

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

No.: 500-06-001301-247

DENIS SIMARD, natural person, residing
at [REDACTED]

Applicant

v.

BLOOMEX INC., legal person, having its
head office at 4235, 17 Street Southeast
Calgary, Alberta, T2G 3W7

Defendant

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND
APPOINT APPLICANT AS CLASS REPRESENTATIVE**

(Art. 571 C.C.P. and following)

**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL YOUR APPLICANT STATES AS
FOLLOWS:**

I. OVERVIEW

1. This proposed class action seeks compensation for all damages and costs incurred due to the Defendant Bloomex's use of false, misleading and/or deceptive marketing strategies to sell flowers and related flower products online through their website www.bloomex.ca.
2. Consumers expect to pay the lowest price that a company represents a product will cost at a given time. This principle, codified in sections 52 and 54 of the *Competition Act*, RSC 1985, c C-34 (the "**Competition Act**") and in sections 224 of the *Quebec Consumer Protection Act*, CQLR, c. P-40.1 (the "**CPA**"), require that companies represent the full cost of a product upfront and prohibit companies from charging the higher of two different advertised prices for a product. These provisions ensure that companies' pricing practices are fair, transparent, and straightforward.
3. Through its website, Bloomex represents a price for flower products to consumers that is, unbeknownst to them, unattainable, and thereafter increases the purchase price in the final step of the purchase process. By doing so, Bloomex charges consumers a higher price for flower products than the price that was initially advertised.

4. Additionally, consumers expect that the representations a company makes about their products are true. Both federal and provincial laws prohibit companies from making false or misleading representations to a consumer by any means whatsoever, under sections 52 and/or 54 of the *Competition Act* and articles 215 and onwards of the Quebec *CPA*. These protections ensure that companies may be held accountable for any false information they provide to consumers.
5. Through its website, Bloomex represents three different categories of false information to consumers:
 - a. First, Bloomex adds a surcharge fee only at the backend of a transaction, after the initial price has been described on more than one occasion, thus falsely leading consumers to believe that the price as initially advertised is attainable when in fact it is not.
 - b. Second, Bloomex represents previous customers' satisfaction with their flower services using ratings on a scale of 1 to 5 that are, unbeknownst to Québec consumers, static. Despite almost a decade passing, Bloomex continues to represent customer reviews that are unchanged. By doing so, Bloomex falsely represents the state of public opinion concerning their flower services therefore deceiving Québec consumers in their decision-making.
 - c. Third, Bloomex represents that their individual flower products are usually sold at a regular listed price and that they are being offered at a steep discount, often for a limited time. In reality, however, Bloomex's flower products are rarely, if ever, sold at that undiscounted price and are instead almost always offered and sold at a so-called discount. By doing so, Bloomex deceives Quebec consumers into believing that the flower product they purchased is ordinarily sold at a higher price and has more value than it actually does.
6. Bloomex's conduct, summarized above and detailed in the claim below breach sections 52 and/or 54 of the *Competition Act* and constitute prohibited business practices contrary to sections 215, 219, 224 c), 225 and/or 228 of the *CPA*.
7. The Applicant seeks: (i) an aggregate amount for compensatory damages under the *CPA* and s 36 of the *Competition Act*; (ii) a reduction of his and the Class Members' obligations equivalent to a portion of the amount gained by the Defendants as a result of their conduct; and (iii) an aggregate amount for punitive damages under s 272 of the *CPA*.

II. **THE PARTIES**

8. The Applicant, Denis Simard, is a consumer within the meaning of the *CPA*, wishes to institute a class action on behalf of the following class:

All persons who, in the province of Québec, purchased Flower Products through www.bloomex.ca since January 1, 2015, until the date that this action is certified as a class proceeding.

(The “Class”, the “Class Members”, and the “Class Period”)

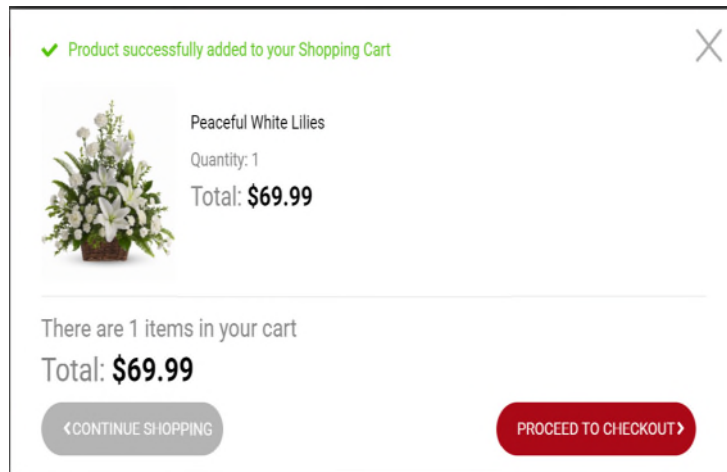
9. The Defendant, Bloomex Inc., is a Canadian company founded in 2005 with establishments in the province of Quebec, which, during the Class Period, sold individual flowers, floral bouquets, arrangements or wreaths, and gift hampers products (hereinafter “**Flower Products**”) through their Canadian website, www.bloomex.ca, (hereinafter “**Website**”) to Québec consumers, as appears from the corporate information retrieved from the Québec corporate registry CIDREQ and disclosed herewith as **Exhibit P-1**.
10. The Defendant is a merchant under the meaning of the *CPA*. Their activities are governed by the *CPA*, among other legislation.
11. By selling Flower Products to consumers in Québec the Defendant enters distance contracts with consumers and thus carries out business in the province of Québec. As such, when Class Members purchase Flower Products from the Bloomex, the contract is deemed to be entered into in Québec (s. 54.2 *CPA*).

III. CONDUCT #1 - BLOOMEX SELLS FLOWER PRODUCTS HIGHER THAN ADVERTISED PRICE THROUGH DECEPTIVE “SURCHARGE FEE”


12. When a consumer goes to purchase Flower Products on the Website, Bloomex represents a price for each Flower Product that is unattainable (hereinafter the “**First Price**”), as Bloomex fails to disclose from the outset of the purchase process a mandatory additional Surcharge Fee for each Flower Product, which is often though not necessarily always set at \$1.99.
13. When a consumer goes to www.bloomex.ca to purchase a Flower Product, they must proceed through several webpages before arriving at the “Express Checkout – Billing” webpage. The First Price is represented to the consumer several times during the checkout process. It is only at this final step in the checkout process after the consumer has entered their delivery postal code on the Express Checkout – Billing webpage that Bloomex displays a total purchase price that is higher than the original advertised price (the “**Total Price**”).
14. For example, on the individual product page for Peaceful White Lilies, Bloomex represents the First Price as \$69.99, as seen in the photo below and more fully from the screenshot taken of the Website and disclosed herewith as **Exhibit P-2**.



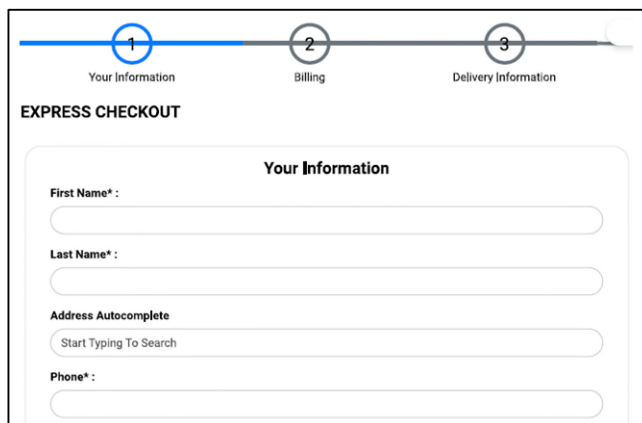
15. After a consumer clicks “Add to Cart”, a new pop-up window advises the consumer that the product has been added to their cart. Within this pop-up window, Bloomex represents the First Price for Flower Products once more, offering the consumer the choice to either continue shopping or proceed to checkout, as illustrated in the below photo and on the screenshot captured from the website, provided as **Exhibit P-3**.



16. After a consumer clicks “Proceed to Checkout” on the pop-up window, they are taken to a webpage entitled “Shopping Cart Summary” on which Bloomex represents the First Price for a third time, as appears from the photo below and more fully from the screenshot of the Shopping cart Summary webpage taken from the Website and disclosed herewith as **Exhibit P-4**.

Shopping cart Summary				
PRODUCT	PRICE	QUANTITY	TOTAL	REMOVE
 Peaceful White Lilies (/sympathy-and-funeral-flowers/peaceful-white-lilies/) SKU: LF100-72	\$69.99	- 1 +	\$69.99	
			TOTAL: \$69.99	

17. After a consumer clicks “Proceed to Checkout” on the Shopping cart Summary webpage, the consumer is taken to the “Checkout Specials” webpage where Bloomex provides the consumer the opportunity to add additional products to their cart or to proceed to checkout, as appears from the screenshot of the Checkout Specials webpage taken from the Website and disclosed herewith as **Exhibit P-5**.
18. After a consumer clicks “Proceed to Checkout” on the Checkout Specials webpage, the consumer is brought to the Express Checkout webpage, on which Bloomex indicates the three final steps to conclude the purchase: 1) Your Information; 2) Billing; and 3) Delivery Information.
19. On the first part of the Express Checkout process, the consumer is required to enter their personal contact information, including their first name, last name, address, and phone number, as appears from the photo below and more fully from the screenshot of the Express Checkout – Your Information webpage taken from the Website and disclosed herewith as **Exhibit P-6**.



1
 2
 3

Your Information Billing Delivery Information

EXPRESS CHECKOUT

Your Information

First Name* :

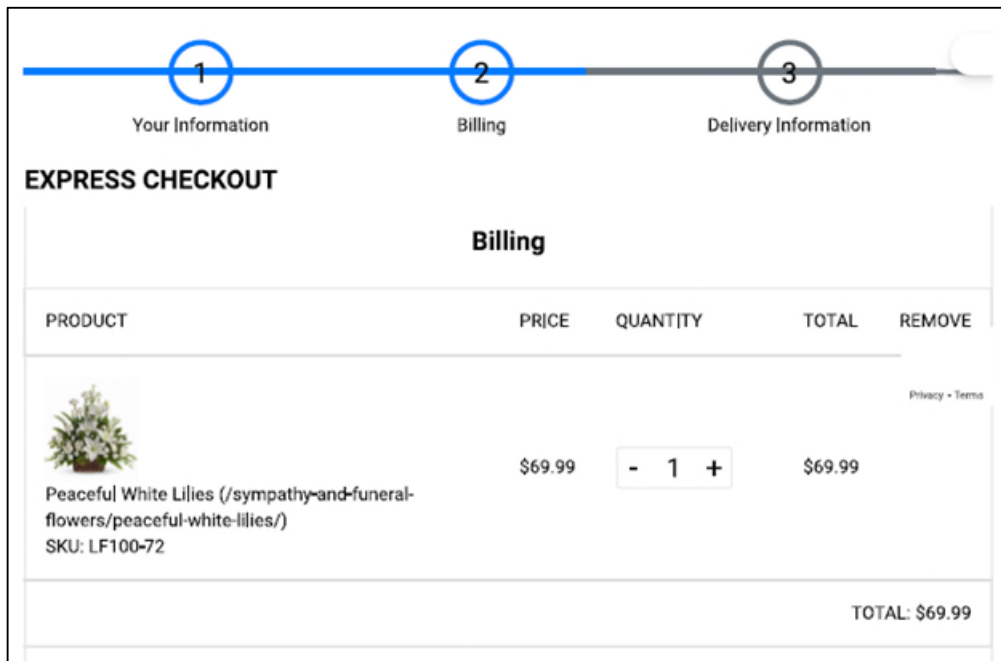
Last Name* :

Address Autocomplete

Phone* :

20. Once a consumer enters the required personal information and clicks “Next Step”, they are taken to the “Billing” page. On the Express Checkout – Billing webpage, the consumer is requested to enter billing and delivery information and the First Price is

represented for a fourth time, as appears from the photo below and more fully from the screenshot of the Express Checkout – Billing webpage taken from the Website and disclosed herewith as **Exhibit P-7**.



21. After a consumer selects a delivery postal code and a delivery date on the Express Checkout – Billing webpage, Bloomex represents, for the first time in the entire checkout process, that the consumer will be charged a \$1.99 fee (hereinafter the “**Surcharge Fee**”) in addition to the First Price represented for Flower Products, as appears from the photo below and more fully from the screenshot of the Express Checkout – Billing webpage taken from the Website and disclosed herewith as **Exhibit P-7**.

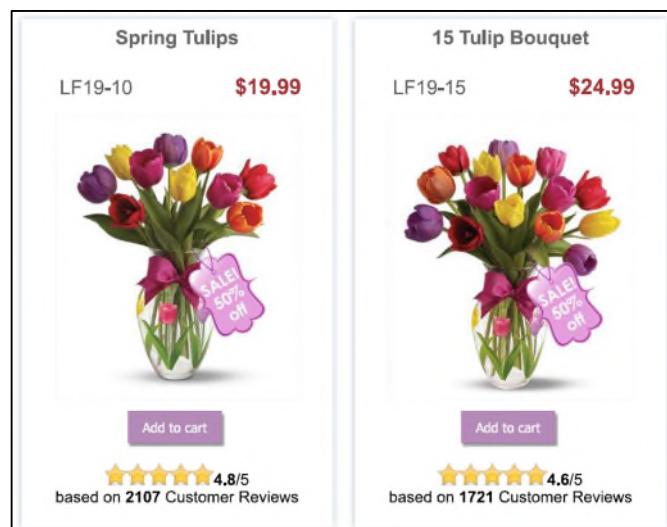
Order Price Detail	
Total Items Price:	\$69.99
Corporate discount	-\$0.00
https://bloomex.ca/checkout-onepage?checkoutStep=2	
3/5/24, 6:35 PM Flowers and Gift Basket	
Coupon discount	-\$0.00
Delivery Fee:	\$14.99
Taxes	\$13.02
Surcharge ⓘ	\$1.99
Redeem Bloomex Bucks	-\$0.00
Redeem Credit	-\$0.00
Donation	\$0.00
Total Price:	\$99.99
YOU SAVE:	\$50.00

22. In other words, and using the example of the Peaceful White Lilies, Bloomex's advertised First Price for this product is unattainable as the Total Price is in reality \$69.99 (the First Price) plus \$1.99 (the Surcharge Fee).
23. In addition to Bloomex's failure to disclose the existence of the Surcharge Fee until the very end of the checkout process, Bloomex also fails to disclose the purpose of this Surcharge Fee. Throughout the entire checkout process of their Flower Product, the consumer is left in the dark as to what this fee is for.
24. The only place where any attempt to explain the Surcharge Fee is found in Bloomex's Delivery Policy, accessible when a consumer scrolls down on the Website's homepage and clicks the hyperlink "Delivery Policy" found in the bottom banner of the Website, as appears more clearly in the PDF screenshot of the Bloomex Delivery Policy disclosed herewith as **Exhibit P-8**.
25. At the very bottom of its delivery policy and written in fine print, Bloomex explains the Surcharge as follows:

In a continued effort to offer and maintain our "Best in Industry" pricing we have been forced to introduce a \$1.99 "Surcharge" - this fee is used to offset rising costs of product, handling and delivery.
26. In sum, the representations made by Bloomex regarding the Surcharge Fee are disclosed late in the checkout process and even once they are disclosed in the final step of the process, the consumer is left in the dark as to what these fees are for and why they are charged.

IV. CONDUCT #2 - BLOOMEX MISLEADS WITH STAR RATING REPRESENTATIONS

27. The purpose of customer review systems on online e-commerce platforms, like that which Bloomex uses, is to provide prospective consumers with insights on the past experiences of other customers to assist the prospective consumers to make an informed decision about their purchase.
28. In the realm of consumer decision-making, online customer reviews and product ratings serve as important resources that guide purchasing choices. Therefore, it is imperative for businesses to maintain reviews that are comprehensive, precise, and up to date to uphold consumer trust and facilitate informed buying decisions.
29. Since at least 2015, next to almost, if not all, of their advertised Flower Products for sale on their Website, Bloomex represents an image featuring five stars and a numerical rating out of five (e.g., 4.8/5) (hereinafter the “**Star Rating**”) to convey to prospective consumers the satisfaction of previous customers.
30. In addition to the numerical rating and the image of five stars, each Star Rating indicates a disclaimer specifying that it is based on a specific number of reviews submitted by previous customers.
31. For example, in 2015, for Spring Tulips (SKU Code LF19-10), Bloomex represented the First Price at \$19.99 with a Star Rating of 4.8/5 based on 2107 customer reviews and for 15 Tulip Bouquet (SKU Code LF19-15) Bloomex represented the First Price at \$24.00 with a Star Rating of 4.6/5 based on 1721 customer review, as seen in the photo below and more fully from the PDF screenshot of Bloomex Website Homepage dated February 5, 2015, provided as **Exhibit P-9**.



32. Almost a decade later, on or around March 6, 2024, while Bloomex updated the representations made about the price of their Flower Products, the Star Ratings appear unchanged. For example, Bloomex represented the First Price for Spring

Tulips (SKU Code LF19-10) at \$24.99 but the Star Rating representation is unchanged from what it was in 2015 as the product has a rating of 4.8 stars out of 5, based on a total of 2107 reviews, as appears in the photo below and more fully from the PDF screenshot of the Spring Tulips individual product page dated March 6, 2024, disclosed herewith as **Exhibit P-10**.



33. The same reality is observed for the 15 Tulip Bouquet (SKU Code LF19-15). On or around March 6, 2024, while Bloomex updated the representations made about the price of the product, the Star Rating is the same as it was in 2015 with 4.6 stars out of 5, based on a total of 1721 reviews, as appears in the photo below and more clearly illustrated in the PDF screenshot of 15 Spring Tulips individual product page dated March 6, 2024, provided as **Exhibit P-11**.



34. The Defendant's conduct since at least 2015, is a representation of consistently high ratings and exceptional customer satisfaction. This representation is particularly misleading given Bloomex's 1.3 out of 5 satisfaction score received from over 3,763 independent reviews on Trustpilot, an independent and international business review website, as appears more fully from a sample of these reviews retrieved from Trustpilot's website disclosed in support of this claim as **Exhibit P-12**.

35. The disparity in ratings represented by Bloomex themselves and those left by their customers on the independent review website highlights the reality of Bloomex's customer dissatisfaction. The large disparity between Bloomex's representations and reality implies a deliberate or conscious effort by the Defendant to deceive consumers by either representing false high satisfaction scores voluntarily or by omitting crucial information regarding the outdated reviews.

V. CONDUCT #3 - BLOOMEX FALSELY REPRESENTS A DISCOUNT RELATIVE TO AN INFLATED REGULAR PRICE

36. On their respective websites, the Defendants each represent a Regular Price and/or a Discount Value for each of the Flower Products offered for sale.

37. For almost all, if not all, Flower Product advertised for sale on their Website, Bloomex represents two prices: the price for which the product is ostensibly on sale (the "**Discount Price**") and a higher price for which that same product is ostensibly normally sold at (the "**Regular Price**"). The Regular Price is displayed with a strikethrough. In addition to Bloomex's representations of two prices, the Regular Price and the Discount Price, Bloomex also presents an amount that is the difference between those two, the "**Discount Value**", as appears in the photo below of the Peaceful White Lilies pricing representations and more fully on **Exhibit P-2**.



The Regular Price of \$119.00 is struck through, the Discount Price is represented at \$69.99 for a total Discount Value of \$50.00.

38. Despite these representations made concerning the Regular Price and the Discount Price, the reality is that Bloomex never, or almost never, sells their Flower Products for the so-called Regular Price, which is nothing more than a fictitious price aimed at deceiving Class Members into believing they are getting a discounted price when in fact they are simply paying the usual and ordinary price Bloomex always charges.

VI. BLOOMEX ADMITS TO ALL THREE CATEGORIES OF UNLAWFUL CONDUCT

39. The above-described allegations are supported and corroborated by Bloomex's admissions of such conduct before the Australian Competition & Consumer Commission (hereinafter "**ACCC**") who fined Bloomex \$1 million in penalties for false and misleading marketing practices in breach of the Australian Consumer Law.
40. More specifically, Bloomex admitted that it published misleading Star Ratings, advertised its products at a discount when they generally are not sold at the "strikethrough price", or the Regular Price, and added surcharges which were inadequately disclosed, the whole contrary to Australian consumer protection laws, as appears from the copy of the Press Release published by the ACCC on March 15, 2024 disclosed herewith as **Exhibit P-13**, and also the reasons for judgement of the Federal Court of Australia indexed as *Australian Competition and Consumer Commission v Bloomex Pts Ltd*, [2024] FCA 243 wherein Bloomex admitted the three categories of conduct were contrary to Australian consumer protection law and only contested the quantum of the administrative penalty, disclosed as **Exhibit P-14**.

VII. THE DEFENDANTS' UNLAWFUL CONDUCT

Articles 219, 224 and 228 of the Quebec CPA

41. Article 219 of *CPA* prohibits false or misleading representations, and are responsible for any representation that includes false information – static customer reviews:

219. No merchant, manufacturer or advertiser may, by any means whatever, make false or misleading representations to a consumer.

42. Article 224 of *CPA* prohibits advertising an incomplete or fragmented price. In other words, the Defendants are prohibited from selling a Flower Products at a price which is higher than the advertised price:

224. No merchant, manufacturer or advertiser may, by any means whatever,

...

(c) charge, for goods or services, a higher price than that advertised.

For the purposes of subparagraph a.1 of the first paragraph, the price actually paid by the merchant is the price the merchant paid reduced by all the charges the merchant paid but that have been or will be reimbursed.

For the purposes of subparagraph c of the first paragraph, the price advertised must include the total amount the consumer must pay for the goods or services. However, the price advertised need not include the Québec sales tax or the Goods and Services Tax. More emphasis must be put on the price advertised than on the amounts of which the price is made up.

43. Article 228 of *CPA* explicitly prohibits merchants from omitting important facts, including the disclosure of Surcharge Fees and the existence of misleading customer reviews, in any communication or representation made to a consumer.

228. No merchant, manufacturer or advertiser may fail to mention an important fact in any representation made to a consumer.

Sections 52 and 54 of the Competition Act

44. Article 52 of the *Competition Act* prohibits Bloomex from promoting a product and knowingly or recklessly making a representation to the public that is false or misleading. In other words, the law prohibits the Defendants from representing a Flower Products at a non-attainable price:

52 (1) No person shall, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever, knowingly or recklessly make a representation to the public that is false or misleading in a material respect.

...

(1.3) For greater certainty, the making of a representation of a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation, unless the obligatory charges or fees represent only an amount imposed by or under an Act of Parliament or the legislature of a province.

45. Article 54 of the *Competition Act* prohibits Bloomex from supplying a product with two prices clearly expressed and not selling it at the lower price. In other words, the law prohibits the Defendants from representing a Flower Products at a non-attainable price:

54 (1) No person shall supply a product at a price that exceeds the lowest of two or more prices clearly expressed by him or on his behalf, in respect of the product in the quantity in which it is so supplied and at the time at which it is so supplied

Conduct #1 Breaches CPA and Competition Act

46. As described above regarding the Website checkout process of Flower Products, throughout the checkout process Bloomex represented to the consumer that Flower Products were available at the First Price, and prominently displayed such representations on the many initial webpages involved in the checkout process, such as but not limited to the Homepage, Individual Flower Product webpages, the Flower Product pop-up windows, and the Shopping cart Summary webpage.
47. By the multiple representations throughout the checkout process of a First Price of the Flower Products that fail to include the Surcharge Fee, Bloomex charges consumers a price for the Flower Products that is higher than the advertised price.
48. In addition, the Surcharge Fee is not a tax. It is not a provincial or federal sales tax, nor is it another fee imposed by a legislature or Act of Parliament. Rather, this Surcharge Fee is a source of revenue for Bloomex.

49. Throughout the Class Period, Bloomex failed to disclose the Surcharge Fee when representing the First Price and therefore has committed a prohibited business practice under section 224c) of the *CPA*.
50. In addition to the breach of article 224c) of the *CPA*, alternatively, by the following, Bloomex failed to mention an important fact in their representation to the consumer contrary to article 228 *CPA*:
 - a. By not indicating the Surcharge Fee in the initial advertised First Price, Bloomex failed to disclose the important fact that the advertised First Price was not the total price of the good, i.e. the Flower Products.
 - b. By failing to disclose the Surcharge Fee purpose or the meaning of this fee, Bloomex has failed to disclose an important fact to the consumer during the checkout process of the Flower Product.
 - c. Bloomex's explanation of the Surcharge Fee found in their Delivery Policy is an admission by Bloomex to the fact that this is an important fact that consumers ought to be aware of.
 - d. The existence of the Surcharge Fee is a fact that impacts the ultimate price that Bloomex charges for the product, which for a consumer is one of the most important factors of their purchase, if not the most important factor.
51. Thus, Bloomex's conduct also constitutes a prohibited business practice under contrary to section 228 of the *CPA*.
52. By the following conduct, Bloomex knowingly or recklessly represented the Flower Products as available for the non-attainable First Price, which is false and misleading contrary to the *Competition Act*:
 - a. By representing price of the Flower Products with the First Price throughout all steps of the check-out process;
 - b. By subsequently adding a Surcharge Fee, the price advertised, i.e. the First Price, becomes non attainable;
 - c. By including the Surcharge Fee information as the last piece of information on the webpage.
53. Throughout the entire check-out process to purchase Flower Products, Bloomex represented that Flower Products were available at the First Price, prominently displayed on the Booking Platform as a point-of-purchase indicator. In other words, Bloomex represented the Flower Products to be attainable at the First Price.

54. Presenting Flower Products initially at the First Price and later advertising a distinct price upon consumer interaction, incorporating an additional Surcharge Fee, constitutes a breach of both sections 52 & 54 of the *Competition Act*.

Conduct #2 Breaches CPA and Competition Act

55. Customer reviews that have remained unchanged since at least 2015 and are not appropriately labeled as outdated exhibit inherent incorrectness and deception. This conduct by Bloomex suggests a deliberate effort to inaccurately bolster its products while withholding essential information from customers. Consequently, such reviews are apt to mislead Class Members by creating the impression of impartiality, independence, and recent feedback.
56. When presenting information on their Website, the Defendants must adhere to all provisions of the *CPA* and the *Competition Act*, which require that all the representations on the Defendant's website are precise and free from any misleading information.
57. Regarding the Star Rating representations on their website, the general impression that a consumer would have about each Flower Product would include the following:
 - a. Bloomex has afforded customers the opportunity to provide product ratings on a scale of one to five to articulate their satisfaction levels.
 - b. Bloomex undertakes the computation of an average rating by aggregating all customer ratings pertinent to a given product.
 - c. Bloomex presents this average rating as a credible indicator of customer satisfaction with a specific product.
58. In reality however, Bloomex's Star Ratings represented on its the Website have remained static and have not been updated since at least 2015.
59. The Defendant has thus failed to incorporate, or otherwise account for, customer ratings or reviews that it may have received after 2015. In other words, Bloomex has omitted to inform Quebec consumers that the ratings available on their Website do not represent in reality the public opinion of Flower Products – an important fact guiding the Quebec consumer's decision making.
60. This conduct of misrepresenting the veracity of customer satisfaction or ratings amounts to a prohibited business practice under the *CPA* as well as false and misleading marketing practices as defined in the *Competition Act*.

Conduct #3 Breaches CPA and Competition Act

61. The general impression a Quebec consumer would have of the pricing representations made by Bloomex about their Flower Products is that there is a Regular Price and that the consumer is obtaining the Flower Product at a significantly discount price.
62. Contrary to the above-described general impression, the reality is that Bloomex sold Flower Products to Quebec consumers at a so-called Discount Price for the majority of the time, as they admitted before the ACCC.
63. By omitting to inform Quebec consumers of the important fact that the Discount Price was the price that they regularly sell their Flower Products for and that the Regular Price was not the price that they regularly sell their Flower Products for, the Defendant's have committed a fault.
64. By falsely indicating a Discount Price on Flower Products when this so-called reduced price was actually the price used a significant majority of the time, and by falsely striking through the other price to insinuate it's the Regular Price when this is not in reality the typical price for which Flower Products are sold regularly, the Defendants conduct amount to a falsely indicated price reduction and regular price.
65. Finally, because of the Defendant's conduct of falsely indicating a price reduction and a regular price, Bloomex also misled Quebec consumers by letting them believe that the price of Flower Products was advantageous.
66. In sum, Bloomex's conduct of displaying a false discount price constitutes a prohibited business practice per the *CPA* as well as false and deceptive marketing practices as defined in the *Competition Act*.

VIII. DAMAGES

Compensatory Damages

67. As a result of the above conduct, the Applicant and Class Members are entitled to the following damages to repair the prejudice suffered:
 - a. compensatory damages, including aggregate damages, under the *CPA* and s 36 of the *Competition Act*.
 - b. a reduction of his and the Class Members' obligations equivalent to a portion of the amount gained by the Defendants as a result of their violation of their obligations imposed by the *CPA*; and
 - c. punitive damages, including aggregate damages, in an amount to be determined, for breach of obligations imposed on the Defendants under s 272 of the *CPA*.

68. Applicant and Class Members have suffered ascertainable loss as a result of Defendants' misconduct and failures to comply with the law, notably the amounts of the Surcharge Fee each time they purchased Flower Products through the Defendant's website.

Punitive Damages under article 272 CPA

69. Throughout the Class Period, the way Bloomex operates their business illustrates a deliberate disregard, ignorance, or a careless and/or seriously negligent attitude concerning the rights of Québec consumers.
70. Adopted in 2010, the law in Québec prohibiting merchants from advertising fragmented prices under article 224c) CPA is has been the state of the law for over a decade.
71. Bloomex intentionally adds this Surcharge Fee to each transaction, as Bloomex specifically sets out the intention for this mandatory fee is for Bloomex to be able "*to offset rising costs of product, handling and delivery.*"
72. Unlike the Delivery Fee which is collected by the delivery companies who perform this service and the taxes that are collected by public authorities, the Surcharge Fee only benefits Bloomex.
73. In the circumstances set out in this Application, Bloomex continues to breach the CPA without any explanation for their ongoing breach.
74. In addition, Bloomex's breach of law is particularly significant given Bloomex's considerable presence in Canada.
75. Bloomex's ignorance of the law that has been steady for over a decade illustrates their lax, careless and ignorant consideration for consumer's rights and their own obligations that as a whole is detrimental to Québec consumers.
76. Through the representations made on their Website, Bloomex demonstrates that they are more concerned with their own profits rather than about following the law in Québec and respecting consumer's rights and their own obligations set out by the CPA.
77. The deliberate disregard for consumer's rights and their own obligations is further supported by other conduct observed on Bloomex's Website, such as stagnant reviews that remain unchanged at least since 2015, suggesting that Bloomex falsely represents that their products have a standard of satisfaction that is untrue to reality.

78. When it comes to purchasing Flower Products and related gifts online, consumers are deprived of the opportunity to physically inspect the flowers as they would in a traditional store. Consequently, marketing representations play a vital role in enabling average consumers to make well-informed decisions. This makes it all the more significant when a company like Bloomex that only operates an e-commerce business deliberately disregards or is ignorant of the rights of consumers residing in the jurisdiction it provides services to.
79. The Defendants complete disregard for the Class Members' rights and to its own obligations under the *CPA* is in-and-of-itself an important reason for punitive damages against the Defendants, as well as to deter and dissuade others from engaging in similar reprehensible conduct to the detriment of Quebec consumers.

IX. FACTS GIVING RISE TO APPLICANT'S PERSONAL CLAIM

80. The Applicant Denis Simard is a resident of Quebec City.
81. The Applicant searched online to purchase flowers. Despite exploring several websites, he noted that Bloomex stood out due to its appealing initial low prices and the positive reviews prominently displayed for each product listed on the website.
82. On or around February 13, 2024, the Applicant purchased a Flower Product labeled "Super mufflers" with SKU code LF17-10 from Bloomex's Website. This transaction was specifically intended as a surprise Valentine's gift for his significant other, as disclosed as **Exhibit P-15**.
83. When selecting the Flower Product labeled "Super mufflers" it had positive star representations of 4.4/5 based on 2296 customer reviews and the Applicant paid extra delivery fees to make sure that the flowers would be delivered for Valentine's Day.
84. The Applicant expressed dissatisfaction with the Flower Product being delivered late on February 15, 2024, not meeting the advertised quality, and incurring an additional Surcharge Fee of \$1.99. Despite this disappointing experience, Bloomex chose not to issue a refund.
85. Moreover, during the checkout process, Bloomex advertised the First Price for the flowers as \$19.99. However, the Total Price for the product was higher than the first given that a Surcharge Fee of \$1.99 was later added to the bill.
86. The Surcharge Fee of \$1.99, paid to Bloomex by the Applicant accounts for the additional mandatory fee tacked on to the advertised First Price, and as appears from the copy of the Applicant's receipt as **Exhibit P-15**.
87. To comply with their obligations under the *CPA*, Bloomex should have charged the Applicant \$19.99 for the flowers, which is the price which was the First Price advertised to the Applicant.

88. By charging the Applicant a higher price than the First Price of \$19.99 advertised to the Applicant, Bloomex's conduct constitutes a prohibited business practice as defined in the *CPA*, generally sections 219, and more specifically sections 224 c) and/or 228.
89. By their use of misleading and deceptive visuals on their Website, the Defendant represented a First Price of \$19.99 to the Applicant that was not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation contrary to section 52 of the *Competition Act*.
90. By expressly representing two distinct prices to the Applicant but charging the Applicant the higher of these two prices, Bloomex supplied flowers to the Applicant at a price that exceeds the lowest of two or more prices clearly expressed to the consumer in the check-out process on their Website, contrary to section 54 of the *Competition Act*.
91. As a result, Bloomex is liable to reimburse the Applicant \$1.99 (which represents the amount charged minus the First Price advertised) and an amount to be determined by the court on account of punitive damages.

X. FACTS GIVING RISE TO CLAIMS HELD BY CLASS MEMBERS

92. The facts that give rise to the personal claim of the Applicant are the same as each personal claim belonging to members of the class against Bloomex.
93. Each member of the group purchased Products through Bloomex's Website during the Class Period.
94. The material facts that are present for the Applicant's individual case against Bloomex are the same facts underlying each Class Member's claim against Bloomex.
95. Each class member was exposed to these representations because they accessed the Defendants' Website
96. Bloomex sells Products to Class Members for flowers or gifts in Quebec for a price that is superior to the advertised First Price, in violation of articles 224 c) of the *CPA*.
97. In using misleading and deceptive visuals, Bloomex purposely omitted to inform each Class Member of an important fact that the advertised first price is unattainable and that a Surcharge Fee will be added, contrary to article 228 of the *CPA*.
98. In using misleading and deceptive visuals, Bloomex represented to each Class Member a price that is not attainable due to fixed obligatory charges or fees constitutes a false or misleading representation contrary to section 52 of the *Competition Act*.

99. In expressly representing to the consumer two distinct prices, Bloomex has supplied flowers to each Class Member at a price that exceeds the lowest of two or more prices clearly expressed to the consumer in the check-out process on their Website, contrary to section 54 of the *Competition Act*.
100. Consequently, each Class Member paid Bloomex an unlawfully inflated price for their Flower Products.
101. By reasons of Bloomex's conduct, the Class Members all suffered damages which they collectively claim against Bloomex.
102. Class Members, as credulous and inexperienced consumers with rights under the *CPA*, were each subjected to the Defendants' ignorance, carelessness, or serious negligence with respect to the obligations they owe to consumers.
103. All Class Members are entitled to claim the sums which they unlawfully were charged and thus paid to Bloomex for the purchase of Flower Products in Quebec, as well as punitive damages.

XI. IDENTICAL, SIMILAR OR RELATED QUESTIONS OF FACT OR LAW

104. The conclusions sought by each class member are the same and raise identical, similar or related questions of fact and law, namely:
 - a. Have the Defendants charged a Surcharge Fee for Flower Products on their Platform during the Class Period?
 - b. In charging any Surcharge Fee during the Class Period, did the Defendants breach ss 219, 224, or 228 of the *CPA*, or any of them?
 - c. In charging any Surcharge Fee during the Class Period, did the Defendants breach section 52 and/or 54 of the *Competition Act*?
 - d. In making misleading customer review Representations during the Class Period, did the Defendants breach ss 219 or 228 of the *CPA*, or any of them?
 - e. In making misleading customer review Representations during the Class Period, did the Defendants breach section 52 and/or 54 of the *Competition Act*?
 - f. Have the actions of the Defendants caused harm to Class Members?
 - g. Are Class Members entitled to seek compensatory and/or punitive damages from the Defendants under s 272 of the *CPA*? If so, in what amounts? Can the damages or any portion of them be aggregated? Alternatively, are Class Members entitled to a reduction in the sales price of their Flower Products during the Class Period, with the specific amount to be determined?

- h. Can Class Members claim damages under section 36 of *the Competition Act*? If so, in what amount? Can the damages or any portion of them be aggregated?
- i. Should an injunction be granted to prevent the Defendants from continuing the described unfair, deceptive, and unlawful practices?

XII. THE COMPOSITION OF CLASS MAKES RULES OF MANDATE IMPRACTICAL

- 105. The composition of the class makes it difficult and/or impractical to apply the rules of mandates to take part in judicial proceedings on behalf of others for consolidation of proceedings pursuant to articles 59 or 67 C.C.P.
- 106. All the facts alleged in the preceding paragraphs make it difficult, if not impossible, to trace each and every person involved in this lawsuit and to contact each member of the Group to obtain a mandate or proceed by joining actions.
- 107. Class Members are numerous and are scattered across Quebec.
- 108. As a result, the number of individual and legal persons who have purchased Flower Products from the Defendant and were impacted by the false and misleading price advertisements over the Class Period is expected to be quite significant within the province of Quebec.
- 109. In the circumstances, it would be impracticable and impossible for the Applicant to obtain a mandate from each Class Member or to join them all into a single action.
- 110. Moreover, the modest amount that each or some Class Member are likely entitled to claim against the Defendants makes it likely that the majority of these Class Members would hesitate to file their own individual action against the Defendants, never mind the fact that the costs associated with initiating an individual claim to pursue one's right before the courts would be largely more significant than the amount each member can hope to obtain as a result of such individual actions.
- 111. In the circumstances, the class action procedure is the only appropriate procedure for the proposed Class Members to access justice and pursue their respective claims against the Defendants effectively and efficiently.
- 112. It would be impossible for the Applicant to retrace and contact every Member to seek a joinder or a mandate of all their claims.

XIII. THE PROPOSED CLASS REPRESENTATIVE

- 113. The Applicant seeks to be appointed the status of representative Applicant for the following reasons.

114. The Applicant is a class member and has a personal interest in seeking the conclusions sought.
115. The Applicant has the time, energy, will and determination to assume and perform the duties incumbent upon him that are required to carry out the proposed class action.
116. The Applicant acts in good faith with the only goal in accessing justice and the relief sought for themselves and for the other class members.
117. The Applicant does not have any circumstances that would put them in conflict with the other members of the class.
118. The Applicant cooperates and will continue to fully cooperate with his lawyers, who have experience in consumer protection-related class actions.
119. The Applicant has read this Application prior to its court filing and reviewed the exhibits in support thereof and understands the nature of the action.

XIV. THE NATURE OF THE CLASS ACTION

120. The nature of the action the Applicant intends to bring on behalf of the Class Members is an action in compensatory and punitive damages.

XV. CONCLUSIONS SOUGHT

121. The conclusions that the Applicant wishes to introduce by way of an originating application are:
- a. **GRANT** the Applicant's action.
 - b. **ORDER** the Defendants to cease the conduct in their future representations of charging unattainable prices and representing inflated customer reviews.
 - c. **ORDER** the Defendants to pay the Class Members damages in an amount to be determined by the Court with interest at the legal rate, plus the indemnity provided for by law in accordance with article 1619 of the *Civil Code of Quebec*, from the date of service of the *Application for Authorization to institute a class action and to obtain the status of class representative*.
 - d. **ORDER** each Defendants to pay punitive damages to the Class Members in an amount to be determined.
 - e. **ORDER** that the Defendants pay the cost of these legal proceedings engaged as a result of their conduct, including the costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*.

- f. **ORDER** the collective recovery of the Class Members' claims.
- g. **CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
- h. **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.
- i. **CONDEMN** the Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.
- j. **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.
- k. **THE WHOLE WITH** costs, including all expert fees, notice fees, and expenses of the administrator, if any.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant, Denis Simard, the status of Representative Plaintiff of the persons included in the Class herein described as follows:

All persons who, in the province of Québec, purchased Flower Products through www.bloomex.ca since January 1, 2015, until the date that this action is certified as a class proceeding.

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

- a. Have the Defendants charged a Surcharge Fee for Flower Products on their Platform during the Class Period?
- b. In charging any Surcharge Fee during the Class Period, did the Defendants breach ss 219, 224, or 228 of the CPA, or any of them?

- c. In charging any Surcharge Fee during the Class Period, did the Defendants breach section 52 and/or 54 of the Competition Act?
- d. In making misleading customer review representations during the Class Period, did the Defendants breach ss 219 or 228 of the CPA, or any of them?
- e. In making misleading customer review representations during the Class Period, did the Defendants breach section 52 and/or 54 of the Competition Act?
- f. Have the actions of the Defendants caused harm to Class Members?
- g. Are Class Members entitled to seek compensatory and/or punitive damages from the Defendants under s 272 of the CPA? If so, in what amounts? Can the damages or any portion of them be aggregated? Alternatively, are Class Members entitled to a reduction in the sales price of their Flower Products during the Class Period, with the specific amount to be determined?
- h. Can Class Members claim damages under section 36 of the Competition Act? If so, in what amount? Can the damages or any portion of them be aggregated?
- i. Should an injunction be granted to pr the Defendants from continuing the described unfair, deceptive, and unlawful practices?
- j. In charging any Surcharge Fee during the Class Period, did the Defendants breach sections 219, 224, or 228 of the CPA, or any of them?
- k. In charging any Surcharge Fee during the Class Period, did the Defendants breach sections 52 and/or 54 of the *Competition Act*?
- l. Have the actions of the Defendants caused harm to Class Members?
- m. Are Class Members entitled to seek compensatory and/or punitive damages from the Defendants under section 272 of the CPA? If so, what amounts can they claim? Alternatively, are Class Members entitled to a reduction in the sales price of their Flower Products during the Class Period, with the specific amount to be determined?
- n. Can Class Members claim damages under section 36 of *the Competition Act*? If so, in what amount?
- o. Should an injunction be granted to prevent the Defendants from continuing the described unfair, deceptive, and unlawful practices?

IDENTIFY as follows the conclusions sought by the class action in relation thereof:

- a. **GRANT** the Applicant's action.

- b. **ORDER** the Defendants to cease the conduct in their future representations of charging unattainable prices.
- c. **ORDER** the Defendants to pay the Class Members damages in an amount to be determined by the Court with interest at the legal rate, plus the indemnity provided for by law in accordance with article 1619 of the *Civil Code of Quebec*, from the date of service of the *Application for Authorization to institute a class action and to obtain the status of class representative*.
- d. **ORDER** each Defendants to pay punitive damages to the Class Members in an amount to be determined.
- e. **ORDER** that the Defendants pay the cost of these legal proceedings engaged as a result of their conduct, including the costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*.
- f. **ORDER** the collective recovery of the Class Members' claims.
- g. **CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;
- h. **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.
- i. **CONDEMN** the Defendants to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders.
- j. **RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class.
- k. **THE WHOLE WITH** costs, including all expert fees, notice fees, and expenses of the administrator, if any.

DECLARE that any member who has not requested his exclusion from the class be bound by any judgment to be rendered on the class action, in accordance with law;

FIX the delay for exclusion from the Class at 60 days from the date of notice to the Class and after the expiry of such delay the members of the class who have not requested exclusion be bound by any such judgment;

ORDER the publication of a notice to the members of the Class according to the terms to be determined by the Court;

REFER the record to the Chief Justice so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard and In the that the class action is to be brought in another district, that the clerk of this Court be ordered, upon receiving the decision of the Chief Justice, to transmit the present record to the clerk of the district designated.

THE WHOLE with legal costs, including the cost of all notices.

Montréal, March 20, 2024

Slater Vecchio

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SUMMONS
(Articles 145 and following CCP)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Exhibits supporting the application

In support of the *Application for authorization to Institute a Class Action*, the Applicant relies on the following exhibits:

- Exhibit P-1:** Copy of Bloomex Inc. Quebec Business Registry, CIDREQ
- Exhibit P-2:** Screenshot of Peaceful White Lilies Individual Product Page - Bloomex.ca
- Exhibit P-3:** Screenshot of Popup for Peaceful White Lilies - Bloomex.ca
- Exhibit P-4:** Screenshot of Shopping Cart Summary for Peaceful White Lilies - Bloomex.ca
- Exhibit P-5:** Screenshot of Checkout Specials for Peaceful White Lilies - Bloomex.ca
- Exhibit P-6:** Screenshot of Checkout Summary - Your Information - Bloomex.ca
- Exhibit P-7:** Screenshot of Checkout Summary - Billing - Bloomex.ca
- Exhibit P-8:** Screenshot of Bloomex Delivery Policy - Bloomex.ca
- Exhibit P-9:** Screenshot of Customer Reviews dated February 5, 2015
- Exhibit P-10:** Screenshot of Customer Reviews for Spring Tulips dated March 6, 2024
- Exhibit P-11:** Screenshot of Customer Reviews for 15 Spring Tulips dated March 6, 2024
- Exhibit P-12:** Screenshot of Customer Reviews of bloomex.ca on Trustpilot dated March 6, 2024
- Exhibit P-13:** Copy of the ACCC Press Release dated March 15, 2024
- Exhibit P-14:** Australian Competition and Consumer Commission v Bloomex Pts Ltd, [2024] FCA 243

Exhibit P-15 Copy of Applicant's Order on Bloomex.ca dated February 13, 2024

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

Defendants' answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Est, Montreal, Québec, H2Y 186, 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 Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

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 Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons 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.

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, March 20, 2024

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NOTICE OF PRESENTATION

TO:

BLOOMEX INC., legal person having its
head office at 4235 17 Street Southeast
Calgary AB T2G 3W7 Canada

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELF ACCORDINGLY.

Montréal, March 20, 2024

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