

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup> : 500-06-000431-086

SUPERIOR COURT  
(Class Action)

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**ANNA MAZZONNA**, residing and domiciled at  
373 Laverendrye, in the City and District of  
Longueuil, Province of Quebec, J4G 2S2;

*Petitioner*

-vs-

**DAIMLERCHRYSLER FINANCIAL  
SERVICES CANADA INC. / SERVICES  
FINANCIERS DAIMLERSCHRYSLER INC.**,  
duly constituted according to the law, having  
its head office at One Riverside Drive West,  
City of Windsor, Province of Ontario, N9A 5K3;

(...)

*Defendant*

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

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**TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF  
QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
STATES THE FOLLOWING:**

**GENERAL PRESENTATION**

1. Petitioner wishes to institute a class action on behalf of the following group, of which Petitioner is a member, namely:
  - all persons (including their estates, executors, or personal representatives), consumers, corporations, firms, businesses, and other organisations in all of Canada, whose personal information was stored or saved on a data tape, which was lost by Defendant while in transit in

March of 2008 (exact date of the incident not yet determined);

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioners", "Class Member(s)", "Group Member(s)", the "Group", the "Class", "Consumer(s)", "Users" or "Customers");

2. Defendant Daimlerchrysler Financial Services Canada Inc. / Services Financiers Daimlerschrysler inc. is involved in the business of leasing and financial services in the automotive industry, and presently does business under various names, *inter alia*, Daimlerchrysler Financial Services Canada Inc., Services Financiers Daimlerchrysler Canada Inc., Chrysler Credit Canada, Chrysler Financial, Chrysler Financial Canada, Crédit Chrysler Canada, Damilerchrysler Financial, Daimlerchrysler Services Canada, Daimlerchrysler Services in Canada, Services Daimlerchrysler au Canada, Services Daimlerchrysler Canada, Services Financiers Chrysler, Services Financiers Chrysler Canada, Services Financiers Daimlerchrysler (hereinafter collectively "**Daimlerchrysler**"), the whole as more appears from the CIDREQ report on Defendant Daimlerchrysler from *Le registre des entreprises*, filed herewith, as **EXHIBIT P-1**;

3. (...)

### **FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

4. As appears from Defendant Daimlerchrysler's letter sent by regular mail to Class Members, which was dated March 27, 2008 but only received by Class Members on or about April 21, 2008, a copy of said letter in both English and French versions sent being filed herewith, as **EXHIBIT P-3**, Defendant Daimlerchrysler stated and admitted the following:

"Dear (...):

One of the highest priorities at Chrysler Financial is our focus on your privacy and the protection of your personal information. It is for this reason we are writing to you today to notify you of a recent incident we had with the transfer of certain customer information stored on a data tape to a licensed third party credit reporting agency. On March 12, 2008, we were notified by United Parcel Services ("UPS") that a data tape (the "Data Tape") sent by Chrysler Financial containing certain customer information was destroyed or lost in transit and never arrived at the agency. The Data Tape cannot be easily accessed and requires specialized software and equipment to read, but it did contain some personal information that Chrysler Financial had obtained from you (most importantly, name, address, and social insurance number).

Chrysler Financial, in co-ordination with UPS, is conducting a thorough investigation but at this point in time the Data Tape has not been located. Having said that, we also have no reason to suspect that an unauthorized individual has actually retrieved and is using the personal information contained on the Data Tape, which we reiterate is not readily-accessible. Nonetheless, as a precautionary measure we are alerting you to this recent incident so that you may be watchful for signs of any possible misuse of your personal information by an unauthorized recipient.

We apologize for any inconvenience or alarm this may cause you. Chrysler Financial can confirm that this has not happened before within our quality control processes and, since the incident, we have put into place additional measures with this and other third party agencies to ensure that this will not happen again. Chrysler Financial has also, on a voluntary basis, disclosed this incident to the federal Privacy Commissioner's Office and the applicable provincial privacy offices.

We appreciate your business and want to assure you that Chrysler Financial remains committed to providing exceptional customer service while enforcing the strictest of privacy measures.

If you require any additional information or clarification, please do not hesitate to contact us at 1-800-263-6920.

Yours truly,

Brian Chillman  
General Counsel  
Chrysler Financial..."

- 4.1 Petitioner received, on or about April 21, 2008, an identical letter as the one produced as Exhibit P-3, addressed to her specific name as Defendant Daimlerchrysler's records will show, however said Petitioner has since lost or misplaced the said letter received, Defendant Daimlerchrysler being summoned to produce a copy of the letter sent to said Petitioner into the Court record;
5. As appears from the above-cited letter, P-3, the lost "Data Tape" contained certain customer information of the Class Members, including names, addresses, and social insurance numbers;
6. Defendant was (...) clearly negligent in the manner in which said information was being transferred and/or stored in the first place;
7. Furthermore, and as appears from the above-cited letter, P-3, Defendant (...) has not even offered any credit monitoring services to Class Members, who may now be vulnerable to fraud and/or identity theft due to the loss of their personal

information;

8. Moreover, although Defendant (...) was aware of the loss of the information since at least March 12, 2008, as detailed in the P-3 letter, Defendant chose to only notify the Class Members, by regular mail, namely the P-3 letter received in late April 2008 (April 21, 2008 in the case of Petitioner), notwithstanding the fact that Defendant(...) had the necessary contact information and clearly (...) had the notification and delivery means in order to contact the Class Members much quicker, which would have helped in preventing further fraud exposure for Class Members. Defendant's lack of haste in notifying Class Members in this regard is therefore indicative of its (...) negligence in the preservation, protection and safe keeping of the Class Members' personal information and interests;
9. Furthermore, Defendant(...) has not even created an Internet webpage or other similar services which could help Class Members gain information as to the status of the lost Data Tape containing their private information;
10. Petitioner and likely the other Class Members have already and will continue to experience anxiety, inconvenience, pain, suffering and/or fear due to the loss of their personal information, which has made Petitioner and other Class Members potential targets for fraud and/or identity theft;
11. Petitioner and the other notified Class Members will have to closely monitor their accounts looking for possible fraud from now on and for all periods subsequent to the loss of information (the exact date of which is still undetermined);
12. Should Class Members choose to sign up for credit monitoring services, following the loss of their personal information by Defendant(...) which is described above, Class Members will not only be inconvenienced by the safety measures that said credit monitoring services will put into place, but will also likely have to pay certain fees or costs in order to activate such a service and/or in order to replace their personal identification such as social insurance numbers, driver's licence numbers, etc. Defendant(...) is solely responsible and liable for these costs or fees to be paid by Class Members and for the inconvenience caused to Class Members in this regard;
13. Furthermore, should Class Members actually take these precautionary steps in order to prevent further fraud exposure, such as signing up for credit monitoring or changing their personal information, these steps cannot guarantee that the Class Members' credit is safe from now, after the loss of information by

Defendant(...);

14. Class Members can clearly fall victim to fraud or identity theft, in the future, due to Defendant's negligence in the safekeeping of their personal information;
15. If Class Members indeed fall victim to fraud or identity theft, they will be inconvenienced by the loss of funds and loss of time, which again Defendant(...) is solely responsible and liable to compensate;

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

16. Every member of the Group had his or her personal information in the Data Tape lost by Defendant(...) as described hereinabove;
17. Every member of the Group has or will experience anxiety, inconvenience, pain, suffering and/or fear due to the loss of personal information which has made them potential targets for fraud or identity theft;
18. Every member of the group has to closely monitor his or her accounts looking for possible fraud from now on and for all periods subsequent to the loss of information (the exact date of which is still undetermined);
19. Every member of the Group will be inconvenienced by any safety measures that may become necessary in order to prevent further fraud exposure, such as credit monitoring service or changing personal information, which, in any case, cannot guarantee that their credit files are safe from now on;
20. Furthermore, every Group Member may be required to pay costs or fees in order to sign up for such credit monitoring services, to change their personal information, or in order to otherwise protect themselves from further fraud exposure;
21. Moreover, considering the method used by Defendant(...) in order to notify Class Members of the loss of information, namely the sending of the P-3 letter by regular mail, it is possible that many Class Members have not actually been notified of the loss of their information, for whatever reason, and their credit file is therefore even more at risk since said Class Members will not even be looking for possible fraudulent use of their credit file or information, and will not have the

opportunity to take further preventative measures in order to protect their credit file;

22. Every member of the Group can still fall victim to fraud or identity theft, in the future, due to Defendant's negligence in the safekeeping of their personal information;
23. Finally, should any Class Member wish to terminate his or her contract with Defendant Daimlerchrysler, such as terminate the lease of an automobile or vehicle, as a result of their loss of confidence in Defendant Daimlershrysler following the loss of information described herein, additional costs, interest and/or penalties will surely be charged by Defendant Daimlerchrysler (or one of its related entities) to said Class Members. Defendant(...) is liable for these additional sums as well;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

24. The composition of the group makes the application of article 59 or 67 C.C.P. impractical for the following reasons:
  - a) The number of persons included in the group is estimated at well over 1000 considering the fact that Data Tapes are normally used in order to hold large amounts of data;
  - b) The names and addresses of persons included in the group are not known to the Petitioner (but are clearly known to Defendant(...));
  - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible;
25. The recourses of the members raise identical, similar or related questions of fact or law, namely:
  - a) Was Defendant negligent in the handling of and subsequent loss of the personal information of the Group Members?
  - b) Is Defendant liable to pay damages to the Group Members as a result of the loss of said information, including actual monetary losses incurred as well as pain, suffering, inconvenience, anxiety and other moral and/or punitive damages caused by the loss of said information?
26. The interests of justice favour that this motion be granted in accordance with its

conclusions;

### **NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

27. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages;
28. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

**GRANT** Plaintiffs' action against Defendant;

**CONDEMN** Defendant to pay to the members of the group compensatory damages for all monetary losses caused as a result of Defendant's loss of said member's personal information;

**CONDEMN** Defendant to pay an amount in punitive, exemplary and/or moral damages to every Group Member, estimated at 250\$ per person, with interest as well the additional indemnity;

**GRANT** the class action of Petitioners on behalf of all the members of the group;

**ORDER** the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

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

29. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) A great number of the members of the group reside in the judicial District of Montreal and in the appeal District of Montreal;
  - b) Defendant carries on business in the District of Montreal;
  - c) (...);
30. Petitioner who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the members of the group for the following reason:

- a) Her personal information was lost by Defendant(...) as described hereinabove;
  - b) She has already and will continue to suffer anxiety, inconvenience and possible other damages as a result of said loss of information;
  - c) She understands the nature of the action;
  - d) She is available to dedicate the time necessary for an action and to collaborate with members of the group;
  - e) Her interests are not antagonistic to those of other members of the group;
31. 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;

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

- All persons (including their estates, executors, or personal representatives), consumers, corporations, firms, businesses, and other organisations in all of Canada, whose personal information was stored or saved on a data tape, which was lost by Defendant while in transit in March of 2008 (exact date of the incident not yet determined);

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

- a) Was Defendant negligent in the handling of and subsequent loss of the personal information of the Group Members?
- b) Is Defendant liable to pay damages to the Group Members as a result of the loss of said information, including actual monetary losses incurred as well as pain, suffering, inconvenience, anxiety and other moral and/or punitive damages caused by the loss of said information?

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



the following:

**GRANT** Plaintiffs' action against Defendant;

**CONDEMN** Defendant to pay to the members of the group compensatory damages for all monetary losses caused as a result of Defendant's loss of said member's personal information;

**CONDEMN** Defendant to pay an amount in punitive, exemplary and/or moral damages to every Group Member, estimated at 250\$ per person, with interest as well the additional indemnity;

**GRANT** the class action of Petitioners on behalf of all the members of the group;

**ORDER** the treatment of individual claims of each member of the group in accordance with articles 1037 to 1040 C.C.P.;

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

**DECLARE** that all members of the group that 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 30 days from the date of the publication of the notice to the members;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P.;

**THE WHOLE** with costs to follow.

**MONTREAL, (...) June 22, 2009**

**SPIEGEL SOHMER INC.**

Per: \_\_\_\_\_

David Assor

Co-Attorneys for Petitioner and the  
Class Members

N° 500-06-000431-086

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**SUPERIOR COURT**  
*(Class action)*  
DISTRICT OF MONTRÉAL

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**ANNA MAZZONNA**

*Petitioner*

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CANADA INC./SERVICES FINANCIERS  
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(...)

*Defendant*

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**ORIGINAL**

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(87448-001)

**Me David Assor**  
**SPIEGEL SOHMER INC.**

Lawyers

5 Place Ville-Marie, Suite 1203  
Montreal, Quebec H3B 2G2

CANADA

Telephone: (514) 875-2100 • Telecopier: (514) 875-8237

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**BS 0251**

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