

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

No.: 500-06-000919-189

**SUPERIOR COURT**

**(CLASS ACTION)**

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**EMILIE SAMSON**, a person residing at  
2127, Rue Duquesne, City of Montréal,  
Province of Québec, Canada, H1N2W6

*Applicant*

vs.

**BUSBUD INC.**, a legal person incorporated  
pursuant to the laws of Canada with a  
registered office at 5425 Casgrain Avenue,  
Suite 901 in the City of Montréal in the  
Province of Québec

and

**BUSBUD USA INC.**, a corporation having  
its registered office at 251 Little Falls Drive,  
Wilmington, Delaware, 19808, United  
States of America

and

**BUSBUD EUROPE LIMITED** a corporation  
having its registered office at 15th Floor,  
125 Old Broad Street, London, EC2N 1AR,  
England

and

**BUSBUD BRASIL RESERVA DE  
PASSAGENS LTDA**, a corporation having  
its registered office at 254 R Boa Vista,  
Andar 10, Conj 1010 Sala A 01.014.000,  
Sao Paulo, SP, Brasil

*Defendants*

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**REAMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A  
CLASS ACTION AND TO APPOINT THE STATUS OF  
REPRESENTATIVE PLAINTIFF (ARTICLE 574 C.C.P. AND FOLLOWING)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE APPLICANT STATES THE FOLLOWING:

**I. GENERAL PRESENTATION**

1. The Applicant addresses the Court for the purpose of obtaining authorization to institute a class action for and on behalf of the members of the Class (as hereinafter defined) against the Defendants Busbud Inc., Busbud USA Inc, Busbud Europe Limited and Busbud Brasil Reserva de Passagens LTDA (hereinafter collectively referred to as “**Busbud**”), based on the provisions of the federal *Competition Act*, R.S.C., 1985, c. C-34 (hereinafter the “**Competition Act**”) and the *Consumer Protection Act*, chapter P-40.1 (hereinafter the “**CPA**”) in relation to Class Members’ purchase of bus tickets from Busbud.

**II. THE PARTIES**

2. The Applicant, Emilie Samson, is a resident of the province of Québec and temporarily residing in New York for completion of her post-graduate education.
3. The Applicant is a “consumer” within the meaning of the *CPA*.
4. The Applicant wishes to institute a class action on behalf of the following Class of which the Applicant is a member, namely:

*All individuals worldwide (subsidiarily in Canada or in the province of Québec) who from April 4, 2015, purchased one or more Bus Tickets from Busbud and paid a higher price than advertised;*

*Excluding individuals from April 4, 2015 to April 4, 2016 who purchased the Bus Tickets for business purposes;*

*or any other group to be determined by the Court;*

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

5. BUSBUD INC. is a body corporate incorporated under the *Canada Business Corporations Act*. Its registered office is located at 5425 Casgrain Avenue, Suite 901, Montréal, Québec H2T1X6 Canada; disclosed as **Exhibit P-1** is the Industry Canada corporate registry extract.
6. The Defendants carry on business in the Province of Québec and have their headquarters in the Province of Québec; disclosed as **Exhibit P-2** is the corporate registry extract of Busbud Inc. from the Registraire des entreprises du Québec.
7. BUSBUD INC. derives revenue as a result of its domicile in the Province of Québec and selling bus tickets and/or providing its bus ticketing services from its headquarters in Québec.
8. The Defendants are each a “merchant” within the meaning of the *CPA*, or alternatively, an “advertiser” as referenced in arts. 224(c) and 253 of the CPA.
9. The Defendants provide bus ticketing services throughout Canada, and also globally, and sell bus tickets from its headquarters in Québec on behalf of numerous bus companies around the world including, but not limited to, Greyhound (“**Bus Ticket(s)**”). Disclosed as **Exhibit P-3** is the list of bus companies whom the Defendants sell bus tickets for.
10. Since as early as the start of the class period in 2015, the Defendants charge above the advertised price in (...) the following manner:
  - a. the “Service Fees Method” as further detailed below; (...)
  - b. (...)

**11.** The Defendants' practice is the same across its website, its Apple App and its Google App.

**11.1.** Since the filing and service of the present Application, on or about June 14, 2018, the Defendants modified their website Terms of Use to add three additional entities: Busbud USA Inc, Busbud Europe Limited, and Busbud Brasil Reserva de Passagens LTDA. The exact activities and relation of these entities with Busbud Inc. is in the Defendants' exclusive knowledge. Disclosed as **Exhibit P-3.1** is the new Terms of Use.

**11.2.** Some time after October 5, 2018, Defendants modified again its Terms of Use without announcing such and while displaying incorrectly at the bottom of the page that the date of last update was June 14, 2018, the whole as appears from a December 10 screenshot and an October 5, 2018 screen capture, disclosed as **Exhibit P-3.2**. While the changes appear to concern a removal of the Québec governing law and jurisdiction clauses by the Defendants, they in any event bear no effect on the present proceedings whether it is for existing customers or future customers as further detailed below.

### **III. FACTS GIVING RISE TO THE APPLICANT'S CLAIM**

**12.** On or about February 18, 2017, the Applicant, through the Busbud website, ([www.busbud.com](http://www.busbud.com)) purchased a Greyhound Bus Ticket for travel from Montréal, Québec to Boston, Massachusetts. Disclosed as **Exhibit P-4** is the Applicant's receipt of purchase and Bus Ticket.

**13.** The Applicant paid \$155.00USD (equivalent to about \$202.94CAD on that day) for the Bus Ticket.

**14.** The Applicant purchased the Bus Ticket by completing the following steps, in the following order:

- a. On or about February 18, 2017, she visited Busbud's website;
- b. She then entered the origin (Montreal, Québec) and destination (Boston,

Massachusetts) for her travel;

- c. She entered her intended date for travel, namely February 20, 2017 and the number of passengers travelling; and then
  - d. Pressed the “Search” button on the Busbud website.
- 15.** At the time she was not aware that she was charged a service fee by Busbud. She later learned of the pricing issue after the 2018 incident detailed below and further investigation.
- 16.** On or about February 26, 2018, the Applicant, through the Busbud website, ([www.busbud.com](http://www.busbud.com)) purchased a Greyhound Bus Ticket for travel from Montréal, Québec to New York City, New York. Disclosed as **Exhibit P-5** is the Applicant’s receipt of purchase and Bus Ticket.
- 17.** The Applicant paid \$66.50USD (equivalent to about \$84CAD on that day) for the Bus Ticket.
- 18.** The Applicant purchased the Bus Ticket by completing the following steps, in the following order:
- a. On or about February 26, 2018, she visited Busbud’s website;
  - b. She then entered the origin (Montreal, Québec) and destination (New York, New York) for her travel;
  - c. She entered her intended date for travel, namely March 6, 2018 and the number of passengers travelling; and then
  - d. Pressed the “Search” button on the Busbud website.
- 19.** The search result displayed by the Defendants showed the price of approximately \$76CAD for the Greyhound Bus Ticket that the Applicant ended up purchasing shortly after, amongst other Bus Tickets for the same date.
- 20.** The Applicant selected her Greyhound Bus Ticket and was taken to another page

on the Busbud website. This second page now displayed a total price of approximately \$84CAD for the Applicant's Greyhound Bus Ticket, which is \$8 higher than the first displayed price. The price difference was a result of a \$2.50USD service fee added at this second step of the purchase (herein before referred to as the "Service Fees Method").

21. The Applicant then proceeded to purchase the Bus Ticket as she needed to travel in any event.
22. Thereafter, the Applicant complained to Busbud in respect of price differences on the Bus Ticket. Disclosed as **Exhibit P-6** is the e-mail exchange between Busbud and the Applicant.
23. On the day of departure, Greyhound did not operate that particular bus route that day because of a snow storm and the Applicant's Bus Ticket was unusable.
24. On or about March 7, 2018, the Applicant sought a refund of the unused Bus Ticket from Busbud, who refused to provide a refund and referred the Applicant to Greyhound, who then delayed issuing a refund until on or around March 28, 2018.

#### IV. **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS**

25. The Defendants market and sell their Bus Tickets to travellers across Canada and worldwide via:
  - a. their own website (www.budbud.com);
  - b. their Android App, which is downloadable via the Google Play Store; or
  - c. their Apple App, which is downloadable via the Apple App Store.
26. The use of the Busbud website, Android App, and Google App from anywhere in the world are bound by identical terms of use, disclosed as **Exhibit P-7**, which has been recently modified as noted in paragraph 11.2, and states that:

*This document, together with the Privacy Policy and any other policies or guidelines posted at www.busbud.com (the "Terms") is a contract between*

*you ("you") and Busbud Inc. concerning the conditions associated with your use of the website www.busbud.com and the associated mobile application (together the "Website"). In these Terms, "Busbud", "we", "us" or "our" means Busbud Inc.*

*These Terms shall be governed by and construed by the laws of the Province of Quebec, Canada and the laws of Canada applicable to contracts between Quebec residents and to be performed in Quebec. Parties hereby irrevocably submit and attorn to the jurisdiction of the Courts of the district of Montreal, Province of Québec, Canada.*

*These Terms are the entire and exclusive agreement between Busbud and you regarding the Website, and these Terms supersede and replace any prior agreements between Busbud and you regarding the Website.*

**(emphasis added)**

**27.** The Defendants' "refund policy" also provide for similar terms above in respect of Québec governing law and jurisdiction of the Québec courts. Disclosed as **Exhibit P-8** is Busbud's refund policy.

**28.** Regardless of whether the Class Members purchased their Busbud Bus Tickets via Busbud's website, Google App, or Apple App:

- a. the Class Members are bound by the same terms of use (**Exhibit P-7**);
- b. each Class Member would have seen the advertisement of a particular price for a Bus Ticket at the first instance (the "**First Price**");
- c. after the Class Member selects any of the Bus Tickets for making the purchase, a higher price is then displayed on the next screen (for the website) or at the checkout screen (for the Apple App and the Google App) (the "**Second Price**");

d. all of the Class Members would have paid a higher price in the form of a “service fee”, which is the difference between the Second Price and the First Price; (...)

e. (...)

**29.** The following two YouTube videos published by the Defendants respectively in April and June 2015 illustrate perfectly the prohibited practice of displaying a First Price and then a higher Second Price for a suggested trip in 2015:

a. <https://www.youtube.com/watch?v=KOdb8bjha4A>

b. <https://www.youtube.com/watch?v=1kGfaUBAimg>

**30.** As further example, a Class Member may search for Bus Tickets for a particular trip, for example Vancouver, BC to Seattle, Washington. Disclosed as **Exhibit P-9** is the search result for a one-way trip from Vancouver, BC to Seattle, Washington for April 5, 2018, where the first search result shows a price of \$31.

**31.** A Class Member may then select any of the search results in Exhibit P-9. For example, a Class Member may select the first result. Disclosed as **Exhibit P-10** is the purchase page for the first search result in Exhibit P-9, which now shows a price of \$34.77, with additional service fees of \$3.28.

**32.** A Class Member would always be shown a lower First Price, followed by a higher Second Price, difference of which is the service fee charged by Busbud, regardless of: the platform that the Class Member uses, the bus company that the Class Member selects, the Class Member’s travel dates/times, the Class Member’s origin and destination, and whether the Class Member travels one-way or return.

**33.** All Class Members paid Busbud a service fee that was not included in the First Price.

**34.** (...)



35. The Class Members are “consumers” within the meaning of the *CPA* and a “person” referred to in Section 36(1) of the *Competition Act*.
36. All of the damages to the Class Members are a direct and proximate result of the Defendants’ conduct of charging the Class Members a price which is the higher of the First Price and Second Price.
37. Many of the Class members may not know they have been charged this “service fee” (...) and had they known, they would not have paid this higher price.
38. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class.
39. In taking the foregoing into account, all members of the Class are justified in claiming damages, including but not limited to, compensatory damages, moral damages, and/or punitive damages, and/or other consumer remedies.
40. Busbud’s conduct of selling and/or advertising Bus Tickets without first disclosing service fees shows ignorance, carelessness, and/or gross negligence with respect to its obligations and the rights of consumers and would justify the award of punitive damages.
41. Furthermore, Busbud’s conduct of selling and/or advertising Bus Tickets at a lower price and then increasing the price at a subsequent step shows ignorance, carelessness, and/or gross negligence with respect to its obligations and the rights of consumers and would justify the award of punitive damages.

**V. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

42. The composition of the Class makes the application of the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings impractical or impossible in this case for the reasons detailed below.

43. The number of persons included in the Class is estimated to be in the tens of thousands, if not hundreds of thousands.

44. The names and contact information (addresses, e-mail address, and/or phone numbers) of all individuals included in the Class are not known to the Applicant but are, however, in the possession of the Defendants.

45. The precise size of the Class and identity of the individual members in the Class are within the exclusive knowledge of the Defendants only.

46. Given that the Defendants sell Bus Tickets for many bus companies around the world, there are likely Class Members residing in every province/territory across Canada and also throughout the world.

47. Considering all of the Class Members have agreed to irrevocably submit their claims to the exclusive jurisdiction of the courts in the province of Québec, in the district of Montréal (as indicated in paragraph 20), those Class Members may only litigate in the province of Québec.

47.1. For Class Members who purchased on or after the Defendants changed their website terms unannounced (as detailed in paragraphs 11.2),

a) This Court still has jurisdiction over the claims:

- a. as Busbud Inc., is headquartered in the province of Québec; and
- b. for the Defendants other than Busbud Inc., the Court still has jurisdiction under art. 3148(3) CCQ as the damages caused to all those Class Members were as a result of those Defendants transacting through Québec-based Busbud Inc.

b) The Competition Act and/or the CPA continues to govern the transactions for those Class Members based on Busbud Inc.'s presence in Québec, under any of art. 3113, 3112-3, or 3082 CCQ, and/or art. 19 CPA.

- 48.**It is impractical for each Class Member to travel to Québec to individually file and participate in court proceedings before the Court of Québec, Small Claims Division.
- 49.**In addition, given the costs and risks inherent in an action before the courts, many Class Members will hesitate to institute an individual action against the Defendants.
- 50.**Even if the Class Members could afford such individual litigation, the court system could not as it would be overloaded.
- 51.**Further, individual litigation of the legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the court system.
- 52.**Moreover, a multitude of actions institutes risks leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members.
- 53.**These facts demonstrate that only the Defendants possess all the information about the composition of the Class and it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action.
- 54.**In these circumstances, a class action is the only appropriate procedure for all of the Members of the Class to effectively pursue their respective rights and have access to justice.
- 55.**The claims of the Class Members raise identical, similar, or related questions of fact or law attached as Schedule A.
- 56.**The majority of the issues to be dealt with are issues common to every Class Member.
- 57.**The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely the Defendants' sale and advertisement of Bus Tickets at a lower First Price and thereafter charging a higher Second Price.

58. All Class Members are “consumers” within the meaning of the *CPA* and presumed to be prejudiced by the Defendants’ act and/or conduct.
59. Each Class Members’ damages from the Defendants’ act and/or conduct are identical and very similar and would not require individual recovery of claims under Articles 599-601 of the *CCP*.
60. The Class Member’s damages can be determined with sufficient precision without individual inquiry, such that collective recovery of claims under Article 595-598 of the *CCP* would be appropriate.
61. The interests of justice favour that this application be granted in accordance with its conclusions.

VI. **THE APPLICANT IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

62. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the Class, since the Applicant:
- a. purchased a Bus Ticket from the Defendants during the class period;
  - b. paid the Defendants a price for the Applicant’s Bus Ticket that was higher than the advertised prices;
  - c. understands the nature of the action in that she expressed it her own words by herself to the Defendants in the e-mail exchanges (Exhibit P-5) and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
  - d. is available to dedicate the time necessary for the present proceedings and to collaborate with the undersigned attorneys in this regard;
  - e. is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
  - f. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;

- g. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members;
- h. has given the mandate to the undersigned attorneys to investigate the size of the Class;
- i. has given the mandate to the undersigned attorneys to obtain assistance from the *Fonds D'aide Aux Action Collective*; and
- j. does not have interests that are antagonistic to those of other members of the Class.

## VII. **DAMAGES**

**63.** Class Members have paid service fees to the Defendants on their Bus Tickets, such service fees were not disclosed in the First Price, contrary to the requirements under Article 224(c) *CPA* and/or Section 54 of the federal *Competition Act*.

**64.** (...)

**65.** The Defendants must be held accountable for their breach of obligations imposed on it under the *CPA*, namely Article 253 and/or 272, and/or Section 36 of the *Competition Act*.

**66.** In light of the foregoing, the following remedies may be claimed against the Defendants:

- a. Compensatory damages, equivalent to the service fees paid to the Defendants by each Class Member and the full cost of investigation and legal costs and lawyer fees for this class action, pursuant to Section 36 of the federal *Competition Act* against the Defendants for charging service fees contrary to Section 54 of the *Competition Act*;

b. (...)

- c. A reduction of obligations consisting of the amount of the service fees charged by the Defendants (...) on the Class Members;
- d. Compensatory damages, in an amount to be determined by the Court, moral damages, and/or other consumer remedies under Article 272 of the *CPA* against the Defendants for contravention of Article 224(c) of the *CPA*; and/or
- e. Punitive damages, in an amount to be determined by the Court, for the Defendants' breach of their obligations under the *CPA*.

### VIII. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

67. The action that the Applicant wishes to institute on behalf of the members of the Class is an action for damages under the federal *Competition Act* and an action for damages and other contractual remedies under Article 272 of the *CPA*.

68. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

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

**DECLARE** the Defendants jointly and severally liable for the damages suffered by the Applicant and each of the members of the Class;

**CONDEMN** the Defendants jointly and severally to pay an amount in damages, including compensatory and/or moral damages, to each member of the Class, 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 Bus Ticket;

**CONDEMN** the Defendants jointly and severally 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.;

**ORDER** that the above two condemnations be subject to collective recovery;

**CONDEMN** the Defendants jointly and severally to bear all the judicial and extra-judicial costs/fees of the action including the cost of notices, the cost of claims administration, the cost of experts, if any, pursuant to Section 36

of the *Competition Act*;

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

**IX. JURISDICTION**

**69.** The Applicant suggests that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:

- a. The Defendants are each a “merchant” and/or an “advertiser” within the definition of the *CPA*;
- b. The Defendants’ headquarters is in the Province of Québec, or otherwise operates via a Québec-based entity;
- c. All Class Members have, by operation of a contract between the Defendants and each member of the Class, submitted to the exclusive jurisdiction of the courts situated in the judicial District of Montréal, Province of Québec for the resolution of all disputes or disagreements;
- d. For Class Members after the Defendants changed their Terms of Use (paragraphs 11.2 above), this Court has jurisdiction by virtue of the basis noted in paragraph 47.2 above;
- e. In any event, the contract between the Defendants and each member of the Class has a “real and substantial connection” to the Province of Québec; and
- f. The obligations between the Defendants and Class Members are governed in all respects by the laws of the Province of Québec.

**70.** The present application is well-founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an Originating Application in damages and other consumer remedies;

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

*All individuals worldwide (subsidiarily in Canada or in the province of Québec) who from April 4, 2015, purchased one or more*

**POUR CES MOTIFS, PLAISE À LA COUR :**

**ACCEUILLIR** la présente demande;

**AUTORISER** l'action collective sous la forme d'une demande introductive d'instance en dommages-intérêts et autres remèdes prévus en vertu de la *Loi sur la protection du consommateur* et la *Loi sur la concurrence*;

**ATTRIBUER** à la requérante le statut de représentante du groupe de personnes incluses dans l'action collective ci-après défini :

*Toutes les personnes partout dans le monde (subsidièrement au Canada ou dans la province de Québec) qui, à partir du 4 avril*



*Bus Tickets from Busbud and paid a higher price than advertised;*

*Excluding individuals from April 4, 2015 to April 4, 2016 who purchased the Bus Tickets for business purposes;*

*or any other group to be determined by the Court;*

*2015, ont acheté un ou plusieurs billets d'autobus de Busbud et ont payé un prix plus élevé que celui annoncé;*

*Excluant les individus qui, du 4 avril 2015 au 4 avril 2016 ont acheté tels billets pour fins d'affaires;*

*ou tout autre groupe déterminé par la Cour;*

**IDENTIFY** the principle of questions of fact and law to be treated collectively as those in Schedule A;

**IDENTIFIER** les principales questions de fait et de droit à être traitées collectivement comme étant celles incluses à l'Annexe A;

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

**IDENTIFIER** comme suit les conclusions recherchées qui s'y rattachent :

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

**ACCUEILLIR** l'action collective intentée par la requérante pour le compte des membres du groupe;

**DECLARE** the Defendants jointly and severally liable for the damages suffered by the Applicant and each of the members of the Class;

**DÉCLARER** que les Défenderesses sont solidairement responsables des dommages subis par la requérante et chacun des membres du groupe;

**CONDEMN** the Defendants jointly and severally to pay an amount in damages, including compensatory and/or moral damages, to each member of the Class, 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 Bus Ticket;

**CONDAMNER** les Défenderesses solidairement à payer une somme en dommages, incluant des dommages compensatoires ou dommages moraux à chacun des membres du groupe, le quantum étant à déterminer par la Cour, le tout avec intérêt et indemnité additionnelle de l'article 1619 du Code civil du Québec depuis la date d'achat des billets;

**CONDEMN** the Defendants jointly and severally 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

**CONDAMNER** les Défenderesses solidairement à payer une somme à titre de dommages punitifs à chacun des membres du groupe, le quantum étant à déterminer par la Cour, le tout avec

the additional indemnity, under Article 1619 of the C.C.Q.;

**ORDER** that the above two condemnations be subject to collective recovery;

**CONDEMN** the Defendants jointly and severally to bear all the judicial and extra-judicial costs/fees of the action including the cost of notices, the cost of claims administration, the cost of experts, if any, pursuant to Section 36 of the *Competition Act*;

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

**DECLARE** that all members of the Class that have not requested their exclusion from the Class in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

**FIX** the delay of exclusion at one-hundred and twenty (120) days from the date of the publication of the notice to the Class Members;

**ORDER** the publication of notices, including a long-form notice and summary notice, to the members of the Class in accordance with Article 579 C.C.P.;

**ORDER** that said notices be published conspicuously on the front page of the Defendants' website with a link entitled "*Class Action Notice for Service Fee*

intérêt et indemnité additionnelle de l'article 1619 du Code civil du Québec;

**ORDONNER** le recouvrement collectif des sommes prévues aux deux paragraphes précédents;

**CONDAMNER** les Défenderesses solidairement à l'ensemble des coûts et frais judiciaires et extrajudiciaires, incluant les honoraires extrajudiciaires, les coûts des avis aux membres, les coûts applicables au recouvrement collectif le cas échéant, ainsi que les frais d'experts, en vertu de l'article 36 de la *Loi sur la concurrence*;

**RENDRE** toute autre ordonnance ou mesure que la Cour estime nécessaire pour sauvegarder les droits des parties;

**DÉCLARER** que tous les membres du groupe qui n'ont pas demandé à être exclus dudit groupe à l'intérieur du délai prescrit soit liés par tout jugement à être rendu dans le dossier d'action collective à être institué;

**FIXER** le délai d'exclusion du groupe à 120 jours à compter de la publication de l'avis aux membres du groupe;

**ORDONNER** la publication d'avis aux membres du groupe, incluant une version complète et une version abrégée, en conformité avec l'article 579 C.p.c.;

**ORDONNER** que lesdits avis soient publiés de façon visible sur le site internet des Défenderesses avec un lien intitulé « Action collective concernant les

*Charges and Price Increases*” in French and English until after the day of exclusion;

**ORDER** that said notices be published conspicuously on the Defendants’ social media pages (including Facebook pages and Twitter accounts), with a link entitled “*Class Action Notice for Service Fee Charges and Price Increases*”, in both French and English, and “pinned” to the top of the social media pages until after the day of exclusion;

**ORDER** the Defendants to send said notices via e-mail to each Class Member to their last known e-mail address with a subject line “*Class Action Notice for Service Fee Charges and Price Increases*”, in French and English;

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

**THE WHOLE WITH COSTS** including publications fees.

frais de service et augmentation des prix » en français et en anglais jusqu’à la fin du délai d’exclusion;

**ORDONNER** que lesdits avis soient publiés de façon visible sur les réseaux sociaux des Défenderesses (incluant Facebook et Twitter) avec un lien intitulé « Action collective concernant les frais de service » en français et en anglais tout au haut des pages de réseaux sociaux jusqu’à la fin du délai d’exclusion;

**ORDONNER** aux Défenderesses d’envoyer lesdits avis par courriel à chacun des membres du groupe dans un courriel ayant pour sujet « Action collective concernant les frais de service » en français et en anglais;

**RENDRE** toute autre ordonnance que la Cour détermine;

**LE TOUT** avec frais de justice, incluant les frais de publication des avis.

Montréal, April 4, 2018 (Amended September 19, 2018 and Reamended December 10, 2018)

(s) *Sébastien A. Paquette*

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Me Sébastien A. Paquette

Me Jérémie John Martin

**CHAMPLAIN AVOCATS**

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Attorneys for Applicant

## **Schedule A to the Application for Authorization – Common Questions (Art. 575(1) CCP)**

### **Liability to the Class**

#### *Federal Competition Act*

1. Did the Defendants clearly display a “first price” in the search results to each of the Class Members in the search result screen?
2. Did the Defendants display a “second price” immediately prior to each Class Member confirming and/or submitting their purchases of Bus Tickets?
3. Is the “second price” higher than the “first price” for all Class Members?
4. Were the Defendants only entitled to charge the “first price” under section 54 of the *Competition Act*?
5. Were the Class members entitled to pay to the Defendants the “first price” under section 54 of the *Competition Act*?

#### *Consumer Protection Act*

6. Did Busbud’s advertising and/or sales of the Bus Tickets contravene Article 224(c) of the *CPA*?
7. Does the absolute presumption of prejudice apply to the Class Members’ claims?

### **Remedies for the Class Members**

#### *Recovery for the Class Under Section 36 of the Competition Act*

8. Have the Class Members suffered actual damages equivalent to the “second price” minus the “first price”?
9. Are the Class Members entitled to claim the damages in question #8 pursuant to s. 36 of the *Competition Act*?

- 10.** Are the Class Members entitled to recovery of investigation costs and costs of this proceeding, including all judicial and extra-judicial fees and disbursements on a full indemnity basis?

Recovery for the Class Under the *Consumer Protection Act*

- 11.** Are the Class Members entitled to claim any of the remedies under Article 272 from the Defendants, namely:
- a. a reduction of the Class Member's obligations by the Defendants returning a monetary amount equivalent to the amount of service fees the Defendants charge to the Class Members;
  - b. the Defendants' performance of the obligation required under Article 224(c), by only charging each of the Class Members no higher than the first advertised price and refunding the service fees charged;
  - c. (...)
  - d. (...)
  - e. award compensatory damages to each Class Member; and/or
  - f. award moral damages, including damages for inconvenience, to each Class Member?
- 12.** Does the Defendants' 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?

Miscellaneous

- 13.** Are the Class Members entitled to the interest and additional indemnity set out in the C.C.Q. on the above monetary amounts, from the date of initial date of purchase of their Bus Ticket(s)?
- 14.** Should the Court grant a permanent injunction enjoining the Defendants from:
  - a. charging a price higher than the lowest clearly displayed price or otherwise displaying two or more different prices; and
  - b. displaying two or more different prices for the same product/service of the same quantity?
- 15.** Can a collective recovery for the Class Members be made in this class action under Article 595-598 of the *CCP*?

**SUMMONS**  
**(Articles 145 and following CCP)**

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**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.

**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.

### **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:** Bus companies affiliated with Busbud

**Exhibit P-3.1:** Modified Terms of Service

**Exhibit P-4:** Applicant's receipt and bus tickets - Boston

**Exhibit P-5:** Applicant's receipt and bus tickets – New York

**Exhibit P-6:** Applicant's email exchange with Busbud

**Exhibit P-7:** Busbud website Terms of Use

**Exhibit P-8:** Busbud Refund policy

**Exhibit P-9:** Sample Busbud search for trip from Vancouver, BC to Seattle, Washington

**Exhibit P-10:** Sample bus ticket sold by Busbud from Vancouver, BC to Seattle, Washington

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, April 4, 2018 (Amended September 19<sup>th</sup> 2018 and Reamended December 10, 2018)

*(s) Sébastien A. Paquette*

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Me Sébastien A. Paquette  
Me Jérémie John Martin  
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Attorneys for Applicant

**NOTICE OF PRESENTATION  
(Articles 146 and 574 CCP)**

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**TO: BUSBUD INC.**

5425 Casgrain Avenue  
Suite 901  
Montréal QC H2T 1X6  
**Defendants**

**TO: BUSBUD USA INC.**

251 Little Falls Drive,  
Wilmington, Delaware,  
19808,  
United States of America

**TO: BUSBUD EUROPE LIMITED**

15th Floor,  
125 Old Broad Street,  
London, EC2N 1AR,  
England

**TO: BUSBUD BRASIL RESERVA DE PASSAGENS LTDA**

254 R Boa Vista, Andar 10,  
Conj 1010 Sala A 01.014.000,  
Sao Paulo, SP,  
Brasil

**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 case management judge assigned to the present case.

**GOVERN YOURSELF ACCORDINGLY.**

Montréal, September 19, 2018

*(s) Sébastien A. Paquette*

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Me Sébastien A. Paquette  
Me Jérémie John Martin  
**CHAMPLAIN AVOCATS**

Mr. Simon Lin  
**EVOLINK LAW GROUP**

Attorneys for Applicant

N<sup>o</sup> **500-06-000919-189**

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COUR SUPÉRIEURE  
(Actions collectives)  
DISTRICT DE MONTRÉAL

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**EMILIE SAMSON,**

**Applicant**

v.

**BUSBUD INC.,**

**BUSBUD USA INC.**, a corporation having its registered office at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America

**BUSBUD EUROPE LIMITED** a corporation having its registered office at 15th Floor, 125 Old Broad Street, London, EC2N 1AR, England

**BUSBUD BRASIL RESERVA DE PASSAGENS LTDA**, a corporation having its registered office at 254 R Boa Vista, Andar 10, Conj 1010 Sala A 01.014.000, Sao Paulo, SP, Brasil

**Defendants**

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**REAMENDED APPLICATION FOR  
AUTHORIZATION TO INSTITUTE A CLASS  
ACTION AND TO APPOINT THE STATUS OF  
REPRESENTATIVE PLAINTIFF; EXHIBIT P-3.2  
(ARTICLE 574 C.C.P. AND FOLLOWING)**

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**ORIGINAL**

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