

Court File No.:

CV-14-512624 OOC

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

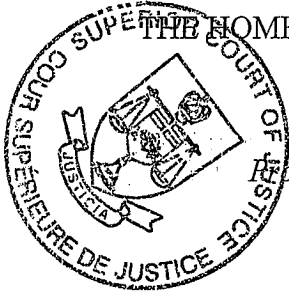
STEVEN LOZANSKI

Plaintiff

- and -

THE HOME DEPOT, INC. and HOME DEPOT OF CANADA, INC.

Defendants



*Proceedings under the Class Proceedings Act, 1992  
(S.O. 1992, c. 6)*

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff and file it with proof of service, in the court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty (60) days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten (10) more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date Sept. 22, 2014

Issued by   
Local Registrar

Address of court office:  
10<sup>th</sup> Floor,  
393 University Avenue  
Toronto, Ontario

**TO:** **THE HOME DEPOT, INC.**  
c/o  
CORPORATION SERVICE COMPANY  
2711 Centerville Rd. Suite 400  
Wilmington, Delaware  
USA 19808

**AND TO:** **HOME DEPOT OF CANADA, INC.**  
1 Concorde Gate  
Toronto, ON  
M3C 4H9

## STATEMENT OF CLAIM

1. The plaintiff claims on his behalf and on behalf of the class and all class members for:
  - a) An order pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, certifying this action as a class proceeding and appointing him and/or other members of the class to act as representatives of the class;
  - b) General damages in the amount of \$500,000,000.00 or in such other amount as this Honourable Court deems appropriate;
  - c) Special damages in the sum of \$500,000,000.00 or in such other amount as this Honourable Court deems appropriate, on account of, *inter alia*, all expenses incurred by the plaintiff and other class members to monitor his and their credit;
  - d) an interim interlocutory and permanent order, pursuant to s.101 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43, and Rule 40 of the *Rules of Civil Procedure*, compelling the defendants to fund a credit monitoring programme supervised by the Court for the review and monitoring of the credit of the putative class members by experts and to make recommendations regarding the protection and/or rehabilitation of the said class members' credit;
  - e) Punitive damages in the amount of \$25,000,000.00 or in such other amount as this Honourable Court deems appropriate;
  - f) Aggravated damages in the amount of \$25,000,000.00 or in such other amount as this Honourable Court deems appropriate;
  - g) Such further and other damages as may be proven at trial;
  - h) Pre-judgment interest on the forgoing sums pursuant to s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;

- i) Post-judgment interest on the foregoing sums pursuant to s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43;
- j) Costs of this action on a substantial indemnity scale; and,
- k) Such further and other relief as counsel may advise and/or this Honourable Court may allow.

## THE PARTIES

2. The plaintiff, Steven Lozanski, resides in Richmond, Ontario, and at all material times was the cardholder of a credit card issued by Visa.
3. In late August or early September, the plaintiff used the subject credit card to rent equipment from a Home Depot retail store owned and operated by the defendants.
4. On or about September 15, while travelling on business, the plaintiff attempted to pay for a hotel room using the subject credit card. He was surprised and embarrassed to learn that his credit card was declined.
5. The plaintiff immediately contacted Visa in order to determine why his credit card had been declined. He was advised that the card had been "maxed out", meaning that all of the credit available had already been advanced for numerous purchases.

6. This news came as a further surprise to the plaintiff, as he had only made minimal purchases that were unpaid at the time when the subject card was declined.
7. Through his discussion with Visa, he learned that \$8,000 in unauthorized purchases had been made on the subject credit card. All of those unauthorized purchases were made after the plaintiff's use of the subject card at the Home Depot store.
8. The representative of Visa asked the plaintiff whether he had recently used the subject credit card at a Home Depot location, and this was the first time the plaintiff had learned that the defendants had been the subject of a major security breach in which the plaintiff's and millions of others' credit card information had been stolen by third parties.
9. The defendant, The Home Depot, Inc. ("Home Depot US") is a Delaware corporation, headquartered in Atlanta, Georgia.
10. The defendant, Home Depot of Canada, Inc. ("Home Depot Canada"), is incorporated under the laws of Canada with a Canadian corporate office located in Toronto, Ontario.
11. The defendants are hereinafter collectively referred to as the "defendants" or "Home Depot".
12. Home Depot operates 180 stores in Canada and more than 2,200 in the United States. The stores provide home improvement goods and services.

13. The plaintiff pleads that, by virtue of the acts described herein, each of the companies comprising the defendants, as set out above, is vicariously liable for the act and omissions of the others for the following reasons:

- a) Each was the agent of the other;
- b) Home Depot Canada is a wholly owned and controlled subsidiary of Home Depot US;
- c) Home Depot Canada's transaction systems are entirely directed and controlled by Home Depot US;
- d) Each defendant's business was operated so that it was inextricably interwoven with the business of the other;
- e) Each defendant entered into a common advertising and business plan with the other;
- f) Each defendant operated pursuant to a common business plan.; and
- g) Each defendant intended that the businesses be run as one business organization.

#### **THE BREACH**

14. When consumers make purchases at Home Depot retail stores using credit or debit cards, Home Depot collects information related to that card including the card holder name, the account number, expiration date, card verification value ("CVV"), and personal identification number ("PIN") for debit cards; Home Depot also collects and stores

customer names, mailing addresses, phone numbers, and email addresses (together, the "Personal Information"). Home Depot stores the Personal Information in its point-of-sale system and transmits this information to a third party for completion of the payment.

15. Beginning in approximately late April or early May 2014 through to early September, 2014, unidentified assailants gained access to the computer network owned and operated by the defendants.
16. Among the systems compromised was the defendants' point-of-sale network that is used to process customers' credit card- and debit card-transactions for Home Depot retail locations in Canada and the United States.
17. Accordingly, in breaching the defendants' system, the assailants gained access to approximately 56 million of the defendants' customers' Personal Information, representing one of the largest data breaches in history.
18. The assailants can use, and have used, the Personal Information to make fraudulent transactions using the plaintiff's and other class members' credit- and debit-cards. The assailants can sell, and have sold, the Personal Information to third parties for the same purpose.
19. The defendants did not immediately notify their customers, the public, or the authorities about the data breach. Instead, news of the breach was first published by a third party

security analyst on his blog on September 2, 2014. It was only after that third party published a report of the breach that Home Depot, on September 8, 2014, chose to alert the public, over four months after the fact.

## THE CLASS

20. This action is brought on behalf of the plaintiff in his own right, and pursuant to the *Class Proceedings Act*, S.O. 1992, c.6, on behalf of all persons resident throughout Canada who have communicated personal information and/or financial data and/or usage data to the defendants as purchasers in the defendants' retail locations, which information was later stolen or released to or obtained by unauthorized third parties.
21. The plaintiff is representative of a class of persons more particularly described as follows:
- “All persons resident or situated in Canada (including their estates, executors, or personal representatives), who have communicated personal information and/or financial data and/or usage data to the defendants, which information was stolen or released to or obtained by unauthorized third parties in April or May 2014.”
22. The plaintiff and other class members used their credit- and/or debit-cards at Home Depot store locations believing that their Personal Information and/or financial data and/or usage data was to be held securely and in confidence by the defendants and that same would certainly not be subjected to exposure and theft. The confidential information was communicated to the defendants for the defendants' restricted use and



was not to be utilized for any purpose other than for that which it was originally provided.

23. Had the plaintiff and other class members known that their Personal Information and/or financial data would not be maintained by the defendants in a reasonable secure manner, the plaintiff and other class members would not have allowed their credit- and/or debit-cards to be used in Home Depot store locations.

### **CAUSES OF ACTION - OVERVIEW**

24. The defendants failed to adequately safeguard certain personal information, financial data and usage data belonging to the plaintiff and other class members. Specifically, the defendants failed to maintain adequate computer security of the plaintiff's and class members' credit, debit, and prepaid card information, full names, addresses, e-mail addresses, birthdates, usernames, passwords, logins, security questions, and other related information, all of which was accessed and stolen by computer hackers.

25. The defendants delayed notifying the proper law enforcement agencies and delayed in notifying and/or warning the plaintiff and other class members of the potential theft of their personal information and/or financial data and/or usage data.

26. The defendants' failure to advise the plaintiff and other class members in a timely manner of the loss of sensitive personal information, financial data and usage data to unauthorized

third parties, represents additional negligence and reckless disregard for the sensitivity and confidentiality of the said private information entrusted to them. The defendants' failure to notify the plaintiff and other class members as soon as practicable that personal information, financial data and usage data belonging to them had been stolen by or revealed to unauthorized third parties indicates a failure on the part of the defendants to mitigate against the inconvenience, damages, and loss suffered by the plaintiff and members of the class.

27. The plaintiff states that the causes of action in this action include, but are not limited to:

**(A) NEGLIGENCE**

28. The defendants:

- a) owed the plaintiff and each class member a duty of care to ensure that their personal information, financial data, and usage data remained confidential and was not disclosed;
- b) knew that a breach of their duty would cause damage to the plaintiff and class members; and,
- c) knew, or ought to have known, that their substandard method of the maintenance of the confidential information and the security of same were such that it was inevitable, or at least probable, that the confidential information would likely be stolen or otherwise disclosed, in breach of their duty.

29. The defendants were required to meet a reasonable standard of care because:

- a) the confidential information communicated by the plaintiff and each of the class members was unique to the plaintiff and each class member;
- b) the confidential information pertained to the identity and financial interests of the plaintiff and each of the class members; and
- c) the confidential information was communicated to the defendants under circumstances where the plaintiff and class members had no choice in the communication if he/she wanted to obtain the defendants' goods and services through the provision of personal information and financial data.

30. The defendants had a duty to protect the confidential information of class members, which duty they have negligently breached. The particulars of the defendants' negligence are as follows:

- a) They knew or ought to have known that the encryption of their computer systems, including their point-of-sale systems, was inadequate to protect against breach and compromise by computer hackers and they failed to take any or sufficient steps to remedy same;
  - b) They employed computer personnel and/or computer contractors who lacked the necessary skills, education, training and expertise in computer data security and encryption;
  - c) They could and should have used the services of an outside, secure computer payment service such as Paypal, but failed to do so;
  - d) They failed to warn the plaintiff and class members that their computer systems, including their point-of-sale systems, lacked security and were
-

therefore susceptible to breach and compromise by hackers. The defendants owed a duty of care to warn the plaintiff and class members of this lack of security and susceptibility to breach;

- e) They failed to take any steps or sufficient steps to ensure the security of their computer systems, including their point-of-sale systems,. Examples of security measures that the defendants failed to implement to protect class members' personal information from theft, exposure, or misuse include the use of adequate firewalls, the use of encryption, the use of up-to-date hardware, software and security protocols, and the protection against known vulnerabilities;
- f) They failed to heed warnings about the inadequate security of their computer systems, including their point-of-sale systems, and about how same could be breached and compromised by computer hackers;
- g) They failed to follow or in fact violated industry standards or similar guidelines that govern the safe storage of customers personal information, financial data and usage data. As an example, they violated the Payment Card Industry Data Security Standard by, *inter alia*, failing to encrypt credit card data, failing to use adequate firewalls, and failing to restrict access to its computer systems;
- h) They failed to notify the plaintiff, class members, and law enforcement agencies immediately upon discovery of the theft of class members' personal information, financial data and usage data;
- i) They failed to have security measures in place sufficient to prevent the theft of the plaintiff and other class members personal information, financial data, and usage data;

- j) They failed to immediately notify the plaintiff and class members of the theft of their personal information, financial data, and usage data - thereby preventing class members from immediately taking steps to protect their financial interests;
- k) They failed to immediately notify the plaintiff and class members as how to search their credit and debit card records, to place fraud alerts on their credit cards, and to take out fraud insurance;
- l) They failed properly or at all to educate, instruct, and supervise their personnel on security conduct and procedures;
- m) They failed to have in place a computer security conduct and procedural protocol to be adhered to and followed by their personnel; and
- n) If they had in place a computer security conduct and procedural protocol, they failed to ensure same was adhered to and followed by their personnel

## **(B) BREACH OF CONFIDENCE**

31. The plaintiff pleads that the defendants are liable in tort for the damages suffered by him and class members in that:

- a) the plaintiff and class members communicated confidential information to the defendants who received the said information knowing well that the same was to be received and maintained as confidential;
- b) the confidential information was communicated to the defendants for the sole and limited purpose of the defendants' use in the context of the provision of goods and services by the defendants to the plaintiff and class members and,

- c) the defendants received the confidential information knowing well the limited purpose for which it was communicated. Accordingly, they became and were at all material times under a duty of confidence towards the plaintiff and the class members in respect of the said confidential information. The defendants allowing unauthorized third parties to access and steal the said confidential information constitutes a breach of confidence.

### **(C) BREACH OF PRIVACY**

32. The plaintiff pleads that the defendants are liable for the damages suffered by him and the class members resulting from loss and disclosure of personal information, financial data and usage data belonging respectively to him and to the class members.

33. The plaintiff and class members provided their personal information, financial data, and usage data to the defendants with a reasonable expectation that the plaintiff's and class members' privacy would be maintained.

34. Through the defendants' wrongdoing, as aforesaid, the plaintiff's and class members' private information and data became available and was deliberately and unlawfully accessed by third parties, without the plaintiff's and class members' knowledge or consent.

35. By permitting third parties to access the plaintiff's and class members' personal information, financial data, and usage data, the defendants breached the plaintiff's and

class members' common law and statutory reach to privacy, including, but not limited to, the tort of intrusion upon seclusion and the federal *Personal Information Protection and Electronic Documents Act*, which the plaintiff pleads and relies upon.

36. The loss of the plaintiff's and class members' private information occasioned by the defendants' lax security measures was highly offensive to the plaintiff and class members, causing them distress, humiliation or anguish.

**(D) BREACH OF FIDUCIARY DUTY**

37. The defendants were in a fiduciary relationship with the plaintiff and class members by reason of their entrustment with financial data, personal information, and usage data belonging to the plaintiff and class members. By virtue of this fiduciary relationship and the vulnerability of the plaintiff and class members, the defendants had a duty of care to use reasonable means to keep the said private information of the plaintiff and class members strictly confidential and secure. The defendants unlawfully breached this duty.

**(E) BREACH OF CONTRACT**

38. When communicating personal information, financial data and usage data to defendants in order to transact business with the defendants and utilize their computer systems, including their point-of-sale systems, the plaintiff and class members entered into implied contracts with the defendants whereby the defendants would safeguard the plaintiff's and

class members' personal information, financial data and usage data and notify them promptly of any and all compromise and/or theft of same.

39. Without such implied contracts, the plaintiff and class members would not have communicated their personal information, financial data and usage data to the defendants in order to transact business with them.

40. The plaintiff pleads that he and all class members are also third party beneficiaries of contracts entered into between the defendants and various third parties. These contracts require that the defendants safeguard the personal information, financial data and usage data of the plaintiff and class members.

41. The plaintiff pleads that the defendants breached the said contracts by permitting or failing to prevent the compromise of their computer systems, including their point-of-sale systems, as described above, and that, as a result of these breaches, the plaintiff and class members have suffered losses and damages.

**(F) WAIVER OF TORT AND UNJUST ENRICHMENT**

42. The plaintiff and class members are entitled to waive the tort and require the defendants to account for and disgorge all the revenue they received from the sale of their goods and services to the plaintiff and class members during the period of the breach.



43. The plaintiff pleads that such election may be appropriate for the following reasons, among others:

- a) Such revenue was acquired in such circumstances that the defendants cannot in good conscience retain it:
- b) The integrity of the online marketplace would be undermined if the court did not require an accounting and disgorgement:
- c) The defendants engaged in wrongful conduct by soliciting the plaintiff's and class members' Personal Information, confidential information, financial data, and usage data, without safeguarding the confidentiality of this information and data, thereby causing the plaintiff and class members to suffer damages; and
- d) The defendants would be unjustly enriched if they were permitted to retain revenues realized from the sale of their goods and services, when a portion of those revenues was used by the defendants inadequately to secure the plaintiff's and other class members' Personal Information.

44. The defendants' enrichment has come at the expense of the plaintiff and class members, who were deprived of the consideration they paid for secure purchases. There is no juristic reason for that enrichment.

45. The plaintiff claims a constructive trust in favour of the class over those proceeds that were received by the defendants as a result of this unjust enrichment.

**G) NEGLIGENCE MISREPRESENTATION**

46. By virtue of the trust reposed in the defendants by the plaintiff and class members, there existed a special relationship between the parties giving rise to a duty of care owed by the defendants to the plaintiff.

47. The defendants represented to the plaintiff and class members that any personal information provided by the plaintiff and class members to the defendants would be secure and protected from unauthorized access by third parties. The defendants ought reasonably to have foreseen that the plaintiff and class members would reasonably rely on that representation.

48. The defendants' representations that information received by them from the plaintiff and class members was untrue, inaccurate, or misleading. The representations were made negligently.

49. The plaintiff and class members reasonably relied on these misrepresentations to their detriment.

**(H) OTHER CAUSES OF ACTION**

50. The plaintiff pleads and relies upon the *Sale of Goods Act* and the *Consumer Protection Act, 2002*, in Ontario and the equivalents to each of these acts that are in force in their

respective jurisdiction across Canada. The plaintiff additionally pleads and relies upon the federal *Competition Act*.

51. In particular, the plaintiff pleads that:

- a) It is an implied condition pursuant to the *Sale of Goods Act* and the *Consumer Protection Act, 2002* (and their equivalent statutes in other provinces) that goods shall be of merchantable quality and shall be reasonably fit for the purpose for which the goods are required;
- b) The *Consumer Protection Act* in Ontario (and its equivalent statutes in other provinces) provides that in respect of “consumer agreements”, the implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* in Ontario (and its equivalent statutes in other provinces) apply to goods sold by a consumer sale and those implied conditions and warranties cannot be varied or eliminated by contract;
- c) It is a contravention of the *Competition Act* when a person, for the purpose of promoting, directly or indirectly, the supply or use of a product, knowingly or recklessly makes representations to the public that are false or misleading in material respects.

52. The plaintiff pleads that the defendants breached the *Sale of Goods Act* and *Consumer Protection Act, 2002*, in Ontario (and their equivalent statutes in other provinces) as well as the federal *Competition Act* in that:

- a) Their computer systems, including their point-of-sale systems, were not of merchantable quality and were not reasonably fit for the purpose for which they

are required. Specifically, but without limiting the generality of the foregoing, their computer systems, including their point-of-sale systems, were not secure, such that Personal Information, financial data, and usage data provided by the plaintiff and class members to the defendants was improperly made available to third parties.

- b) The defendants engaged in unfair practices by falsely, misleadingly, and deceptively representing that their computer systems, including their point-of-sale systems, were secure and that personal information, financial data, and usage data provided by the plaintiff and class members to the defendants in connection with use of their computer systems, including their point-of-sale systems, would be secure. The representations were made intending that the plaintiff and class members would rely upon them in purchasing Home Depot's goods and services. The plaintiff and class members did, in fact, rely upon these representations when they purchased Home Depot's goods and services using the plaintiff's and other class members' credit- and debit-cards;
- c) The defendants, for the purpose of promoting, directly or indirectly, the supply or use of their goods and services, knowingly or recklessly makes representations to the public that were false or misleading in material respects, in that they did not disclose the security of their computer systems, including their point-of-sale systems,. The representations were made for the purpose of inducing the plaintiff and class members to purchase Home Depot's goods and services. The plaintiff and class members did, in fact, rely upon these representations when they purchased Home Depot's goods and services;

## DAMAGES

53. The plaintiff and all class members have suffered significant loss and damages including harm and injury to their financial and other interests and loss of use of their credit- and

debit-cards, all of which were damages directly resulting from the loss and disclosure of their personal information, financial data and usage data by the defendants.

54. As a result of the defendants' acts, omissions, and breaches, the plaintiff and all class members are exposed to theft of their identity, theft from their bank accounts, and theft from their credit card and debit card accounts. The compromise of the plaintiff's and class members' private information and the resulting burden, fear, anxiety, emotional distress, loss of time spent seeking to undo harm and prevent further harm, and other economic and non-economic damages suffered by the plaintiff and class members were the direct and proximate result of defendants' violations of their duties.

55. As a result of the defendants' acts and omissions aforesaid, the plaintiff and class members have suffered harm for which they claim damages. They have suffered and will continue to suffer distress, humiliation or anguish from the release of their Personal Information, the actual or potential fraudulent transactions carried out in their names, and the unexpected rejection of their attempts to purchase goods or services through their credit- or debit-cards. Further and in the alternative, the plaintiff and other class members suffered recognized psychological or psychiatric illness, as well as the stress and inconvenience of knowing that unauthorized persons have their Personal Information, financial data and usage data. Further, the class members' losses and expenses have occurred, are ongoing and include, *inter alia*:

- a) loss from their bank accounts as a result of the theft of debit card numbers;
- b) fraudulent charges against their credit card accounts;

- c) loss of their time, spent consulting with legal counsel, banking officials, credit professionals, or with other individuals relevant to the loss of the subject information, with resultant financial loss;
- d) funds directly or indirectly expended in furtherance of gathering information about the loss of the confidential information, such as that spent on long-distance telephone charges, or postage; and/or
- e) funds directly or indirectly expended in the course of attempting to secure personal information, financial data and usage data, as a result of the loss of security of same by the defendants, such as fees incurred changing credit cards, changing personal identifiers (such as Social Insurance Numbers), monitoring bank accounts and credit card statements, monitoring their credit bureau information, purchasing fraud insurance, and other preventative measures.

56. While the exact number of class members is unknown at this time, the plaintiff believes that there may be more than a million class members. The identities of the class members will easily and most practicably be ascertained from the defendants' records. As such, a class action is the most efficient and economic method of proceeding.

57. There are questions of law and fact that are common to class members, the determination of which will advance the herein litigation and the claims of the plaintiff and class members. These common questions include, but are not limited to:

- a) Was there a duty of care owed by the defendants to the plaintiff and class members?
- b) Did the defendants breach that duty of care?

- c) Did the defendants commit a breach of confidence?
- d) Did the defendants commit a breach of fiduciary duty?
- e) Did the defendants commit breaches of contract?
- f) Did the defendants breach the plaintiff's and class members' privacy?
- g) Did the defendants violate industry standards or similar guidelines that govern the safe storage of customers' personal information, financial data and usage data?
- h) Are the defendants liable to pay damages to the plaintiff and class members and, if so, what is the appropriate measure of damages?
- i) Are class members entitled to waive the tort and elect to require an accounting and disgorgement of the defendants' revenues received from the plaintiff and other class members using their credit- and/or debit-cards during the period of the breach?
- j) Did the defendants negligently misrepresent to class members the safety of their computer systems, including their point-of-sale systems,?
- k) In misrepresenting the security of their computer systems, including their point-of-sale systems, and permitting the breaches of these systems, did the defendants violate the *Sale of Goods Act* and the *Consumer Protection Act* in Ontario, or any of their equivalent statutes in other provinces?
- l) In misrepresenting the security of their computer systems, including their point-of-sale systems, and permitting the breaches of their computer systems, including their point-of-sale systems, did the defendants violate the federal

*Competition Act?*

m) Are aggravated damages appropriate?

n) Are punitive damages appropriate?

58. The plaintiff's claim is typical of the claims of other class members and on the common issues he has no interest which is in conflict with other class members.

59. The plaintiff will fairly and adequately protect the interests of the class.

60. The class action is an appropriate method for the fair and efficient adjudication of the issues and achieving fairness and justice without over-burdening the Court system with a multiplicity of individual claims.

61. The prosecution of separate actions would create the risk of conflicting decisions on the same facts and issues.

62. The plaintiff pleads that the defendants' conduct as particularized above was reckless, wanton, negligent, callous, and in total disregard of the plaintiff's security and rights as well as those of class members. The conduct of the defendants was and continues to be indifferent to the consequences and was and is motivated singularly by economic and reputational considerations. The particulars of the defendants' reprehensible conduct is as follows:

a) They deliberately failed to advise the plaintiff and class members of the breach



and compromise of their computer systems, including their point-of-sale systems, as soon as they became aware of same;

- b) They deliberately failed to advise the plaintiff and class members that their personal information, financial data and usage data had been compromised and stolen as soon as they became aware of same;
- c) They deliberately placed their own reputational and financial interests ahead of those of the plaintiff and class members;
- d) They failed to immediately notify the plaintiff and class members as how best to search their credit records and to place fraud alerts on their credit cards – despite stating that they would do so;
- e) Their response to the breach and compromise of their computer systems, including their point-of-sale systems was secretive, haphazard, and tardy – motivated singularly by reputational and financial considerations;
- f) They deliberately left the plaintiff and class members twisting in the wind, all the while exposed to greater damages, while they engaged in spin doctoring and public relations strategies;
- g) They took a cavalier and arbitrary approach with respect to their obligations to the class;
- h) They failed to warn the plaintiff and class members in a timely fashion that their computer systems, including their point-of-sale systems, had been hacked and that their personal information may have been compromised;
- i) They waited to warn the plaintiff and class members that their computer systems, including their point-of-sale systems had been hacked;

j) Upon learning that their computer systems, including their point-of-sale systems, had been hacked and that private information of their customers had been compromised, the defendants advised customers in the U.S. of remedial steps that could be taken to protect themselves, such as cancelling credit cards and engaging the services of credit card fraud alert agencies. The defendants did not immediately so advise the plaintiff and class members as to how to take such steps;

k) At all material times, the conduct of the defendants as set forth above was wilful, wanton, and reckless;

l) The defendants' aforesaid acts, omissions, wrong doings, breaches of legal duties or obligations constitute a wanton and outrageous disrespect for fair business practices and dealings with customers and the public.

63. By engaging in such deplorable conduct and tactics, the defendants committed a separate actionable wrong for which this Honourable Court should voice its disapproval and displeasure with an award of punitive damages.

64. By engaging in such deplorable conduct and tactics, the defendants caused the plaintiff and class members to suffer injuries to their feelings of dignity, pride, and self-respect and, as such, the plaintiff and class members claim aggravated damages herein.

65. The acts, omissions, wrong doings, breaches of legal duties or obligations of the defendants have caused or materially contributed to the plaintiff's and class members suffering injury, economic and non-economic losses and damages.

66. The plaintiff and class members have suffered injury, economic loss, or damages arising from the aforesaid acts, omissions, wrong doings, breaches of legal duties or obligations of the defendants .

67. The plaintiff pleads and relies, *inter alia*, upon the following legislation:

- *Class Proceedings Act*, R.S.O. 1992, S.O. 1992, c.6;
- *Courts of Justice Act*, R.S.O. 1990, c.43;
- *Negligence Act*, R.S.O. 1990, c. N.1;

and similar legislation in other Canadian provinces, as amended and the regulations made thereunder.

68. There is a real and substantial connection between the subject matter herein and the Province of Ontario among others for the following reasons:

- a) The defendants carry on business in Ontario;
- b) The plaintiff and numerous putative class member reside in Ontario;
- c) The plaintiff and numerous putative class members registered with and used the defendants' computer systems, including their point-of-sale systems, in Ontario and suffered damages in Ontario.

69. This originating process may be served without court order outside Ontario in that the claim is:

- a) In respect of a tort committed in Ontario (Rule 17.02(g));
- b) In respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (Rule 17.02(h));
- c) In respect of property in Ontario (Rule 17.02 (a));
- d) Against a person outside Ontario who is a necessary or proper party to a proceeding properly brought against another person served in Ontario (Rule 17.02 (o)); and
- e) Against a person carrying on business in Ontario (Rule 17.02 (p)).

70. The plaintiff proposes that Trial in this action take place in the City of Toronto, in the Province of Ontario.

Date of Issue: September 22, 2014

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SUPERIOR COURT OF JUSTICE

Proceedings commenced at Toronto

*Proceedings under the Class Proceedings Act,  
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**STATEMENT OF CLAIM**

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