

action, purchased, received, and/or acquired one or more Air Canada Consumer Flight Pass(es) with a specified number of flight credits

(hereinafter referred to as “**Class Member(s)**” or the “**Class**”);

2. The present class action stems from the Defendant’s sale of Consumer Flight Passes² with expiries and additional fees, and the Class Members seek remedies under section 272 of the *Québec Consumer Protection Act*, CQLR c P-40.1 (the “**CPA**”) and the *Civil Code of Québec*, RLRQ c CCQ-1991 (the “**CCQ**”), including:
 - a. compensatory damages,
 - b. reduction of obligations,
 - c. rescinding, setting aside, or annulling the Class Members’ purchase of the Air Canada consumer Flight Passes,
 - d. moral damages, including damages for inconvenience,
 - e. punitive damages, and
 - f. interest and additional indemnity;
3. In its November 27, 2020 judgment, the Court of Appeal identified the main issues to be dealt with collectively as the following:

Application of the *Consumer Protection Act*

1. Is the *CPA* a law of public order applicable to all merchants located within Québec?
2. Considering that Air Canada is headquartered and domiciled in the province of Québec, does the *CPA* also govern Air Canada’s conduct and/or transactions, when transacting remotely via the internet with a consumer residing outside of Québec?
3. If Question 2 is “No”, does the *CPA* apply by virtue of the Québec choice of law clause within Air Canada’s website Terms of Use (for class members prior to February 23, 2016 who are resident outside of Québec)?
4. Subsidiarily, if Question 2 is “no”, then for class members on or after February 23, 2016 who are resident outside of Québec, by virtue of the Alberta choice

² The particulars of a “Consumer Flight Pass(es)” is/are defined in subparagraph 8(a).

of law provision (para. 21 of the Application for Authorization) and operation of Article 3117 CCQ, did Air Canada commit a contractual fault under Article 1458 CCQ by:

- a. Selling the Air Canada Consumer Flight Pass, which is a “prepaid purchase card” under section 1 of *Gift Card Regulation*, Alta Reg 146/2008; and
- b. Imposing fees and expiry dates contrary to section 2-3 of the above statute.

Consumer Protection Act Prepaid Card Questions

5. Is the Air Canada Consumer Flight Pass a “prepaid card” within the meaning of s. 187.1 of the *CPA*?
6. If the Air Canada Consumer Flight Pass is a “prepaid card”:
 - a. Is the expiry date on Air Canada’s Consumer Flight Pass contrary to s. 187.3 of the *CPA*?
 - b. Is the charge for an extension of the expiry date on Air Canada’s Consumer Flight Pass a charge for the use of a prepaid card contrary to s. 187.4 of the *CPA*?
 - c. Is the charge for the change of a travelling companion’s name on Air Canada’s Consumer Flight Pass a charge for the use of a prepaid card contrary to s. 187.4 of the *CPA*?

Remedies Questions

7. Does the absolute presumption of prejudice apply to the Class Members’ claims?
8. Are the Class members entitled to compensatory damages (or a reduction of obligations) from Air Canada, consisting of:
 - a. a monetary amount equivalent to the value of the Consumer Flight Pass flight credits that have been forfeited to Air Canada;
 - b. a monetary amount equivalent to the extension fees paid to extend the expiry of the Consumer Flight Pass; and/or
 - c. a monetary amount equivalent to the companion name change fees paid for the use of the Consumer Flight Pass?
9. Are the Class members entitled to any or all of the following remedies with respect to Air Canada imposing an expiry date on their Consumer Flight Passes;
 - a. reduction of each Class Members’ obligations;

- b. rescind, set aside, or annul the Class Member's Consumer Flight Pass purchase(s);
 - c. award compensatory damages to each Class Member; and/or
 - d. award moral damages, including damages for inconvenience, to each Class Member?
10. Does Air Canada's conduct demonstrate lax, passive or ignorance with respect to consumers' rights and to their own obligations under the consumer protection laws such that punitive damages is warranted? If so, how much?
11. Are the Class Members entitled to the interest and additional indemnity set out in the CCQ on the above monetary amounts, from the date of initial date of purchase of their Consumer Flight Pass(es)?

II. THE DEFENDANT

4. The Defendant, Air Canada, is a body corporate that is continued under the *Canada Business Corporations Act* with its registered office located at 7373 Boulevard de la Côte-Vertu, Saint-Laurent, Québec, Canada, H4S 1Z3. Disclosed as **Exhibit P-1** is the Industry Canada corporate registry extract;
5. Air Canada is domiciled in, carries on business, and has its headquarters in the Province of Québec. Disclosed as **Exhibit P-2** is the corporate registry extract from the *Registraire des entreprises du Québec*;
6. Air Canada derives revenue as a result of its presence and domicile in the Province of Québec;
7. Air Canada provides airline services throughout Canada, and also globally, and sells its flight services through various means including a fixed-price *prepaid* package of airline vouchers that may later be redeemed, within a specific period of time, for flight tickets for travel within a predetermined geographical region (a "**Flight Pass(es)**"), and disclosed as **Exhibit P-3** is Air Canada's own description of a Flight Pass;
8. Air Canada's prepaid Flight Passes consist of two main categories or types:

a. **“Consumer Flight Passes”** includes the following:

- i. *a Flight Pass that can only be used by the purchasing traveller without the ability to sell or otherwise transfer the Flight Pass; or*
- ii. *a Flight Pass that can only be used by the purchasing traveller and/or the traveller’s companion(s), without the ability to sell or otherwise transfer the Flight Pass, except for changing the name(s) of the traveller’s companion(s) for a \$125 fee,*

samples of which dated on or about 2017 from Air Canada’s website are disclosed as **Exhibit P-4**;

b. **“Flight Passes for Business”** includes:

- i. **“Small and Medium Sized Business”**: *a Flight Pass that can accommodate up to 10 or 20 employees;*
- ii. **“Large Corporation”**: *a Flight Pass that can accommodate up to 35, 75, or 500 employees,*

samples of which dated on or about 2017 from Air Canada’s website are disclosed as **Exhibit P-5**;

9. The Consumer Flight Passes are available in the following denominations (some examples are provided in Exhibit P-4):
 - a. A specified number of one-way travel flight credits (e.g. 6, 8, 10, or 20 flight credits); or
 - b. Unlimited travel for a specified period of time;
10. The Consumer Flight Passes at issue in this class action are those for a specified/limited number of flight credits, as described in subparagraph 9(a) above;
11. The Consumer Flight Passes for unlimited travel for a specified period of time (subparagraph 9(b) above) are **not** the subject of this class action;
12. Air Canada markets its Consumer Flight Passes under numerous labels including, but not limited to, a "Flight Pass", a "World Travel Pass", a "Sun Pass", a "Student Pass", and/or a "Student Flight Pass";
13. Air Canada imposes expiry dates on the use of the Consumer Flight Passes, as mentioned in paragraph 9(a) above, and the expiry is usually one year;
14. Air Canada also charges numerous fees in relation to the Consumer Flight Passes and the fees that are subject to this class action are the following:
 - a. a one-time extension fee (usually \$250) that would extend the expiry date on a Consumer Flight Pass once, and only one extension is permitted; and
 - b. a companion name change fee (usually \$125) for changing the name of the individual that may redeem or utilize the flight credits on the Consumer Flight Pass (see paragraph 8(a)(ii) above);

15. Upon reaching the expiry date that Air Canada has imposed on the Consumer Flight Passes, any flight credits remaining on that pass is forfeited to Air Canada, can no longer be redeemed for travel, and the customer receives no refund of any monies they paid for their Consumer Flight Pass;

III. THE SITUATION

a. The Plaintiff's Personal Situation

16. On or about March 6, 2015, through his travel agent, the Plaintiff purchased a Consumer Flight Pass in his own name from Air Canada (the "**Plaintiff's Pass**");

17. The Plaintiff purchased the Plaintiff's Pass primarily for rest and relaxation travel purposes to Fort Lauderdale, Florida, and to stay at the vacation property he owns in Fort Lauderdale, Florida;

18. The Plaintiff's Pass was a "*Sun Pass – Florida Flex – 8 credits*" with product ID 275PC000028 for \$2,562 including taxes (the "**Plaintiff's Pass**"), and the proof of purchase is disclosed as **Exhibit P-6**;

19. The Plaintiff's Pass was charged to a credit card that bears the name of the Plaintiff as the cardholder, and was normally used for some expenses of his business enterprise, Hubmar International Inc.;

20. Out of the \$2,562 for the Plaintiff's Pass, \$1,937 was immediately accounted for and off-setted against monies that [REDACTED] Inc. owed to the Plaintiff personally in his capacity and disclosed as **Exhibit P-7** is the Plaintiff's expense report for March 2015, with redactions of unrelated transactions;

21. The remaining \$625 for the Plaintiff's Pass was redeemed using the loyalty points on the credit card and was not paid for using Hubmar International Inc.'s money;

22. Disclosed as **Exhibit P-8** is the Plaintiff's credit card statement for March 2015 and April 2015 with redactions of unrelated transactions, which contains the credit card charge for the Plaintiff's Pass and the associated redemption of loyalty points;
23. The Plaintiff's Pass had a start date of March 6, 2015 and an expiry date of March 6, 2016, whereby the expiry date can be extended for a further three months for a fee of \$250, and any unredeemed flight credits after the expiry date are forfeited to Air Canada, without any refund of the monies paid;
24. The Plaintiff's Pass was non-transferrable and can only be used by the Plaintiff and one additional companion that may be added, and that companion can be changed upon payment of an additional fee;
25. The Plaintiff's Pass consisted of eight one-way prepaid coach-class flight credits that were eligible for travel from either Montreal, Ottawa, or Toronto to destinations in the United States of America including Fort Lauderdale and other sun destinations in Florida;
26. The transactions on the Plaintiff's Pass were as follows:
- a. The Plaintiff redeemed two flight credits for a round-trip leisure travel from Montreal to Fort Lauderdale between December 23, 2015 and January 6, 2016 for his daughter, who was the named companion on the Plaintiff's Pass, and disclosed herein as **Exhibit P-9** was the itinerary;³
 - b. The Plaintiff redeemed two flight credits for a round-trip from Montreal to Fort Lauderdale between February 18-21, 2016 for rest and relaxation purpose, and disclosed as **Exhibit P-11** was the itinerary;

³ The Plaintiff also travelled to Fort Lauderdale to spend the Christmas holiday with his daughter between December 22, 2015 and January 12, 2016, but booked his travel with Aeroplan points, and the Plaintiff's own itinerary is disclosed as **Exhibit P-10**.

- c. On or about February 13, 2016, the Plaintiff revised the above itinerary to February 25-29, 2016 and disclosed as **Exhibit P-12** was the revised itinerary;
- d. On or about February 2016, the Plaintiff extended the remaining four credits on the Plaintiff's Pass by paying a \$315 extension fee, disclosed as **Exhibit P-13**;
- e. The Plaintiff redeemed two flight credits for a round-trip from Montreal to Fort Lauderdale between May 19-23, 2016 for rest and relaxation purpose, and disclosed as **Exhibit P-14** was the itinerary;
- f. The Plaintiff redeemed two flight credits for a round-trip from Montreal to Fort Lauderdale between June 2-5, 2016 for his friend's leisure travel, and disclosed herein as **Exhibit P-15** was the itinerary; and
- g. Prior to making the above booking for his friend, the Plaintiff paid the companion name change fee of \$125, plus GST;

b. The Situation for the Class Members

- 27. Air Canada markets the Consumer Flight Pass for non-business travel, or otherwise internally designates the Consumer Flight Pass as a consumer product;
- 28. Air Canada sells its Consumer Flight Passes to travellers across Canada and also worldwide via its own website either:
 - a. directly to the traveller via <https://www.aircanada.com> (the "**Consumer Site**"); or
 - b. through a travel agent via the "Travel Agents" section of its website (<https://www.aircanada.com/agents>) (the "**Travel Agents Site**");

29. The use of the Air Canada websites (including both the Consumer Site and Travel Agents Site) from within Canada, and anywhere else in the world, were bound by identical terms of use, disclosed as **Exhibit P-16**, which is an Internet Archive webpage dated January 21, 2016, and states that:

“This User Agreement shall be deemed to have been made in the Province of Quebec, Canada, and shall be governed in all respects by the laws of the Province of Quebec, Canada, and the federal laws applicable therein, without regard to its conflicts of law principles. You submit to the exclusive jurisdiction of the courts situated in the judicial District of Montreal, Province of Quebec for the all disputes or disagreements arising pursuant to, or transactions and relationships contemplated by, this User Agreement, and waive any objections as to personal jurisdiction or as to the laying of venue in such courts due to inconvenient forum or any other basis and undertake to file no action or bring no complaint in any other court.

.....

This User Agreement shall constitute the entire agreement between you and Air Canada with respect to our website, and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Air Canada with respect to our website. A printed version of this Agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.”

(emphasis added)

30. On or about February 23, 2016, Air Canada amended its terms of use for its websites, which is disclosed as **Exhibit P-17** (an Internet Archive webpage dated February 23, 2016) and states that:

Governing Law

For Québec residents—These Terms of Use shall be governed by, construed and/or interpreted in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein and shall be treated in all respects as a Quebec contract, without regard to principles of conflicts of law that would impose a law of another jurisdiction. Any dispute is to be submitted to the exclusive jurisdiction of the courts in the judicial district of Montreal, Province of Québec.

For non-Québec residents—These Terms of Use shall be governed by, construed and/or interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract, without regard to principles of conflicts of law that would impose a law of another jurisdiction. Any dispute is to be submitted to the non-exclusive jurisdiction of the courts in the judicial district of Calgary, Province of Alberta.

.....

Entire Agreement

Subject to any other applicable agreement you may have entered into with us, these Terms of Use and any other notices or statements posted on the Website constitute the entire agreement between you and Air Canada with respect to the use of the Website, including the AIR CANADA CONTENT and these Terms of Use supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and Air Canada with respect to the Website and AIR CANADA CONTENT.

(emphasis added)

31. The website terms of use in Exhibit P-17 were applicable to residents in Canada, and individuals residing outside of Canada;

32. The website terms of use in Exhibits P-16 and P-17 are contracts of adhesion;
33. Regardless of whether the Class Members purchased their Consumer Flight Passes from the Consumer Site or through a travel advisor who acquired the Consumer Flight Passes on behalf of the Class Member on the Travel Agents Site:
- a. identical terms and conditions as those documented in Exhibit P-6 were shown to the Class Members (or their travel advisors acting on behalf of the Class Members under the laws of agency or mandates) prior to the purchase of their respective Consumer Flight Passes and thereafter confirmed in a confirmation e-mail sent by Air Canada;
 - b. Air Canada is bound by the same website terms of use in either Exhibit P-16 or Exhibit P-17, subject to the mandatory laws in Québec;
 - c. the Class Members may only use the Consumer Flight Pass personally (or by a named companion) and cannot trade, resell or otherwise transfer the ownership of the Consumer Flight Pass, as indicated in paragraph 8(a);
 - d. each Class Member's use of the Consumer Flight Pass would be subject to a short expiry period and the additional fees as described in paragraph 14;
and
 - e. some of Class Members would have paid the additional fees as described in paragraph 14 and/or had their flight credits seized by Air Canada after the expiry date;
34. Every Class Member purchased, received, or acquired the Consumer Flight Pass from Air Canada during the class period and the flight credits on those Consumer Flight Passes could later be redeemed for a specified number of one-way flights for travel between a pre-determined list of destinations;

35. The Class Members are “consumers” within the meaning of the *CPA*;
36. After a Class Member redeems flight credit(s) from their Consumer Flight Pass for an actual flight, the Class Member will be permitted to “check-in” for their flights approximately 24-hours before their flight using the Air Canada website, a sample screenshot of the online check-in screen is disclosed as **Exhibit P-18**;
37. All of the damages or losses to the Class Members are a direct and proximate result of Air Canada’s conduct including imposing of expiry dates and/or fees on the use of the Consumer Flight Passes;
38. Air Canada’s conduct of selling the Consumer Flight Passes in the face of the plain and clear language of the *CPA* rules regarding “prepaid cards” reflects ignorance, carelessness, and/or gross negligence with respect to its obligations and the rights of consumers, including Air Canada’s conduct that had been continuing even after this class action was authorized, would justify the award of punitive damages;

IV. **The Faults Committed by the Defendant, Air Canada**

39. The Defendant has committed numerous faults based on the situation described above, including:
- a. imposing expiry dates on its Consumer Flight Passes and/or seizing the Class Members’ flight credits that have passed Air Canada’s imposed expiry dates, contrary to the Defendant’s statutory obligations under art. 187.3 of the *CPA*;
 - b. imposing and/or charging fees on its Consumer Flight Passes for extending the aforementioned expiry date, or to change the name of a travelling companion on the Consumer Flight Passes, contrary to the Defendant’s statutory obligations under art. 187.4 of the *CPA*; and/or

- c. subsidiarily, a contractual fault under article 1458 CCQ for failure to abide by sections 2-3 of the *Alberta Gift Card Regulation*, Alta Reg 146/2008 (the “**Alberta Gift Card Laws**”) in respect of its Consumer Flight Passes;

40. Air Canada’s Flight Passes (including the Consumer Flight Passes) are “prepaid cards” within the meaning of art. 187.1 of the *CPA*, a question of law that the Court of Appeal has already conclusively determined for this class action (*Benamor c. Air Canada*, 2020 QCCA 1597 at paras. 33-48 and 67);

41. Air Canada did not appeal the Court of Appeal’s ruling and the legal question of whether their Flight Passes are “prepaid cards” now has the force of *res judicata*;

a. **Expiry Dates and Fees for the Consumer Flight Passes Contravene the CPA**

42. Air Canada’s Consumer Flight Passes have expiry dates, or otherwise imposed the above-referenced fees;

43. Those expiry dates and fees contravene arts. 187.3 and 187.4 of the *CPA*, respectively;

44. The *CPA* is a law of public order where the good faith or bad faith of the merchant is not relevant in considering whether a merchant has violated its statutory obligations;

b. **Alternatively, a Contractual Fault for Violating The Alberta Gift Card Laws**

45. The Plaintiff and the Class relies on an alternative ground for establishing Air Canada’s fault, relying on the Alberta Gift Card Laws;

46. Whether the Court will need to consider and/or apply the Alberta Gift Card Laws depends on whether the Québec *CPA* applies to all Class Members or just Class

Members residing in Québec, as described in detail in section VI – Applicability of the Québec CPA further below;

47. The Air Canada Consumer Flight Passes are “prepaid purchase cards” within the meaning of section 1(b) of the Alberta Gift Card Laws, which closely resembles art. 187.1 of the CPA;

“prepaid purchase card” means a written certificate, electronic card or other voucher or payment device with a monetary value for which a purchaser provides consideration and that

- (i) may or may not be increased in value or reloaded,*
- (ii) is purchased or loaded on a prepaid basis in a specific amount for the future purchase or delivery of goods or services, and*
- (iii) is honoured on presentation to a supplier, and includes a gift card and gift certificate;*

48. The only material difference between a “prepaid card” under art. 187 CPA and s. 1(b) of the Alberta Gift Card Laws is that the preamble of s. 1(b) contains a reference to “monetary value”, which is not present under art. 187 CPA;

49. The Air Canada Consumer Flight Passes has “monetary value”, as that term is commonly used (*Benamor c. Air Canada*, 2020 QCCA 1597 at para. 46);

50. The Alberta Gift Card Laws similarly prohibits expiry dates and fees for a “prepaid purchase card” under ss. 2-3 of the *Alberta Gift Card Laws*, which are materially similar to arts. 187.3 and 187.4 of the CPA;

51. For Class Members that may need to resort to the Alberta legislation as described in a further section below, Air Canada’s failure to abide by the Alberta Gift Card Laws constitutes a contractual fault under art. 1458 CCQ;

V. **Remedies for the Class Members**

52. The prepaid card provisions under the *CPA* are found in Title I;

53. Hence, for purchases where the Québec *CPA* applies, those Class Members are entitled to the absolute presumption of prejudice and to claim the remedies found in art. 272 of the *CPA*, without having to meet any additional requirements;

54. Class Members claim compensatory damages and/or a reduction of obligations pursuant to art. 272 *CPA*, for the following:

- a. monetary amount equivalent to the value of the Consumer Flight Pass flight credits that have been forfeited to Air Canada;
- b. a monetary amount equivalent to the extension fees paid to extend the expiry of the Consumer Flight Pass; and/or
- c. a monetary amount equivalent to the companion name change fees paid;

55. The Class Members further claim, pursuant to art. 272 *CPA*, the following for Air Canada having imposed an illegal expiry date on their Consumer Flight Passes:

- a. reduction of each Class Members' obligations for their acquisition of the Consumer Flight Passes (i.e., a court-ordered reduction of the price that they have already paid, and refund of the corresponding price differences);
- b. rescind, set aside, or cancel the Class Member's Consumer Flight Pass purchase(s), at the option of those Class Members;
- c. award compensatory damages to each Class Member; and/or
- d. award moral damages, including damages for inconvenience, to the Class;

56. For Class Members that may need to rely on the Alberta Gift Card Laws, those members seek the same remedies in the preceding paragraphs as a result of contractual faults committed by Air Canada;

57. All the Class Members claim punitive damages against Air Canada since Air Canada's conduct before, during, and after their breaches of the CPA demonstrates lax, careless, negligent, passive, and ignorant conduct with respect to each Class Member's legal rights;

58. Air Canada also completely disregarded their own legal obligations under the applicable consumer laws and continues to sell the Consumer Flight Passes in an illegal fashion even months after the Court of Appeal's judgment in the present case;

59. A merchant can easily reform their business practices to comply with the prepaid card provisions in the CPA, but Air Canada has failed to do so (*Benamor c. Air Canada*, 2020 QCCA 1597 at paras. 61-62);

60. The punitive damages provided for in section 272 CPA have a preventative purpose to discourage the repetition of similar undesirable conduct;

61. Given Air Canada's conduct, the Class Member's claims are well justified;

VI. **Applicability of the Québec CPA to the Transactions In this Class Action**

a. **The Québec CPA Applies to All the Class Members by Operation of Law**

62. The CPA is a law of general application in the province of Québec, which governs the relationship between Québec-based merchants (such as Air Canada) and consumers residing in Québec and also elsewhere in Canada;

63. The CPA is applicable to Air Canada's conduct and/or their transactions with consumers by virtue of Air Canada's connection to, domicile in, and being headquartered in the province of Québec;

64. Furthermore, the CPA is a law of public order, and also a law of mandatory nature under article 3076 CCQ;

b. **The Québec CPA Applies to Some Class Members by Contract**

65. For Class Members that acquired their Consumer Flight Passes before Air Canada's unilateral change of website terms of use (described in paragraphs 29-30 above), Air Canada agreed that their relationship with Class Members will be exclusively governed by Québec law and any disputes are to be resolved by the courts in the district of Montréal;

66. Air Canada must abide by their own choice of Québec law, which includes all applicable laws in Québec such as the *Consumer Protection Act*;

67. The Plaintiff and Class Members say that article 3117 CCQ has no application in this case, and cannot operate to exclude the application of the Québec CPA (*Benamor c. Air Canada*, 2020 QCCA 1597 at paras. 87-88; see also *Hurst c. Air Canada*, 2017 QCCS 223 at paras. 19-21);

68. Air Canada's own website terms of use expressly excluded the application of conflicts of law principles (such as art. 3117 CCQ):

"This User Agreement shall be deemed to have been made in the Province of Quebec, Canada, and shall be governed in all respects by the laws of the Province of Quebec, Canada, and the federal laws applicable therein, without regard to its conflicts of law principles.

(emphasis added)

69. This contractual choice of Québec law is a *further* ground for applying the CPA for those Class Members' acquisition of their Consumer Flight Passes from Air Canada;

c. **Air Canada's Imposition of Alberta Law Cannot Exclude the Québec CPA**

70. For Class Members residing outside of Québec that acquired their Consumer Flight Passes after Air Canada's unilateral change in their website terms of use (described in paragraphs 29-30 above), Air Canada's new website terms state that;

***For Québec residents**—These Terms of Use shall be governed by, construed and/or interpreted in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein and shall be treated in all respects as a Quebec contract, without regard to principles of conflicts of law that would impose a law of another jurisdiction. Any dispute is to be submitted to the exclusive jurisdiction of the courts in the judicial district of Montreal, Province of Québec.*

***For non-Québec residents**—These Terms of Use shall be governed by, construed and/or interpreted in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein and shall be treated in all respects as an Alberta contract, without regard to principles of conflicts of law that would impose a law of another jurisdiction. Any dispute is to be submitted to the non-exclusive jurisdiction of the courts in the judicial district of Calgary, Province of Alberta.*

71. Air Canada cannot contract out of the statutory obligations imposed under the CPA, nor can Air Canada elect to exclude the operation of the CPA in whole or in part, as a result of the operation of some or all of arts. 19, and/or 261-262 CPA;

72. The Plaintiff and Class Members maintain that the Québec CPA would apply to the Consumer Flight Passes by operation of law, irrespective of Air Canada's attempt to contractually exclude the consumer protection laws of their home jurisdiction;

d. **The CPA is Constitutionally Operable and Applicable in this Instance**

73. Air Canada has urged this Court and the Court of Appeal to determine with finality, one way or another, whether their Consumer Flight Passes are “prepaid cards” under the *CPA*;

74. In urging the courts to conclusively determine that question of law (i.e., whether their Consumer Flight Passes are “prepaid cards”), Air Canada has not filed any notice that it intended to challenge the constitutionality of the *CPA* as required by the *CCP*;

75. Since the Court of Appeal has already conclusively determined that the Consumer Flight Passes are “prepaid cards” under art. 187.1 of the *CPA* (*Benamor c. Air Canada*, 2020 QCCA 1597 at paras. 33-48 and 67), it is no longer open for Air Canada to relitigate the constitutionality of the *CPA* or the Alberta Gift Card Laws;

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

GRANT the class action of the Applicant and each of the Class Members;

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

CONDEMN the Defendant to pay an amount in damages, including compensatory and/or moral damages, to each member of the Class, or alternatively a reduction of obligations for each Class Member in an amount to be determined by the Court, plus interest as well as additional indemnity, under Article 1619 of the C.C.Q., since the date of each Class Member’s purchase of their Consumer Flight Pass;

CONDEMN the Defendant to pay an amount in punitive and/or exemplary damages to each member of the Class, in an amount to be determined by the Court, with interest as well as the additional indemnity, under Article 1619 of the C.C.Q.;

CONDEMN the Defendant to bear the costs of the present action including expert, expertise, and notice fees;

ORDER that the above three condemnations be subject to collective recovery;

CONDEMN the Defendant to bear the costs of the action including the cost of notices, the cost of claims administration, and the cost of experts, if any;

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

Montréal, February 24, 2021

(s) Champlain avocats

Me. Jérémie John Martin, Attorney

Me. Sébastien A. Paquette, Attorney

Champlain Avocats

1434 Sainte-Catherine Street West, Suite 200

Montreal, Quebec, H3G 1R4

Phone: 514-866-3636

Fax: 514-800-0677

Notifications: jmartin@champlainavocats.com

Notifications: spaquette@champlainavocats.com

Lawyers for the Plaintiff

SUMMONS
(Articles 145 and following CCP)

Filing of a judicial application

Take notice that the Petitioner has filed this Originating Application in the office of the Superior Court in the judicial district of Montréal.

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 Rue Notre-Dame Est, Montréal, Québec, H2Y 1R6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

Failure to answer

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

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the case required by the Code, cooperate with the Petitioner in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the Originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main

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

Transfer of application to Small Claims Division

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

Calling to a case management conference

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

Exhibits supporting the application

- Exhibit P-1:** Copy of Industry Canada Corporate Search Report
- Exhibit P-2:** Copy of Registraire des entreprises Quebec Search Report
- Exhibit P-3:** Copy of Air Canada's website regarding "What is a Flight Pass?"
- Exhibit P-4:** Samples of Air Canada Consumer Flight Passes
- Exhibit P-5:** Samples of Air Canada non-Consumer Flight Passes
- Exhibit P-6:** Confirmation email of the Plaintiff's purchase of the Flight Pass
- Exhibit P-7:** Plaintiff's expense report for March 2015
- Exhibit P-8:** Plaintiff's credit card statements for March and April 2015
- Exhibit P-9:** Redemption of the Plaintiff's Flight Pass (first trip)
- Exhibit P-10:** Plaintiff's redemption of a flight ticket to accompany his daughter to Florida
- Exhibit P-11:** Redemption of the Plaintiff's Flight Pass (second trip)
- Exhibit P-12:** Redemption of the Plaintiff's Flight (Pass second trip - revised)
- Exhibit P-13:** Payment of an extension fee for the Flight Pass
- Exhibit P-14:** Redemption of the Plaintiff's Flight Pass (third trip)
- Exhibit P-15:** Redemption of the Plaintiff's Flight Pass (fourth trip)
- Exhibit P-16:** Air Canada's website terms of use dated January 21, 2016
- Exhibit P-17:** Air Canada's website terms of use dated February 23, 2016
- Exhibit P-18:** Air Canada flight online check-in screen

The exhibits in support of the application are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montréal, February 24, 2021

(s) Champlain avocats

Me. Jérémie John Martin, Attorney

Me. Sébastien A. Paquette, Attorney

Champlain Avocats

1434 Sainte-Catherine Street West, Suite 200

Montreal, Quebec, H3G 1R4

Phone: 514-866-3636

Fax: 514-800-0677

Notifications: jmartin@champlainavocats.com

Notifications: spaquette@champlainavocats.com

Lawyers for the Plaintiff

N^o 500-06-000883-179

**SUPERIOR COURT
(CLASS ACTION)
DISTRICT OF MONTREAL**

JOSEPH BENAMOR, residing at 1000,
Marlboro, Suite 401, Town of Mount Royal,
Province of Québec, Canada, H4P 1C1

Plaintiff / Class Representative

v.

AIR CANADA having a registered office at
7373 De La Côte Vertu Blvd West in the City of
Montréal in the Province of Québec

Defendant

ORIGINATING APPLICATION
(141 and 583 C.C.P)

ORIGINAL

M^e SÉBASTIEN A. PAQUETTE
CHAMPLAIN AVOCATS
1434 rue Sainte-Catherine O. Suite 200
Montréal (Québec) H3G 1R4
spaquette@champlainavocats.com
Téléphone : (514) 944-7344
Télécopieur : (514) 800-2286
(AP0CM0)