

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

C. SAINTE-MARIE

Plaintiff

- and -

**AMAZON.COM, INC, AMAZON.COM.CA, INC., AMAZON CANADA FULFILLMENT
SERVICES, INC., AMAZON TECHNOLOGIES, INC., AND AMAZON.COM LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: March 21, 2017

Issued by

(S) Signature

Local Registrar

Address of
court office:

161 Elgin Street
2nd Floor
Ottawa, ON K2P 2K1

TO: Amazon.com, Inc.
410 Terry Avenue North
Seattle, Washington
98109, USA

AND TO: Amazon.com.ca, Inc.
410 Terry Avenue North
Seattle, Washington
98109, USA

AND TO: Amazon Canada Fulfillment Services, Inc.
800-885 West Georgia Street
Vancouver, British Columbia
V6C 3H1

AND TO: Amazon Technologies, Inc.
410 Terry Avenue North
Seattle, Washington
98109, USA

AND TO: Amazon.com LLC
410 Terry Avenue North
Seattle, Washington
98109, USA

DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**GST**” is the Goods and Services Tax, a value-added tax levied by the federal government in the amount of 5%;
- (b) “**PST**” and/or “**RST**” is the Provincial Sales Taxes, referred to as Retail Sales Taxes in certain provinces, which amount varies according to the province(s);
- (c) “**HST**” is the combined Harmonized Sales Tax, a consumption tax that blends **GST** and **PST** and/or **RST** into a single value-added tax, which is used in the **HST-Participating Province(s)**;
- (d) “**PST/RST-Collecting Province(s)**” means the provinces of Manitoba, Saskatchewan, and British Columbia;
- (e) “**HST-Participating Province(s)**” means the provinces of Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island;
- (f) “**Strictly GST-Collecting Province and Territories**” means Alberta, Yukon, Nunavut, and the Northwest Territories;
- (g) “**Zero-Rated Supply**” means the provision of property or a service where the tax rate thereon is 0%, including **Basic Groceries** and **Other Products** as defined in the *Excise*

Tax Act at Section VI as well as the alternate terms found in the **Provincial Sales Tax Legislation** including, but not limited to “Exempt tangible personal property” and “Non-Taxable Component”;

- (h) “**PST/RST Exempt Supply**” and/or “**Non-Taxable Component(s)**” means the provision of property or a service where the provincial tax is exempt (i.e. where no **PST** and/or **RST** is payable thereon);
- (i) “**Basic Groceries**” means all food or beverages for human consumption (including accompaniments therefor) to the exclusion of the list of items found in the *Excise Tax Act* at Schedule VI, Part III, s. 1;
- (j) “**Other Products**” includes those products found in the *Excise Tax Act* at Schedule VI, Part II.1;
- (k) “**Undue Sales Tax(es)**” means the value-added tax charged and collected on **Zero-Rated Supplies** and/or **PST/RST Exempt Supplies**;
- (l) “**Class**” or “**Class Members**” means all persons residing in Canada, excluding Quebec, who purchased a good (tangible personal property) from Amazon and who were charged for and who paid sales taxes (GST/HST and/or PST/RST) that were not due under federal and/or provincial legislation (a “Zero Rated Supply”, including “Basic Groceries” and “Other Products”, as well as, a “Non-Taxable Component” and/or a “PST/RST Exempt Supply”);

(m) “***Class Proceedings Act***” means the *Class Proceedings Act*, SA 2003 c C-16.5, as amended;

(n) “***Consumer Protection Act***” means the *Consumer Protection Act, 2002*, SO 2002, c. 30, Sched. A, as amended, including ss. 8, 11, 14 & 15;

(o) “**Consumer Protection Legislation**” means:

(i) The *Business Practices and Consumer Protection Act*, SBC 2004, c.2, as amended, including ss. 4, 5 & 8-10;

(ii) *The Business Practices Act*, CCSM, c. B120, as amended, including ss. 2 & 23;

(iii) The *Consumer Protection and Business Practices Act*, SNL 2009, c. C-31.1, as amended, including ss. 7, 8, 9 & 10, and *Trade Practices Act*, RSNL 1990, c. T-7, as amended, including ss. 5, 6 & 14;

(iv) The *Fair Trading Act*, RSA 2000, c. F-2, as amended, including ss. 6, 7 & 13;

(v) The *Consumer Protection Act*, RSQ c. P-40.1, as amended, including ss. 219 & 272;

(vi) The *Consumer Product Warranty and Liability Act*, SNB 1978, c. C-18.1, as amended, including ss. 4, 10, 12, 15-18, 23 & 27;

(vii) The *Consumer Protection Act*, RSNS 1989, c. 92, as amended, including ss. 26 & 28A;

(viii) The *Business Practices Act*, RSPEI 1988, c. B-7, as amended, including ss. 2-4;
and

- (ix) *The Consumer Protection Act*, SS 1996, c. C-30.1, as amended, including ss. 5-8, 14, 16, 48 & 65;
- (p) “**Competition Act**” means the *Competition Act*, RSC 1985, c. C-34, as amended, including ss. 36 & 52;
- (q) “**Excise Tax Act**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended, including Schedule VI;
- (r) “**Provincial Sales Tax Legislation**” means:
- (i) The *Retail Sales Tax Act*, R.S.O. 1990, c. R.31, as amended;
 - (ii) The *Harmonized Sales Tax Act*, SNB 1997, c. H-1.01, as amended;
 - (iii) The *Revenue Administration Regulations*, NLR 73/11, as amended;
 - (iv) The *Sales Tax Act*, SNS 1996, c 31, as amended;
 - (v) The *Retail Sales Tax Act*, RSPEI 1988, c R-13.03, as amended;
 - (vi) The *Retail Sales Tax Act*, C.C.S.M. c. R130, as amended;
 - (vii) The *Provincial Sales Tax Act*, RSS 1978, c P34.1, as amended;
 - (viii) The *Provincial Sales Tax Act*, SBC 2012, C 35, as amended
 - (ix) The *Provincial Sales Tax Exemption and Refund Regulation*, BC Reg 97/2013, as amended;

- (s) “**Defendants**” or “**Amazon**” means Amazon.com, Inc., Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon Technologies, Inc., and Amazon.com LLC;
- (t) “**Plaintiff**” means C. Sainte-Marie; and
- (u) “**Representation(s)**” means the **Defendants’** false, misleading and/or deceptive representations that (i) they had a right to collect the **Undue Sales Taxes** on **Zero-Rated Supplies** and/or **PST/RST Exempt Supplies**, that (ii) the transactions whereby consumers purchased **Zero-Rated Supplies** and/or **PST/RST Exempt Supplies** involved tax obligations when they did not, that (iii) the **Undue Sales Taxes** being charged were for purpose of legitimate tax collection under federal and/or provincial tax legislation, when they were not, and (iv) by using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the existence and/or true nature of the Undue Sales Taxes.

THE CLAIM

2. The proposed Representative Plaintiff, C. Sainte-Marie, claims on his own behalf and on behalf of the members of the Class as defined in paragraph 4 below (the “Class”) as against Amazon.com, Inc., Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon Technologies, Inc., and Amazon.com LLC; (the “Defendants”):
- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;

- (b) A declaration that the express contracts with Class Members are severable and that the Undue Sales Taxes are a voidable clause;
- (c) A declaration that the Defendants breached their fiduciary duty to Class Members;
- (d) A declaration that the Defendants committed conversion;
- (e) A declaration that the Defendants breached their duties to Class Members;
- (f) A declaration that the Defendants were negligent in applying and charging Undue Sales Taxes on Zero-Rated Supplies as well as PST/RST Exempt Supplies;
- (g) A declaration that the Defendants committed fraudulent concealment;
- (h) A declaration that the Defendants committed negligent misrepresentation;
- (i) A declaration that the Defendants breached their implied covenant of good faith and fair dealing;
- (j) A declaration that the Defendants made representations that were false, misleading, deceptive, and unconscionable, amounting to unfair practices in violation of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation as well as the *Competition Act*;
- (k) A declaration that the Defendants breached the *Excise Tax Act* as well as the Provincial Sales Tax Legislation in applying and charging Undue Sales Taxes on Zero-Rated Supplies as well as PST/RST Exempt Supplies;

- (l) A declaration that the present Statement of Claim is considered as notice given by the Plaintiff on his own behalf and on behalf of “persons similarly situated” and is sufficient to give notice to the Defendants on behalf of all Class Members;
- (m) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation;
- (n) A declaration that the Plaintiff and Class Members are entitled to a refund of the Undue Sales Taxes paid based *inter alia* on its their invalidity *ab initio*, revocation of acceptance, and rescission;
- (o) A declaration that the Defendants are jointly and severally liable for any and all damages awarded;
- (p) General damages in an amount to be assessed individually or in the aggregate for the Class Members;
- (q) Special damages in an amount that this Honourable Court deems appropriate to compensate Class Members for, *inter alia*, the Undue Sales Taxes;
- (r) Punitive, aggravated, and exemplary damages in the aggregate in an amount to be determined as this Honourable Court deems appropriate;
- (s) In the alternative to the claim for damages, an order for an accounting of revenues received by the Defendants resulting from the collection of Undue Sales Taxes;

- (t) A declaration that any funds received by the Defendants through the collection of Undue Sales Taxes are held in trust to be returned to the Plaintiff and Class Members;
- (u) Restitution and/or a refund of all monies paid to or received by the Defendants from the Undue Sales Taxes to members of the Class on the basis of unjust enrichment;
- (v) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendants from the Undue Sales Taxes to members of the Class on the basis of *quantum valebant*;
- (w) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (x) A permanent injunction restraining the Defendants from continuing any actions taken in contravention of the Consumer Protection Legislation, the *Consumer Protection Act*, the *Competition Act*, the *Excise Tax Act*, and the Provincial Sales Tax Legislation;
- (y) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (z) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 26 (9) of the *Class Proceedings Act*;

- (aa) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon; and
- (bb) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, C. Sainte-Marie, is an individual residing in the city of Renfrew, in the province of Ontario. On November 3, 2016, Mr. Sainte-Marie placed an order with Amazon for various goods including Zero-Rated Supplies and PST/RST Exempt Supplies and was charged (and paid) Undue Sales Taxes.

The Class

4. The Plaintiff seeks to represent the following class of which he is a member (the “Proposed Class”):

All persons residing in Canada, excluding Quebec, who purchased a good (tangible personal property) from Amazon and who were charged for and who paid sales taxes (GST/HST and/or PST/RST) that were not due under federal and/or provincial legislation (a “Zero Rated Supply”, including “Basic Groceries” and “Other Products”, as well as, a “Non-Taxable Component” and/or a “PST/RST Exempt Supply”).

The Defendants

5. The Defendant, Amazon.com, Inc., (“Amazon.com”), is an American electronic commerce corporation, with its head office in Seattle, Washington. It is the parent company under which all

of the other Defendants operate. It is the registrant of the Canadian trade-mark (word) “AMAZON.COM” (TMA499121), which was filed on March 7, 1997, the Canadian trade-mark (design) “AMAZON.COM & Smile Design” (TMA642316), which was filed on July 12, 2000, the Canadian trade-mark (word) “AMAZON” (TMA590443), which was filed on July 12, 2001 and the Canadian trade-mark (word) “AMAZON.CA” (TMA597845), which was filed on March 4, 2002.

6. The Defendant, Amazon.com.ca, Inc., (“Amazon.com.ca”), is an American corporation with its principal place of business in Seattle, Washington. It is in the business of electronic commerce and is the registrant of the GST/HST registration number 857305932, the RST Registration Number 85730 MT0001, and the PST Registration Number PST-1017-2103, which gives it the ability to apply, charge, and collect GST/HST and PST/RST across Canada¹.

7. The Defendant, Amazon Canada Fulfillment Services, Inc. (“Amazon Fulfillment Services”), is a Canadian electronic commerce corporation, with its head office in Vancouver, British Columbia, that has several principal establishments (fulfillment centres) throughout Ontario. It is a wholly-owned subsidiary of Defendant Amazon.com that does business throughout Canada, including within the province of Ontario.

8. Orders are shipped from the fulfillment centres, namely:

- #YVR2 – 450 Derwent PL Delta, British Columbia V3M 5Y9
- #YYZ1 – 6363 Millcreek Drive Mississauga, Ontario L5N 1L8

¹ Defendant Amazon.com.ca is also the registrant of the QST registration number 1201187016, which gives it the ability to apply, charge, and collected QST in the province of Quebec.

- #YYZ2 – 2750 Peddie Rd. Milton, Ontario L9T 6Y9
- #YYZ3 – 7995 Winston Churchill Blvd. Brampton, Ontario L6Y 0B2
- #YYZ4/#YYZ6 – 8050 Heritage Rd., Brampton, Ontario L6Y 0C9
- #PRTO – 6110 Cantay Rd., Mississauga, Ontario L5R 3W5

9. The Defendant, Amazon Technologies, Inc., (“Amazon Technologies”), is an American electronic commerce corporation, with its head office in Seattle, Washington. It is a wholly-owned subsidiary of Defendant Amazon.com. It is the registrant of the website domain name “amazon.ca”, which was created on September 19, 2000. It is the current owner of the of the Canadian trade-mark (word) “AMAZON.COM” (TMA499121), which was filed on March 7, 1997, the Canadian trade-mark (design) “AMAZON.COM & Smile Design” (TMA642316), which was filed on July 12, 2000, the Canadian trade-mark (word) “AMAZON.CA” (TMA597845), which was filed on March 4, 2002 (Exhibit R-1) and the current owner and registrant of the Canadian trade-mark (design) “AMAZON.CA” (TMA756673), which was filed on March 26, 2007, and the Canadian trade-mark (design) “AMAZON.CA” (TMA909042), which was filed on July 2, 2010.

10. The Defendant, Amazon.com LLC, (“Amazon LLC”), is an American electronic commerce corporation, with its head office in Seattle, Washington. It is a wholly-owned subsidiary of Defendant Amazon.com.

11. The Defendants market, advertise, promote, import, distribute, and/or sell various goods through Amazon’s website throughout Canada, including within the province of Ontario.

12. As set out hereinafter, the Defendants are jointly and severally liable for the acts and omissions of each other.

13. Unless the context indicates otherwise, all Defendants will be referred to as “Amazon” for the purposes hereof.

THE NATURE OF THE CLAIM

14. The Defendants are, and have been at all relevant times, engaged in the business of electronic commerce (also known as e-commerce, EC, and e-retailing) throughout Canada.

15. These class proceedings concern the Defendants’ inconsistent, arbitrary, and unlawful application of the *Excise Tax Act* and the Provincial Tax Legislation to the goods sold on their website – in so doing, the Defendants have been systematically applying, charging, and collecting Undue Sales Taxes from Class Members. More specifically, the Defendants’ unlawful conduct consists of the following: (a) applying, charging, collecting, and unlawfully demanding Undue Sales Taxes on many Zero-Rated Supplies and/or PST/RST Exempt Supplies and (b) making the false, misleading, and deceptive Representations that (i) they had a right to collect the Undue Sales Taxes, (ii) the transactions whereby consumers purchased Zero-Rated Supplies and/or PST/RST Exempt Supplies involved tax obligations when they did not, and that (iii) the Undue Sales Taxes were being charged for the purpose of legitimate tax collection under federal and/or provincial tax legislation, when they were not.

16. In other words, in unjustifiably and improperly charging GST/HST and/or PST/RST on Zero-Rated Supplies and/or PST/RST Exempt Supplies and then proceeding to label the purported

sales tax as “GST/HST” and/or “PST/RST”, the Defendants misrepresent to customers that the Undue Sales Taxes are due for the purposes of federal and provincial sales tax, when they are not.

I. Amazon - Background

17. Amazon is an electronic commerce and cloud computing company that was founded on July 5, 1994. It is the largest internet-based retailer in the world by total sales and market capitalization.

18. Originally an online bookstore, Amazon has expanded over the years to offer products across dozens of categories, including one of its most recent additions – groceries. More specifically, in the United States, Amazon launched its gourmet food business on its American website (www.amazon.com) in 2003. In Canada, in or about October 31, 2013, Amazon launched a “Grocery and Gourmet Food” section on its Canadian website (www.amazon.ca), initially offering 15,000 non-perishable, non-refrigerated grocery products, across a wide variety of categories, including breakfast foods, baby food, snacks, packaged beverages, coffee, etc., from a variety of brands such as Campbell, Nestle, Pepsi, and Kellogg.

19. Referred to as “Canada’s shopping mall of the future”, Amazon had sales of over \$1.5 billion of Canada’s e-commerce sales in 2013, with a market share of 7% of the total online retail sales in the country (being \$21.6 billion).

20. In 2014, Amazon was again estimated to be the top e-retailer in Canada based on its \$1.9 billion in sales in that year (a \$4 billion increase in sales from the previous year). Moreover, the

Defendants' websites, www.amazon.ca and www.amazon.com, have been reported to be the top two most trafficked retail sites by Canadian online shoppers.

21. The Defendants' website, www.amazon.com, has been ranked as the thirteenth (13th) most visited website in the world with the average daily time on the site as 8 minutes and 46 seconds and 8.91 daily views per visitor. In Canada, the Defendants' website, www.amazon.ca, ranks as ninth (9th) most visited website with the average daily time on site at 6 minutes and 42 seconds and 7.68 daily views per visitor. Finally, www.amazon.com has been ranked as the number one website for online shopping in the world.

22. According to Amazon's 2015 Annual Report, "Amazon became the fastest company ever to reach \$100 billion in annual sales". The Annual Report went on to boast that because of Amazon's business model, it is able to "turn [its] inventory quickly and have a cash-generating operating cycle".

II. Sales Taxes – An Overview

23. Taxation in Canada is a shared responsibility between the federal government and the various provincial and territorial legislatures. Under the Constitution Act, 1867, 30 & 31 Vict, c 3, taxation powers are vested in the Parliament of Canada under s. 91(3) for "The raising of Money by any Mode or System of Taxation". The provincial legislatures have a more restricted authority under ss. 92(2) and 92(9) for "Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes".

24. There are three (3) taxes levied in Canada; (i) Goods and Services Tax (GST) of 5% levied by the federal government, (ii) provincial sales taxes (PST/RST) levied by the provincial governments, and (iii) the Harmonized Sales Tax (HST), which is a single, blended combination of GST and PST/RST.

25. HST is levied in Ontario and in the four Atlantic provinces: New Brunswick, Newfoundland and Labrador, Nova Scotia and Prince Edward Island (the “HST-Participating Provinces”). HST combines the GST and PST/RST in these provinces and is collected on the sales and supplies of most property and services. In Ontario, HST is calculated at a rate of 13%, and in New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, HST is calculated at a rate of 15%. British Columbia adapted HST between 2010 and 2013, but eventually abolished the system after a province-wide referendum. HST is collected by the Canada Revenue Agency, which then remits the appropriate amounts to the participating provinces.

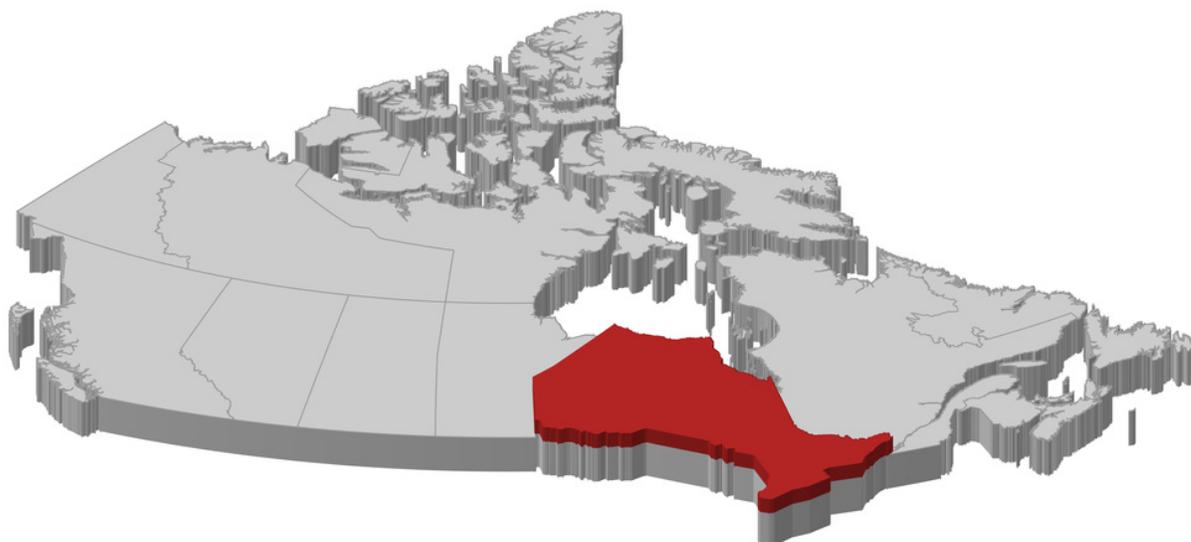
26. The provinces of Manitoba, Saskatchewan, and British Columbia charge and collect both GST and PST/RST. In these provinces, merchants must calculate and collect the goods and services tax (GST) at a rate of 5% in addition to provincial sales taxes, on the supplies of most property and services. The retail sales tax (RST) in Manitoba is calculated at a rate of 8% on the retail price, the provincial sales tax (PST) in Saskatchewan is calculated at a rate of 5% on the retail price, and the provincial sales tax (PST) in British Columbia is calculated at a rate of 7% on the retail price.

27. In contrast, there is no provincial sales tax or retail sales tax in Alberta, Nunavut, Yukon, or the Northwest Territories. As a result, merchants are only required to collect GST calculated at

a rate of 5% on the supplies of most property and services. The federal GST rate is 5%, effective January 1, 2008.

Tax rates per province/territory				
Province/Territory	Type	GST (%)	PST (%)	Total tax rate (%)
Alberta	GST	5	0	5
British Columbia	GST + PST	5	7	12
Manitoba	GST + PST	5	8	13
New Brunswick	HST	5	10	15
Newfoundland and Labrador	HST	5	10	15
Northwest Territories	GST	5	0	5
Nova Scotia	HST	5	10	15
Nunavut	GST	5	0	5
Ontario	HST	5	8	13
Prince Edward Island	HST	5	10	15
Quebec	GST + PST	5	9.975	14.975
Saskatchewan	GST + PST	5	5	10
Yukon	GST	5	0	5

28. Depicted below is the history of applicable taxes in Ontario since 1991:



Historical VAT² rates

GST Rates

- 13% HST since July 1, 2010
 - 5% GST from January 1, 2008 to June 30, 2010
 - 6% GST from July 1, 2006 to December 31, 2007
 - 7% GST from January 1, 1991 to June 30, 2006
-

29. As agents of the Minister of National Revenue and provincial revenue agencies, the Defendants are required to collect sales taxes payable in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15 (the “Excise Tax Act”) and with the applicable Provincial Sales Tax Legislation³.

² VAT is value-added tax.

³ In British Columbia, the Provincial Sales Tax (PST) is administered in accordance with the *Provincial Sales Tax Act*, SBC 2012, c 35; in Manitoba, the Retail Sales Tax (RST) is administered in accordance with *The Retail Sales Tax Act*, CCSM c R130; in Saskatchewan, the Provincial Sales Tax (PST) is administered in accordance with the *Provincial Sales Tax Act*, RSS 1978.

30. The question of taxability, whether a particular product or product category is subject to sales tax, exempt from sales tax, taxable at a rate of 0% (Zero-Rated) or Non-Taxable is closely regulated by federal and provincial legislation.

31. In the HST-Participating Provinces and in the strictly GST-Collecting Provinces and Territories (Alberta, Yukon, Nunavut, and the Northwest Territories), Schedule VI of the *Excise Tax Act* is devoted to the categorization of a Zero-Rated Supply and serves to determine what is taxable at the regular GST/HST rate.

32. Federally, “Basic Groceries” and “Other Products” fall under the definition of “Zero-Rated Supplies” in the *Excise Tax Act*, at Schedule VI in addition to “Prescription Drugs and Biologicals”, “Medical and Assistive Devices”, “Agriculture and Fishing”, “Exports”, “Travel Services”, “Transportation Services”, “International Organizations”, “Financial Services”, and “Collection of Customs Duties”.

33. “Basic Groceries” means all food or beverages for human consumption (including accompaniments therefor) to the exclusion of the list of items found in the *Excise Tax Act* at Schedule VI, Part III, s. 1, including, but not limited to the following summary thereof (mostly consisting of alcohol, junk food and/or snack food for immediate consumption):

- a) Alcoholic beverages, carbonated beverages, and non-milk-based fruit (flavoured) beverages containing less than 25 percent natural juice,
- b) Candy, chewing gum, chocolate, and all seeds, nuts and popcorn coated therewith or with honey, molasses, syrup, sugar or artificial sweeteners,

- c) Chips, crisps, puffs, curls or sticks and other similar snack food or popcorn and brittle pretzels, and granola products, but not including products sold as breakfast cereal,
- d) Salted nuts or salted seeds,
- e) Snack mixtures containing cereals, nuts, seeds, dried fruit or any other edible product, but not including products sold as breakfast cereal,
- f) Ice lollies, juice bars, flavoured, coloured or sweetened ice waters, or similar products, whether frozen or not,
- g) Ice cream/milk, sherbet, frozen yogurt/pudding, including non-dairy substitutes therefor and any single serving package containing same,
- h) Fruit bars, rolls or drops or similar fruit-based snack foods,
- i) Cakes, muffins, pies, pastries, tarts, cookies, doughnuts, brownies, croissants with sweetened filling or coating, and etc., but not including bread products, where they are packaged in quantities of less than six (6) in single servings or are single servings of less than six (6),
- j) Beverages, pudding, jello, mousse, flavoured whipped dessert, and etc. except (i) baby food, (ii) when sold in a package with other single servings, and (iii) when the package exceeds a single serving,
- k) Food or beverages heated for consumption,
- l) Salads not canned or vacuum sealed,

- m) Unfrozen sandwiches and the like,
- n) Platters of cheese, cold cuts, fruit or vegetables and other arrangements of prepared food,
- o) Beverages dispensed on site,
- p) Food or beverages sold through catering services or through a vending machine,
- q) Food or beverages sold at an establishment where substantially all of the sale of food or beverages are of the enumerated categories above unless the food or beverage is not designed for immediate consumption or the product is and is sold in a quantity of six (6) or more and is not sold for on-site consumption, and
- r) Unbottled water, other than ice;

34. “Other Products”⁴ includes the following:

- a) Products that are marketed exclusively for feminine hygiene purposes and is a sanitary napkin, tampon, sanitary belt, menstrual cup or other similar product;

35. The HST-Participating Provinces apply the *Excise Tax Act* in determining whether a particular product is a Zero-Rated Supply. However, the provinces of Ontario, Nova Scotia, New Brunswick, Newfoundland and Labrador, and Prince Edward Island apply a “point-of-sale rebate” for the provincial part of the HST payable on certain qualifying books sold, imported, or brought into these provinces.

⁴ “Other Products” is defined in the *Excise Tax Act* at Schedule VI, Part II.1.

36. In the PST/RST-Collecting Provinces, which collect a combination of GST and PST/RST (Manitoba, Saskatchewan, and British Columbia), the *Excise Tax Act* determines what is Zero-Rated with respect to the GST payable, and the applicable Provincial Sales Tax Legislation determines what is “exempt” with respect to the PST/RST payable.

37. By way of example, in Manitoba, *The Retail Sales Tax Act*, C.C.S.M. c. R130 (hereinafter the “Manitoba RST Act”) includes a section entitled “Tax Exemptions for Tangible Personal Property” in which article 3(1) lists “Exempt tangible personal property”. Article 3(1) stipulates that “no tax is payable under this Act in respect of the following classes of tangible personal property”. Among the Non-Taxable supplies enumerated in section 3 are (this summary is non-exhaustive):

- (a) “[F]ood and beverages the supply of which is a zero-rated supply under Part III of Schedule VI of the *Excise Tax Act* (Canada)”;
- (b) Cycling helmets;
- (c) Children’s clothes and footwear;
- (d) Feminine hygiene products;
- (e) Items used for nursing, feeding or bathing a baby⁵, baby supplies such as diapers, strollers, pacifiers and cribs, furniture, but not including toys, mobiles, and mirrors;

⁵ Under the Manitoba Retail Sales Act, a baby is under two (2) years.

- (f) Breast pumps, toilet training items, child safety items such as vehicle restraint systems;
- (g) Natural water;
- (h) “[D]rugs or substances the supply of which is a zero-rated supply under Part I of Schedule VI of the Excise Tax Act (Canada) when purchased for human use” as well as for livestock;
- (i) Nicotine replacement therapy products designed to assist in quitting smoking;
- (j) Dental appliances ordered by a dentist and optical appliances ordered by a physician;
- (k) Artificial limbs, hearing aids, dentures;
- (l) Tangible personal property designed for use by a disabled person;
- (m) A variety of farm implements and machinery, and items used to operate the farm including livestock and agricultural products;
- (n) Edible plants and seeds/bulbs to grow said plants;
- (o) Commercial fishing boats and nets;
- (p) Books, student yearbooks, free newspapers and magazines,

- (q) Legal tender, commemorative coins, and postage stamps, unless purchased at a premium;
 - (r) Used clothing valued at \$1.00 or less, used furniture and other household items valued at \$100.00 or less;
 - (s) Diabetic supplies and blood monitoring supplies;
 - (t) Mining products; and
 - (u) Exhibit purchased by a non-profit museum or gallery.
38. In Saskatchewan, the *The Provincial Sales Tax Act*, RSS 1978, c P34.1 (hereinafter the “Saskatchewan PST Act”) contains the following non-exhaustive list of “Exemptions” from tax at article 8(1):
- (a) Agricultural products, including livestock;
 - (b) Artificial limbs and prosthetics;
 - (c) Alcoholic beverages;
 - (d) Bibles, books, magazines, and newspapers;
 - (e) Clay, earth, coal;
 - (f) Children's clothing and footwear (which includes cloth *and* disposable diapers)

- (g) Coins and notes purchased at face value;
- (h) Dental appliances prescribed by a dentist and dentures, optical appliances prescribed by a physician;
- (i) Prescription drugs;
- (j) Electricity;
- (k) Equipment designed for the disabled, including hearing aids, orthopaedic appliances;
- (l) Various farm equipment and paraphernalia;
- (m) Food and drink;
- (n) Matches;
- (o) Certain medical devices;
- (p) Natural water;
- (q) Postage stamps purchased at face value;
- (r) Weed control chemicals; and
- (s) Wood.

39. Since July 1, 2015, the supplies of feminine hygiene products are also non-taxable in Saskatchewan.

40. In British Columbia, the *Provincial Sales Tax Exemption and Refund Regulation*, BC Reg 97/2013 (the “B.C. PST Exemption Regulation”) includes specific items that are exempt from tax under the *Provincial Sales Tax Act*, SBC 2012, c 35 (the “B.C. PST Act”). The B.C. PST Exemption Regulation contains the following non-exhaustive list of “Exemptions” from tax:

- (a) Drugs, vaccines, artificial limbs and orthopaedic appliances, hearing aids, dentures and accompaniments, prescription dental and optical appliances;
- (b) Feminine hygiene products;
- (c) Oral vitamins and dietary supplements, salves, ointments, nasal sprays, inhalants, antiseptics, liniments, foot powders, germicides, laxatives, cough syrups, and cold and flu remedies, pads for bunions, calluses and corns and first aid materials, but not including sunscreen, oral hygiene products, toiletries, soaps and moisturizers (unless medicated), hair products (unless for the treatment of lice), and beauty products and cosmetics;
- (d) Nicotine replacements to assist an individual to stop smoking tobacco;
- (e) Diabetic and ostomy supplies;
- (f) Human parts including, organs, tissue, semen, ova, blood and blood constituents;

- (g) Devices for use in the transportation of individuals with disabilities;
- (h) Medical supplies and equipment for individuals with disabilities;
- (i) Children's clothing and footwear (not bigger than size 16 for girls and 20 for boys), but not including disposable diapers, costumes, or sporting equipment;
- (j) Used clothing and footwear valued at less than \$100.00
- (k) School supplies, including schoolbags, drawing instruments, erasers, glue, ink, paper, paint and paint brushes, crayons, pencils and pens (other than fountain pens and nibs), binder, rulers, school art portfolios, and work books;
- (l) Teaching implements purchased by a school, not including chalkboards/whiteboards and accompaniments;
- (m) Books (other than fashion books), newsletters, yearbooks, sheet music, magazines, newspapers;
- (n) Certain gifts;
- (o) Manufactured firelogs, barbecue briquettes;
- (p) Window insulating systems;

- (q) Work-related safety equipment including safety glasses, goggles, face shields and helmets, respirators, gas masks, hearing protectors, safety caps, reinforced gloves, safety footwear, personal intercom systems for hands-free communication;
- (r) Marine safety equipment including life-jackets, buoys and flags, and throw rings;
- (s) Various safety equipment and apparel including bicycle lights/reflectors, children's restraint and booster car seats, first aid kits, safety helmets/vests/bibs, emergency locator transmitters, portable fire extinguishers, smoke/fire alarm, gas detection monitors, avalanche safety equipment;
- (t) Certain industrial and commercial items;
- (u) Reusable bottles for milk products;
- (v) Animal feed and seeds and vitamins and dietary supplements unless it's a domestic pet;
- (w) Certain property for farming purposes, fertilizers;
- (x) Remembrance Day poppies and wreaths, natural cut evergreen trees sold as Christmas trees;
- (y) Dry ice; and
- (z) Coins sold at face value.

41. The term “exempt” carries a different meaning under the *Excise Tax Act* than it does under the Provincial Sales Tax Legislation of Manitoba, Saskatchewan, and British Columbia. The *Excise Tax Act* uses the term “Zero-Rated” to describe the supplies that aren’t subject to the regular tax rate (being taxable at a rate of 0%). However, the term “exempt” is used to describe PST/RST Exempt Supplies and/or Non-Taxable Components in Manitoba, Saskatchewan, and British Columbia.

42. In sum, the term “Zero-Rated Supply” is applicable to all provinces with respect to the GST/HST portion of the sales tax and the term “exempt” is applicable to Manitoba, Saskatchewan, and British Columbia with respect to their PST/RST (i.e. PST/RST Exempt).

43. It appears clearly from the reading of the *Excise Tax Act* that the government’s intention is that Basic Groceries are not to be included in the tax base. To this end, rather than attempting to define everything that is included in the category of Basic Groceries, section 1 of Part III of Schedule VI of the *Excise Tax Act* itemizes a list of exclusions and exceptions.

44. Similarly, the Provincial Sales Tax Legislation in Manitoba, Saskatchewan, and British Columbia also include sections concerning PST/RST Exempt or non-taxable supplies.

III. The Defendants’ Sales Tax Collection Practices

45. As an agent of the Minister of the federal government and/or on behalf of the provinces, Amazon is required to collect sales taxes payable in accordance with the provisions set out in the *Excise Tax Act*.

46. The law is clear and unambiguous with regards to the “non-taxability” of Zero-Rated Supplies described in Section VI of the *Excise Tax Act* and in the Provincial Sales Tax Legislation.

47. For example, Schedule VI of the *Excise Tax Act* expressly provides that the supplies of Basic Groceries and “Other Products” are not taxable goods and, for greater certainty, article 165 (3) states that “The tax rate in respect of a taxable supply that is a zero-rated supply is 0 percent”.

48. Provisions with similar wording can be found in the Provincial Sales Tax Legislation with respect to PST/RST Exempt Supplies.

49. At the core of the present Application is the fact that the Defendants’ tax collection practices are at odds with applicable sales tax laws and that the collection of the Undue Sales Taxes was under *colore officii*.

50. To date, Amazon has been inconsistently applying the *Excise Tax Act* and the Provincial Sales Tax Legislation by charging and collecting the Undue Sales Taxes on the Zero-Rated Supplies and/or PST/RST Exempt Supplies purchased by unwitting consumers, thereby misappropriating and occupying the funds without any legal right.

51. Further, in so doing, Amazon has made false, misleading, and/or deceptive representations to Class Members that it had a right (or even a duty) to collect the Undue Sales Taxes described herein including, but not limited to the act of listing the purported sales taxes as “GST/HST” and/or “PST/RST” on customers’ invoices.

52. When a customer wishes to conclude a transaction with Amazon, the first step in the purchasing process is to access Amazon’s website (either directly or through a mobile application)

at www.amazon.ca or www.amazon.com. Once the customer finds the product(s) that they wish to purchase, they may add these items to their virtual shopping cart by clicking “Add to Cart”.

53. A customer must sign into their Amazon account (or sign up for one) prior to proceeding to check-out and may sign in at any time prior to this as well. Before actually placing the order, the customer is redirected to a webpage entitled “Review your order”. Amazon displays the order summary on this webpage, indicating: the total cost of the items, shipping and handling fees, the total before tax, and lastly, the “Estimated GST/HST” and “Estimated PST/RST/QST”.

54. According to the Defendants, the amount of estimated taxes can differ from the taxes ultimately calculated when the customer’s order is processed and shipped, due to various factors affecting the calculation of sales tax. The Defendants make the following statement on their website:

Generally, tax is calculated on the total selling price of each individual item. In accordance with applicable tax laws, the total selling price of an item generally will include item-level shipping and handling charges, item-level discounts, gift-wrap charges, and an allocation of order-level shipping and handling charges and order-level discounts.

Note that many factors can change between the time you place an order and the time your order is shipped, which could affect the calculation of taxes. Therefore, the amount appearing on your order as "Estimated Tax" can differ from the taxes ultimately calculated when your order ships.

55. Notwithstanding the potentially incorrect stated amount of sales tax displayed to the customer prior to the placement of the order (and therefore, prior to the contract being formed), Amazon never properly corrects and calculates the final sales tax amount in accordance with applicable federal and provincial tax legislation.

56. After the order has been placed, the customer then receives a Order Confirmation email which again details the order and estimates the amount of sales tax (called the “Estimated Tax”).

57. After the order has been shipped, the customer then receives a Shipping Confirmation email which now specifies the actual sales tax amount that was charged (called the “Tax Calculated”).

58. Despite showing the “Estimated Tax” on the customers’ cart and on the Order Confirmation and the actual “Tax Calculated” on the Shipping Confirmation, the presence of the undue sales tax is exceptionally inconspicuous, in that in order for a customer to realize the overcharge they would need to: (a) closely inspection their invoice, (b) be an expert in sales tax law, and (c) use complex calculations.

59. Essentially, on its website as well as in the two (2) follow-up emails to the customer, Amazon elects to display only the total sum of the sales taxes at the end of the order summary and/or invoice containing the total purchases instead of breaking it down per item to indicate whether or not sales taxes are being charged thereon, making it highly difficult, if not impossible for a customer to even realize, both before placing the order and afterward, that they will be and/or have been taxed incorrectly.

/Description	Our Price/Notre prix	Total/Total
	CDN\$ 2.00	CDN\$ 2.00
	CDN\$ 4.48	CDN\$ 4.48
	CDN\$ 7.99	CDN\$ 7.99
	CDN\$ 6.29	CDN\$ 6.29
	CDN\$ 7.88	CDN\$ 7.88
<hr/>		
Subtotal/Sous-total		CDN\$ 28.64
Shipping and Handling/Frais de port		CDN\$ 0.00
GST/HST/TPS/TVH		CDN\$ 3.72
PST/RST/QST/TVP/TVD/TVQ		CDN\$ 0.00
Order Total/Montant total		CDN\$ 32.36

60. This is especially true in the event that a customer places an order of various items from Amazon, some of which are taxable at the regular GST/HST and PST/RST rates, while others are Zero-Rated Supplies and/or PST/RST Exempt Supplies. Amazon's practice of only listing the sales tax as a total amount on the order as a whole (instead of on each item individually, indicating item-by-item if taxes are being charged or not) is deceptive and facilitates the collection of the undue sales taxes from unsuspecting customers. In other words, the undue sales taxes are effectively hidden.

61. Given that goods ordered from Amazon are rarely purchased on their own, but most often as part of a larger order with several items bundled together, it is nearly impossible that a

reasonably prudent person would discern whether the sales taxes had been correctly applied to their order. Furthermore, the naming of the undue sales taxes as “GST” and/or “PST/RST” are themselves false and misleading representations, contributing to the improbability that an ordinary person would perceive the amount as incorrect.

62. In any case, when purchasing a product from a merchant, especially one as large as Amazon, a reasonably prudent person normally and rightfully presumes that the amount of the sales taxes are properly calculated – which is clearly not the case with Amazon.

63. The Defendants knew or should have known the sales tax requirements in each country and province in which they operate and that their tax collection practices in relation to the Zero-Rated Supplies and/or PST/RST Exempt Supplies are inconsistent with applicable federal and provincial tax legislation.

IV. The Defendants’ Further Misrepresentations and Negligence

64. While the applicable tax laws throughout Canada provide that the rate of tax with respect to a taxable supply that is Zero-Rated is 0% and that PST/RST Exempt Supplies are simply exempt from sales tax altogether, Amazon nonetheless, consistently misapplies and/or wholly disregards the applicable laws by calculating GST/HST and/or PST/RST on Zero-Rated and PST/RST Exempt Supplies – and this, despite their express reassurance to the contrary.

65. In the event that the Defendants required further clarification or assistance in the interpretation of the provisions set out in the *Excise Tax Act* or the Provincial Sales Tax Legislation pertaining to sales tax on Zero-Rated Supplies, they could have consulted the Canada Revenue

Agency's diverse selection of tax bulletins, memoranda, information sheets and brochures available to the public; all replete with examples and interpretations in relation to various categories of Zero-Rated Supplies and/or PST/RST Exempt Supplies.

66. Similarly, the PST/RST-Collecting Provinces' (Manitoba, Saskatchewan, and British Columbia) offer a wide range of detailed information bulletins with respect to provincial sales tax and PST/RST Exempt Supplies.

67. Furthermore, the Defendants at least should have consulted Canada Revenue Agency's website or the websites of the provincial revenue agencies, which feature specific sections for businesses and consumption taxes. For instance, at the Canada Revenue Agency's website, www.cra-arc.gc.ca, under the section for businesses, there is a comprehensive page labelled "Charge the GST/HST" that includes a subsection entitled "Which GST/HST rate to charge" where businesses may find what the meaning of a Zero-Rated Supply is, along with a link to specific examples. Similarly, at www.cra-arc.gc.ca, also under the section for businesses, there is a comprehensive page labelled "Charge the GST/HST" that includes a subsection entitled "Which GST/HST rate to charge" where businesses may find what the meaning of a Zero-Rated Supply is, along with a link to specific examples.

68. Should the Defendants still have found themselves unable to interpret the relevant provisions hereto, they could have contacted the Canada Revenue Agency's GST/HST Rulings centre of technical expertise on the goods and services tax/harmonized sales tax, which exists for the purpose of providing timely, accurate and accessible technical information on entitlements and obligations under the *Excise Tax Act* and related regulations.

Our services

- For GST/HST technical enquiries, call our national telephone service at **1-800-959-8287** from 8:15 a.m. to 5:00 p.m. Our goal is to respond to these enquiries within two minutes of a caller entering the queue.
- In response to written requests, we issue rulings and interpretations to explain technical GST/HST matters. This service is offered at no cost. Our goal is to respond to written requests for GST/HST rulings and interpretations within 45 business days of CRA receipt of the request and all relevant facts and supporting documentation. This excludes highly technical and precedent- and/or policy-setting rulings and interpretations.
 - A **ruling** is a formal written letter or statement that explains the CRA position on how the relevant provisions of the Act apply to a clearly defined fact situation. A ruling is binding on the CRA.
 - An **interpretation** is a formal letter or statement that explains the CRA's view or general understanding of how the Act applies to a generic fact situation.

You can request a ruling or interpretation by:

- Mailing the request and any supporting documentation to your nearest GST/HST rulings centre listed at the end of this publication; or
- Submitting the request and any supporting documentation electronically through the *Submit documents* service in the My Business Account and Represent a Client portals. This service is available to businesses and authorized representatives that have registered to these portals.

69. Despite the abundance of readily-accessible information available for the precise business activity that the Defendants chose to engage in, namely, the sale of goods within Canada, the Defendants chose to either neglect to familiarize themselves with the applicable tax legislation, (thus rendering themselves willfully blind as to their contents), and/or deliberately misapply said legislation for their own purposes. It is clear that the Defendants either never properly researched Canadian federal and provincial tax legislation and/or that they intentionally inconsistently and arbitrarily apply the *Excise Tax Act* and/or the Provincial Sales Tax Legislation.

V. The Defendants' Liability

70. The Defendants' business practice of charging and collecting sales tax on Zero-Rated Supplies and PST/RST Exempt Supplies sold by Amazon is unlawful, deceptive, and/or grossly negligent – as is clearly laid out below.

71. The Defendants' misappropriation of sales taxes was and is prohibited, and intentional, insofar as it is believed and therefore averred that the Defendants had actual knowledge of applicable sales tax legislation, given that Amazon holds at least 7% of the market share of the total online retail sales in Canada.

72. Alternatively, if misappropriation of the sales taxes was not deliberate and/or intentional, it is the result of gross negligence on the part of the Defendants; particularly so due to the large volume of sales in which Amazon engages in Canada, including within the province of Ontario.

73. The Defendants knew, or in the exercise of reasonable care towards Class Members who relied on their Representations, should have known that Zero-Rated Supplies are taxable at a rate of 0% and that PST/RST Exempt Supplies are exempt from the application provincial sales tax and/or retail sales tax altogether. Equally, the Defendants either knew or should have known which goods were designated as Zero-Rated Supplies by the federal government and which goods were designated as PST/RST Exempt by the provincial governments. In erroneously determining that the Zero-Rated Supplies and/or PST/RST Exempt Supplies sold by Amazon were subject to sales taxes, the Defendants were inexplicably reckless.

74. In light of the above, any argument made by the Defendants that they had no knowledge that the Undue Sales Taxes being collected was in violation of Canadian legislation is dubious at best.

75. Amazon's gross negligence is further evidenced by its inaction and indifference when it learned that it was improperly charging sales tax on certain Zero-Rated Supplies and/or PST/RST

Exempt Supplies. Despite receiving complaints to that effect, Amazon continues to refuse and/or neglect to rectify the situation and to conform its behaviours within the confines of the law.

76. A reasonably prudent corporation, merchant, marketer, advertiser, distributor and/or seller in the Defendants' position would have amended their tax collection practices, notified customers, and refunded the amounts collected as the undue sales taxes – but unfortunately, this has not occurred and absent this legal proceeding would surely have been “swept under the rug”.

77. Whether the Defendants' actions in charging and collecting undue sales taxes were deliberate or grossly negligent, it remains that they impermissibly charged and collected these sales taxes, which were not due, and further misrepresented that they were owed under federal and/or provincial sales tax legislation, thereby causing the Plaintiff and Class Members to suffer damages as a result of their misconduct – punitive damages are therefore in order.

VI. Summative Remarks

78. The Plaintiff and the Class Members that he seeks to represent suffered economic damages by having paid the Undue Sales Taxes to the Defendants. They did not, and could not, have agreed to the inclusion of this additional charge and, even if it had been adequately disclosed (which it was not), the very premise by which the Defendants were collecting said undue taxes was false as they had no right to collect it, the transactions did not involve tax obligations and its purpose was false and misleading given that sales tax is not due on Zero-Rated Supplies and PST/RST Exempt Supplies under applicable sales tax legislation. Simply put, the Undue Sales Taxes applied to the orders were never agreed to by consumers and, even if their existence had been noted, the label itself is misleading in that “GST/HST” and “PST/RST” were not actually due.

79. The Plaintiff and Class Members suffered out-of-pocket loss in terms of the amount of the Undue Sales Taxes and are therefore entitled to claim full reimbursement of the payment of any Undue Sales Taxes unlawfully and arbitrarily levied on their orders.

80. The Plaintiff, on behalf of the Class Members, seeks an award of damages against the Defendants for their intentional and wilful failure to disclose and/or active concealment of the Undue Sales Taxes for which the stated purpose is inherently false.

81. The Representation was made knowingly and/or recklessly.

82. The Defendants' practice of charging and collecting the Undue Sales Taxes was facilitated namely due to their deceptive conduct and failure to conspicuously disclose its existence, if at all, to customers at the time their orders were placed.

83. Nevertheless, the Defendants knew or ought to have known that ordinary consumers would not be reasonably able to protect their interests and would be relying on the Defendants' representations to their detriment.

84. The Plaintiff and the Class Members have suffered and will continue to suffer injuries, losses or damages as a result of the Defendants' conduct.

THE REPRESENTATIVE PLAINTIFF

85. On or around November 3, 2016, Mr. Sainte-Marie placed an order with Amazon on its website at www.amazon.ca for Gerber Baby Cereal, Rice, Hamburger Helper Less Sodium Cheesy Italian, Kellogg's Rice Krispie Square Bars Value Pack (16 bars), Kellogg's Pop-Tarts Jumbo (24

count), La Tortilla Factory Large Wheat Tortillas and Oreo cookies, which were invoiced separately with subtotals of \$3.42 and \$28.64, respectively.

86. Amazon applied and collected Undue Sales Taxes from the Plaintiff in the amounts of \$0.44 on the first item and \$3.72 on the second items (labelled as “GST/HST” and despite the majority of the aforementioned items in the order consisting of Basic Groceries, and therefore taxable at a rate of 0%).

87. The charging of \$0.44 GST/HST indicates that Amazon had decided that the Gerber Baby Cereal, Rice was taxable at the Ontario HST rate of 13% on the \$3.42 and the charging of the \$3.72 GST/HST on the second items indicates that Amazon has decided that the entire order was subject to HST despite the majority of the aforementioned items in the order falling under the definition of Basic Groceries and therefore being Zero-Rated Supplies

88. The Plaintiff suffered damages as a result of the Defendants’ conduct.

CAUSES OF ACTION

A. Voidable Clause of Contract – Defence to Formation

89. Upon placing an order with the Defendants, the Plaintiff and Class Members entered into an express contract with the Defendants whereby a monetary benefit was conferred onto the Defendants in exchange for the delivery of selected goods from Amazon’s website.

90. The Defendants’ unlawful inclusion in this contract of the Undue Sales Taxes consisted of: (a) a latent (hidden) ambiguity whereby Class Members had a reasonable belief that the

Defendants' Representation was true and that the sales taxes were legitimate, (b) material misrepresentation and/or fraud with respect to the total price and or the legitimacy of the levied taxes and the Class Members were in justifiable reliance upon the Defendants' Representation, and (c) a breach of public policy in that it is unlawful to levy undue sales taxes on consumers.

91. Therefore, Class Members are entitled to consider the Undue Sales Taxes as a severable portion of the contract which is voidable at their option, and to require that said monies be returned to them.

92. Even if the Defendants had properly disclosed the existence of the Undue Sales Taxes prior to the formation of the contract and had they secured Class Members' consent thereto (thereby purportedly including it as part of the terms), this consent would have been misinformed as the Defendants' representations were that this additional charge was an amount of sales tax owed under federal and/or provincial tax legislation (as described herein, this money was not collected for this purpose). Therefore, had Class Members consented to the Undue Sales Taxes, this consent would have been fraudulently obtained, thereby voiding its inclusion in any case.

93. Further, even had the Defendants disclosed that the Undue Sales Taxes were being charged arbitrarily, they would not have formed part of the contract as their mere inclusion is against public policy.

94. The Defendants' misrepresentation has resulted in injury, economic losses and damages to the Plaintiff and Class Members.

95. The aforementioned loss suffered by the Plaintiff and the Class Members was caused by this misrepresentation, particulars of which include, but are not limited to the fact that the Class Members were charged and paid amounts under the guise of sales taxes that were not actually due under the applicable tax legislation.

96. The Defendants' breaches were wilful and not the result of mistake or inadvertence.

97. By virtue of the acts and omissions described above, the Plaintiff and Class Members are entitled to recover damages from the Defendants.

98. The loss, damage and injuries were foreseeable.

B. Breach of Fiduciary Duty

99. Upon placing an order with the Defendants, the Plaintiff and Class Members entered into an express contract with the Defendants whereby a monetary benefit was conferred onto the Defendants in exchange for the delivery of selected goods from Amazon's website. By and through the operation of this relationship, Amazon was acting as a fiduciary to the Plaintiff and to the Class.

100. The Defendants charged and collected an inconspicuous Undue Sales Taxes to and from Class Members on the Zero-Rated Supplies and/or PST/RST Exempt Supplies under the guise of legitimate "GST/HST" and/or "PST/RST".

101. As a proximate result of the Defendants' actions, the Plaintiff and Class Members have suffered damages in the form of the amount of the Undue Sales Taxes.

102. The Defendants' breach of fiduciary duty was a direct cause of the Plaintiff's and the Class Members' damages. Had the Defendants made reasonable efforts to assess, represent, charge, and collect the correct amount of sales taxes on the Class Members' orders, they would not have been deprived of their property through the collection of the Undue Sales Taxes.

C. Tort of Conversion

103. By its conduct, the Defendants have converted and/or misappropriated funds belonging to the Plaintiff and Class Members.

104. The Defendants had no legal right to collect sales taxes, given that the supplies of the Plaintiff and Class Members' were Zero-Rated and therefore taxable at a rate of 0% and/or PST/RST Exempt under federal and/or provincial tax legislation.

105. The conversion and misappropriation of the funds that are the Undue Sales Taxes are prohibited, and intentional, insofar as it is believed and therefore averred that the Defendants had actual knowledge of applicable sales tax legislation.

106. Further, the Plaintiff and Class Members trusted Amazon to properly apply sales taxes in accordance with applicable legislation, which evidently, they failed and/or refused to do.

107. The elements of the tort of conversion are clearly made out in this Statement of Claim as the Plaintiff and Class Members had clear and unconditional legal ownership of the Undue Sales Taxes at the time of the conversion, the Defendants gained possession of the Undue Sales Taxes through the commission of wrongful acts and there are significant damages resulting to the Plaintiff and the Class Members.

108. The Defendants' conduct in intentionally interfering with the Class Members' property unjustifiably deprived the Plaintiff and the Class of the rightful possession and use of their money and the degree of harm was and is significant thereby constituting an unlawful conversion of Plaintiff's and Class Member's personal property.

D. Tort of Civil Negligence

109. The Defendants had a positive legal duty to use reasonable care to perform their legal obligations to the Class Members, including, but not limited to: assessing, representing, charging, and collecting the correct amount of sales taxes on the supplies of goods sold to customers.

110. Amazon was aware that its customers (including the Plaintiff and Class Members) relied on it to properly apply sales tax in accordance with applicable Canadian sales tax legislation, particularly due to the fact that it expressly reassured customers that the final sales tax would be calculated in accordance with applicable sales tax laws.

111. The Defendants breached their duty of care to the Class Members by negligently charging and collecting the Undue Sales Taxes on the Zero-Rated Supplies and/or PST/RST Exempt Supplies in violation of applicable sales tax legislation and by further misrepresenting that the Undue Sales Taxes were owed under federal and provincial sales tax legislation.

112. The Defendants knew or should have known that Zero-Rated Supplies are taxable at a rate of 0% and PST/RST Exempt Supplies are exempt from sales tax altogether, yet the Defendants continue to charge and collect the Undue Sales Taxes.

113. By virtue of the acts and omissions described above, the Defendants were negligent and caused damage to the Class Members by failing take the appropriate steps to ensure that they were assessing, representing, charging, and collecting the correct amount of sales taxes on the supplies of goods sold to consumers.

114. The loss, damages and injuries were foreseeable.

115. The Defendants' conduct directly and proximately caused the loss, injury and damages to the Class Members.

116. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendants.

E. Tort of Fraudulent Concealment

117. The Defendants made material omissions as well as affirmative misrepresentations regarding Amazon's sales tax collection practices and the purpose of the Undue Sales Taxes.

118. The Defendants knew that the Representations were false at the time that they were made.

119. Amazon's concealment and omissions of material facts concerning the Undue Sales Taxes was made purposefully, wilfully, wantonly, and/or recklessly to mislead Class Members into reliance.

120. Amazon knew that Class Members, being ordinary consumers, had no way to determine the truth behind Amazon's concealment and material omissions of facts surrounding the Undue Sales Taxes, as set forth herein.

121. Further, not only were the Undue Sales Taxes calculated on the sum of the total purchases only (and not on individual items), the final sales tax amount was only displayed for Class Members on their invoice after their orders had been placed and the items had been shipped. Moreover, the Undue Sales Taxes was falsely listed as "GST/HST" and "PST/RST" – a practice that further concealed the truth from customers.

122. The Defendants had a duty to disclose material facts regarding the existence and the true nature of the Undue Sales Taxes because it was known and/or accessible only to the Defendants, at the time of entering into the contract. Neither the Plaintiff, nor the Class Members could, in the exercise of reasonable diligence, have independently discovered that the Undue Sales Taxes would not and did not conform to the statements and Representations prior to entering into the contract with the Defendants.

123. The facts concealed and/or not disclosed by the Defendants to the Plaintiff and Class Members at the time that the contract was entered into are material facts in that a reasonable person would have considered them important in deciding whether to proceed to place their order with Amazon.

124. The Defendants have still not made full and adequate disclosure and continue to defraud the Class Members and to conceal material information regarding the Undue Sales Taxes by simply listing the purported sales tax as "Estimated GST/HST" and/or "Estimated PST/RST".

125. The Class Members relied on the Defendants' Representations and acted in reliance thereupon. The Class Members' actions were reasonable and justified. The Defendants were in exclusive control of the material facts concerning the Undue Sales Taxes and such facts were not known to the public or to the Class Members.

126. As a result of the concealment and/or suppression of facts, the Class Members have sustained and will continue to sustain damages.

127. As a result of their reliance, the Class Members have been injured in an amount to be proven at trial.

F. Tort of Negligent Misrepresentation

128. The tort of negligent misrepresentation can be made out as:

- (a) There was a relationship of proximity in which failure to take reasonable care would foreseeably cause loss or harm to the Class;
- (b) The Defendants made a Representation that was untrue, inaccurate and/or misleading;
- (c) The Defendants acted negligently in making the Representation;
- (d) The Representation were relied upon by the Class reasonably; and
- (e) The Class has sustained damages as a result of their reliance.

129. Amazon represented to the Class Members that they had a right to collect the Undue Sales Taxes, that their orders involved tax obligations, and that the Undue Sales Taxes were being levied for the purpose of legitimate tax collection under federal and/or provincial tax legislation, when they were not.
130. At the time that the Defendants made the misrepresentations herein alleged, they had no reasonable grounds for believing the Representation to be true, as there was ample evidence to the contrary set forth in detail above.
131. The Defendants knew or were reckless in not knowing that their Representations were untrue. The Defendants either had actual knowledge of the fact that the Undue Sales Taxes was unlawful, unjustified and did not represent sales tax due under federal and provincial tax legislation, or they were reckless and negligent in not knowing.
132. The Defendants made the Representation herein alleged with the intention that the Plaintiff and Class Members rely on this representation.
133. Class Members acted in justifiable and reasonable reliance on these material misrepresentations, and in reliance thereupon, paid the Undue Sales Taxes under the belief that it was their obligation under federal and/or provincial sales tax legislation.
134. The Class Members were unaware of the fact that the Undue Sales Taxes listed as “GST/HST” and/or “PST/RST” were being charged and collected by the Defendants without any legal right to do so.

135. The Class Members had no way of reasonably determining the truth of these representations on their own and could only rely on the Defendants. Said reliance was to the detriment of the Class Members.
136. Had the Class Members known the true facts, they would not have proceeded to place their orders with Amazon.
137. By reason of the foregoing, the Class Members are entitled to recover damages and other relief from Defendants.

G. Breach of Implied Covenant of Good Faith and Fair Dealing

138. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.
139. The Class Members were charged and paid the Undue Sales Taxes when sales taxes were not due under federal and/or provincial sales tax legislation. Furthermore, the Defendants failed to conspicuously disclose the existence of the Undue Sales Taxes to customers prior to entering into the contract of sale, and in fact, made it almost impossible for a customer to realize that they had been taxed incorrectly. This runs contrary to the concepts of good faith and fair dealing in that the Defendants were acting with dishonesty in failing to make Class Members aware of the Undue Sales Taxes.
140. The Defendants had a duty to make reasonable effort to take the appropriate steps to ensure that they were assessing, representing, charging, and collecting the correct amount of sales tax on the supplies of goods sold to customers.

141. It was objectively reasonable under the circumstances, based on the Defendants' misrepresentations, active concealment and omissions, for the Plaintiff and Class Members to expect that Amazon would properly apply and collect sales tax in accordance with applicable sales tax legislation.
142. It was objectively reasonable under the circumstances for Plaintiffs and Class Members to expect that the Defendants would not proceed to charge and collect the Undue Sales Taxes under the guise of "GST/HST" and/or "PST/RST" after their orders had been placed; and it was certainly reasonable for the Class Members to expect that Amazon would not engage in deceptive conduct in placing the Undue Sales Taxes inconspicuously in the total amount of sales tax calculated on the supplies of their purchases, so as to effectively hide it.
143. Regardless of Class Members' knowledge of the Undue Sales Taxes or the lack thereof, the Plaintiff and Class Members were charged and paid a purported sales tax under the guise of "GST/HST" and/or "PST/RST", which was not due on the Zero-Rated Supplies and/or PST/RST-Exempt Supplies purchased from Amazon.
144. The Defendants, who failed to perform their legal obligations, cannot be said to be in good faith or dealing fairly with Class Members.
145. As a direct and proximate result of Defendants' breach of its implied covenants, the Plaintiff and the Class Members have been damaged in an amount to be determined at trial.

STATUTORY REMEDIES

146. The Defendants are in breach of the *Consumer Protection Act*⁶, the *Competition Act*, the *Excise Tax Act*, the Provincial Sales Tax Legislation and/or other similar/equivalent legislation.

147. The Plaintiff pleads and relies upon trade legislation and common law, as it exists in this jurisdiction and upon consumer protection legislation and the equivalent/similar legislation and common law in the other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially-contributed to by the Defendants' inappropriate and unfair business practices, which includes the Defendants being in breach of applicable Consumer Protection laws.

A. Breach of the *Consumer Protection Act*

148. The Defendants are residents in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

149. At all times relevant to this action, the Class Members were “consumer[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

150. At all times relevant to this action, the Defendants were “supplier[s]” within the meaning of that term as defined in s. 1 of the *Consumer Protection Act*.

⁶ While the *Consumer Protection Act* applies only in Ontario, other Canadian provinces have similar consumer protection legislation including, but not limited to: the *Consumer Protection Act*, CQLR c P-40.1 at ss. 41, 215, 216, 218, 219, 220(a), 221(g), 228, 239, 253, 270 & 272; the *Fair Trading Act*, RSA 2000, c F-2 at ss. 5-7, 7.2, 7.3, 9 & 13; the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 at ss. 4-9, 171 & 172; *The Business Practices Act*, CCSM, c B120 at ss. 2-9 & 23; the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1 and the *Trade Practices Act*, RSNL 1990, c T-7 at ss. 5-7 & 14; the *Business Practices Act*, RSPEI 1988, c B-7 at ss. 2-4; the *Consumer Protection Act*, SS 1996, c C-30.1 at ss. 5-8, 14, 16 & 23-25

151. The contract of sale entered into between the Plaintiff and Class Members and the Defendants is a “consumer agreement” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.
152. The transactions by which the Plaintiff and Class Members placed orders of various goods from Amazon were “consumer transaction[s]” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.
153. The Defendants have engaged in an unfair practice by making a Representation to Class Members which was and is “false, misleading or deceptive” and/or “unconscionable” within the meaning of ss. 14, 15 and 17 of the *Consumer Protection Act* as follows:
- (a) Representing that they had a right to collect the Undue Sales Taxes on Zero-Rated Supplies and/or PST/RST Exempt Supplies;
 - (b) Representing that the transactions whereby consumers purchased Zero-Rated Supplies and/or PST/RST Exempt Supplies involved tax obligations when they did not;
 - (c) Representing that the Undue Sales Taxes being charged were for purpose of legitimate tax collection under federal and/or provincial tax legislation, when they were not; and
 - (d) By using exaggeration, innuendo and ambiguity as to a material fact or failing to state a material fact regarding the existence and/or true nature of the Undue Sales Taxes.

154. The Representation was and is unconscionable because *inter alia* the Defendants know or ought to know that consumers are likely to rely, to their detriment, on Defendants' misleading statements as to the nature of the Undue Sales Taxes.
155. Further, the Defendants' conduct alleged herein is unfair insofar as it offends public policy, is oppressive and causes consumers substantial injury.
156. The Representation was and is false, misleading, deceptive and/or unconscionable such that it constituted an unfair practice and as a result of which Class Members are entitled to damages pursuant to the *Consumer Protection Act*.
157. The Class Members relied on the Representations made by the Defendants.
158. The reliance upon the Representation by the Class Members is established by his or her purchase of various goods from Amazon.

B. Breach of the *Competition Act*

159. At all times relevant to this action, the Defendants' marketing, advertising, promoting, importing, distribution and/or sale of goods was a "business" and the various goods purchased by Class Members were a "product" within the meaning of that term as defined in s.2 of the *Competition Act*.
160. The Defendants' acts are in breach of s. 52 of Part VI of the *Competition Act*, were and are unlawful and render the Defendants jointly and severally liable to pay damages and costs of investigation pursuant to s. 36 of the *Competition Act*.

161. The Defendants knowingly and recklessly made the Representation to the public and in so doing breached s.52 of the *Competition Act* because the Representation:

(a) Was made for the purpose of promoting, directly or indirectly, the business interests of the Defendants;

(b) Was made to the public;

(c) Was false and misleading in a material respect; and

(d) Failed to state material facts.

162. The Class Members relied upon the Representation with respect to purpose of the Undue Sales Taxes and suffered damages and loss.

163. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay the damages which resulted from the breach of s. 52.

164. Pursuant to s. 36 of the *Competition Act*, the Class Members are entitled to recover their full costs of investigation and substantial indemnity costs paid in accordance with the *Competition Act*.

165. The Class Members are also entitled to recover as damages or costs, in accordance with the *Competition Act*, the costs of administering the plan to distribute the recovery in this action and the costs to determine the damages of each Class Member.

C. Breach of the *Excise Tax Act*⁷

166. At all times relevant to this action, Amazon was a “business” carrying on “commercial activity” within the meaning of those terms as defined in Part IX, section 123 of the *Excise Tax Act*;
167. At all times relevant to this action, Class Members were “consumer(s)” within the meaning of the term as defined in Part IX, section 123 of the *Excise Tax Act*;
168. At all times relevant to this action, the Zero-Rated Supplies were “Zero-Rated Supplies” within the meaning of the term as defined in Part IX, section 123 and in Schedule VI of the *Excise Tax Act*;
169. At all times relevant to this action, the Basic Groceries were “Basic Groceries” within the meaning of the term as defined in Schedule VI Part III of the *Excise Tax Act*;
170. At all times relevant to this action, Amazon was required to collect and to remit applicable sales tax pursuant to the *Excise Tax Act*;
171. In collecting and remitting Undue Sales Taxes, Amazon was in contravention of the *Excise Tax Act*, in not abiding by its provisions and directives;
172. As such, Amazon is liable to Class Members to return the Undue Sales Taxes charged;

⁷ As well as the equivalent or similar provisions of the Provincial Sales Tax Legislation.

CAUSATION

173. The acts, omissions, wrongdoings, and breaches of legal duties and obligations of the Defendants are the direct and proximate cause of the Plaintiff and Class Members' injuries.
174. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendants, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

175. By reason of the acts, omissions and breaches of legal obligations of the Defendants, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include, but are not limited to the following special, and punitive damages.

A. Special Damages (Pecuniary Damages)

176. The special damages being claimed in this Statement of Claim include:
- a. The amount of the Undue Sales Taxes;
 - b. Compensation for the period during which they were deprived of possession of their property in the greater amount of:

- i) Interest calculated on the amount of money collected without right according to the legal rate set by the courts and/or set out in provincial legislation; or alternatively
- ii) Interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act*, R.S.C., 1985, c. I-15.

B. Punitive (Exemplary) and Aggravated Damages

177. The Defendants have taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

178. Notwithstanding the foregoing, the Defendants continue to unlawfully charge and collect the Undue Sales Taxes with full knowledge that they are in contravention of the applicable tax legislation;

179. In addition, it should be noted since the Defendants are part of a highly-revered, multi-billion-dollar corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendants only be required to disgorge monies which should not have been retained and/or withheld, such a finding would be tantamount to an encouragement to other businesses to deceive their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations.

180. At all material times, the conduct of the Defendants as set forth was malicious, deliberate and oppressive towards their customers and the Defendants conducted themselves in a wilful, wanton and reckless manner.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

181. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendants' conduct, including the alleged breaches of any of the *Consumer Protection Act*, the *Competition Act*, the *Excise Tax Act*, and/or the Provincial Sales Tax Legislation constitutes wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

182. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the gross revenues earned by the Defendants or the net income received by the Defendants from the collection of Undue Sales Taxes.

183. Further, the Defendants have been unjustly enriched as a result of the revenues generated by the collection of Undue Sales Taxes and as such, *inter alia*, that:

- (a) Defendants have obtained enrichment through the retention of revenues and profits from the Undue Sales Taxes and the saving of costs of reimbursing the Undue Sales Taxes;

- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation, including the economic burden of having paid the inconspicuous Undue Sales Taxes; and
- (c) The benefit obtained by the Defendants and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason. Since the monies that were received by the Defendants resulted from the Defendants' wrongful acts, there is and can be no juridical reason justifying the Defendants' retaining any portion of such money paid.

184. Further, or in the alternative, the Defendants are constituted as constructive trustees in favour of the Class Members for all of the monies received from the imposition of the Undue Sales Taxes because, among other reasons:

- (a) The Defendants were unjustly enriched by receipt of the monies paid as the Undue Sales Taxes;
- (b) The Class Members suffered a corresponding deprivation by having paid the Undue Sales Taxes;
- (c) The monies were acquired in such circumstances that the Defendants may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust;

(e) The integrity of the market would be undermined if the court did not impose a constructive trust; and

(f) There are no factors that would render the imposition of a constructive trust unjust.

185. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendants.

COMMON ISSUES

186. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

(a) Did the Defendants inconsistently and/or arbitrarily apply the *Excise Tax Act* and/or the Provincial Sales Tax Legislation with respect to Zero-Rated and PST/RST Exempt supplies?

(b) Did the Defendants unlawfully charge and collect GST/HST and/or PST/RST on Zero-Rated Supplies and/or PST/RST Exempt Supplies?

(c) Did the Defendants have a policy and practice of imposing undue sales taxes on Zero-Rated Supplies and/or PST/RST Exempt Supplies?

(d) Did the Defendants know, or should they have known that Zero-Rated Supplies are taxable at a rate of 0% and/or that PST/RST Exempt Supplies are not taxable?

- (e) Did the Defendants know or show they have known the goods that were designated at being Zero-Rated Supplies and/or PST/RST Exempt Supplies?
- (f) Did the Defendants engage in unlawful, unfair, misleading and/or deceptive acts and practices in charging and collecting sales tax on Zero-Rated Supplies and/or PST/RST Exempt Supplies?
- (g) Are the contracts by which the Zero-Rated Supplies and/or that PST/RST Exempt Supplies severable and voidable as to the Undue Sales Tax terms?
- (h) Did the Defendants breach their fiduciary duty to Class Members?
- (i) Did the Defendants' conduct constitute conversion?
- (j) Do the Defendants owe the Class Members a duty to use reasonable care?
- (k) Did the Defendants act negligently in failing to use reasonable care to either perform its legal obligations or inform Class Members of the true nature of the Undue Sales Taxes?
- (l) Were the Defendants negligent in determining that the Zero-Rated and PST/RST Exempt supplies were taxable at the respective rates applicable to GST/HST and/or PST/RST and in representing to customers that sales taxes were due under federal and provincial legislation?

- (m) Did the Defendants knowingly, recklessly and negligently misrepresent to Class Members that sales taxes were due, when they were not?
- (n) Did the Defendants commit fraudulent concealment?
- (o) Did the Defendants commit a fraudulent and/or negligent misrepresentation?
- (p) Did the Defendants make false or misleading representations concerning the purpose of a charge or proposed charge?
- (q) Are the Defendants in breach of the implied covenant of good faith and fair dealing?
- (r) Did the Defendants engage in unfair, misleading, and/or deceptive acts or practices in failing to clearly and conspicuously disclose:
- (i) The existence of the Undue Sales Taxes? and/or
 - (ii) That the Undue Sales Taxes was not actually due under applicable tax legislation?
- (s) Did the Defendants' acts or practices breach the *Consumer Protection Act*, the *Competition Act*, the *Excise Tax Act*, the Provincial Sales Tax Legislation, and/or other similar/equivalent legislation?
- (t) Was it reasonable for the Class Members to rely on the Defendants to properly levy sales taxes on the goods that they purchased?

- (u) Have the Class Members been damaged by the Defendants' conduct, and, if so, what is the proper measure of such damages?
- (v) Are the Defendants responsible for all related pecuniary damages, including, but not limited to the amount of the Undue Sales Taxes, including interest calculated on the amount of money collected without right according to the legal rate set by the courts and/or set out in provincial legislation; or alternatively interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act*, R.S.C., 1985, c. I-15.?
- (w) Are Defendants responsible to pay punitive (exemplary) and aggravated damages to Class Members and in what amount?
- (x) Were the Defendants unjustly enriched?
- (y) Did the Defendants profit from their unlawful practices?
- (z) Should the Defendants be condemned to refund all Undue Sales Taxes to Class Members?
- (aa) Should an injunctive remedy be ordered to prohibit the Defendants from continuing to perpetrate the unfair, misleading and/or deceptive conduct?
- (bb) In the affirmative to any of the above questions, did the Defendants' conduct engage their solidary liability toward the members of the Class?

EFFICACY OF CLASS PROCEEDINGS

187. The members of the proposed Class potentially number in at least the tens of thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.
188. Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendants. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded, and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.
189. By their very nature, taxes affect many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard.
190. While certain Class Members may have suffered a substantial loss, it is expected that the majority have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding.
191. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity.

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

193. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the class to effectively pursue their respective legal rights and have access to justice.

194. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel is qualified to prosecute complex class actions.

LEGISLATION

195. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Consumer Protection Act*, the Consumer Protection Legislation the *Competition Act*, the *Excise Tax Act*, and the Provincial Sales Tax Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

196. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) The Defendants engage in business with residents of Ontario;
- (b) The Defendants derive substantial revenue from carrying on business in Ontario;
and
- (c) The damages of Class Members were sustained in Ontario.

197. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

THE DEFENDANTS' JOINT AND SEVERAL LIABILITY

198. The Plaintiff pleads that by virtue of the acts and omissions described above, the Defendants are liable in damages to himself and to the Class Members and that each Defendant is responsible for the acts and omissions of the other Defendants for the following reasons:

- (a) Each was the agent of the other;
- (b) Each companies' business was operated so that it was inextricably interwoven with the business of the other as set out above;
- (c) Each company entered into a common advertising and business plan to supervise, control, operate and market, promote, represent and sell various goods;
- (d) Each owed a duty of care to the other and to each Class Member by virtue of the common business plan to supervise, control, operate and market, promote, represent and sell goods from their Canadian website (www.amazon.ca); and

- (e) The Defendants intended that their businesses be run as one global business organization.

SERVICE OUTSIDE ONTARIO

199. The originating process herein may be served outside Ontario, without court order, pursuant to subparagraphs (a), (c), (g), (h) and (p) of Rule 17.02 of the *Rules of Civil Procedure*. Specifically, the originating process herein may be served without court order outside Ontario, in that the claim is:

- (a) In respect of personal property situated in Ontario (rule 17.02(a));
- (b) For the interpretation and enforcement of a contract or other instrument in respect of personal property in Ontario (rule 17.02 (c));
- (c) In respect of a tort committed in Ontario (rule 17.02(g));
- (d) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (e) The claim is authorized by statute, the *Competition Act* and the *Consumer Protection Act* (rule 17.02(n)); and
- (f) Against a person outside Ontario who is necessary and/or proper party to a proceeding properly brought against another person served in Ontario; i.e.

Amazon.com, Inc., Amazon.com.ca, Inc., Amazon Canada Fulfillment Services, Inc., Amazon Technologies, Inc., and Amazon.com LLC (rule 17.02(o)); and

(g) Against a person carrying on business in Ontario (rule 17.02(p)).

Date: March 21, 2017

CONSUMER LAW GROUP P.C.

251 Laurier Ave. West, Suite 900

Ottawa, Ontario

K1P 5J6

Jeff Orenstein

LSUC# 59631G

jorenstein@clg.org

Andrea Grass

LSUC# 65051R

agrass@clg.org

Tel: (613) 627-4894

Fax: (613) 627-4893

Lawyers for the Plaintiff

C. SAINTE-MARIE
Plaintiff

- and -

AMAZON.COM, INC. et alii.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA
Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

CONSUMER LAW GROUP P.C.
251 Laurier Ave. West, Suite 900
Ottawa, Ontario, K1P 5J6

Jeff Orenstein
LSUC# 59631G
jorenstein@clg.org

Andrea Grass
LSUC# 65051R
agrass@clg.org

Tel: (613) 627-4894
Fax: (613) 627-4893

Lawyers for the Plaintiff