales contracts are not at issue in this case. However, should this amendment be permitted, Location Claireview submits that paragraphs 3 to 8 of the Affidavit, along with **Exhibit RS-1**, constitute relevant and appropriate evidence for the purpose of the hearing on the Re-Amended Application;
15. Paragraphs 3 to 5 provide important background information concerning the history of Location Claireview's Road Vehicle Dealer Permit;
16. Paragraph 6, along with Exhibit RS-1, explains that Location Claireview displays its yearly Road Vehicle Dealer Permit issued by the OPC in its showroom as required by law;
17. Paragraphs 7 and 8, along with Exhibit RS-1, demonstrate that the permit issued by the OPC contains both the *Société de l'assurance automobile du Québec* ("**SAAQ**") and the OPC permit number, which explains why Location has continued to use its SAAQ Road Vehicle Dealer Permit number on its sales contracts;

IV. AMOUNTS IN TRUST

18. In his Amendments, the Applicant is seeking to have this Court determine if the amount of \$2,000 that Mr. Charbonneau paid to have Location Claireview acquire the Tiguan for him was a violation of Section 254 CPA because it was not placed in trust (Re-Amended Application for Authorization, paras. 2.5, 3.6 & 5.4);
19. Should this new cause of action be permitted, Location Claireview submits that paragraphs 9 & 10 of the Affidavit constitute relevant and appropriate evidence to this issue;
12. Paragraph 9 establishes that this was the only time that Location Claireview obtained a sum of money in advance of signing a lease;
13. Paragraph 10 establishes that the Applicant was charged the amount of \$2,000 for the purpose of acquiring the 2011 Tiguan that he wanted at auction, i.e. after the contract between the parties to acquire the Tiguan was formed and that there is therefore no violation fo Section 254 CPA;

V. EXHIBIT P-2.1

14. In his Re-Amended Application, Mr. Charbonneau seeks to introduce certain advertisements posted to Location Claireview's Facebook page in order to support its allegation that Location Claireview does not place a label on its cars in accordance with Section 155 CPA (Re-Amended Application for Authorization, para. 2.6 & Exhibit P-2.1);
15. Location Claireview submits that paragraphs 11 through 16 of the Affidavit, along with **Exhibits RS-2 & RS-3**, constitute relevant and appropriate evidence for the purpose of the hearing on the Re-Amended Application;
16. Paragraphs 11 & 12 establish that the selective photographs found at Exhibit P-2.1 were taken solely for advertising purposes and do not represent how Location Claireview's cars appear on its property and in its showroom when they are viewed in person by potential customers;
17. Paragraphs 13 & 14, along with supporting Exhibit RS-2, explains the circumstances in which Location Claireview uploads advertisements to its Facebook page as well as why, for the purposes of these advertisements only, any identifying material are exceptionally removed from the vehicles;
18. Paragraphs 15 & 16, along with supporting Exhibit RS-3, demonstrate that, aside from when a car is being photographed for advertising purposes, every car in Location Claireview's showroom and property has the label required by law;
19. In fact, Me Nazem himself admitted in an email to the Court on May 21, 2020 that:

Par souci d'intégrité et d'équité envers la défenderesse, je vous informe que les photographies P-2.1 ne constituent pas toutes les photographies publicitaires de la défenderesse. Sur sa page Facebook, certaines d'autres photographies démontrent un reflet et un objet blanc près du pare-brise de certaines voitures. Mais, afin d'éviter un débat sur la nature du reflet ou de l'objet blanc, seules les photographies qui ne contenaient clairement pas d'étiquette ont été utilisées à la pièce P-2.1.

VI. THE APPLICANT'S FACEBOOK PAGE

20. In his Re-Amended Application, Mr. Charbonneau alleges that he has created a Facebook page to inform potential class members of the case in order to bolster his claim that he is an appropriate representative of the class (Re-Amended Application, para 11.7);
21. Location Claireview submits that paragraphs 17 & 18 of the Affidavit, along with Exhibit RS-4, constitute relevant and appropriate evidence for the purpose of the hearing on the Re-Amended Application;

22. Indeed, paragraphs 17 & 18, along with supporting **Exhibit RS-4**, clearly contradict the Applicant's allegation that he has created a Facebook page to inform potential members of the class by demonstrating that it is simply not true;

VII. CONCLUSION

23. Both the Affidavit of Mr. Salzman and the evidence contained in Exhibits RS-1 to RS-4 are relevant and appropriate in order to allow Location Claireview to respond to the new allegations and exhibits proposed by the Applicant in his Re-Amended Application, and will enable this Court to decide whether the conditions for authorization have been met;

24. This application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Motion to Adduce Relevant Evidence at the Authorization Hearing*;

AUTHORIZE Respondent Location Claireview S.E.N.C. to file the following evidence at the hearing on the motion for authorization of the class action:

- a) A copy of Location Claireview's Road Vehicle Dealer Permit issued by the *Office de la protection du consommateur* valid from January 1, 2018 to December 21, 2019 (**Exhibit RS-1**);
- b) A copy of an advertisement for a car uploaded to Location Claireview's Facebook page on May 2, 2019 (**Exhibit RS-2**);
- c) A copy of photographs taken of some of Location Claireview's cars while they were taken on its property and in its showroom between May 17, 2018 and March 6, 2019 (**Exhibit RS-3**);
- d) A copy of the cover of the Applicant's Facebook page as well as a one of his Facebook posts (**Exhibit RS-4**);
- e) An affidavit from Mr. Ron Salzman, president of Location Claireview (the "**Affidavit**") (**Exhibit R-2 to this Motion**).

THE WHOLE without costs, except in the event of contestation.

MONTREAL, this 1st day of June, 2020

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Attorneys for the Respondent

LOCATION CLAIREVIEW S.E.N.C.

Our file: 5188-1

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C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

S U P E R I O R C O U R T
(Class Action)

N° 500-06-000996-195

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v.

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Respondent

**LIST OF EXHIBITS IN SUPPORT OF LOCATION CLAIREVIEW S.E.N.C.'S MOTION
TO ADDUCE RELEVANT EVIDENCE AT THE AUTHORIZATION HEARING**

Exhibit	Title
RS-1	A copy of Location Claireview's Road Vehicle Dealer Permit issued by the <i>Office de la protection du consommateur</i> valid from January 1, 2018 to December 21, 2019;
RS-2	A copy of a photograph of a car uploaded to Location Claireview's Facebook page on May 2, 2019;
RS-3	A copy of photographs taken of some of Location Claireview's cars while they were on its property and in its showroom between May 17, 2018 and March 6, 2019;
RS-4	A copy of the cover of the Applicant's Facebook page as well as one of his Facebook posts;
R-2	A copy of the affidavit from Mr. Ron Salzman, president of Location Claireview.

MONTREAL, this 1st day of June, 2020;

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Attorneys for the Respondent

LOCATION CLAIREVIEW S.E.N.C.

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NOTICE OF PRESENTATION

TO: M^e James Reza Nazem
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Attorneys for the Applicant
RÉAL CHARBONNEAU

TAKE NOTICE that the *Location Claireview S.E.N.C.'S Motion to Adduce Relevant Evidence at the Authorization Hearing* will be presented for adjudication before the Honourable Justice Sylvain Lussier, sitting in practice division in and for the District of Montreal, on **June 15th, 2020** at **9:00 a.m.**, or so soon thereafter as counsel may be heard by way of videoconference.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, this 1st day of June, 2020;

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

RÉAL CHARBONNEAU

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LOCATION CLAIREVIEW S.E.N.C.

Respondent

**LOCATION CLAIREVIEW S.E.N.C.'S
MOTION TO ADDUCE RELEVANT
EVIDENCE AT THE AUTHORIZATION
HEARING, LIST OF EXHIBITS,
EXHIBITS RS-1 TO RS-4, EXHIBIT R-2
AND NOTICE OF PRESENTATION**

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