

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL
No.: 500-06-000750-154

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

S [REDACTED] MEDALSY [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];

Petitioner

vs.

THE TORONTO-DOMINION BANK, a bank duly constituted according to the Law of Canada, having a principal establishment at 1350 Boul. Rene-Levesque West, 6th floor, in the City and District of Montreal, Province of Quebec, H3G 1T4;

Respondent

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

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

1. Petitioner wishes to institute a class action on behalf of the following Group of which Petitioner is a member:

All persons in Canada (subsidiarily Quebec), who, as at August 16, 2015:

- a) are a Primary Cardholder or Authorized User of a "TD Travel Card" ("carte de crédit Voyages TD") offering the "TD Travel Rewards Programs" ("Programme de Primes-voyages TD"), including without limitation the "TD First Class Travel Visa Infinite Card" ("Carte Visa Infinite TD Class Ultime Voyages"), the "TD Platinum Travel Visa Card" ("Carte Visa TD Platine Voyages"), the "TD Classic Travel Visa Card" ("Carte Visa TD Classique Voyages") and/or the "TD Business Travel Visa Card" ("Carte Visa TD Voyages Affaires") (hereinafter collectively the "**TD Travel Card(s)**"); and
- b) had earned and accumulated but not yet redeemed TD Points on their TD Travel Card;

or any other group to be determined by the Court;

(hereinafter referred to as "**Petitioner(s)**", the "**Class Member(s)**", the "**Class**", the "**Group Member(s)**", or the "**Group**", the "**Customer(s)**", the "**Cardholder(s)**");

2. Respondent The Toronto-Dominion Bank (hereinafter "**Respondent**" or "**TD**"), is a bank constituted according to the Laws of Canada, operating across the country, with its principal establishment located in the District of Montreal, Province of Quebec, the whole as more fully appears from the CIDREQ report communicated herewith as **Exhibit R-1**;

3. TD offers many types of credit cards to its Customers, each credit card offering different benefits or rewards, the whole as more fully from extracts of TD's website(s), communicated herewith as **Exhibit R-2**;
4. As appears from Exhibit R-2, TD offers a line of "TD Travel Cards" ("Cartes de Crédit Voyages TD"), namely the following without limitation:
 - a) the "TD First Class Travel Visa Infinite Card" ("Carte Visa Infinite TD Class Ultime Voyages");
 - b) the "TD Platinum Travel Visa Card" ("Carte Visa TD Platine Voyages");
 - c) the "TD Classic Travel Visa Card" ("Carte Visa TD Classique Voyages");
 - d) the "TD Business Travel Visa Card" ("Carte Visa TD Voyages Affaires");(hereinafter collectively the "**TD Travel Card(s)**");
5. The TD Travel Cards offer *inter alia* the "TD Travel Rewards Programs" ("Programme de Primes-voyages TD");
6. Petitioner communicates herewith, as **Exhibit R-3**, *en liasse*, the "Cardholder Agreement and Benefit Coverages Guide" for each of the above-listed TD Travel Cards, in both English and French, as they are posted on TD's website (hereinafter collectively the "**Agreement(s)**");
7. The R-3 Agreements are consumer contracts (unless the Cardholder is a legal person) and are also contracts of adhesion;
8. Concerning the TD Travel Rewards Program, the R-3 Agreements start off by setting out how the Cardholder can earn TD Points, the whole as follows:

TRAVEL REWARDS PROGRAM TERMS AND CONDITIONS

In this section, the words “we”, “us” and “our” mean: (1) the Bank; and (2) the Expedia For TD online and phone channels (“Expedia For TD”) that are operated by Expedia, Inc. (“Expedia”). “Program” means the TD Travel Rewards Program associated with the Account and includes all Program privileges and travel reward benefits, including TD Points. “Travel Purchases” means all Purchases of travel and related services (including bookings) under the Program charged to the Account. All Travel Purchases made through Expedia For TD are provided by Expedia or its agents or suppliers. All Travel Purchases made under the Program, but not using Expedia For TD, are provided by third party agencies, suppliers or other travel providers, including any online sites or phone channels operated by Expedia (except for Expedia For TD) and any other online travel agencies, suppliers or providers (the “Other Travel Providers”). Applicable terms of the TD First Class Travel Visa Infinite Cardholder Agreement apply to the Program, as do the following additional terms and conditions, which together are referred to as this Agreement.

TD Points

TD Points are earned for Purchases charged to the Account as follows:

- 1) Three (3) TD Points are earned for each one (1) dollar in Purchases;
- 2) Nine (9) TD Points are earned for each one (1) dollar in Travel Purchases made online through Expedia For TD; and
- 3) Six (6) TD Points are earned for each one (1) dollar in Travel Purchases made by phone through Expedia For TD.

9. The R-3 Agreements then set out how the Cardholder can redeem the TD Points and the value of said TD points when redeemed;

TD Points Redemption

Every 10,000 TD Points are worth \$50 off the cost of Travel Purchases. Redemptions can only be made in 10,000 TD Point increments.

TD Points can only be redeemed for Travel Purchases under the Program through Expedia For TD, but not through Other Travel Providers. In order to redeem TD Points, the Account must be open, in good standing, and not in default under the terms and conditions of this Agreement. TD Points can only be redeemed by the Primary Cardholder or an Authorized User.

TD Points that have not been recorded in your TD Points Balance are not available to be redeemed. TD Points will not be earned on any Purchases that have not been posted to the Account, including any Travel Purchases made through Other Travel Providers. This means that until the Purchase has been posted to the Account and the TD Points earned on that Purchase have been recorded in your TD Points Balance, you cannot redeem any TD Points that you may earn on that Purchase.

You can redeem TD Points under the Program for any amount of a Travel Purchase as follows: 1) You can redeem the required number of TD Points to cover the full amount of the Travel Purchase. If the dollar value of the TD Points redeemed exceeds the full amount of any Travel Purchase, your Account will not be credited for more than the full amount of the Travel Purchase; or 2) You can redeem the required number of TD Points for any portion of the Travel Purchase. Your Account will be credited with an amount equal to the dollar value of the TD Points redeemed.

The Net Amount of any Travel Purchase will remain on the Account and the Primary Cardholder will continue to be responsible for payment of the Net Amount.

Whether a Travel Purchase is made through Expedia For TD, or through Other Travel Providers, if any TD Points are redeemed towards that Travel Purchase, TD will provide a credit for those redeemed TD Points in an amount equal to the dollar value of those TD Points.

1) Redeeming TD Points for Travel Purchases made through Expedia For TD

When you make a Travel Purchase through Expedia For TD, you can only redeem those TD Points that are recorded in your TD Points Balance at the time you are making that Travel Purchase, even if the Travel Purchase requires only a deposit at that time. As a reminder, when you redeem TD Points towards a Travel Purchase that you are making through Expedia For TD, any credit that is applied to your Travel Purchase for the TD Points you are redeeming will reduce or cancel the TD Points to be earned for that Travel Purchase. When you redeem TD Points towards only a portion of your Travel Purchase: 1) The dollar value of the TD Points you have redeemed will be applied as a credit to the full amount of that Travel Purchase charged to your Account and only the Net Amount of that Travel Purchase will be charged to your Account; and 2) You will only earn TD Points on the Net Amount of that Travel Purchase.

2) Redeeming TD Points after a Travel Purchase has been made through Other Travel Providers

For Travel Purchases made through Other Travel Providers, TD Points must be redeemed within ninety (90) days after the Travel Purchase has been posted to the Account. You cannot redeem TD Points through Other Travel Providers. To determine when a Travel Purchase has been posted to your Account, you can view your transactional history for the Account online through our EasyWeb® Internet banking or allow the Travel Purchase to appear on your next monthly statement after the transaction date of that Travel Purchase. As a reminder, when you redeem TD Points towards a Travel Purchase that you made through Other Travel Providers, any credit for the TD Points to be redeemed and applied to your Account for your original Travel Purchase amount will reduce or cancel the TD Points that were earned for that Travel Purchase. This means that when you redeem TD Points towards only a portion of your original Travel Purchase: 1) The dollar value of the TD Points you have redeemed will be applied as a credit to your Account to reduce the full amount of your original Travel Purchase; and 2) You will only earn TD Points on the Net Amount of your original Travel Purchase.

10. Accordingly, and as appears from the above, 10,000 TD Points are worth \$50 off the cost of Travel Purchases (redemptions being made only in 10,000 TD Point increments);
11. This means that \$1 equals 200 TD Points redeemed in the context of Travel Purchases;
12. Furthermore, TD attempts to entice the Customers to make their Travel Purchases through its own "Expedia for TD" travel service, by offering 2 or 3 times more TD Points for each dollar spent, as opposed to the regular 3 TD Points for each dollar spent using the TD Travel Card with third party travel providers;
13. That being said, pursuant to the R-3 Agreements, regardless of whether the Cardholder makes the Travel Purchase through TD's "Expedia for TD" or

through a so-called "Other Travel Provider" (such as travel websites like Travelocity or Orbitz, airlines like Air Canada or American Airlines, hotels, car rental companies, etc.), the redemption value of the TD Points remains the same, namely \$50 for 10,000 TD Points (i.e. \$1 for 200 TD Points);

14. Therefore, for example, if a Cardholder reserves a rental car directly from a car rental company, for a total purchase of \$50 charged on the TD Travel Card, the Cardholder can then redeem 10,000 TD Points (if accumulated) and be credited \$50 on the same TD Travel Card;
15. For larger Travel Purchases, the Cardholder can decide how many increments of 10,000 TD Points he or she wants to redeem, always at the same value of \$50 for each 10,000 TD Points increments;
16. However, TD has unilaterally decided to modify the R-3 Agreements in such a way that the Class Members' already accumulated TD Points, as at August 16, 2015, will be worth less than \$50 for each 10,000 TD Points increments (therefore less than \$1 for 200 TD Points);
17. More specifically, together with the Class Members' June or July 2015 credit card statements, TD included a so-called "updated version of the new TD Travel Rewards Program Terms and Conditions for your Card in effect as of August 16, 2015", as well as notices purporting to explain TD's unilateral modifications to the existing terms and conditions in the Exhibit R-3 Agreements, the whole as more fully appears from the various notices and updated terms and conditions for the above-listed TD Travel Cards, in both English and French, as posted on TD's website, communicated herewith as **Exhibit R-4, en liasse** (hereinafter collectively the "**Notice(s)**" or the "**New Terms and Conditions**");
18. The first notice included in Exhibit R-4 begins by attempting to reassure and deceive the Class Members into believing that the changes made to the TD

Travel Rewards Program are beneficial to the Cardholders;

19. In this regard, this first notice in Exhibit R-4 starts off by using the following positive sounding phrases, in the hope that Class Members would not realize what was actually happening:

- “Changes are coming soon to your TD Travel Card.
More Flexible TD Point redemptions for Book Any Way travel purchases.”;
- “Enjoy more redemption flexibility than ever before.” (underlining in the notice);
- “Starting August 16, 2015, you can now redeem in minimum \$1 increments for travel purchased through any travel providers outside of Expedia for TD® (“Book Any Way”).”.

20. The next part of Exhibit R-4 includes *inter alia* the following incomprehensible and misleading information and calculations:

On August 16, 2015, the following changes to the TD Travel Rewards Program Terms and Conditions contained in your TD First Class Travel Visa Infinite Cardholder Agreement will take effect:

Travel Purchases made through Other Travel Providers

- Every 250 TD Points (up to the first 300,000 TD Points redeemed for a Travel Purchase of \$1,200 or under) are worth \$1 in travel savings for that Travel Purchase.
- After the first 300,000 TD Points are redeemed, if the Travel Purchase is for more than \$1,200, then every 200 TD Points are worth \$1 in travel savings for that Travel Purchase amount that is over \$1,200.

Redemptions can only be made in 250 or 200 TD Points, as applicable.

For example:

A. Travel Purchases of \$1,200 and Under

Cost of Travel Purchase at Other Travel Provider:	\$1,175
TD Points redeemed to cover cost in full:	293,750 TD Points Calculation: ($\$1,175 \times 250$ TD Points = 293,750 TD Points)

B. Travel Purchases of \$1,201 or More

Cost of Travel Purchase at Other Travel Provider:	\$2,275
TD Points redeemed to cover cost in full:	515,000 TD Points Calculation: ($\$1,200 \times 250$ TD Points = 300,000 TD Points) + ($\$1,075 \times 200$ TD Points = 215,000 TD Points)

21. Furthermore, in the R-4 Notices, TD confirms that it has unilaterally modified the R-3 Agreements concerning the value and redemption of the TD Points, the whole as follows:

TD Points Redemption

TD Points can be immediately redeemed for Travel Purchases made through Expedia For TD at the time you make the Travel Purchase, as explained below.

For Travel Purchases made through Other Travel Providers, TD Points must be redeemed after the Travel Purchase has been made as explained in "Redeeming TD Points after a Travel Purchase has been made through Other Travel Providers" section 2 below.

To redeem TD Points, the Account must be open, in good standing, and not in default under the terms and conditions of this Agreement.

(...)

2) Redeeming TD Points after a Travel Purchase has been made through Other Travel Providers

For each Travel Purchase made through an Other Travel Provider, a Cardholder can redeem TD Points towards the amount of that Travel Purchase as follows:

1. For the first \$1,200 of that Travel Purchase (equal to 300,000 TD Points):
 - Every 250 TD Points redeemed equals \$1 in travel savings for that Travel Purchase amount.
2. For each \$1 over the first \$1,200 of that Travel Purchase:
 - Every 200 TD Points redeemed are worth \$1 in travel savings for that Travel Purchase amount that is over the first \$1,200.

This means that when you redeem TD Points towards a Travel Purchase made at an Other Travel Provider:

- 250 TD Points = \$1 in travel savings for up to the first 300,000 TD Points you redeem for that Travel Purchase; and
- 200 TD Points = \$1 in travel savings for any TD Points over the first 300,000 TD Points that you redeem for that Travel Purchase.

Redemptions can only be made in 250 or 200 TD Points, as applicable.

For example:

A. Travel Purchases of \$1,200 and Under

Cost of Travel Purchase at Other Travel Provider:	\$1,175
TD Points redeemed to cover cost in full:	293,750 TD Points <i>Calculation:</i> $(\$1,175 \times 250 \text{ TD Points})$ $= 293,750 \text{ TD Points}$

B. Travel Purchases of \$1,201 or More

Cost of Travel Purchase at Other Travel Provider:	\$2,275
TD Points redeemed to cover cost in full:	515,000 TD Points <i>Calculation:</i> $(\$1,200 \times 250 \text{ TD Points})$ $= 300,000 \text{ TD Points} +$ $(\$1,075 \times 200 \text{ TD Points})$ $= 215,000 \text{ TD Points}$

In summary:

- Every 250 TD Points (up to the first 300,000 TD Points redeemed for a Travel Purchase of \$1,200 or under) are worth \$1 in travel savings for that Travel Purchase.
- After the first 300,000 TD Points are redeemed for a Travel Purchase of more than \$1,200, every 200 TD Points are worth \$1 in travel savings for the amount of that Travel Purchase that is over \$1,200.

For Travel Purchases made through Other Travel Providers, TD Points must be redeemed within ninety (90) days after the Travel Purchase has been posted to the Account. You cannot redeem TD Points through Other Travel Providers. To determine when a Travel Purchase has been posted to your Account, you can view your transactional history for the Account online through our EasyWeb® Internet banking or allow the Travel Purchase to appear on your next monthly statement after the transaction date of that Travel Purchase. As a reminder, when you redeem TD Points towards a Travel Purchase that you made through Other Travel Providers, any credit for the TD Points redeemed and applied to your Account for your original Travel Purchase amount will reduce or cancel the TD Points that were earned for that Travel Purchase. This means that when you redeem TD Points towards only a portion of your original Travel Purchase: 1) The dollar value of the TD Points you have redeemed will be applied as a credit to your Account to reduce the full amount of your original Travel Purchase; and 2) You will only earn TD Points on the Net Amount of your original Travel Purchase.

22. The convoluted, unclear, illegible and/or incomprehensible language contained in the R-4 Notices serve one purpose, namely to reduce the value of the Class Members' already earned and accumulated TD Points as at August 16, 2015, and ensure that the Class Members are not fully aware of this value reduction;
23. In this regard, and as cited above from the R-4 Notices, TD has unilaterally modified the R-3 Agreements in such a way that after August 16, 2015, when a Class Member will make a Travel Purchase through a so-called "Other Travel Provider", the value of the first 300,000 TD Points redeemed goes down from \$1,500 to \$1,200;
24. It appears *inter alia* from the calculation and example provided by TD in the R-4 Notices, cited above, regarding a Travel Purchase at Other Travel Provider for \$2,275. Whereas a Cardholder under the R-3 Agreements would only require 455,000 TD Points to be credit the entire \$2,275 Travel Purchase, as of August 16, 2015, the Cardholder requires 515,000 TD Points;
25. Stated another way, under the so-called updated Terms and Conditions (R-4), for any redemption of \$1,200 or under, the value of the TD Points has gone down from 50\$ to 40\$ for each 10,000 TD Points increments (namely each 1\$ costing 250 TD Points as opposed to 200 TD Points);
26. TD has therefore unilaterally modified the R-3 Agreements and retroactively reduced the value of the Class Members TD Points earned and accumulated before August 16, 2015, the whole in order to earn more profit at the detriment of the Class Members;

27. That being said, TD has not reduced the value of the TD Points when the Cardholder makes the Travel Purchase through TD's own "Expedia for TD", the Exhibit R-4 updated terms and conditions stating the following:

1) Redeeming TD Points for Travel Purchases made through Expedia For TD

Every 10,000 TD Points redeemed are worth \$50 in travel savings off the cost of Travel Purchases made through Expedia For TD. Redemptions can only be made in 10,000 TD Point increments. We can decrease the required minimum TD Point redemption increment at any time.

28. This is once again an attempt by TD to earn more profit by trying to entice or force the Class Members to make Travel Purchases through TD's "Expedia for TD" service, as opposed to through a so-called Other Travel Provider such as Air Canada, Travelocity, etc.;

29. As mentioned above, before August 16, 2015, Class Member were able to make Travel Purchases through either "Expedia for TD" or any "Other Travel Provider", with the same redemption value attributed to the TD Points earned;

30. Class Members accumulated their TD Points before and up to August 16, 2015 with the understanding and agreement that the redemption value was and would be \$50 for each 10,000 TD Points increments;

31. TD has in bad faith and illicitly unilaterally decided to reduce the value of the Class Members' TD Points accumulated before August 16, 2015, the whole without the Class Members consent and to their detriment;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

32. Petitioner has a TD First Class Travel Visa Infinite Card;
33. Petitioner received his June 18, 2015 TD First Class Travel Visa Infinite credit card statement, a copy of which is communicated herewith, **under seal**, as **Exhibit R-5** (Petitioner reserving his right to file future credit card statements);
34. Petitioner's Exhibit R-5 June 2015 credit card statement contains notices on the first and last page referring to the enclosed R-4 Notices (Petitioner did not retain the actual copies of the R-4 Notices included with his R-5 statements);
35. As appears from the R-5 June credit card statement, Petitioner's balance of TD Points was 307,072 as of June 18, 2015;
36. On July 14, 2015, Petitioner redeemed 140,000 TD Points, at a total value of \$700 (namely 50\$ multiplied by 14 increments of 10,000 TD Points);
37. On July 16, 2015, Petitioner called TD (at 1-855-384-9341) in order to enquire about the unilateral modifications to the R-3 Agreements and the TD Travel Rewards Programs detailed above;
38. The TD representative confirmed the following:
- a) That as of mid-August 2015, the redemption value of 10,000 TD Points will go down from the present value of \$50 to \$40;
 - b) That this reduction in value will affect all TD Points earned and accumulated before August 16, 2015 since TD has "changed the rules" and Petitioner has no say in the matter;
 - c) That Petitioner's TD Points balance as of July 16, 2015 was 184,192 TD Points, at a value of \$900 (the TD representative obviously calculating that 18 increments of 10,000 TD Points equals \$900);

39. It should be noted that the present total value of Petitioner's 184,192 TD Points is \$920.96 ($(184,192 \div 10,000) \times \$50 = \$920.96$);
40. After August 16, 2015, Petitioner's 184,192 TD Points will only be worth \$736.768 (namely $(184,192 \div 10,000) \times \40), for a Travel Purchase made with an "Other Travel Provider";
41. Petitioner loss of value will therefore be for a total of \$184.192 on his existing TD Points;
42. Petitioner accumulated his TD Points with the agreement and understanding (pursuant to the R-3 Agreements) that the redemption value is and will be \$50 for each 10,000 TD Points increments;
43. Petitioner did not agree nor consent to TD's unilateral decision to retroactively reduce the value of the TD Points he earned and accumulated before August 16, 2015 (nor did he agree or consent to any other modifications affecting his TD Points);

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

44. Each Class Member was a either TD Travel Card Primary Cardholder or Authorized User as at August 15, 2015 with a balance of earned and accumulated but not yet redeemed TD Points as at that date;
42. The value of the Class Members' TD Points earned and accumulated as of August 16, 2015 has been unilaterally decreased by TD's unilateral modifications of the R-3 Agreements (Exhibit R-4);
43. The Class Members have suffered injury as a result of the abusive, unilateral, illegible and incomprehensible modifications by TD of the R-3 Agreements (in

Exhibit R-4) and said modifications should be declared null and not opposable to the Class Members as consumers and/or the adhering party to an adhesion contract;

44. The Petitioner and the Class Members are entitled to have the value of their TD Points earned before August 16, 2015 reinstated to \$50 for each 10,000 TD Points increments and are entitled to claim compensatory damages, moral damages for trouble and inconvenience, as well as punitive damages;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

45. The composition of the Group makes the application of Articles 59 or 67 C.C.P. impractical for the following reasons;

46. While the exact number of Group Members is unknown to the Petitioners at this time, TD undoubtedly has thousands of Customers across the country who are either TD Travel Card Primary Cardholders or Authorized Users. The exact number of Class Members can be discerned from records kept by TD;

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

48. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;

49. Moreover, a multitude of actions instituted risks leading to contradictory judgments on questions of fact and law that are similar or related to all Class Members;
50. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
51. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice;
52. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Respondent's misconduct and unilateral and illegal modifications to the R-3 Agreements and the TD Travel Rewards Programs;
53. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Are the Exhibit R-3 TD Travel Card Agreements consumer contracts and/or contracts of adhesion?
 - b) Was Respondent legally permitted to unilaterally modify the terms and conditions of the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs, reducing the redemption value as of August 16, 2015 of the TD Points earned and accumulated by the Class Members before August 16, 2015?

- c) Should these modifications to the R-3 TD Travel Card Agreements and the TD Travel Rewards Programs be declared null?
- d) Should injunctive relief be ordered forcing Respondent to reinstate the value of \$50 per 10,000 TD Points increments (or 200 TD Points for each \$1), concerning all of the Class Members' TD Points earned and accumulated on their TD Travel Card before August 16, 2015?
- e) Is Respondent liable to pay compensatory and/or moral and/or punitive/exemplary damages to the Class Members and, if so, in what amount?

54. The majority of the issues to be dealt with are issues common to every Class Member;

55. The interests of justice favor that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

56. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages and injunctive relief;

57. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

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

DECLARE null the unilateral modifications made by Defendant to the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs which reduced the redemption value as of August 16, 2015 of the TD Points earned and accumulated by the Class Members on their TD Travel Card before August 16, 2015;

ORDER Defendant to reinstate the value of \$50 per 10,000 TD Points increments (or 200 TD Points for each \$1), concerning all of the Class Members' TD Points earned and accumulated on their TD Travel Card before August 16, 2015;

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

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

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in compensation of the moral damages suffered for trouble and inconvenience caused by Respondent's modifications of the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the

motion to authorize a class action;

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

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

CONDEMN the Defendant to bear the costs of the present action including experts' fees and notice fees;

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

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fee and publication fees to advise Class Members;

58. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a. Many Class Members, including Petitioner, are domiciled in the District of Montreal;
- b. TD have its principal establishment in the District of Montreal;
- c. The Petitioner's legal counsel practices law in the District of Montreal;

59. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Class Members since Petitioner;

- a. is a Class Member, as more fully detailed above, who contacted TD in order to enquire about TD's unilateral modifications to the TD Travel Rewards Program;
- b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
- c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
- d. 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;
- e. does not have interests that are antagonistic to those of other 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. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

60. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and injunctive relief;

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

All persons in Canada (subsidiarily Quebec), who, as at August 16, 2015:

- a) are a Primary Cardholder or Authorized User of a "TD Travel Card" ("carte de crédit Voyages TD") offering the "TD Travel Rewards Programs" ("Programme de Primes-voyages TD"), including without limitation the "TD First Class Travel Visa Infinite Card" ("Carte Visa Infinite TD Class Ultime Voyages"), the "TD Platinum Travel Visa Card" ("Carte Visa TD Platine Voyages"), the "TD Classic Travel Visa Card" ("Carte Visa TD Classique Voyages") and/or the "TD Business Travel Visa Card" ("Carte Visa TD Voyages Affaires") (hereinafter collectively the "**TD Travel Card(s)**"); and

b) had earned and accumulated but not yet redeemed TD Points on their TD Travel Card;

or any other group to be determined by the Court;

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

- a) Are the Exhibit R-3 TD Travel Card Agreements consumer contracts and/or contracts of adhesion?
- b) Was Respondent legally permitted to unilaterally modify the terms and conditions of the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs, reducing the redemption value as of August 16, 2015 of the TD Points earned and accumulated by the Class Members before August 16, 2015?
- c) Should these modifications to the R-3 TD Travel Card Agreements and the TD Travel Rewards Programs be declared null?
- d) Should injunctive relief be ordered forcing Respondent to reinstate the value of \$50 per 10,000 TD Points increments (or 200 TD Points for each \$1), concerning all of the Class Members' TD Points earned and accumulated on their TD Travel Card before August 16, 2015?
- e) Is Respondent liable to pay compensatory and/or moral and/or punitive/exemplary damages to the Class Members and, if so, in what amount?

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

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

DECLARE null the unilateral modifications made by Defendant to the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs which reduced the redemption value as of August 16, 2015 of the TD Points earned and accumulated by the Class Members on their TD Travel Card before August 16, 2015;

ORDER Defendant to reinstate the value of \$50 per 10,000 TD Points increments (or 200 TD Points for each \$1), concerning all of the Class Members' TD Points earned and accumulated on their TD Travel Card before August 16, 2015;

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

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

CONDEMN the Defendant to pay to each of the Class Members a sum to be determined in compensation of the moral damages suffered for trouble and inconvenience caused by Respondent's modifications of the Exhibit R-3 TD Travel Card Agreements and the TD Travel Rewards Programs, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay to each of the Class Members a

sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to the Law from the date of service of the motion to authorize a class action;

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

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

CONDEMN the Defendant to bear the costs of the present action including experts' fees and notice fees;

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

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fee and publication fees to advise Class Members;

DECLARE that all Class Members who have not requested their exclusion from the Group 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 thirty (30) days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., within sixty (60) days from the judgment to be rendered herein in LA PRESSE and the NATIONAL POST, and ORDER Respondents to pay for said publication costs;

ORDER that said notice be available on the Respondents' websites, Facebook page(s), and Twitter account(s), with a link stating "Important notice to all past or present purchasers/users of Johnson's Bedtime Baby line of products", with pictures of the Bedtime Baby Products featured next to said links;

THE WHOLE with costs including all publication costs.

MONTREAL, JULY 17, 2015
LEX GROUP INC.

(s) Lex Group Inc.

Per: David Assor
Attorneys for Petitioner