

CANADA

(Class Action)  
SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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**M. SIDEL**

NO: 500-06-000924-189

*Applicant*

-vs.-

**L'ARÉNA DES CANADIENS INC.**, legal person duly constituted, having its head office at 1275 rue Saint-Antoine West, City of Montreal, Province of Quebec, H3C 5L2

*Defendant*

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
& TO APPOINT THE APPLICANT AS REPRESENTATIVE PLAINTIFF  
(Art. 574 C.C.P and following)**

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TO ONE OF THE HONOURABLE JUSTICES 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 group, of which she is a member, namely:

- All persons who purchased a ticket from the Defendant (whether from evenko or otherwise) and who was charged an "Electronic Ticket" fee, a "Will Call - Box Office pickup" fee, a "Mobile Ticket" fee, a "Ticketless" fee, and/or any other delivery fee to receive their tickets via email, mobile device, physical pickup, or to use their credit card as a ticket

or any other group to be determined by the Court;

(hereinafter referred to as the "Class")



2. Applicant resides in the judicial district of Montreal and is a “consumer” within the meaning of both the *Consumer Protection Act*, CQLR, c. P-40.1 (“CPA”) and the *Civil Code of Québec*, CQLR c. CCQ-1991 (“CCQ”);
3. Defendant is a “merchant” within the meaning of the CPA;
4. Applicant contends that the Defendant charges for the transfer of customers’ ticket(s) to an event otherwise than by mail or physical delivery service (i.e. UPS, etc.) that costs the Defendant either nothing or, at best, a marginal cost and is, therefore, contrary to article 8 of the CPA as well as article 1437 CCQ;
5. Further, Defendant charges a variable “Service Charge” which varies depending on the ticket price without any clear explanation as to what this fee is for or why it would fluctuate as a function of the ticket price;
6. In consequence, the Applicant and the Class Members are entitled to a full refund of these purported delivery fees (or alternatively, a reduction thereof) as well as punitive damages;

B) The Defendant

7. Defendant has its head office in Montreal, Quebec and often does business under the name evenko, the whole as appears more fully from a copy of an extract from the *Registre des entreprises*, produced herein as **Exhibit R-1**;
8. Defendant operates the evenko website (www.evenko.ca), amongst its other commercial activities;
9. On the “About evenko” section of its website, Defendant boasts the following:

“evenko is a Quebec company which is the most important independent promoter and producer in Canada. Presenting more than 1,200 musical, family and sporting events annually throughout the province of Quebec, Atlantic Canada and the eastern United States, evenko plays host to the biggest entertainers in the world and invests in the development and promotion of Quebec artists. It is the creator and producer of: Osheaga Music and Arts Festival, HEAVY MONTRÉAL, îleSoniq, '77 Montréal all held at Parc Jean-Drapeau in Montreal, the Festival YUL EAT which takes place at the Old Port of Montreal and Electro Parade Montreal. evenko is also the promoter of the Montreal ePrix for the FIA Formula E Championship. Moreover, evenko is the exclusive manager of the Bell Centre, the Corona Theatre, Place Bell in Laval, L'Étoile Banque Nationale and Le Club Dix30 in Brossard. In January 2017, Pollstar, the entertainment industry’s most respected source, ranked evenko as the top independent promoter in Canada and the 10th most important promoter in North America. The evenko trademark is the property of L'Aréna des Canadiens Inc.”



The whole as appears more fully from a copy of an extract from the Defendant's website at [www.evenko.ca](http://www.evenko.ca), produced herein as **Exhibit R-2**;

10. During 2016, evenko presented 1,224 events and based on publicly-available information, it appears that the Defendant generates tens of millions of dollars annually through the sale of tickets to live sporting, cultural or entertainment events in North America;

C) The Situation

I. Delivery Fees – Explained

11. When it sells tickets to its customers, Defendant imposes the following fees on ticket purchases:

- Facility Fee of \$3.25 per ticket; and
- Service Charge of an amount that varies based on the ticket price per ticket; and
- On the Evenko website: “Delivery Method” (“*Méthode de livraison*”) charge which gives the customer a choice of 2 options:
  - (i) “Electronic Ticket” (“*Billet Électronique*”) fee of \$5.75 per order; or
  - (ii) “Standard Mail” (“*Poste Régulière*”) fee of \$5.75 per order [if there is enough time before the show] or “Will Call - Box Office pickup” (“*Billetterie*”) fee of \$5.75 to \$7.50 per order [if it is too close to show or game time];
- For some events only: “Ticketless - Credit card required for entry” (“*Ticketless: Carte de crédit requise à l'entrée*”) fee of \$5.00-\$7.00 depending per order;
- For Montreal Canadiens hockey games: “Mobile Ticket” (“*Billet mobile*”) fee of \$5.00 per order.

12. A description of the 4 delivery methods are explained by the Defendant in their Frequently Asked Questions (“FAQ”) section of their website, as appears more fully from a copy of an extract from the Defendant's website under the title “Delivery Method | FAQ | evenko”, produced herein as **Exhibit R-3**;

13. It appears that the Defendant is the only player in its industry that charges consumers a Service Fee and then on top of that an Electronic Ticket fee, a



Mobile Ticket fee, and a Will Call fee where they are also charging a Service Fee;

14. The Electronic Ticket fee is an amount of money (\$5.75) that the Defendant charges to email consumers their electronic tickets upon completion of their order;
15. The Will Call - Box Office pickup fee is an amount of money (\$5.75 to \$7.50) that the Defendant charges to allow consumers to physically come and pick up their printed tickets at one of their box office locations;
16. The Ticketless fee is an amount of money (\$5.00-\$7.00 depending) that the Defendant charges to consumers to simply have them use their own credit cards as an entry to an event;
17. The Mobile Ticket fee is an amount of money (\$5.00) that the Defendant charges to transfer to a consumers' mobile device their electronic tickets upon completion of their order for Montreal Canadiens hockey games;
18. This action does not challenge the Standard Mail fee as there are clearly delivery costs associated with this such (i.e. stamps, envelopes, labels, etc...) and the industry recognizes this and charges varying fees for this type of ticket delivery;
19. Defendant is effectively charging consumers anywhere from \$5.00 to \$7.50 (and most often \$5.75) to either send them an email or a mobile transfer or to allow them to pick up the tickets or have them use their credit card for entry, when the cost to do so is either nothing – because the process is entirely automated – or in the case of actual physical tickets such a cost is minimal (i.e. ink and paper for printing);
20. The Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees are disproportionate, exploitative and abusive, and bear no relation to the underlying cost of sending an electronic ticket or allowing a customer to pick up the ticket (which is either \$0, minimal, or already factored into the ticket price that Defendant charges to consumers – the Applicant, for instance, was charged \$89.00 on account of “Service Fees”);
21. This proceeding seeks the full reimbursement (or alternatively, a reduction) of the Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees of between \$5.00 to \$7.50 (and most often \$5.75) that consumers paid Defendant – to receive an email, mobile transfer, allow for pick up, or to have their credit card act as a ticket – as damages, as well as, punitive damages for under article 8 CPA and article 1437 CCQ, which provide as follows:



<p>C.P.A.</p> <p>8. The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.</p>	<p>L.P.C.</p> <p>8. Le consommateur peut demander la nullité du contrat ou la réduction des obligations qui en découlent lorsque la disproportion entre les prestations respectives des parties est tellement considérable qu'elle équivaut à de l'exploitation du consommateur, ou que l'obligation du consommateur est excessive, abusive ou exorbitante.</p>
<p>C.C.Q.</p> <p>1437. An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.</p> <p>An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to the requirements of good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.</p>	<p>C.c.Q.</p> <p>1437. La clause abusive d'un contrat de consommation ou d'adhésion est nulle ou l'obligation qui en découle, réductible.</p> <p>Est abusive toute clause qui désavantage le consommateur ou l'adhérent d'une manière excessive et déraisonnable, allant ainsi à l'encontre de ce qu'exige la bonne foi; est abusive, notamment, la clause si éloignée des obligations essentielles qui découlent des règles gouvernant habituellement le contrat qu'elle dénature celui-ci.</p>

## II. The Level at which the Disproportion Becomes Exploitative

22. Ticketmaster, Admission.com and Réseau Ovation are evenko's main competitors in the province of Quebec for ticket sales on the primary market;
23. The difference between them is generally the venue where the event is held and the artist that is performing (or sporting event that is taking place);
24. Although they offer virtually identical services, Ticketmaster, Admission.com and Réseau Ovation do not charge anything to consumers for emailing them their tickets, sending it to their mobile device, or allowing them to pick up their tickets – where they are also charging a Service Fee;



25. A screenshot from Ticketmaster's website illustrates that: (i) Ticketmaster does not charge any fees to send tickets electronically or to print the tickets online; and (ii) where Ticketmaster does charge a service fee, there is no charge for a customer to pick up their tickets at "will call" or "au guichet" / "à la billetterie", as it appears from **Exhibit R-4**, as seen below:

The screenshot shows the Ticketmaster website interface for the Montreal Alouettes vs. Hamilton Tiger-Cats game on Sat 06/09 @ 12:00pm at Percival-Molson Stadium. The 'Delivery' section is active, showing three tabs: 'Canada', 'USA', and 'Other Country'. Under 'Canada', there are four radio button options:

- Go Mobile, Print-at-Home - FREE**
  - Go Mobile**  
Your phone's your ticket. Locate your tickets in your account - or in your app. When you go mobile, your tickets will not be emailed to you or available for print.
  - Print-at-Home**  
Log into your account from a computer - not a phone or tablet. From your order, view and print your tickets. When you print-at-home, your tickets will not be emailed to you.
- UPS**  
\$16.00
- XpressPost**  
\$16.00
- Canada Post Mail**  
No additional charge
- Will Call**  
No additional charge

On the right side of the page, there is a summary box for 'SEC L2 General Admission' with a team logo and 'verifiedtickets' logo. Below this is an 'Order Details' section showing '1 Régulier - Regular' and a 'Fees' section with '\$5.40 (Service Fee) x 1'. The 'Delivery' section is set to 'Go Mobile, Print-at-Home'. A 'Subtotal' section is at the bottom, followed by a green 'NEXT' button.

26. A screenshot from the Admission.com website (a division of Ticketmaster) illustrates that: (i) they do not charge any fees to send tickets electronically, or to print the tickets online; and (ii) they do not charge customers to pick up their tickets at the box office or "à la billetterie", as it appears from **Exhibit R-5** as seen below:

**admission**  
division de ticketmaster®

1 2 Acheter 4

MAI DIMANCHE, 20:00  
**13** ENRICO MACIAS  
2018 L'Olympia, Montréal

**vosre commande**

Comment voulez-vous que vos billets soient livrés? i

Sélectionnez une méthode de livraison à partir de la liste ci-dessous.

**Billet électronique**  
C'est rapide et facile avec le Billet électronique. Télécharger votre billet sur votre téléphone mobile ou Imprimer à la maison.

**Xpresspost QC et ON** i **15.00 CAD**  
CONSOMMATEURS DU QUÉBEC ET ONTARIO SEULEMENT. Vous recevrez vos billets dans les 5 À 7 JOURS OUVRABLES suivant l'achat et uniquement à l'adresse de facturation de la carte de crédit, à moins d'indication contraire spécifiée dans la page de l'événement.

**Xpresspost Canada** i **20.00 CAD**  
Vous recevrez vos billets dans les 5 À 7 JOURS OUVRABLES suivant l'achat et uniquement à l'adresse de facturation de la carte de crédit, à moins d'indication contraire spécifiée dans la page de l'événement.

**À récupérer à la billetterie où l'événement a lieu** i  
Veuillez récupérer vos billets à la billetterie. Les billets peuvent être récupérés seulement 24 heures après l'achat. ATTENTION, certaines salles et billetteries n'ouvrent que le soir de l'événement seulement. Veuillez contacter la salle pour de plus amples informations. Veuillez noter que seul le titulaire de la carte de crédit est autorisé à récupérer les billets et que vous devez avoir en votre possession une carte d'identité avec photo, ainsi que la carte de crédit que vous avez utilisée lors de votre achat pour prendre possession des billets. Billets non récupérables dans un point de vente Admission.

**Votre commande**

Temps restant pour compléter la commande **08:10**

**Billets 1** ×

ENRICO MACIAS 100.93 CAD  
2018-05-13 20:00

Section PARTERRE-CENTRE  
Rangée F  
Sièges 17  
Information Parterre A à L

Tarifs RÉGULIER  
Prix du billet 100.93 CAD x 1  
(Incl. frais 10.10 CAD)

**Livraison**

Billet électronique 0.00 CAD

27. A screenshot from Réseau Ovation's website illustrates that: (i) they do not charge any fees to send tickets electronically; and (ii) there is no charge for a customer to pick up their tickets from the box office or "au guichet", as it appears from **Exhibit R-6**, as seen below:



**Réseau Ovation**  
*Simplifiez-vous la vie!*

ÉVÉNEMENTS ▼

MON COMPTE

CONTACTEZ-NOUS

  
PANIER  
EXPIRE DANS 13:09 MIN.

FR | EN

Effectuer d'autres achats

Vider le panier et recommencer

Votre transaction est traitée par Réseau Ovation, 23 953 Québécois(es) ont également acheté des billets en ligne depuis 1 mois en utilisant cette solution.

PANIER 

		Prix (\$ CAD)
<p>Supprimer</p> <p>Reprendre</p>	<p><b>François Bellefeuille - Ven. 27 avril 2018, 20h00 - Salle Albert-Rousseau</b></p> <p>Emplacement(s): Section: Balcon, Rangée: D, Siège(s): 28 <a href="#" style="font-size: 0.8em; color: orange;">Voir les sièges dans le plan</a></p> <p>Tarif(s): Régulier (1)</p>	38,27 \$

**Veuillez s.v.p. sélectionner un mode de livraison:**

- Au guichet - 0,00 \$**

Les billets que vous avez achetés peuvent être récupérés dès maintenant à la billetterie de la Salle Albert-Rousseau. Si vous souhaitez prendre possession de vos billets lors de votre spectacle, présentez-vous à la billetterie au minimum 30 minutes avant le début de la représentation.

Dans le cas où une personne autre que vous-même doit récupérer les billets, merci d'en aviser la billetterie au 418 659-6710.
- Billet(s) électronique(s) - 0,00 \$**

Choisissez le format désiré:

  - Format détaillé à imprimer sur papier seulement (non adapté pour présentation sur téléphone mobile)
  - Format compact à présenter sur votre téléphone mobile

Vous recevrez sous peu un courriel contenant vos billets électroniques. Il est très important d'avoir avec vous, lors du spectacle, les billets reçus dans le courriel qui vous sera envoyé. La confirmation d'achat ne peut être utilisée comme billet. Si vous ne recevez aucun courriel contenant vos billets électroniques, communiquez avec la billetterie dans les plus brefs délais au 418 659-6710

28. The Place des Arts sells tickets to and hosts an array of performances in Montreal (in the area commonly referred to as the “Quartier des Spectacles”), such as *Les Grands Ballets Canadiens*, the *Montreal Symphony Orchestra* and the *Opéra de Montréal*. The first screenshot below shows that the Place des Arts does not charge any fees to send tickets electronically; the second screenshot shows that they do not charge any fees when the tickets are picked up from the box office (*billetterie*), as it appears *en liasse* from **Exhibit R-7**, as seen below:

## Screenshot #1:

PLACE  
DES  
ARTS
BILLETTERIE

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## My Place des Arts Account

powered by **ticketmaster**

[home](#) | [faq](#) | [contact us](#) | [log out](#)

Hello, [REDACTED]

Your order will expire in  
**9:30**

**Cost Summary**

Item Total	86.25
Delivery Total	0.00
<b>Total Amount</b>	<b>\$86.25</b>

[checkout](#)

[continue shopping](#)

More information on Place des Arts parking

Place des arts parking - Save now and add parking to your purchase now

[More information on Place des Arts parking](#)

### Shopping Cart

Your order will expire in **9:30 minutes**

This icon on an event means you can also get in with your smartphone, no matter which ticket delivery method you choose! See how easy it is in your confirmation email.

**Cart Items**

item	details	type	price	total
<b>Roméo &amp; Juliette - Gounod</b>	Section LBA27	Regular	\$86.25	\$86.25
Tue, 22 May 2018 19:30	Rangee 1			
Salle Wilfrid-Pelletier	Siege 1			

**Select Delivery** Electronic (\$0.00 Per Order)

[Mobile Entry](#) [change seats](#) | [remove](#)

**Cost Summary**

Item Total	\$86.25
Delivery Total	\$0.00
<b>Total Amount</b>	<b>\$86.25</b>

## Screenshot #2:

The screenshot shows the 'My Place des Arts Account' page on the Billetterie website, powered by Ticketmaster. The page features a navigation bar with links for home, FAQ, contact us, and log out. A user is logged in, and their order will expire in 8:40 minutes. The main content area is titled 'Shopping Cart' and contains a table of cart items. The table lists one item: 'Cendrillon' for \$149.00. Below the table, there is a 'Select Delivery' dropdown menu set to 'Billetterie (\$0.00 Per Order)'. A 'Mobile Entry' option is also visible. A 'Cost Summary' section at the bottom right shows the total amount of \$149.00. On the left side, there is a 'Cost Summary' box with a 'checkout' button and a 'continue shopping' link. There is also a link for 'More information on Place des Arts parking'.

PLACE  
DES  
ARTS

BILLETTERIE

My Place des Arts Account powered by **ticketmaster**

[home](#) | [faq](#) | [contact us](#) | [log out](#)

Hello, [REDACTED]

Your order will expire in **8:40**

**Cost Summary**

Item Total	149.00
Delivery Total	0.00
<b>Total Amount</b>	<b>\$149.00</b>

[checkout](#)

[continue shopping](#)

More information on Place des Arts parking

Place des arts parking - Save now and add parking to your purchase now

[More information on Place des Arts parking](#)

**Shopping Cart** Your order will expire in **8:40 minutes**

This icon on an event means you can also get in with your smartphone, no matter which ticket delivery method you choose! See how easy it is in your confirmation email.

**Cart Items**

item	details	type	price	total
<b>Cendrillon</b> Sat, 5 May 2018 14:00 Salle Wilfrid-Pelletier	Section LCO4 Rangee 1 Siege 3	Regular	\$149.00	\$149.00

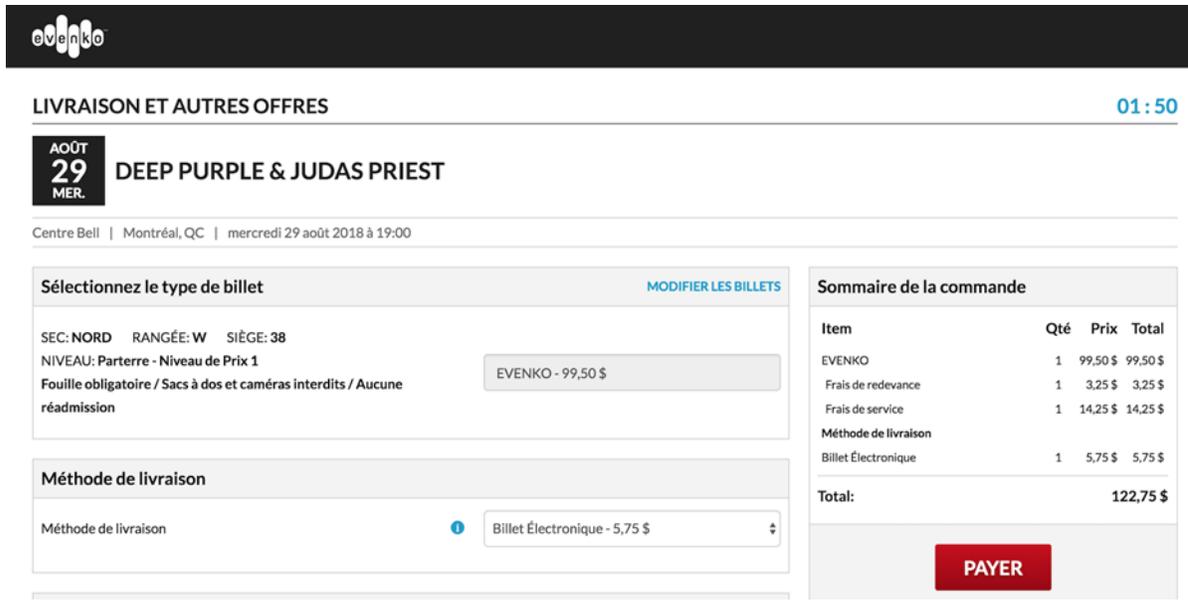
**Select Delivery**  Select Delivery Method  
Billetterie (\$0.00 Per Order )

[Mobile Entry](#) [change seats](#) | [remove](#)

**Cost Summary**

Item Total	\$149.00
Delivery Total	\$0.00
<b>Total Amount</b>	<b>\$149.00</b>

29. On the other hand, the Defendant charges \$5.75 to Class Members to send an email which costs them nothing and that no other merchants charge for, the whole as appears more fully from a copy of a screenshot of evenko's website, produced herein as **Exhibit R-8**:



**LIVRAISON ET AUTRES OFFRES** 01:50

**AOÛT 29 MER. DEEP PURPLE & JUDAS PRIEST**

Centre Bell | Montréal, QC | mercredi 29 août 2018 à 19:00

**Sélectionnez le type de billet** MODIFIER LES BILLETS

SEC: NORD RANGÉE: W SIÈGE: 38  
 NIVEAU: Parterre - Niveau de Prix 1  
 Fouille obligatoire / Sacs à dos et caméras interdits / Aucune réadmission

EVENKO - 99,50 \$

**Méthode de livraison**

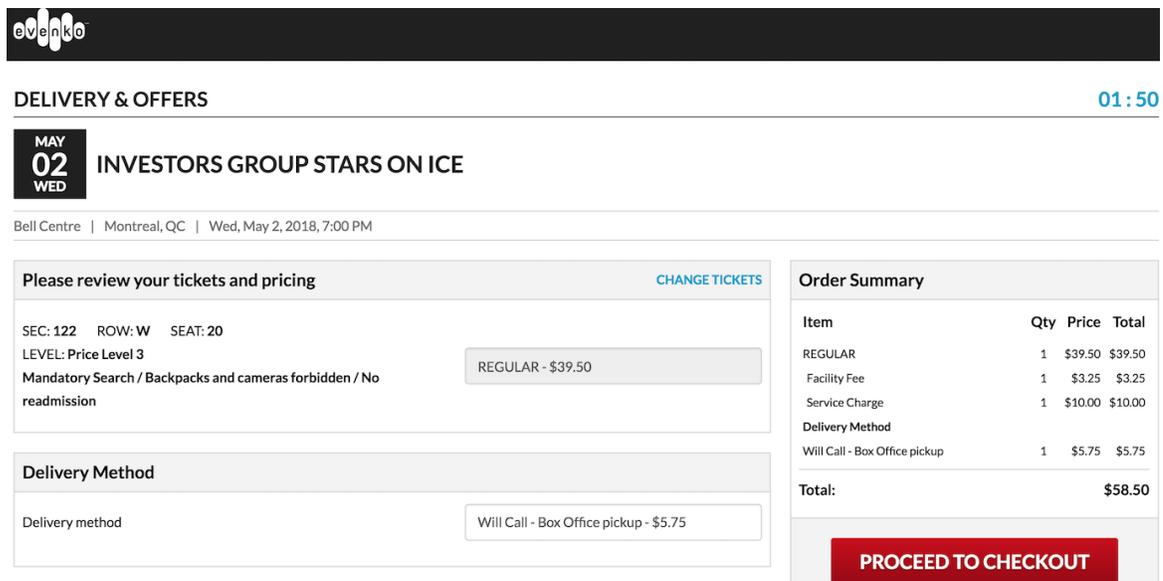
Méthode de livraison Billet Électronique - 5,75 \$

**Sommaire de la commande**

Item	Qté	Prix	Total
EVENKO	1	99,50 \$	99,50 \$
Frais de redevance	1	3,25 \$	3,25 \$
Frais de service	1	14,25 \$	14,25 \$
<b>Méthode de livraison</b>			
Billet Électronique	1	5,75 \$	5,75 \$
<b>Total:</b>			<b>122,75 \$</b>

**PAYER**

30. The Defendant further charges \$5.75 to Class Members to pick up their tickets from the box office which costs them close to nothing (i.e. other than ink and paper) and that no other merchants charge for where they are also charging a service fee, the whole as appears more fully from a copy of a screenshot of evenko's website, produced herein as **Exhibit R-9**:



**DELIVERY & OFFERS** 01:50

**MAY 02 WED. INVESTORS GROUP STARS ON ICE**

Bell Centre | Montreal, QC | Wed, May 2, 2018, 7:00 PM

**Please review your tickets and pricing** CHANGE TICKETS

SEC: 122 ROW: W SEAT: 20  
 LEVEL: Price Level 3  
 Mandatory Search / Backpacks and cameras forbidden / No readmission

REGULAR - \$39.50

**Delivery Method**

Delivery method Will Call - Box Office pickup - \$5.75

**Order Summary**

Item	Qty	Price	Total
REGULAR	1	\$39.50	\$39.50
Facility Fee	1	\$3.25	\$3.25
Service Charge	1	\$10.00	\$10.00
<b>Delivery Method</b>			
Will Call - Box Office pickup	1	\$5.75	\$5.75
<b>Total:</b>			<b>\$58.50</b>

**PROCEED TO CHECKOUT**

31. The above facts leave no doubt as to the abusive and illegal nature of the Electronic Ticket, Mobile Ticket, and Will Call fees charged by Defendant;
32. In the present case, the fair market value for the service for which Defendant charges these fees is zero or very close to zero;

33. The Defendant ought to have never charged the Electronic Ticket fee, Mobile Ticket, and Will Call fees to the Applicant or to any of the Class Members;
34. The imposing by Defendant of these fees in a consumer contract and contract of adhesion is excessively and unreasonably detrimental to the Applicant and to the Class Members and is therefore contrary to the requirements of good faith;
35. Consequently, an excessive disproportion exists in this case and Defendant must reimburse the Applicant and Class Members for every ticket purchase that they made from the Defendant (whether from evenko or otherwise);
36. Applicant is accordingly entitled to claim and does hereby claim from Defendant the aggregate of the sums paid by Class Members on account of Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees (or similarly abusive fees charged by Defendant, including Service Fees);

### III. Claim for Punitive Damages

37. The Defendant's overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to its own obligations;
38. In this case, Defendant, a Quebec-based company, is in an extraordinarily dominant position and continues to breach the CPA and the CCQ, without any explanation;
39. This complete disregard for consumers' rights and to its own obligations under the law on the part of the Defendant is in and of itself an important reason for this Court to enforce measures that will punish the Defendant, as well as deter and dissuade other entities – both local and foreign – from engaging in similar reprehensible conduct to the detriment of consumers;
40. The reality is that the Defendant has likely generated tens of millions of dollars in revenues over the years by charging Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees as well as "Service Fees" (including on both its evenko website and on via its "Vault" service where Montreal Canadiens season ticket holders resell their tickets to others);
41. These fees are nothing more than a cash-cow for the Defendant, who is charging Class Members to send them either a regular email containing a PDF attachments, an email transfer to their mobile device, allow them to pick up their tickets or allow them to simply use their credit cards as entry, which are services that cost them nothing (or close to nothing) and that other companies perform at no charge;



42. The Defendant behaves as if it has *carte blanche* to exploit consumers and adherents and to charge them abusive and disproportionate delivery fees;
43. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
44. The Defendant's violations were intentional, calculated, malicious and vexatious;
45. Defendant demonstrates through its behaviour (before, during and after the violation) that it is more concerned about its bottom line than about consumers' rights and its own obligations under the CPA and the CCQ (which is compounded by virtue of them being a Quebec-based company and certainly know better);
46. Applicant is accordingly entitled to claim and does hereby claim from Defendant \$15.00 per Class Member per purchase on account of punitive damages;
47. The Defendant's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

48. On January 25, 2018, Applicant purchased four tickets from evenko to see the Elton John concert scheduled for October 4, 2018 at the Centre Bell in Montreal;
49. At the last step prior to completing her purchase, Applicant was given the choice to receive her tickets as paper copies (*copies cartons*) by regular mail for \$5.75, or electronically via email for \$5.75. Applicant had to choose one of the two, otherwise she could not purchase these tickets from evenko;
50. Evenko operates as a monopoly for tickets on the primary market for events at the Centre Bell and certain other locations;
51. As such, Applicant had no other choice but to purchase her tickets from evenko if she wanted to purchase them on the primary market (and therefore not above face value from a reseller on the secondary market);
52. On January 25, 2018, Applicant paid Defendant the Electronic Ticket fee of \$5.75, only to receive an email containing a PDF file with her four tickets, as it appears from an email sent to her from evenko with the subject line "Your E-Tickets - 002-0546 1084", produced herein as **Exhibit R-10**;
53. At the same time, evenko sent Applicant another email – for which it did not charge – with the subject line "Your order confirmation - 002-0546 1084", as can be seen from **Exhibit R-11**;



54. Not only did sending the email cost Defendant nothing, but the Applicant will actually have to incur costs to print her tickets at home so that she can enter the Bell Centre (these costs are obviously minimal i.e. paper and ink, but nonetheless greater than the cost to evenko for sending an automated email);
55. In fact, in Exhibit R-10, Evenko provides the following instructions to Applicant and to all Class Members:
- Open and print the PDF file attached. Please note that you'll need Acrobat Reader in order to be able to open your e-tickets (version 6.0 or above). If you don't use Acrobat reader, you can always download it from here.
56. The contract between the parties is both a consumer contract and a contract of adhesion, as it appears from the evenko Purchase Agreement and Terms of Use, produced herein *en liasse* as **Exhibit R-12**;
57. Applicant is unhappy about paying the Electronic Ticket fee, but was in no position to argue or negotiate with Defendant;
58. Moreover, Defendant charged Applicant an additional \$89.00 on account of "Service Fees" that appears to be abusive;
59. The only choice that Applicant has in this bargain is where she wants to sit at the Centre Bell – all the rest is imposed by the Defendant;
60. Applicant alleges that the Electronic Ticket fee contravenes article 8 of the CPA and article 1437 CCQ;
61. Applicant suffered objective lesion by paying \$5.75 to receive an email from Defendant that costs nothing;
62. There is an important disproportion between the \$5.75 charged to Applicant and the cost to Evenko for sending her an email;
63. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the Electronic Ticket fee (in this case, \$5.75) and the "wholesale" cost to the merchant of providing this service (i.e. the sending of an automated email), which in this case is zero;
64. Applicant believes that further evidentiary support for her allegations (concerning the Defendant's cost to send an email) will come to light after a reasonable opportunity for discovery;
65. Applicant's damages are a direct and proximate result of Defendant's misconduct;



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

### **III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

67. All Class Members have a common interest both in proving the violation of section 8 of the CPA and of 1437 CCQ by the Defendant and in maximizing the aggregate of the amounts unlawfully charged to them by Defendant;

68. Class Members include both consumers within the meaning of the CPA and legal persons within the meaning of the CCQ (the latter entered into contracts of adhesion with Defendant thus triggering article 1437 CCQ in this situation);

69. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the Electronic Ticket, Will Call - Box Office pickup, Mobile Ticket, and Ticketless fees charged by the Defendant are: (i) abusive, disproportionate and constitute objective lesion under article 8 CPA; and/or (ii) excessively and unreasonably detrimental to the consumer or the adhering party and is therefore contrary to article 1437 CCQ;

70. The claims of every member of the Class are founded on very similar facts to the Applicant's claim against Defendant;

71. By reason of Defendant's unlawful conduct, Applicant and every Class Member have suffered damages, which they are entitled to collectively claim against the Defendant;

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

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

- Reimbursement of the whole (or a portion) of the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees; and
- Punitive damages in the amount of \$15.00 per Class Member per purchase;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings

74. According to Exhibit R-2, during 2016 alone, evenko presented 1,224 events;

75. The size of the Class is conservatively estimated to include tens of thousands of Class Members, if not more;

76. The names and addresses of all persons included in the Class are not known to the Applicant, however, are in the possession of the Defendant;

77. Class Members are very numerous and are dispersed across the province, across Canada and elsewhere;

78. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the court system. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system;

79. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgments on questions of fact and law that are similar or related to all Class members;

80. 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;

81. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the Class Members with regard to the Defendant and that which the Plaintiff wishes to have adjudicated upon by this class action

82. Individual questions, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;

83. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendant's misconduct;

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

- a) Does the disproportion between the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees charged to the Class Members and the value of the service provided by the Defendant constitute exploitation and objective lesion under section 8 of the CPA?
- b) Are the Defendant's Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees excessively and unreasonably detrimental to Class Members such that the contractual clauses allowing them to charge such fees are abusive under article 1437 of the CCQ?
- c) Is the portion of the contract concerning Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees null, entitling Class Members to a full reimbursement of the amounts paid to the Defendant?
- d) In the alternative, must the Class Members' obligations be reduced and if so, by how much?
- e) Are the "Service Fees" charged by the Defendant abusive?
- f) Should an injunctive remedy be ordered to prevent the Defendant from continuing to charge its unfair fees?
- g) Are Class Members entitled to punitive damages and, if so, in what amount?

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

#### **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

86. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and a declaratory judgment;

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

GRANT Plaintiff's action against Defendant on behalf of all the Class Members;

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

DECLARE that the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees charged by Defendant amount to exploitation under article 8 of the CPA;

DECLARE that the Electronic Ticket and Mobile Ticket fees charged by the Defendant are excessively and unreasonably detrimental to consumers or adhering parties and are therefore in violation of article 1437 of the CCQ;

DECLARE abusive and null the clauses in the Defendant's service agreements which provide for Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees;

ORDER the Defendant to cease from continuing to charge its unfair fees;

CONDEMN the Defendant to pay the Plaintiff and Class Members compensatory damages for the aggregate of the amounts charged as Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees;

CONDEMN the Defendant to pay the Plaintiff and Class Members compensatory damages for the aggregate of the amounts charged as "Service Fees";

ORDER the collective recovery of all damages owed to the Class Members for the amounts overcharged;

CONDEMN the Defendant to pay to each Class member the sum of \$15.00 per purchase on account of punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

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 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;

RENDER any other order that this Honourable Court shall determine and that is in the interests of Class Members;

A) The Applicant requests that she be appointed the status of representative plaintiff of the Class

88. Applicant requests that she be appointed the status of representative plaintiff for the following principle 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 members of the Class;

89. Additionally, Applicant respectfully adds that:

- a) She has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- b) She mandated her attorneys to file the present Application for the sole purpose of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendant's illegal and abusive behavior and so that Defendant can be held accountable for its misconduct;
- c) She cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;
- d) She has read this Application prior to its court filing (and the exhibits in support thereof) and understands the nature of the action;

90. As for identifying other Class Members, Applicant draws certain inferences from the situation, notably from the information on evenko's website and realizes that by all accounts, there is a very important number of Class Members that find themselves in an identical situation;

91. Applicant has given instructions to her attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;

92. For the above reasons, Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the best interest of Class Members;

B) The Applicant suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal

93. The Applicant and the Defendant both reside in the judicial district of Montreal and in the appeal district of Montreal;

94. A great number of the Class Members reside in the judicial district of Montreal and in the appeal district of Montreal;

95. The Applicant's attorneys practice their profession in the judicial district of Montreal;

96. The present Application is well-founded in fact and in law.

**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, injunctive relief and a declaratory judgment;

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

- All persons who purchased a ticket from the Defendant (whether from evenko or otherwise) and who was charged an "Electronic Ticket" fee, a "Will Call - Box Office pickup" fee, a "Mobile Ticket" fee, a "Ticketless" fee, and/or any other delivery fee to receive their tickets via email, mobile device, physical pickup, or to use their credit card as a ticket

or any other group to be determined by the Court;

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

- a) Does the disproportion between the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees charged to the Class Members and the value of the service provided by the Defendant constitute exploitation and objective lesion under section 8 of the CPA?
- b) Are the Defendant's Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees excessively and unreasonably detrimental to Class Members such that the contractual clauses allowing them to charge such fees are abusive under article 1437 of the CCQ?

- c) Is the portion of the contract concerning Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees null, entitling Class Members to a full reimbursement of the amounts paid to the Defendant?
- d) In the alternative, must the Class Members' obligations be reduced and if so, by how much?
- e) Are the "Service Fees" charged by the Defendant abusive?
- f) Should an injunctive remedy be ordered to prevent the Defendant from continuing to charge its unfair fees?
- g) Are 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 on behalf of all the Class Members;

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

DECLARE that the Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees charged by Defendant amount to exploitation under article 8 of the CPA;

DECLARE that the Electronic Ticket and Mobile Ticket fees charged by the Defendant are excessively and unreasonably detrimental to consumers or adhering parties and are therefore in violation of article 1437 of the CCQ;

DECLARE abusive and null the clauses in the Defendant's service agreements which provide for Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees;

ORDER the Defendant to cease from continuing to charge its unfair fees;

CONDEMN the Defendant to pay the Plaintiff and Class Members compensatory damages for the aggregate of the amounts charged as Electronic Ticket, Will Call, Mobile Ticket, and/or Ticketless fees;

CONDEMN the Defendant to pay the Plaintiff and Class Members compensatory damages for the aggregate of the amounts charged as "Service Fees";

ORDER the collective recovery of all damages owed to the Class Members for the amounts overcharged;

CONDEMN the Defendant to pay to each Class member the sum of \$15.00 per purchase on account of punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

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 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;

RENDER any other order that this Honourable Court shall determine and that is in the interests of Class Members;

**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;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class 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;

**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 judgment to be rendered herein in La Presse, The Montreal Gazette, and Le Soleil;

**ORDER** that said notice be available on the Defendant's website, as well as its Facebook page and Twitter account with a link stating "Notice of a Class Action";

**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";

**ORDER** the Defendant and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or

under their control permitting to identify Class Members, including their names, addresses, phone numbers and email addresses;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs, including all publication and dissemination fees.

Montreal, May 3, 2018

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Applicant

**SUMMONS**  
**(Arts. 145 and following C.C.P.)**

TO: L'ARÉNA DES CANADIENS INC.  
1275 rue Saint-Antoine West  
Montreal, Quebec, H3C 5L2

TAKE NOTICE that the Applicant filed the present motion in the office of the Superior Court, in the judicial district of Montreal.

YOU MUST answer this application in writing, personally or through a lawyer, at the Montreal Courthouse (the Palais de Justice) situated at 1 Notre Dame East, Montreal, Quebec, H2Y 1B6, Canada within 15 days of service of this motion or if you have no domicile, residence, or establishment in Quebec, within 30 days thereof. The answer must be notified to the Applicant's lawyer.

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

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;
- 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.

You may ask the court to refer the 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 motion 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 motion.

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.

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.

In support of the application, the Applicant intends to use the following exhibits:

- R-1: Copy of an extract of the *Registre des entreprises*;
- R-2: Copy of an extract from the Defendant's website at [www.evenko.ca](http://www.evenko.ca);
- R-3: Copy of an extract from the Defendant's website at [www.evenko.ca](http://www.evenko.ca);
- R-4: Screenshot from Ticketmaster's website taken April 26, 2018;
- R-5: Screenshot from the Admission.com website taken May 1, 2018;
- R-6: Screenshot from Réseau Ovation's website taken April 26, 2018;
- R-7: Screenshot from the Place des Arts website taken May 2, 2018;
- R-8: Screenshot from evenko's website taken April 26, 2018, titled "Deep Purple and Judas Priest";
- R-9: Screenshot from evenko's website taken May 1, 2018, titled "Investors Group Stars on Ice";
- R-10: Copy of email titled "Your E-Tickets - 002-0546 1084" dated January 25, 2018;
- R-11: Copy of email titled "Your order confirmation - 002-0546 1084" dated January 25, 2018;
- R-12: Copies of the evenko Purchase Agreement and Terms of Use;

Montreal, May 3, 2018

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Applicant