

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001250-238

(Class Actions)
SUPERIOR COURT

ESTEBEN HARGUINDEGUY, [REDACTED]
[REDACTED]

Applicant

v.

SUNCOR ÉNERGIE INC. (d.b.a. **Petro-Canada**), legal person having a principal establishment at 11701, rue Sherbrooke Est, city and district of Montréal, province of Québec, H1B 1C3

and

PRODUITS SUNCOR ÉNERGIE, S.E.N.C. (d.b.a. **Petro-Canada**), legal person having a principal establishment at 11701, rue Sherbrooke Est, city and district of Montréal, province of Québec, H1B 1C3

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES:

1. The Applicant seeks authorization to institute a class action on behalf of the following class of which he is a member:

Groupe :	Class:
Toutes les personnes au Canada dont les renseignements personnels ou financiers détenus par Petro-Canada ont été compromis lors de l'« incident de	All persons in Canada whose personal or financial information held by Petro-Canada was compromised in the "Cybersecurity Incident" that occurred on or around June

<p>cybersécurité (cybersecurity incident) » survenu le ou vers le 21 juin 2023 ou après, ou qui ont reçu une notification de Petro-Canada les informant de cette incident de cybersécurité.</p> <p>(ci-après le « groupe »)</p> <p>ou tout autre groupe qui sera déterminé par le Tribunal;</p>	<p>21, 2023 or thereafter, or who have received notification from Petro-Canada of such a cybersecurity incident.</p> <p>(hereinafter the “Class”)</p> <p>or any other class to be determined by the Court;</p>
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THE PARTIES:

2. The applicant is a consumer and has held a Petro Points card for the pass 15-17 years approximately;
3. Applicant communicates the extracts from the *Registraire des entreprises* for the Defendants *Suncor énergie inc.* and *Produits Suncor énergie, s.e.n.c.* (doing business under the name and hereinafter collectively referred to as “**Petro-Canada**”) *en liasse* as **Exhibit P-1**;
4. According to its website, Petro-Canada has more than 1,500 service stations and stores across Canada;
5. Petro-Canada has a loyalty program called “Petro-Points”. The Petro-Points loyalty program was designed and is operated by the Defendant *Produits Suncor énergie, s.e.n.c.*, as it appears from the document entitled “Conditions” available on the website: <https://www.petro-canada.ca/fr/personnel/conditions#petropoints>, communicated as **Exhibit P-2**;
6. In particular, the Defendants impose the following conditions on Petro-Points members, although even more information is provided, including physical addresses and phone numbers (Exhibit P-2):

tous les membres devront respecter au moins l'une des conditions suivantes pour accumuler et échanger des Petro-Points :

1. avoir un compte en ligne avec une adresse de courriel valide,
 2. avoir une carte de paiement RBC liée, ou
 3. avoir effectué un échange récent (à partir du 29 juin 2020)
7. The Defendants carry on an enterprise within the meaning of the Civil Code. Given the close ties between the Defendants, and considering that their obligations were contracted for the operation of an enterprise, they are presumed solidarily liable for the acts and omissions of the other;

THE ISSUE:

8. On July 6, 2023, the Defendants admitted that their customers' data and privacy was breached, and published the following on Twitter, as it appears from **Exhibit P-3**:

Comme nous l'avons communiqué le 26 juin, Petro-Canada a fait l'objet d'un incident de cybersécurité. Selon notre enquête à ce jour, nous avons déterminé qu'une partie non autorisée avait accédé à notre réseau TI le 21 juin 2023 ou autour de cette date et que notre programme Petro-Points avait été touché. La partie non autorisée a **obtenu l'information sur les coordonnées de base des membres.**

Par mesure de précaution, nous avons désactivé nos systèmes Petro-Points, incluant notre application et notre site Web et nous menons une surveillance de sécurité accrue.

Même si la fonction d'échange de points est actuellement désactivée, votre solde de points est en sécurité et nous offrirons un crédit pour les points accumulés pendant l'interruption.

Comme vous devriez toujours le faire, nous recommandons aux membres Petro-Points de rester à l'affût des courriels ou messages inhabituels.

Vous devez confirmer que toute demande de jumelage, de téléchargement, ou vous invitant à appeler quelqu'un ou fournir des renseignements personnels est légitime.

La sécurité de vos renseignements personnels est importante pour nous. Nous regrettons que cet incident se soit produit et nous vous remercions de votre patience et votre compréhension tandis que nous cherchons à résoudre la situation.

Si vous avez des questions, **veuillez communiquer avec notre équipe du service à la clientèle de Petro-Canada au 1-800-668-0222.**

9. Applicant, very concerned about the privacy breach, tried calling the phone number 1-800-668-0222 and multiple occasions and was kept on hold for approximately 25 minutes each time. At no point could he speak to a live person and the recording stated that this line was receiving a large volume of calls and that people should call back later (Applicant tried calling both during the day and in the evening);
10. On or about June 21, 2023 (and presumably before), Defendants were made aware that an unauthorized third party had accessed and obtained customer information (hereinafter the "**Data Breach**"). Their first Tweet about the issue was

on June 24, 2023, but they did not mention anything about the Data Breach, as it appears from **Exhibit P-4**:

L'accès à votre compte Petro-Points depuis notre application et notre site Web est temporairement non disponible. Nous travaillons fort pour **résoudre le problème** et nous excusons des incon vénients. Merci de votre patience!

11. The above publication gave the impression that the Defendants were dealing with a technical problem and certainly not a serious Data Breach;
12. It was only on June 26, 2023, that the Defendants admitted the Data Breach, as it appears from their Tweets communicated as **Exhibit P-5**:

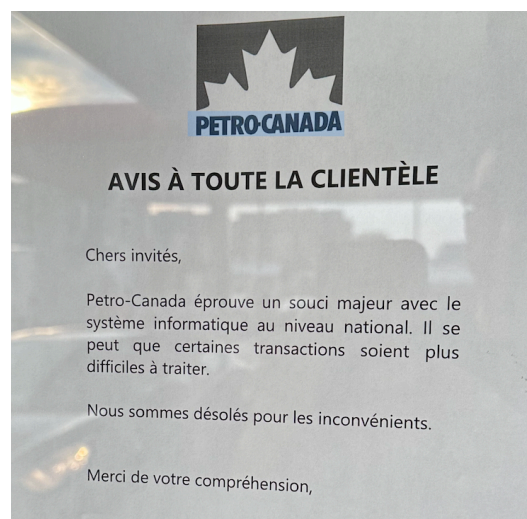
Petro-Canada est une entreprise de Suncor et ensemble, nous **répondons à un incident de cybersécurité**. Bien que nos établissements soient ouverts, vous pouvez subir des interruptions de certains services.

À l'heure actuelle, certains de nos établissements n'acceptent que l'argent comptant et la connexion à notre application et aux Petro-Points n'est pas disponible. Les lave-autos pourraient également ne pas être disponibles à certains emplacements.

Ce qui compte le plus pour nous, c'est vous et votre sécurité. Merci pour votre soutien et votre compréhension alors que nous nous efforçons de vous faire aller de l'avant.

13. As of today, i.e. at least more than 2 weeks after the Data Breach, the Defendants have not communicated with any Class members, nor have they offered any form of protection whatsoever;
14. As of today, i.e. at least more than 2 weeks after the Data Breach, the Defendants have still not confirmed which database and information was accessed and stolen by the unauthorized third party, and have remained vague by using terms such as "*La partie non autorisée a obtenu l'information sur les coordonnées de base des membres*" ("*the unauthorized party obtained members' basic contact information*");
15. Defendants are clearly trying to downplay the severity of the Data Breach by using terms such as "basic" and have acted negligently both in protecting the data of Class members and in protecting them after the Data Breach. Applicant has serious reasons to believe that the Data Breach includes some or all of the following personal information:
 - First and last name;
 - Personal mailing address
 - Business mailing address;

- Email address;
 - Phone number;
 - Date of Birth;
 - Credit information or bank account information in certain cases.
16. Defendants, who required the personal and financial information of its customers in the context of signing up for the Petro-Points program, had the obligation to protect that information and to ensure by all proper and required means that this information is safeguarded from compromise, theft or loss;
 17. When a data breach affecting millions of consumers occurs, Defendants had the obligation to immediately and accurately notify its customers in order to help them prevent further fraud, identity theft, financial losses, losses of time, stress and inconvenience;
 18. This lawsuit stems from Defendants' failure to follow these obligations;
 19. Defendants claim that on June 21, 2023, they were first made aware that their database had been breached by unknown parties. Applicant is presently not aware of the exact date(s) on which the Data Breach occurred nor on which date Defendants knew or should have known about the Data Breach;
 20. Defendants also claim that the Data Breach and the type of information accessed were "determined" on June 21, 2023. However, Defendants inexplicably waited several weeks before publicly announcing the Data Breach on Twitter on July 6, 2023;
 21. Class members who do not have access to Twitter are still left in the dark about the Data Breach. A picture of the explanation posted on the front entrance of Petro-Canada on Décarie boulevard on July 7, 2023, is communicated herewith as **Exhibit P-6**:



22. There is no mention whatsoever about the Data Breach in Exhibit P-6;
23. The Data Breach has been reported by multiple media outlets, as appears from the various articles reporting the issue communicated herewith *en liasse* as **Exhibit P-7**;
24. Despite the fact that the Data Breach was announced in multiple media outlets, Defendants never communicated a notice to Class members. This decreased the likelihood that the consumers would be aware of the Data Breach and was surely intended to minimize the adverse effects of the Data Breach on Petro-Canada's sales and reputation;
25. Defendants were negligent in choosing to wait before actually notifying the affected customers (Class members), leaving them at greater risk of fraud and identity theft, although Defendants have and had the proper contact information and financial means in order to quickly reach the Class members (other than Twitter which has a limited audience reach);
26. Moreover, Defendants failed to confirm that they would indemnify and hold the Class members harmless of any losses or damages suffered as a result of the Data Breach;
27. Defendants have not offered any credit monitoring not any amount of insurance reimbursement policy to Class members;
28. Fraud can occur well after the Data Breach, especially in instances where such a large number of customers are affected;
29. Defendants failed to mandate (and pay for) TransUnion Canada and Equifax Canada to automatically activate credit monitoring services or fraud alerts for Class members, putting these Class members at greater risk of fraud;
30. Defendants were negligent and committed faults in this regard since they failed to activate the TransUnion and Equifax services for their Canadian customers, and many Class members are not even aware of the Data Breach;
31. By choosing not to automatically activate both credit agencies' credit monitoring services and by not posting the proper fraud alerts for all Class members (which could have been done quickly by email, text message, or a pop-up notification on their smart phone applications), Defendants clearly chose to save money instead of helping protect the Class members. Indeed, there is a fee payable to TransUnion and Equifax Canada for activating credit monitoring services and/or to post a fraud alert but Defendants are not offering this and have not paid to automatically activate these services;
32. Defendants sought to impart a false sense of security to the Class members by deceptively downplaying the Data Breach which involves the private information of several million Class members in Canada. Indeed, Defendants have falsely

represented that their customers had only “basic contact information” accessed and stolen;

33. After becoming aware of the Data Breach, Defendants waited an unreasonable, negligent and irresponsible amount of time before starting to contact the Class Members in order to inform them of Data Breach;
34. Accordingly, Defendants failed to promptly and quickly disclose the Data Breach to the Class members/victims of the Data Breach.
35. Personal information is a valuable commodity. There is a “cyber black-market” available for criminals to openly post personal information on a number of Internet websites in what is known as the “dark web”. This demand increases the likelihood of Class members falling victim to identity theft;
36. As a result of Defendants’ inadequate data security, unauthorized third parties / cyber-criminals now possess the private information of Applicant and the Class members;
37. Immediate notice of the breach is essential to obtain the best protection afforded by identity theft protection services. By letting several weeks pass before starting to notify Class members (with many not even informed yet), Defendants failed to provide such immediate notice, thus further exacerbating the damages sustained by Applicant and the Class Members;
38. Defendants’ customers have been and/or will be exposed to fraud and/or identity theft and these customers have been harmed as a result. Harm to victims of the Data Breach includes without limitation fraudulent charges on their accounts, disbursements incurred such as for purchasing extra insurance, placing a fraud alert on their credit file, loss time and expenses related to: (a) finding fraudulent charges; (b) cancelling and reissuing cards or bank accounts; (c) credit monitoring and identity theft prevention; (d) imposition of withdrawal and purchase limits on compromised accounts; (e) the general nuisance and annoyance of dealing with all these issues resulting from the Data Breach; and, in this particular case, (f) waiting for hours on hold on the Defendants’ supposedly dedicated phone number to assist with this Data Breach (1-800-668-0222), which nobody ever answers, even after close to an hour on hold;
39. On top of actual monetary losses related to fraud and identity theft, Applicant and the Class members have already and/or will continue to experience stress, anxiety, fear, inconvenience and/or loss of time due to the loss of their personal information, which has made Applicant and the Class members potential targets for fraud and/or identity theft.
40. The Applicant and the Class Members have suffered or will suffer certain additional inconveniences and damages including but not limited to the following:
 - a) Delays in the processing of any future requests or applications for credit in the

future;

- b) The obligation to closely monitor their accounts for possible fraud for all periods subsequent to the loss of information, for many months or years;
 - c) The obligation to be even more attentive than normally necessary concerning the communication of their personal information since they are at threat of social engineering and phishing, due to the higher possibility of fraudulent activity caused by Defendants' loss of the information (which is what the Defendants tell them to do in **Exhibit P-3**);
 - d) The obligation to inform their financial institutions of the loss of the information by the Defendants and to deal with said financial institutions in order to reduce risk of fraud as much as possible. In this regard, certain Class members have and/or will close their accounts and open new accounts in order to protect themselves, which will cause further loss of time, inconvenience and costs;
 - e) Obtaining and reviewing their credit reports, regularly, in order to look for unauthorized transactions or fraud;
 - f) A negative effect on their credit score; and, in this particular case,
 - g) Loss of money because they could not redeem their Petro-Points for gas (or other goods and services such as car washes) since June 21, 2023 and ongoing.
41. Many Class members have also paid or will pay certain fees or costs in order to further protect themselves, such as in order to activate a credit monitoring service or in order to purchase fraud insurance or alerts, title or other insurance, to change their personal information such as requesting new driver's licence numbers or Social Insurance Numbers, for credit protection consulting services, etc. Defendants are solely responsible for these costs or fees paid by the Class members and for the inconvenience caused to Class Members in this regard;
42. Applicant invokes *inter alia* the following sections of provincial and federal legislation which apply under the circumstances and Applicant respectfully submits that the mere fact that the personal information was entrusted to the Defendants and subsequently lost by Defendants as detailed above constitutes an unlawful violation of the Class members' fundamental rights, which makes Defendants liable to pay compensatory, moral and punitive damages:
- a) Sections 3, 35, 36, 37 and 1621 of the *Civil Code of Quebec*, S.Q. 1991, c. 64;

- b) Sections 5 and 49 of the *Charter of Human Rights and Freedoms*, CQRL, c. C-12;
 - c) Sections 1, 2, 3.1 and following, 10, 13 and 17 of the *Act Respecting the Protection of Personal Information in the Private Sector*, CQRL, c. P-39.1;
 - d) Sections 2, 3, 5 and 11 of the *Personal Information Protection and Electronic Documents Act*, SC 2000, c. 5, as well as its sections 4.1, 4.3, 4.7 to 4.7.4 of its Schedule 1;
43. Applicant alleges that the Defendants did not have a sufficient system or adequate measures in place to adequately protect the risks of its users' personal and highly sensitive information being either: (a) improperly accessed; (b) stolen; and (c) compromised;
44. According to experts, the theft and disclosure of Class members' personal information to third parties, even if just their phone numbers, will cause serious damages, as it appears from a Reader's Digest Canada article titled "*Alarming Things Hackers Can Do with Just Your Cell Phone Number*", communicated as **Exhibit P-8**:

After contacting some security experts for their take, it turns out that finding important details about someone's life with just a phone number is incredibly alarmingly easy...and profitable. "In the wrong hands, your cell number can be used to steal your identity and take over almost every online account you have," Veronica Miller, cybersecurity expert at VPNOverview, tells Reader's Digest.

There are several ways a hacker can use a phone number to turn your life upside down. Here are some ways criminals can target you and how to protect yourself.

45. This Court has previously found (see *Zuckerman c. Target Corporation*, 2017 QCCS 110) that "setting up credit monitoring and security alerts, obtaining credit reports, and cancelling cards or closing accounts and replacing them are not "ordinary annoyances, anxieties and fears that people living in society routinely, if sometimes reluctantly, accept" but may amount to something more" (para. 73);

I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (S. 575 CCP):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

46. Applicant reiterates the above allegations in the present section, as though recited at length;

47. The Applicant has been a Petro-Points members for approximately 15-17 years;
48. Like all Class members, the Applicant's Petro-Points account is linked and associated to, at the least, his full name, phone number, address and email address;
49. Applicant used his Petro-Points card to accumulate points which can be redeemed for goods and services such as gas and car washes;
50. Although the Applicant and Class members do not pay a fee for their Petro-Points membership, the contract is still a consumer contract for the use of services governed by the CPA (Suncor Energy Inc. is a publicly traded corporation on the TSX and NASDAQ with a \$50.2 billion market cap);
51. The Applicant's contractual relationship with the Defendants includes and requires that the Defendants take adequate measures and precautions to safeguard the personal and confidential information he provides them with, including his full name, email address, physical address and phone number;
52. This is all the more so in the present case give that Petro-Canada declares and boasts that "*La sécurité de vos renseignements personnels est important pour nous*" (Exhibit P-3). It turns out that these representations did not live up to their expectations and were therefore false representations within the meaning of the CPA;
53. The Defendants' contractual obligations towards the Applicant include the protection and non-disclosure of his personal and confidential information;
54. The Defendants' security measures in place before the breach were clearly insufficient;
55. Therefore, the Applicant is entitled to claim damages, as well as punitive damages in an amount to be determined, pursuant the CPA and the Quebec Charter;
56. The Applicant's claim for damages is based on breaches by the Defendants of the following legislation:
 - a) Articles 3, 35 and following, and 1458 C.C.Q.;
 - b) Articles 5 and 49 of the Quebec Charter;
 - c) Section 16, 40-42 and 215 and following CPA;
 - d) Articles 1, 2, 3.1 and following, 5, 10, 13, 14 and 17 of *An Act respecting the Protection of Personal and Private Information in the Private Sector* (Quebec); and
 - e) Sections 5 and following and Schedule 1 of PIPEDA.

57. The Applicant further submits that the Defendants should be required to pay for credit-monitoring and anti-tracking software due to their breaches and negligence;
58. In order to help protect himself from fraud and identity theft, Applicant is subscribed to and will purchase (when his currently active subscription ends) the recurring monthly subscription of the Equifax Canada Complete Premier credit monitoring services, at a price of \$21.94 per month (namely \$19.95 plus taxes), which amounts he claims from Defendants as damages stemming directly from the Data Breach. The same applies for the Equifax Canada 6-year fraud alert on his credit file, the whole in order to further protect his credit files and identity;
59. Applicant adds that since June 21, 2023, he has been unable to accumulate or redeem his Petro-Points. This has caused him quantifiable damages of approximately \$5.00 (which is the approximate redemption value of his current point balance) because he was unable to use them due to the Data Breach. He is still unable to accumulate or redeem his Petro-Points as of the filing of this action;
60. For example, on Wednesday, July 5, 2023, Applicant drove to Petro-Canada to fill his tank, but was told by the clerk that Petro-Canada can only accept cash payments. He therefore drove to the nearby Esso and filled his tank, as it appears from the receipt communicated as **Exhibit P-9**. One of his losses, therefore, is that he will never accumulate Petro-Points for this transaction (as well as a few others that he did similarly since June 21, 2023) and that he was prevented from redeeming his Petro-Points (which have a monetary value) for these transactions;
61. The Applicant's damages are a direct and proximate result of the Defendants omissions, breaches and negligence;

Punitive Damages:

62. For all of the reasons more fully detailed above, which are reiterated as though recited at length in the present section, Applicant respectfully submits that Defendants were grossly and/or intentionally negligent and are liable to pay punitive damages to the Class members;
63. In fact, without limiting the generality of the forgoing, Defendants were grossly negligent and/or intentionally negligent when they:
 - a) did not follow or properly implement an effective data security industry standard to protect the Class members' highly sensitive personal and financial information, which information Petro-Canada allowed to be accessed and/or downloaded/stolen by unauthorized third parties;
 - b) failed to promptly and clearly notify the Applicant and the Class members of the Data Breach;

- c) failed to properly ensure that Applicant and Class members are protected by credit monitoring services by both Equifax Canada and TransUnion and failing to post fraud alerts on the Class members' credit files immediately after the Data Breach;
 - d) failed to timely detect and prevent the Data Breach itself until on or about June 21, 2023, whereas it certainly occurred much earlier (leaving the Class members' information at risk and "unsecured" for an important amount of time);
 - e) failed to even provide protection (Equifax or TransUnion) to Class members;
 - f) failed to offer indemnification for losses suffered by Class members; and
 - g) mislead Class members about having a dedicated toll-free number to assist them, because nobody answers this phone number (1-800-668-0222), even after close to an hour on hold.
64. Considering the above and considering the fact that Defendants have violated various laws which have been enacted in order to protect the Class members' personal and/or financial information, Defendants are liable to pay punitive damages to all of the Class members due to the loss of private information itself, aside from any other compensatory and moral damages suffered by the Class members;
65. Defendants' above detailed actions qualify the fault as intentional which is a result of wild and foolhardy recklessness in disregard for the rights of the Class members, with full knowledge of the immediate and natural or at least extremely probable consequences that its action would cause to the Class members;
66. Defendants' negligence has shown a malicious, intentional, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency. In that event, punitive damages should be awarded to Class members;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

67. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
- a) Were Defendants negligent in the storing and safekeeping of the personal information of the Class members whose information was compromised?
 - b) Once informed of the breach, did the Defendants act negligently?
 - c) Did Defendants commit a fault by delaying the notification to Class members that a Data Breach had occurred?

- d) Did Defendants commit a fault due to the deficiencies of the notices given to Class Members about the Data Breach?
 - e) Are Class members entitled to compensatory, moral or punitive damages and in what amounts?
68. All Class members have a common interest in proving the Defendants' liability;
69. In this case, the legal and factual backgrounds at issue are common to all members of the Class;
70. Every Class member subscribed to the Petro-Points program under the terms that their private information would be safeguarded, whereas Defendants failed in doing so;
71. Every member of the Class is entitled to claim damages and to request that the Defendants pay for credit-monitoring and permanent anti-tracking software. Some Class members may even have the change their phone numbers, which is an enormous inconvenience in today's digital age;
72. Class members are also justified in claiming an aggregate amount for moral damages, punitive damages, and damages troubles and inconvenience;
73. All of the damages to the Class members are a direct and proximate result of the Defendants' negligence and breaches;
74. Indeed, all of Class members are unable to redeem or collect Petro-Points since on or around June 21, 2023, which causes them quantifiable financial damages (for example, if they want to purchase windshield washer fluid, they would be forced to pay in cash instead of redeeming the Petro-Points which they own. Similarly, if they paid in cash they would not accumulate points for that transaction);
75. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
76. The dispute between the parties relates in part to the Defendants' activities in Quebec (since the Petro-Points card/mobile application can be used all over Quebec even if a Class member resides outside of the province);
77. Class members' claim for damages is notably based on the following:
- a) *Civil Code of Québec*, CQLR c CCQ-1991, including articles 3, 35 and following, and 1458 (Quebec);
 - b) *Charter of Human Rights and Freedoms*, CQLR c C-12, including articles 5 and 49 (Quebec);

- c) *Consumer Protection Act*, CQLR c P-40.1, including sections 16, 40-42, 215 and ff. and 272 (Quebec);
- d) *An Act respecting the Protection of Personal and Private Information in the Private Sector*, CQLR c P-39.1, including articles 1, 2, 3.1 and following, 5, 10, 13, 14 and 17 (Quebec);
- e) *Consumer Protection Act*, 2002, SO 2022, c 30, Sch A, including sections 8, 11, 14-15, and 17-18 (Ontario);
- f) *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31, including sections 38, 39, 41, 42, and 61 (Ontario);
- g) *Privacy Act*, RSBC 1996, c 373, including section 1 (British Columbia);
- h) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, including sections 4, 5, and 7-10, 171-172 (British Columbia);
- i) *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c 165 (British Columbia);
- j) *Consumer Protection Act*, RSA 2000, c C-26.3, including sections 5-9, 13, and 142.1 (Alberta);
- k) *Personal and Private Information Protection Act*, SA 2003, c P-6.5 (Alberta);
- l) *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25 (Alberta);
- m) *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2, including sections 5-9, 16, 18-23, 26, 36, and 93 (Saskatchewan);
- n) *The Privacy Act*, RSS 1978, c P-24, including section 2 (Saskatchewan);
- o) *The Freedom of Information and Protection of Privacy Act*, SS 1990-91, c F-22.01 (Saskatchewan)
- p) *The Business Practices Act*, CCSM, c B120, including sections 2-9 and 23 (Manitoba);
- q) *The Privacy Act*, CCSM c P125, including section 2 (Manitoba);
- r) *The Freedom of Information and Protection of Privacy Act*, CCSM c F175 (Manitoba);
- s) *Consumer Product Warranty and Liability Act*, SNB 1978, c 18.1, including sections 4, 13, 15, and 23 (New Brunswick);

- t) *Right to Information and Protection of Privacy Act*, SNB 2009, c R-10.6 (New Brunswick);
- u) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, including sections 7-10 and *Trade Practices Act*, RSNL 1990, c T-7, including sections 5-7 and 14 (Newfoundland and Labrador);
- v) *Privacy Act*, RSNL 1990, c P-22, including section 3 (Newfoundland and Labrador);
- w) *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c A-1.2 (Newfoundland and Labrador);
- x) *Consumer Protection Act*, RSNS 1989, c 92, including sections 26-29 (Nova Scotia);
- y) *Freedom of Information and Protection of Privacy Act*, SNS 1993, c 5 (Nova Scotia);
- z) *Business Practices Act*, RSPEI 1988, c B-7, including sections 2-4 (Prince Edward Island);
- aa) *Freedom of Information and Protection of Privacy Act*, RSPEI 1988, c F-15.01 (Prince Edward Island);
- bb) *Consumers Protection Act*, RSY 2002, c 40, including sections 58 and 86 (Yukon);
- cc) *Access to Information and Protection of Privacy Act*, RSY 2002, c 1 (Yukon);
- dd) *Consumer Protection Act*, RSNWT 1988, c C-17, including sections 70-71 (Northwest Territories);
- ee) *Access to Information and Protection of Privacy Act*, SNWT 1994, c 20 (Northwest Territories);
- ff) *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17, including sections 70-71 (Nunavut);
- gg) *Access to Information and Protection of Privacy Act*, SNWT (Nu) 1994, c 20 (Nunavut);
- hh) *Competition Act*, RSC 1985, c C-34, including sections 36 and 52 (Canada);
- ii) *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, including sections 5 and following and Schedule 1 (Canada);

- jj) *Digital Privacy Act*, S.C. 2015 (Canada);
- kk) Tort of intrusion upon seclusion;
- ll) Breach of privacy;
- mm) Breach of confidence;
- nn) Breach of contract;
- oo) Violation of Privacy Policy;
- pp) Vicarious liability;
- qq) Trouble, inconvenience, and lost time;
- rr) Stress and anxiety;
- ss) Identity theft protection;
- tt) Waiver of torts;
- uu) Unjust enrichment;
- vv) Constructive trust;
- ww) Restitution;
- xx) Disgorgement;

C) THE CLASS

- 78. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 79. The Applicant conservatively estimates the number of persons included in the class to be in the millions;
- 80. The names, phone numbers and contact information of all persons included in the Class are not known to the Applicant, however, are all in the possession of the Defendants (but also in possession of the unauthorized third party);
- 81. Class members are very numerous and are dispersed across the country;
- 82. 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;

83. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

84. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:

- a) he is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
- b) he is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
- c) his interests are not antagonistic to those of other Class members;

85. Additionally, the Applicant respectfully adds that:

- a) he has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
- b) he mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class members, recognized and protected so that they can be compensated and force the Defendants to pay for and offer them credit and fraud monitoring services, as well as an anti-tracking software;
- c) he cooperates and will continue to fully cooperate with his attorneys, who have experience in consumer protection and privacy related class actions;
- d) he understands the nature of the action.

86. As for identifying other Class members, the Applicant draws certain inferences from the situation and realizes that by all accounts, there is a very significant number of Class members that find themselves in an identical situation, and that it would not be useful to attempt to identify each of them given their sheer numbers;

87. For the above reasons, the Applicant respectfully submits that his interest and competence are such that the present class action could proceed fairly and in the best interest of Class members;

II. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

88. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;

89. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT the Representative Plaintiff's action against Defendants on behalf of all Class members;

ORDER the Defendants to permanently provide Class members with credit and fraud monitoring services, as well as anti-tracking software for their devices associated to the compromised information;

CONDEMN the Defendants to pay the Representative Plaintiff and Class members compensatory damages in an amount to be determined;

CONDEMN the Defendants to pay the Representative Plaintiff and Class members moral damages and damages for troubles and inconvenience in an amount to be determined;

CONDEMN the Defendants to pay Class members an amount to be determined on account of punitive damages;

ORDER the collective recovery of all damages to the Class members;

CONDEMN the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;

DECLARE that Defendants are solidarily liable for the monetary condemnation pronounced against the other;

ORDER the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest 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 Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

III. JURISDICTION AND NATIONAL CLASS

90. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Defendants both have their principal establishment in Montreal;

91. Article 3148(2) and (3) CCQ allows the Court to authorize a national class action because the Defendants have a principal establishment in Quebec and the dispute relates to their activities in Quebec (and a fault was committed in Quebec and the obligations arising from the contract was to be performed in Quebec since the Petro-Points can be accumulated and redeemed in the province of Quebec). Therefore, the jurisdiction of the Superior Court of Quebec to authorize a national class action is anchored through a valid connecting factor under article 3148 CCQ;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** the bringing of a class action in the form of an originating application in damages, punitive damages and for injunctive relief;
2. **APPOINT** the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

<p>Groupe :</p> <p>Toutes les personnes au Canada dont les renseignements personnels ou financiers détenus par Petro-Canada ont été compromis lors de l'« incident de cybersécurité (cybersecurity incident) » survenu le ou vers le 21 juin 2023 ou après, ou qui ont reçu une notification de Petro-Canada les informant de cette incident de cybersécurité.</p> <p>(ci-après le « groupe »)</p> <p>ou tout autre groupe qui sera déterminé par le Tribunal;</p>	<p>Class:</p> <p>All persons in Canada whose personal or financial information held by Petro-Canada was compromised in the “Cybersecurity Incident” that occurred on or around June 21, 2023 or thereafter, or who have received notification from Petro-Canada of such a cybersecurity incident.</p> <p>(hereinafter the “Class”)</p> <p>or any other class to be determined by the Court;</p>
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3. **IDENTIFY** the principal questions of fact and law to be treated collectively as the following:
 - a) Were Defendants negligent in the storing and safekeeping of the personal information of the Class members whose information was compromised?
 - b) Once informed of the breach, did the Defendants act negligently?
 - c) Did Defendants commit a fault by delaying the notification to Class members that a Data Breach had occurred?
 - d) Did Defendants commit a fault due to the deficiencies of the notices given to Class Members about the Data Breach?

- e) Are Class members entitled to compensatory, moral or punitive damages and in what amounts?

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

1. **GRANT** the Representative Plaintiff's action against Defendants on behalf of all Class members;
2. **ORDER** the Defendants to permanently provide Class members with credit and fraud monitoring services, as well as anti-tracking software for their devices associated to the compromised information;
3. **CONDEMN** the Defendants to pay the Representative Plaintiff and Class members compensatory damages in an amount to be determined;
4. **CONDEMN** the Defendants to pay the Representative Plaintiff and Class members moral damages and damages for troubles and inconvenience in an amount to be determined;
5. **CONDEMN** the Defendants to pay Class members an amount to be determined on account of punitive damages;
6. **ORDER** the collective recovery of all damages to the Class members;
7. **CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the *Application to Authorize a Class Action*;
8. **DECLARE** that Defendants are solidarily liable for the monetary condemnation pronounced against the other;
9. **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;
10. **ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;
11. **CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;
12. **RENDER** any other order that this Honourable Court shall determine;

5. **ORDER** the publication of a notice to the class members in accordance with article 579 C.C.P. pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;
6. **FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;
7. **DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
8. **RENDER** any other order that this Honourable Court shall determine;
9. **THE WHOLE** with costs including publication fees.

Montreal, July 7, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** *En liasse*, extracts from the *Registraire des entreprises* for the Defendants *Suncor énergie inc.* and *Produits Suncor énergie, s.e.n.c.*;
- Exhibit P-2:** **Petro-Points** "Conditions" available on the website: <https://www.petro-canada.ca/fr/personnel/conditions#petropoints>;
- Exhibit P-3:** Petro-Canada Tweets published on July 6, 2023;
- Exhibit P-4:** Petro-Canada Tweets published on June 21, 2023;
- Exhibit P-5:** Petro-Canada Tweets published on June 26, 2023;
- Exhibit P-6:** Picture of the notice posted on the front entrance of Petro-Canada on Décarie boulevard on July 7, 2023;
- Exhibit P-7:** *En liasse*, news articles reporting on the Data Breach;

Exhibit P-8: Copy of Reader's Digest Canada article titled "*Alarming Things Hackers Can Do with Just Your Cell Phone Number*";

Exhibit P-9: Copy of Applicant's Esso receipt.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, July 7, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 C.P.C.)

TO: SUNCOR ÉNERGIE INC.
11701, rue Sherbrooke Est
Montréal, Québec, H1B 1C3

PRODUITS SUNCOR ÉNERGIE, S.E.N.C.
11701, rue Sherbrooke Est
Montréal, Québec, H1B 1C3

Defendants

TAKE NOTICE that Applicant's *Application to Authorize the Bringing of a Class Action* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, July 7, 2023

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran
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500-06-001250-238

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ESTEBEN HARGUINDEGUY

Applicant

v.

SUNCOR ÉNERGIE INC.
and
PRODUITS SUNCOR ÉNERGIE, S.E.N.C.

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

ORIGINAL

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N/D: JZ-258
