

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-06-000885-174

(Class Action)
SUPERIOR COURT

DANIEL LI

Applicant

v

EQUIFAX INC.

-and-

EQUIFAX CANADA CO

Defendants

**APPLICATION FOR PERMISSION TO EXAMINE THE APPLICANT DANIEL LI AND
TO SUBMIT RELEVANT EVIDENCE
(Article 574 CCP)**

TO THE HONOURABLE PIERRE-C. GAGNON, J.S.C., THE DEFENDANTS
RESPECTFULLY SUBMIT THE FOLLOWING:

1. The Defendants Equifax Inc. and Equifax Canada Co (collectively hereinafter referred to as the "**Defendants**") hereby seek the permission of this Honourable Court to examine the Applicant Daniel Li and to submit a limited number of documents as relevant evidence pursuant to paragraph 574(3) of the *Code of Civil Procedure*, CQLR, c. C-25.01 ("**CCP**");

A. THE APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION

2. On or about on September 11, 2017, Applicant Daniel Li filed an Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff (the "**Application for Authorization**") on behalf of the following class:

"All persons in Quebec who had, at any time prior to September 7, 2017, personal or credit data collected and stored by Equifax and who were subject to risk of data loss as a result of the breach which occurred between May and July 2017 (hereinafter the "**Data Breach**") or any other Class(es) or Sub-Class(es) to be determined by the Court,"

(hereinafter, "**Class Member(s)**" or "**Proposed Class**")

3. It is to be noted that paragraph 46 of the Application for Authorization specifies :

“Members of the Class consist of individuals whose personal and/or financial information was lost by and/or stolen from the Defendants as a result of a data breach that occurred around May 2017;”

4. The Application for Authorization stems from an incident involving unauthorized access to personal information held by the Defendant Equifax Inc. that occurred in 2017 (the “Incident”);

5. The Applicant alleges as follows: his private information, and the private information of the Class Members, was compromised by said Incident as a result of the Defendants’ failures to maintain said private information in a reasonably secure manner, causing damages to the Applicant and to the Class Members;

6. More specifically, the Applicant claims, *inter alia*, that the Defendants were negligent through the following acts and/or omissions:

“a) lost and/or allowed unauthorized access to personal and or financial information of the Class Members;

b) failed to protect the Class Members’ Private Information by allowing for unlawful access or use of the confidential Private Information for purposes other than for which it was supplied to them, without consent;

c) breached the Class Member’s privacy;

d) intruded upon the Class Members’ seclusion;

e) failed to warn and/or inform Class Members of the Data Breach in a timely manner;

f) caused Class Members harm, inconveniences, economic losses, mental distress or other losses resulting from the unauthorized access to their confidential personal and information records;”

7. The Application for Authorization presents the following allegations with regard to the Applicant’s competence to be an adequate representative:

“63. 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 Applicant:

a) had private personal and/or financial information accessed and/or stolen;

b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;

c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;

d) is ready and available to manage and direct the present action in the interest of the Class Members that the applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;

e) does not have interests that are antagonistic to those of other members of the Class;

f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;

g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;"

8. Through this Application for Permission to Examine the Applicant Daniel Li and to Submit Relevant Evidence, the Defendants hereby seek the permission of this Honourable Court to examine the Applicant before the hearing of the Application for Authorization;
9. Before authorizing a class action, the Court must analyse the criteria for authorization pursuant to article 575 CCP, and conclude that each and all of them are met in order to grant the application, more particularly with regard to the existence of identical, similar or related questions of law or fact requirement (article 575 (1) CCP) to the appearance of right requirement (article 575 (2) CCP) and the Applicant's ability to adequately represent the members of the proposed Class (article 575 (4) CCP);
10. Such a determination requires a thorough examination of the allegations presented in the Application for Authorization and of all evidence relevant or appropriate to the analysis of the four criteria;
11. To carry out its analysis, the Court may allow relevant evidence that will enable it to conduct an efficient verification of the criteria of article 575 CCP in a useful and judicious manner, as well as provide a better understanding of the case and shed light on some of the allegations of the Application for Authorization that may be incorrect or incomplete;

12. In light of the above and considering the serious implications of a class action, it is imperative that the Defendants and the Court be able to fully appreciate the scope of the allegations for the Defendants to have a fair hearing on authorization;
13. Furthermore, a class action mobilizes significant judicial resources and thus it is imperative for the Applicant to properly gauge his capacity to direct the process of bringing the action;
14. Taking into account that certain factual allegations are incomplete with regard to the capacity of the Applicant to properly represent the class members of the proposed class, the examination is necessary to allow this Honourable Court to determine if the criterion stated in paragraph 575(4) CCP is met;
15. The Defendants also seek the permission of this Honourable Court to submit a limited number of documents which are necessary to complete the allegations, as demonstrated hereinafter;

B. THE RELEVANCE AND SCOPE OF THE EXAMINATION OF THE APPLICANT

16. The Defendants seek the permission of this Honourable Court to hold a short examination of the Applicant Daniel Li before the hearing of the Application for Authorization;
17. The Defendants wish to fully understand and verify certain allegations;
18. More specifically, the Defendants wish to verify whether the Applicant is in a position to properly represent the class members of the proposed class, evaluate if the criteria of 575 CCP is met and fully understand the description of the proposed class, considering the discrepancy between the description of the class in the Application for Authorization and paragraph 46 therein;
19. The allegations contained in the Application for Authorization with regard to the ability of the Applicant to represent the proposed class adequately (paragraph 63 of the Application for Authorization) constitute opinions and statements of general and vague nature, that are not based on precise, particular and specific facts and circumstances;
20. The Applicant further claims that he had private personal and/or financial information accessed and/or stolen, without alleging the specific facts or circumstances that led him to believe he was in fact impacted by the Incident and, as a result, the vague and incomplete allegations concerning the damages that he has suffered are also questionable;
21. The examination of the Applicant is thus imperative in the absence of any evidence supporting the allegations that the Applicant is an adequate representative;

22. The examination will allow this Honourable Court to obtain the necessary information that is essential to decide whether or not the Applicant is in a position to properly represent the class members of the proposed class;
23. The examination of the Applicant before the hearing of the Application is relevant to provide this Honorable Court with facts relating to:
 - a) The circumstances in which the Applicant was called upon to act as the Applicant;
 - b) The Applicant's understanding of the legal basis of the proposed action;
 - c) The Applicant's ability to properly represent the members of the proposed class, including, but not limited to, the agreement with Applicant's counsel, the nature and the seriousness of the steps taken by him leading up to and culminating in the filing of the Application for Authorization, as well as his efforts, if any, to identify other members of the proposed class and the reasons why he claims to be able to adequately represent the interests of the class members;
 - d) The Applicant's understanding of the necessary efforts and implications to act as a representative within the context of a class action;
 - e) The Applicant's availability and his capacity to direct the process of bringing the action, to pursue the process through trial and to manage the process in an appropriate manner;
 - f) The Applicant's means to ensure the management of the class action and the required steps, completed or to be completed, in order to obtain the necessary financial resources to pursue the action;
 - g) The Applicant's allegations that he had private personal and/or financial information accessed and/or stolen;
 - h) The Applicant's allegations that he is in fact part of the group he seeks to represent;
 - i) The Applicant's allegations that he has suffered ascertainable loss as a result of the alleged failures of the Defendants, including economic loss and mental distress;
24. Article 574 CCP gives the Court discretion to determine whether the examination a party wishes to hold is relevant or not;
25. Those questions and the factual information that they will allow to obtain are relevant and useful for this Honourable Court to evaluate the possibility of a conflict of interest and to decide if the Applicant is in a position to properly represent the members of the proposed class pursuant to article 575(4) CCP;

26. The factual information obtained will also allow this Honourable Court to evaluate if the factual situation of the Applicant raises identical, similar or related issues of law or fact to the ones of the proposed class members pursuant to article 575(1) CCP;
27. The examination will further help the Defendants and this Honourable Court to better understand the description of the Proposed class, more specifically the scope of the terms "who were subject to risk of data loss as a result of the breach";
28. The examination sought by the Defendants would thus be relevant and helpful for the Court to decide on the description of the class if the Application for Authorization is granted;
29. The examination sought is limited to questions pertaining to specific subjects and facts;
30. The examination sought before the hearing of the Application for authorization is limited to clear and straightforward questions, and does not entail a significant disbursement, thus respecting the principle of proportionality set forth in article 18 CCP;
31. The examination of the Applicant shall not exceed one hour and should take place out of Court;

C. THE RELEVANCE AND SCOPE OF THE RELEVANT EVIDENCE

32. The Defendants also seek the authorization of this Honourable Court to submit relevant evidence;
33. The Applicant alleges that "[m]ore than 143 million consumers were affected, including an undisclosed number of Canadians";
34. The Applicant further alleges that he had private personal and/or financial information accessed and/or stolen, without alleging the specific facts or circumstances that led him to believe he was in fact impacted by the Incident;
35. Had the Applicant taken the reasonable steps required by an adequate representative, he would have easily found that the Defendants have assessed the number of Canadian consumers that were potentially impacted, have identified them and have reached out directly to all of them by mail;
36. Thus the allegations with regard to the number of potentially impacted Canadian and to the fact that the Applicant is, himself, part of the potentially impacted consumers are incomplete, vague and misleading;
37. The plaintiff alleges that he is a customer of Equifax. In addition, the Agnew-Americanano claim includes a claim based on contract;

38. Furthermore, it is to be noted that Canadian consumers who purchased any consumer product offered by Equifax, were required to create an account with Equifax Canada and agree to Equifax's Terms of Use;
39. The Terms of Use are necessary to complete the allegations and offer the Court a full and comprehensive understanding of the case;
40. In light of the above, the Defendants seek the authorization of this Honourable Court to submit relevant evidence to provide greater clarity, as well as complete factual information to complete the allegations:
 - a) Copy of Equifax website page dedicated to the Cybersecurity Incident & Important Consumer Information (**Exhibit D-1A** (in French) and **Exhibit D-1B** (in English));
 - b) Copy of Equifax Press Release issued on October 2, 2017 (**Exhibit D-2**);
 - c) CBC Article with regard to the statement made by Equifax that 19 000 Canadians were potentially impacted by the Incident (**Exhibit D-3**);
 - d) Sworn Statement of Marise Eilen Emerson, Supervisor, Consumer Relations and Legal Affairs at Equifax Canada, with regard to the Terms of Use (**Exhibit D-4**);
41. The evidence that the Defendants seek to produce is appropriate and useful to offer a complete and comprehensive picture with respect to the opportunity to authorize or not the institution of the class action in this case;
42. The evidence that the Defendants seek to produce has a high explanatory value with regard to the number of potentially impacted consumers and their identification and will provide clarity as to the management of the events that followed the Incident;
43. The evidence sought to be submitted also satisfies the principle of proportionality required by article 18 CCP;
44. The evidence will also be helpful for the Court to decide on the description of the class if the Application for Authorization is granted;
45. It is in the best interest of justice for this Honourable Court to have the most complete picture of the situation and to be able to verify, with the relevant evidence submitted by the Defendants at hand, if all the criteria of article 575 CCP are met;

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

AUTHORIZE the Defendants Equifax Inc. and Equifax Canada Co to examine the Applicant Daniel Li regarding the following subjects:

- a) The circumstances in which the Applicant was called upon to act as the Applicant;
- b) The Applicant's understanding of the legal basis of the proposed action;
- c) The Applicant's ability to properly represent the members of the proposed class, including, but not limited to, the agreement with Applicant's counsels, the nature and the seriousness of the steps taken by him leading up to and culminating in the filing of the Application for Authorization, as well as his efforts, if any, to identify other members of the proposed class and the reasons why he claims to be able to adequately represent the interests of the class members;
- d) The Applicant's understanding of the necessary efforts and implications to act as a representative within the context of a class action;
- e) The Applicant's availability and his capacity to direct the process of bringing the action, to pursue the process through trial and to manage the process in an appropriate manner;
- f) The Applicant's means to ensure the management of the class action and the required steps, completed or to be completed, in order to obtain the necessary financial resources to pursue the action;
- g) The Applicant's allegations that he had private personal and/or financial information accessed and/or stolen;
- h) The Applicant's allegations that he has suffered ascertainable loss as a result of the alleged failures of the Defendants, including economic loss and mental distress;

ORDER that the examination of the Applicant Daniel Li be held out of court and before the hearing of the Application for Authorization to Institute a Class Action and to Appoint a Representative Plaintiff;

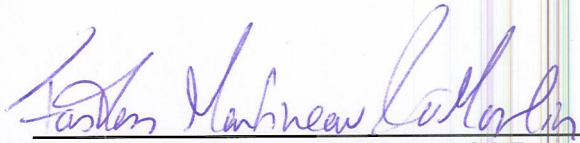
AUTHORIZE the Defendants Equifax Inc. and Equifax Canada Co to submit the following evidence:

- a) Copy of Equifax website page dedicated to the Cybersecurity Incident & Important Consumer Information (**Exhibit D-1A** (in French) and **Exhibit D-1B** (in English));
- b) Copy of Equifax Press Release issued on October 2, 2017 (**Exhibit D-2**);
- c) CBC Article with regard to the statement made by Equifax that 19 000 Canadians were potentially impacted by the Incident (**Exhibit D-3**);

- d) Sworn Statement of Marise Eilen Emerson, Supervisor, Consumer Relations and Legal Affairs at Equifax Canada, with regard with the Terms of Use (**Exhibit D-4**);

THE WHOLE without legal costs, unless the present application is contested.

Montréal, this February 23, 2018



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NOTICE OF PRESENTATION

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TAKE NOTICE that the present Application for Permission to Examine the Applicant Daniel Li and to Submit Relevant Evidence will be presented for adjudication before one of the honourable judges of the Superior Court, sitting in civil practice division for the district of Montréal on a date to be determined by the Court at the time to be determined by the Court, in a Room of the Montréal courthouse to be determined by the Court, located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, this February 23, 2018



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C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

N° : 500-06-000885-174

(Class Action)
SUPERIOR COURT

DANIEL LI

Applicant

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EQUIFAX INC.

-and-

EQUIFAX CANADA CO

Defendants

**LIST OF EXHIBITS
(IN SUPPORT OF THE APPLICATION BY THE DEFENDANTS TO STAY THE
CLASS ACTION)**

- Exhibit D-1A:** Copy of Equifax website page dedicated to the Cybersecurity Incident & Important Consumer Information (in French)
- Exhibit D-1B:** Copy of Equifax website page dedicated to the Cybersecurity Incident & Important Consumer Information (in English)
- Exhibit D-2:** Copy of Equifax Press Release issued on October 2, 2017
- Exhibit D-3:** CBC Article with regard to the statement made by Equifax that 19 000 Canadians were potentially impacted by the Incident

Exhibit D-4: Sworn Statement of Marise Eilen Emerson, Supervisor, Consumer Relations and Legal Affairs at Equifax Canada, signed on February 22, 2018

Montréal, this February 23, 2018

A handwritten signature in blue ink, appearing to read "Matthew C. DuMoulin".

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SUPERIOR COURT
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LOCALITY OF MONTRÉAL

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Applicant

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**APPLICATION FOR PERMISSION TO
EXAMINE THE APPLICANT DANIEL LI AND
TO SUBMIT RELEVANT EVIDENCE
(Article 574 CCP)
(Class Action)
AND EXHIBITS D-1 TO D-4**

ORIGINAL

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