

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

G. GAGNON

NO: 500-06-000855-177

Petitioner

-vs.-

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

Respondents

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

TO THE HONOURABLE MR. JUSTICE MARTIN CASTONGUAY OF THE
SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL,
YOUR PETITIONER STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following class, of which she is a member, namely:
 - All persons residing in Quebec who purchased a good (tangible personal property) from Amazon and who were charged for and who paid sales taxes (GST and/or QST) that were not due under federal and/or provincial legislation (a “Zero-Rated Supply”, including “Basic Groceries”, “Other Products” and “Other Zero-

Rated Supplies”), or any other group to be determined by the Court;

2. The Amazon Respondents, defined hereinbelow, operate the online retail shopping websites, www.amazon.ca and www.amazon.com, that sell and manage the delivery of various products to persons across Canada, including within the province of Quebec;
3. Federally, “Basic Groceries” and “Other Products” fall under the definition of “Zero-Rated Supplies” in the *Excise Tax Act*, R.S.C. 1985, c. E-15 (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”;
4. In Quebec, “Basic Groceries” and “Other Zero-Rated Supplies” fall under the definition of “Zero-Rated Supplies” in *An Act Respecting the Québec Sales Tax*, CQLR c. T-0.1 (hereinafter, the “*ARQST*”), at Chapter IV in addition to “Drugs and Biologicals”, “Medical and Assistive Devices”, “Agriculture and Fishing”, “Supply Shipped Outside Quebec, “Travel Service”, “Transportation Services”, “Motor Vehicle Acquired to be Resupplied”, “Financial Service”, and “Collection of Customs Duties”;
5. “Basic Groceries”¹ 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 as well as the *ARQST* 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) Products intended for the making of wine or beer,
 - c) Candy, chewing gum, chocolate, and all seeds, nuts and popcorn coated therewith or with honey, molasses, syrup, sugar or artificial sweeteners,
 - d) 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,
 - e) Salted nuts or salted seeds,

¹ “Basic Groceries” is defined in the *Excise Tax Act* at Schedule VI, Part III as well as in the *ARQST* at Chapter IV, Division III and essentially mirror one another with the addition, in Quebec, of “products intended for the making of wine or beer” (b), the coating of molasses, honey or sugar (c), and iced croissants (j).



- f) Snack mixtures containing cereals, nuts, seeds, dried fruit or any other edible product, but not including products sold as breakfast cereal,
 - g) Ice lollies, juice bars, flavoured, coloured or sweetened ice waters, or similar products, whether frozen or not,
 - h) Ice cream/milk, sherbet, frozen yogurt/pudding, including non-dairy substitutes therefor and any single serving package containing same,
 - i) Fruit bars, rolls or drops or similar fruit-based snack foods,
 - j) Cakes, muffins, pies, pastries, tarts, cookies, doughnuts, brownies, croissants with sweetened filling, icing 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),
 - k) 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,
 - l) Food or beverages heated for consumption,
 - m) Salads not canned or vacuum sealed,
 - n) Unfrozen sandwiches and the like,
 - o) Platters of cheese, cold cuts, fruit or vegetables and other arrangements of prepared food,
 - p) Beverages dispensed on site,
 - q) Food or beverages sold through catering services or through a vending machine,
 - r) 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
 - s) Unbottled water, other than ice;
6. "Other Products"² includes the following:

² "Other Products" is defined in the *Excise Tax Act* at Schedule VI, Part II.1.



- a) Products that are marketed exclusively for feminine hygiene purposes and is a sanitary napkin, tampon, sanitary belt, menstrual cup or other similar product;
7. “Other Zero-Rated Supplies”³ includes the following:
- a) Admission to a Quebec convention made by a sponsor of the convention to a person not resident in Québec,
- b) Printed books with an ISBN⁴, a digital read-only medium thereof, and/or right to access a website if it is the only component of the supply, and
- c) Talking books or carriers, acquired by a person as a result of a visual handicap,
- d) Tobacco or raw tobacco within the meaning of the *Tobacco Tax Act* (chapter I-2),
- e) Items used for bottle-feeding and/or breast-feeding babies,
- f) Diapers or training pants for children and waterproof pants and diaper accessories for washable diapers;
8. “GST” is the federal goods and services tax of 5% and “QST” is the provincial Quebec sales tax of 9.975%. Both GST and QST are value-added taxes. For the present purposes, the terms “sales tax” (or “sales taxes”) and “value-added tax” (or “value-added taxes”) will be used interchangeably⁵;
9. It is alleged that the Respondents, as tax collectors, have been inconsistently, arbitrarily, and unlawfully charging and collecting GST and/or QST on Zero-Rated Supplies and that Class Members have unwittingly been paying said improper tax(es) which were unlawfully demanded and not due;
10. The Petitioner contends that the Respondents have been: (i) charging and collecting sales tax on Zero-Rated Supplies sold by Amazon; and (ii) misrepresenting that sales tax is due under federal and/or provincial legislation, when it is not;
11. By reason of the Respondents’ conduct, the Petitioner and the members of the Class have suffered damages upon which they wish to claim;

³ “Other Zero-Rated Supplies” is defined in the *ARQST* at Chapter IV, Division VIII.

⁴ ISBN means International Standard Book Number.

⁵ A value-added tax (“VAT”) is a type of general consumption tax that is collected incrementally, based on the value added, at each stage of production and is usually implemented as a destination-based tax, where the tax rate is based on the location of the customer. The VAT mechanism means that the end-user tax is the same as it would be with a sales tax.

B) The Respondents

12. Respondent 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 Respondents 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, the whole as appears more fully from a copy of the trade-marks from the Canadian Intellectual Property Office (CIPO), produced herein *en liasse* as **Exhibit R-1**;

13. Respondent Amazon.com.ca, Inc. (“Amazon.com.ca”) is an American electronic commerce corporation, with its head office in Seattle, Washington. It is a wholly-owned subsidiary of Respondent Amazon.com. It is the registrant of the QST registration number 1201187016, which was registered on April 1, 2002 and of the GST/HST number 857305932, which give it the ability to apply, charge, and collect GST and/or QST in Quebec, the whole as appears more fully from a copy of an extract from Revenue Quebec’s validation service and from a copy of an extract from the Canada Revenue Agency’s GST/HST registry, produced herein *en liasse* as **Exhibit R-2**;

14. Respondent 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 Respondent Amazon.com that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from Corporations Canada, produced herein as **Exhibit R-3**;

15. 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
- #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

The whole as appears more fully from a copy of the TaxJar blog entitled “Where are the Amazon Fulfillment Centers” dated July 5, 2016, produced herein as **Exhibit R-4**;

16. Respondent 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 Respondent 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, the whole as appears more fully from a copy of an extract from the WHOis website at whois.net and from a copy of the trade-marks from CIPO, produced herein *en liasse* as **Exhibit R-5**;

17. Respondent 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 Respondent Amazon.com;
18. The Respondents market, advertise, promote, import, distribute, and/or sell various goods through Amazon’s website throughout Canada, including within the province of Quebec;
19. All of the Respondents have, either directly or indirectly, charged and collected sales tax on Zero-Rated Supplies of goods sold on Amazon and misrepresented that such sales taxes were due under federal and/or provincial legislation, throughout Canada, including within the province of Quebec;
20. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as “Amazon” for the purposes hereof;

C) The Situation

I. Amazon – Background

21. Amazon is an electronic commerce (also known as e-commerce, EC, and e-retailing) 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;
22. 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, the whole as appears more fully from copies of extracts from the Respondents' website at www.amazon.ca, from a copy of the Global News article entitled "Amazon competes against Canadian supermarkets by entering grocery business" dated October 31, 2013, and from a copy of the CBC News article entitled "Amazon launches online grocery store in Canada" dated October 31, 2013, produced herein *en liasse* as **Exhibit R-6**;

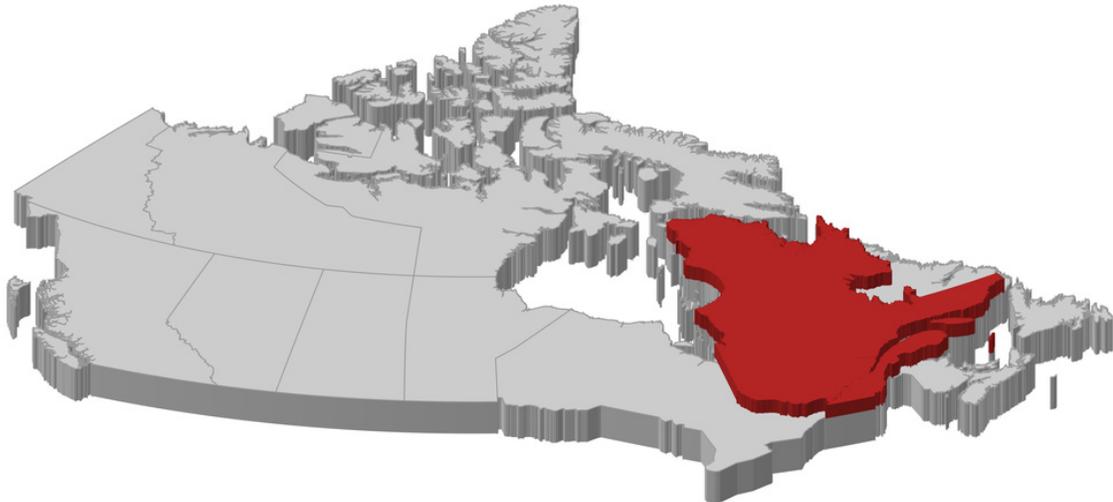
23. Referred to as "Canada's shopping mall of the future", Amazon had sales of over \$1.5 billion of Canada's e-commerce sales in 2013, with a market share of 7% of the total online retail sales in the country (being \$21.6 billion), the whole as appears more fully from a copy of the Global News article entitled "Amazon Jumps Out to Lead in Canada's Online Shopping Wars" dated October 14, 2014, from a copy of the Financial Post article entitled "Amazon.ca sells four times as much as its biggest online rivals in Canada" dated October 16, 2014, and from a copy of the CBC News article entitled "Amazon.ca dominates Canadian e-commerce with 7 percent share" dated October 16, 2014, produced herein *en liasse* as **Exhibit R-7**;
24. 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 Respondents' websites, www.amazon.ca and www.amazon.com, have been reported to be the top two most trafficked retail sites by Canadian online shoppers, the whole as appears more fully from a copy of the Internet Retailer article entitled "Canada gets serious about e-commerce" dated September 1, 2015, produced herein as **Exhibit R-8**;
25. The Respondents' 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 Respondents' 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, the whole as appears more fully from copies of extracts from the Alexa website at www.alexa.com, produced herein *en liasse* as **Exhibit R-9**;
26. According to Amazon's 2015 Annual Report, "Amazon became the fastest company ever to reach \$100 billion in annual sales"⁶. 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"⁷, the whole as appears more fully from a copy of the 2015 Annual Report, produced herein as **Exhibit R-10**;

⁶ Exhibit R-10, at the preamble.

⁷ Exhibit R-10, at page 19.

II. Sales Taxes – An Overview

27. 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”;
28. The federal government levies a value-added tax of 5%, called the Goods and Services Tax (GST) and the province of Quebec levies its own value-added tax of 9.975%, called the Quebec Sales Tax (QST), with the exception that Zero-Rated Supplies are taxable at a rate of 0%. Depicted below is the history of applicable taxes in Quebec since 1992;



Historical VAT⁸ rates

GST Rates

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

QST Rates

- 9.975% QST since January 1, 2013 (on an amount before GST)
- 9.5% QST from January 1, 2012 to December 31, 2012
- 8.5% QST from January 1, 2011 to December 31, 2011
- 7.5% QST from January 1, 1998 to December 31, 2010

⁸ VAT is value-added tax.

- 6.5% QST from May 13, 1994 to December 31, 1997
 - 8% or 4% QST from July 1, 1992 to May 12, 1994
-

29. Under an agreement between the federal government and the Quebec provincial government, Revenue Quebec administers both the GST and the QST within the province of Quebec in accordance with the regulations set by the federal government in the *Excise Tax Act* for the collection of GST and provincially, as set out in the *ARQST*, for the collection of QST, which includes provisions that, for the most part, mirror those found in the *Excise Tax Act*;
30. In Quebec and, in accordance with the applicable taxation regulations (i.e. the *Excise Tax Act*, as well as the *ARQST*), GST and QST are collected on the sales of most goods and/or services;
31. The question of whether a particular product or product category is subject to sales tax, exempt from sales tax, or taxable at a rate of 0% (a Zero-Rated Supply) is closely regulated by both federal and provincial legislation. The categorization of Zero-Rated Supplies is regulated in Quebec, under Chapter IV of the *ARQST* and federally, it is regulated under Schedule VI of the *Excise Tax Act*;
32. Zero-Rated Supplies are defined in Schedule VI of the *Excise Tax Act* as well as at Chapter IV of the *ARQST*, the relevant details of which are summarized above at paragraphs 5, 6, and 7 to include “Basic Groceries”, “Other Products” and “Other Zero-Rated Supplies”;
33. The term “Basic Groceries” is essentially the same between the two governing regulations in applying to most foods and beverages marketed for human consumption to the exclusion of alcohol, snacks and junk food, prepared foods and other foods packaged for immediate consumption;
34. The federal term “Other Products” includes feminine hygiene products and the provincial term “Other Zero-Rated Supplies” includes books, items used to feed babies, and diapers and diaper-related supplies. Thus, it is also possible that a product can be subject to GST and not QST or vice-versa;
35. It clearly appears from the wording of both the federal and provincial regulations that the government’s intention is that Basic Groceries are not to be subject to any taxes. To this end, rather than attempting to define everything that is included in the category of Basic Groceries, the list instead appears as exclusions thereto in both regulations;

III. The Respondents’ Sales Tax Collection Practices

36. As an “agent” of the Minister of the federal government and/or as a “mandatary” of the Minister of Revenue of Quebec, Amazon is required to collect sales taxes payable in accordance with the provisions set out in the *Excise Tax Act* and in the *ARQST*;



37. 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 Chapter IV of the *ARQST*:
- a) 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”, and
 - b) Articles 177 and 198.5 of the *ARQST*, expressly provides that the supplies of Basic Groceries and “Other Zero-Rated Supplies” are not taxable goods and, for greater certainty, article 16 stipulates that, “the rate of the tax in respect of a taxable supply that is a zero-rated supply is 0 percent”;
38. In addition, article 18.0.1 of the *ARQST* also stipulates that “No tax is payable in respect of ... a Zero-Rated Supply”;
39. At the core of the present Amended Application is the fact that the Respondents’ tax collection practices are at odds with applicable sales tax laws and that the collection of the undue sales taxes was under *colore officii*;
40. To date, Amazon has been inconsistently applying the *Excise Tax Act* and the *ARQST* by charging and collecting the sales tax on many Zero-Rated Supplies purchased by unwitting customers, thereby misappropriating and occupying the funds in the absence of any legal right;
41. Further, in so doing, Amazon has made false and misleading 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” and “QST” on customers’ invoices;
42. 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”;
43. 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”, the whole as appears more fully from a copy of an extract from the Respondents’ website at www.amazon.ca and from copies of extracts from the Respondents’ website at www.amazon.com, produced herein *en liasse* as **Exhibit R-11**;



44. According to the Respondents, 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 Respondents 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.

The whole as appears more fully from a copy of an extract from the Respondents' website at www.amazon.ca entitled "About Sales Tax on Items Sold by Amazon.ca", produced herein as **Exhibit R-12**;

45. 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;
46. 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");
47. 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");
48. 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 inspect their invoice, (b) be an expert in sales tax law, and (c) use complex calculations;
49. 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;



1/Description	Our Price/Notre prix	Total/Total
	CDN\$ 4.87	CDN\$ 4.87
	CDN\$ 2.67	CDN\$ 2.67
	CDN\$ 3.64	CDN\$ 29.12
2		
Subtotal/Sous-total		CDN\$ 36.66
Shipping and Handling/Frais de port		CDN\$ 0.00
GST/HST/TPS/TVH		CDN\$ 0.37
PST/RST/QST/TVP/TVQ/TVQ		CDN\$ 0.76
Order Total/Montant total		CDN\$ 37.79
Paid via/Payé par Amex		CDN\$ 37.79

50. 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 and QST rates, while others are Zero-Rated 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;
51. 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 "QST" are themselves false and misleading representations, contributing to the improbability that an ordinary person would perceive the amount as incorrect;
52. The mere representation that the charges represent sales taxes due under federal and provincial legislation, is likely to mislead consumers and contravenes section 227.1 of the *Consumer Protection Act*, CQLR c. P-40.1, which stipulates that "no person may, by any means whatever, make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal or provincial statute" « *Nul ne peut, par quelque moyen que ce soit, faire une représentation fautive ou trompeuse concernant l'existence, l'imputation, le montant ou le taux des droits exigibles en vertu d'une loi fédérale ou provinciale.* »;



53. 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;
54. The Respondents 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 are inconsistent with applicable federal and provincial tax legislation;

IV. The Respondents' Further Misrepresentations and Gross Negligence

55. While the *Excise Tax Act* and the *ARQST* provide that the rate of tax with respect to a taxable supply that is designated as being Zero-Rated is 0%, Amazon nonetheless, consistently misapplies and/or wholly disregards the applicable laws by calculating GST and/or QST, at the rate of 5% and 9.975% respectively, on Zero-Rated Supplies – and this, despite their express reassurance to the contrary;
56. In the event that the Respondents required further clarification or assistance in the interpretation of the provisions set out in the *Excise Tax Act* and/or the *ARQST* pertaining to sales tax on Zero-Rated Supplies, they could have and ought to have contacted Revenue Quebec and/or the Canada Revenue Agency and/or consulted their respective and diverse selections of tax bulletins, memoranda and brochures available to the public; all replete with examples and interpretations in relation to various categories of Zero-Rated Supplies, the whole as appears more fully from a copy of the GST/HST Memorandum entitled “4.3 Basic Groceries” dated January 2007, from a copy of the Revenue Quebec online brochure entitled “The QST and the GST/HST: How They Apply to Foods and Beverages”, and from a copy of the Revenue Quebec bulletin entitled “Consumer Taxes” dated June 27, 2014, produced herein *en liasse* as **Exhibit R-13**;
57. Furthermore, the Respondents at least should have consulted Canada Revenue Agency’s and/or Revenue Quebec’s websites, 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 Revenue Quebec’s website, www.revenuquebec.ca, there is a section labelled “Basic Rules for Applying GST/HST and QST” in which it is unambiguously written, “You must not collect tax on zero-rated supplies or sales, since these supplies are taxable at the rate of 0 percent under the GST and QST systems”, the whole as appears more fully from a copy of an extract from the Canada Revenue Agency’s website at



www.cra-arc.gc.ca and from a copy of an extract from Revenue Quebec's website at www.revenuquebec.ca, produced herein *en liasse* as **Exhibit R-14**;

58. Should the Respondents still have found themselves unable to understand (...) 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.

The whole as appears more fully from a copy of the Canada Revenue Agency's leaflet entitled "GST/HST Rulings – Experts in GST/HST Legislation", produced herein as **Exhibit R-15**;

59. Despite the abundance of readily-accessible information available for the precise business activity that the Respondents chose to engage in, namely, the sale of goods within Canada, the Respondents 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 Respondents 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 *ARQST* with respect to Zero-Rated supplies;

V. The Respondents' Prior Knowledge of the Illegality of their Sales Tax Policies and/or Practices

59.1 Amazon has known that they were charging and collecting undue sales taxes as early as December 2012 as demonstrated from customer reviews posted

on Amazon.ca between the period of December 2012 and January 2017; two of these customer reviews mention that Amazon had even issued them a refund of the money they had paid as undue sales taxes (April 17, 2013 and March 10, 2016), while another customer claims to have made a complaint directly to Amazon but was ignored (March 1, 2013), the whole as appears more fully from a copy of extracts from the Respondents' website at www.amazon.ca, produced herein as **Exhibit R-22**;

59.2 The following is a sampling of customer complaints that had been posted on Amazon.ca (Exhibit R-22):

★☆☆☆☆ **NO HST ON COFFEE AMAZON !**

By [Alan Sears](#) on December 20, 2012

Verified Purchase

Beware of buying coffee from Amazon.ca !!!!!!!1 These crooks insist on charging 13% HST!! Which is WRONG ! I have ordered from Futureshop and Staples before and NEVER got charged HST..... only Amazon does !
 *** Amazon you are WRONG. there is no HST on Coffee / K-cups in Ontario Canada, you are ripping people off !!

LAst time I buy anything from Amazon !!

★★★★★ **Love this coffee but NOT Amazon.ca!!**

By [K. Tong](#) on March 1, 2013

Size: 24 Count

This is my favorite k-cup coffee. It's one of the few I find bold enough and if not for this coffee, I probably would have gotten rid of my Keurig.

But dealing with Amazon.ca has been extremely frustrating. They are charging GST on ground coffee which is a non-taxable grocery item. They have completely ignored me when I tried to point this out to them and failed to respond at all when I asked for a refund of the taxes paid.

Other vendors on Amazon.ca are not charging the GST on the exact same item and there are even other k-cup flavours sold by Amazon.ca without taxes being charged.

Again, it doesn't matter if it comes in a can, bag, jar or k-cup; ground coffee is non-taxable!

★★★★★ **no taxes KCups**

By [L Evans](#) on April 13, 2013

There should be no GST on KCups because they are bought in a box. If they were sold individually then they are taxable.



★★★★☆ **Not the worst I've had**

By [cd22](#) on April 17, 2013

Format: Grocery | **Verified Purchase**

The reviews were so mixed on this product I decided to order it and try it for myself. Its a good strong cup of coffee, but it does not have that great flavour I'm looking for. Right now I've been enjoying Newmans Own, and still like it best. This coffee is better than a lot I have tried, its drinkable for sure. There is some sediment in the bottom of the cup like others have said, but I dont have a problem with that.

If Newmans Own was not available, I would buy this again, but only if it was at a local store. I would never buy off Amazon again due to the fact I am charged GST+PST when in fact there is no tax on coffee.

UPDATE: Amazon did refund the tax to my credit card after I inquired about it. But now I'm wondering if the problem is fixed or I will be charged again next time?

★★★★☆ **The product is OK. However, the company is ...**

By [Allen M.](#) on August 22, 2015

Verified Purchase

The product is OK. However, the company is based in Quebec. Apparently Quebec has different tax laws and treat this as a taxable item. Its possible to get raw almonds using other suppliers that are not in Quebec and they charge no HST on the product. Also I believe these almonds are from California which means they have been pasteurized. There is no detail when I tried to find out on the internet where they get their almonds.

★★★★☆ **Overpriced because Taxes were added**

By [David Wrathner](#) on October 20, 2015

Verified Purchase

Coffee was good; however, taxes were added automatically on an item that is NOT taxable. I will not be reordering.

★★★★☆ **Le produit est o. k. mais Amazon. ...**

By [Carol F.](#) on March 10, 2016

Flavor Name: Organic | Size: 2.27g | **Verified Purchase**

Le produit est o.k. mais Amazon.ca charge les taxes TPS (3,32\$) et TVQ (6,62\$) alors que ce produit est non taxable.

J'ai dû envoyer une dizaine de courriels avant de finir par être remboursé.

Le pire est qu'Amazon.ca continue de charger les taxes. Est-ce de la malhonnêteté de leur part ?

59.3 Despite notice and knowledge and, in certain circumstances, actually refunding the intrepid customers, Amazon continued to charge undue sales taxes on the very same Zero-Rated Supplies that had been refunded to some customers;

VI. An Example of the Respondents' Reaction to Clients' Complaints

59.4 Mr. Louis-Philippe Labelle, the Petitioner's husband, also regularly purchases many items from Amazon, including Basic Groceries. Mr. Labelle, has been charged undue sales taxes on numerous occasions and, after having



informed Amazon about their illegal practices, has received refunds in the amounts of undue sales taxes paid on numerous occasions, the whole as appears more fully from a copy of the Affidavit of Louis-Philippe Labelle dated November 24, 2017, produced herein as **Exhibit R-23**;

59.5 As the case of Mr. Labelle demonstrates, Amazon admitted that they have acted in violation of applicable Canadian sales tax legislation and although Amazon may issue refunds to individuals who complain to them that they have paid undue sales taxes and bring it to their attention, they fail to correct their sales tax issues and the problem remained systemic (that is, until after the institution of the present class action);

VII. The Respondents Could Easily Have Changed their Tax Collection Policies and/or Practices as they did Following the Institution of This Action

59.6 The Respondents' business practice of charging and collecting sales tax on Zero-Rated Supplies was modified after they were sued in the present class action lawsuit, the whole as appears more fully from a copy of a chart detailing a sample of products that were previously taxed by Amazon, but that are no longer taxed today and from a copy of the supporting invoices and from a copy of recent screenshots *en liasse*, produced herein as **Exhibit R-24**;

59.7 It is reasonable to infer that had a class action lawsuit not been commenced, the Respondents would have simply continued to charge and collect undue sales taxes on Zero-Rated Supplies as they had been doing for years, although they had effective knowledge that what they were doing was wrong;

59.8 By modifying their sales tax policies and/or practices in order to comply with the applicable tax legislation, the Respondents have acknowledged that their previous sales tax policies and/or practices were unlawful and that further, they were not the result of some "good faith" interpretation of Canadian sales tax laws, but instead their actions were entirely purposeful, intentional, wilful, deliberate, high-handed, callous, oppressive, cavalier, wanton and/or reckless;

VIII. The Respondents' Liability

60. The Respondents' business practice of charging and collecting sales tax on Zero-Rated Supplies is unlawful, deceptive, and/or grossly negligent – as is clearly laid out below;

61. The Respondents' misappropriation of sales taxes was and is prohibited, and intentional, insofar as it is believed and therefore averred that the Respondents 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 (Exhibit R-7);



62. 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 Respondents; particularly so due to the large volume of sales in which Amazon engages in Canada, including within the province of Quebec;
63. The Respondents knew or should have known that Zero-Rated Supplies are taxable at a rate of 0%. Equally, the Respondents either knew or should have known which goods were designated as Zero-Rated Supplies by the federal and provincial governments. In erroneously determining that the Zero-Rated Supplies sold by Amazon were subject to sales taxes, the Respondents were inexplicably reckless;
64. In light of the above, any argument made by the Respondents that they had no knowledge that the undue sales taxes being collected was in violation of the *Excise Tax Act* and/or the *ARQST* is dubious at best;
65. 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. Despite receiving numerous complaints to that effect, Amazon continued to refuse and/or neglect to rectify the situation and to conform its behaviours within the confines of the law;
66. A reasonably prudent corporation, merchant, marketer, advertiser, distributor and/or seller in the Respondents' 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, it would surely have been “swept under the rug”;
67. (...) The Respondents' 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 Petitioner and Class Members to suffer damages as a result of their misconduct – punitive damages are therefore in order;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

68. In or about September 2015, Petitioner Gagnon created an account with Amazon for the purpose of having the ability to purchase various products offered by same;
69. On or around October 20, 2016, the Petitioner placed an order with Amazon on its website (www.amazon.ca) for cookies (6-count), milk chocolate baking bits, Kellogg's Rice Krispie Square Bars (16-count), protein drinks (6-pack), canned peaches, unpopped popcorn (1 Kg), and pizza crust mix, for which the subtotal came to \$40.65;



70. Amazon applied and collected sales taxes from the Petitioner in the amounts of \$1.77 (labelled as GST/HST/TPS/TVH) and \$3.56 (labelled as PST/RST/QST/TVP/TVD/TVQ) despite the majority of the aforementioned items in the order falling under the definition of Basic Groceries and therefore being Zero-Rated Supplies, the whole as appears more fully from a copy of the sales invoice for order ID 702-4239814-6607436 dated October 20, 2016 and from a copy of the sales invoice for order ID 701-9450251-7846644 dated October 26, 2016, produced herein *en liasse* as **Exhibit R-16**;
71. The charging of \$1.77 GST indicates that Amazon had decided that \$35.40 of this order was federally taxable (in whatever manner, as it is not indicated) and the charging of \$3.56 QST indicates that Amazon had decided that \$35.69 of this order was provincially taxable (in the same unknown manner);
72. Also on October 20, 2016, the Petitioner placed another order with Amazon, where Amazon applied and collected sales taxes from the in the amounts of \$2.54 (labelled as GST/HST/TPS/TVH) and \$5.09 (labelled as PST/RST/QST/TVP/TVD/TVQ). The charging of \$2.54 GST and the charging of \$5.09 QST indicates that Amazon had decided that the entire order was both federally and provincially taxable despite the majority of the aforementioned items in the order falling under the definition of Basic Groceries and therefore being Zero-Rated Supplies (Exhibit R-16);
73. This same incorrect taxation pattern continued on or around October 21, 2016, when the Petitioner was charged and paid an undue sales tax on the Zero-Rated Supplies in the order, the whole as appears more fully from a copy of the sales invoice for order ID 702-4177590-5890628 dated October 26, 2016, produced herein as **Exhibit R-17**;
74. On October 26, 2016, Amazon applied and collected sales taxes from the Petitioner in the amounts of \$1.80 (labelled as GST/HST/TPS/TVH) and \$3.64 (labelled as PST/RST/QST/TVP/TVD/TVQ). The charging of \$1.80 GST and the charging of \$3.64 QST indicates that Amazon had decided that the entire order was both federally and provincially taxable despite the majority of the aforementioned items in the order falling under the definition of Basic Groceries and therefore being Zero-Rated Supplies;
75. On or around November 6, 2016, Petitioner placed another order of containing Basic Groceries with Amazon and was once again charged and paid undue sales taxes thereon, the whole as appears more fully from a copy of the sales invoice for order ID 701-8947400-2859468 dated November 15, 2016, produced herein as **Exhibit R-18**;
76. Between January 6, 2017 and January 18, 2017, the Respondents' unlawful sales tax collection practices continued, the whole as appears more fully from copies of invoices issued to Petitioner (from five orders placed over the course of the month) on which Amazon applied and collected undue sales taxes on

Zero-Rated Supplies, the whole as appears more fully from a copy of the sales invoices for order ID 701-0724539-6333002 dated January 6, 2017, from a copy of the sales invoice for order ID 701-4101430-3684201 dated January 12, 2017, from a copy of the sales invoice for order ID 701-5033826-4725829 dated January 15, 2017, and from a copy of the sales invoice for order ID 701-8663839-4394624 dated January 18, 2017, produced herein *en liasse* as **Exhibit R-19**;

77. Again, on or around March 8, 2017, the Petitioner was again charged and paid undue sales taxes, the whole as appears more fully from a copy the sales order details for order ID 701-4870598-9400207 dated March 8, 2017, produced herein as **Exhibit R-20**;

78. Also on March 8, 2017, the Petitioner placed another order and was again charged and paid undue sales taxes, the whole as appears more fully from a copy of the sale invoice for order ID 701-9039871-8989839 dated March 8, 2017, produced herein as **Exhibit R-21**;

78.1 The Petitioner has engaged an expert in the field, being Stéphane Marcassa, LL.B., D.E.S.S. Fisc., of Richter S.E.N.C.R.L./LLP, who determined, amongst other conclusions, that all of the food products that the Petitioner purchased are zero-rated in GST and QST and all of the Petitioner's items intended for breastfeeding are zero-rated in QST only, the whole as appears more fully from a copy of the Expert Report of Stéphane Marcassa, LL.B., D.E.S.S. Fisc., produced herein as **Exhibit R-25**;

78.2 The Expert Report goes on to deal with other items, such as (for an exhaustive explanation, please see Exhibit R-25):

- a) In Canada, sales taxes are paid by every supplier and distributor in the chain until it reaches the end consumer, so Amazon would know whether or not an item should or should not be sold with sales taxes;
- b) Even if the item is brought in from the U.S., sales taxes are paid at customs and then is also charged in the chain of distribution, so Amazon also would know whether or not an item should or should not be sold with sales taxes;
- c) The law requires that merchants indicate which specific items are being charged sales tax by putting a marking such as FP, FPMJR, E, or some other sign, which all the main stores in Quebec do, and to which Amazon does not;
- d) The other main stores in Quebec do no charge sales taxes on similar items that the Petitioner purchased;
- e) Revenue Quebec does not issue refunds for amounts less than \$2.00;

78.3 According to Revenue Quebec, more specifically, the Direction principale des lois sur les taxes et l'administration fiscale (the department of Revenue Quebec that is responsible for the interpretation of the Excise Tax Act and the ARQST), the question of the application of the GST and the QST to the supply of each of the products listed in the present Application raises no question of interpretation (Exhibit R-25):

Bonjour M. Marcassa,

J'ai bien pris connaissance de votre demande.

Toutefois, la question de l'application de la Taxe sur les produits et services (TPS) et de la Taxe de vente du Québec (TVQ) à la fourniture de chacun des produits listés ne semble soulever aucune question d'interprétation.

Par conséquent, nous avons transféré votre demande à nos services à la clientèle, qui verront à y donner suite.

79. The Petitioner's damages are a direct and proximate result of the Respondents' conduct;

80. In consequence of the foregoing, the Petitioner is justified in claiming damages;

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

81. Every member of the Class has purchased goods sold and shipped from Amazon, on which they were charged and paid undue sales tax on Zero-Rated Supplies;

82. The Class Members were deprived of their money by the Respondents' unlawful, unfair, misleading, and/or grossly negligent acts and practices;

83. In consequence of the foregoing, each member of the Class is justified in claiming at least one or more of the following as damages assessed and calculated in the following manner:

- i. Money in an amount equal to what was charged as undue sales tax (...), when it should not have been charged and collected according to the applicable legislation; and
- ii. Compensation for the period during which they were deprived of possession of their property in the greater amount of:
 - Interest calculated on the amount of money collected without right with the *Barreau du Québec's* legal tax rate and additional indemnity calculator; 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*;



iii. Punitive damages in accordance with the *Consumer Protection Act*,

84. All of these damages to the Class Members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

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

85. The Petitioner is not privy to the specific number of persons who purchased goods from Amazon and were charged for and who paid undue sales taxes on Zero-Rated Supplies; however, given that Amazon is the number one e-commerce retailer in Canada, it is safe to estimate that it is at least in the tens of thousands. Further, Amazon's database could easily establish the number of Class Members and even all of those Class Members' exact coordinates;

86. Class Members are numerous and are scattered across the entire province;

87. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts 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 Respondents would increase delay and expense to all parties and to the court system;

88. By their very nature, sales 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;

89. 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;

90. 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;

91. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;

92. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together into one action;

93. 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;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
94. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;
95. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
96. The claims of the members raise identical, similar or related issues of fact or law, namely:
- a) Did the Respondents inconsistently and/or arbitrarily apply the *Excise Tax Act* and/or the *ARQST* with respect to Zero-Rated Supplies?
 - b) Did the Respondents unlawfully charge and collect GST and/or PST on Zero-Rated Supplies?
 - c) Did the Respondents have a policy and practice of imposing undue sales taxes on Zero-Rated Supplies?
 - d) Did the Respondents engage in unlawful, unfair, misleading, and/or deceptive acts and practices in charging and collecting sales tax on Zero-Rated Supplies?
 - e) Were the Respondents grossly negligent or wilful in determining that the Zero-Rated Supplies were taxable at the rates of 5% (GST) and 9.975% (QST) and in representing to customers that sales taxes were due under federal and provincial legislation?
 - f) Did the Respondents know, or should they have known that Zero-Rated Supplies are taxable at a rate of 0%?
 - g) Did the Respondents know or show they have known the goods that were designated as being Zero-Rated Supplies?
 - h) Did the Respondents knowingly, recklessly or gross negligently misrepresent to Class Members that sales taxes were due, when they were not?
 - i) Did the Respondents make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal and/or provincial statute?



- j) Did the Respondents profit from their unlawful practices?
 - k) Were the Respondents unjustly enriched?
 - l) Did the Respondents receive a thing not due?
 - m) Have Class Members been damaged by the Respondents' conduct and, if so, what is the proper measure of such damages?
 - n) Was it reasonable for Class Members to rely on the Respondents to properly levy sales taxes on the goods (tangible personal property) that they had purchased?
 - o) (...)
 - p) Are the Respondents liable to pay interest at the legal rate or otherwise on the amount of money collected as undue sales tax for the time period during which Class Members were deprived of their money?
 - q) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate the unlawful, unfair, misleading, and/or deceptive conduct?
 - r) In the affirmative to any of the above issues, did the Respondents' conduct engage their solidary liability toward the members of the Class?
 - s) Are members of the Class entitled to punitive (exemplary) damages?
97. The interests of justice favour that this application be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

98. The action that the Petitioner wishes to institute on behalf of the members of the Class is an action in damages, injunctive relief, and a declaratory judgment;
99. The conclusions that the Petitioner wishes to introduce by way of an application to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the Class;

DECLARE that the Defendants have been charging and collecting undue sales taxes from Class Members in contravention of the applicable legislation, to wit, the *Excise Tax Act* and the *ARQST*;

ORDER the Defendants to cease from continuing their unlawful, unfair, false, misleading and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the Class Members;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

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

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

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

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

A) The Petitioner requests that she be attributed the status of representative of the Class

100. The Petitioner is a member of the Class;
101. The Petitioner is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with her attorneys;
102. Petitioner has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
103. Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
104. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed;



105. Petitioner has given instructions to her attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
106. Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
107. Petitioner understands the nature of the action;
108. Petitioner's interests do not conflict with the interests of other Class Members and further Petitioner has no interest that is antagonistic to those of other members of the Class;
109. Petitioner is prepared to be examined out-of-court on her allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
110. Petitioner has spent time researching this issue on the internet and meeting with her attorneys to prepare this file. In so doing, she is convinced that the problem is widespread;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of Justice in the district of Montreal
111. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;
112. The Petitioner's attorneys practice their profession in the judicial district of Montreal;
113. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages, injunctive relief, and declaratory relief;

DESIGNATE the Petitioner as representative of the persons included in the Class herein described as:

- All persons residing in Quebec who purchased a good (tangible personal property) from Amazon and who were charged for and who paid sales taxes (GST and/or QST) that were not due under

federal and/or provincial legislation (a “Zero-Rated Supply”, including “Basic Groceries”, “Other Products” and “Other Zero-Rated Supplies”), or any other group to be determined by the Court;

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

- a) Did the Respondents inconsistently and/or arbitrarily apply the *Excise Tax Act* and/or the *ARQST* with respect to Zero-Rated Supplies?
- b) Did the Respondents unlawfully charge and collect GST and/or PST on Zero-Rated Supplies?
- c) Did the Respondents have a policy and practice of imposing undue sales taxes on Zero-Rated Supplies?
- d) Did the Respondents engage in unlawful, unfair, misleading, and/or deceptive acts and practices in charging and collecting sales tax on Zero-Rated Supplies?
- e) Were the Respondents grossly negligent or wilful in determining that the Zero-Rated Supplies were taxable at the rates of 5% (GST) and 9.975% (QST) and in representing to customers that sales taxes were due under federal and provincial legislation?
- f) Did the Respondents know, or should they have known that Zero-Rated Supplies are taxable at a rate of 0%?
- g) Did the Respondents know or show they have known the goods that were designated as being Zero-Rated Supplies?
- h) Did the Respondents knowingly, recklessly or gross negligently misrepresent to Class Members that sales taxes were due, when they were not?
- i) Did the Respondents make false or misleading representations concerning the existence, charge, amount or rate of duties payable under a federal and/or provincial statute?
- j) Did the Respondents profit from their unlawful practices?
- k) Were the Respondents unjustly enriched?
- l) Did the Respondents receive a thing not due?
- m) Have Class Members been damaged by the Respondents’ conduct and, if so, what is the proper measure of such damages?



- n) Was it reasonable for Class Members to rely on the Respondents to properly levy sales taxes on the goods (tangible personal property) that they had purchased?
 - o) (...)
 - p) Are the Respondents liable to pay interest at the legal rate or otherwise on the amount of money collected as undue sales tax for the time period during which Class Members were deprived of their money?
 - q) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate the unlawful, unfair, misleading, and/or deceptive conduct?
 - r) In the affirmative to any of the above issues, did the Respondents' conduct engage their solidary liability toward the members of the Class?
 - s) Are members of the Class entitled to punitive (exemplary) damages?
114. The interests of justice favour that this application be granted in accordance with its conclusions;

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

GRANT the class action of the Petitioner and each of the members of the Class;

DECLARE that the Defendants have been charging and collecting undue sales taxes from Class Members in contravention of the applicable legislation, to wit, the *Excise Tax Act* and the *ARQST*;

ORDER the Defendants to cease from continuing their unlawful, unfair, false, misleading and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the Class Members;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

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

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

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

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

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

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

ORDER the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in the La Presse, The Montreal Gazette, and Le Soleil;

ORDER that said notice be sent directly to all Class Members through the use of the Respondents' customer database, as well as, posting the said notice on the Respondents' website at www.amazon.ca, Facebook page(s), and twitter accounts with a link stating "Notice to persons who have paid sales taxes on such goods as groceries, diapers, baby bottles, and other zero-rated items on Amazon";

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

THE WHOLE with costs, including all publication fees.

Montreal, November 24, 2017

(s) Jeff Orenstein

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner

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N°: 500-06-000855-177

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

G. GAGNON

Petitioner

-vs.-

AMAZON.COM, INC. et al.

Respondents

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

COPY

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