

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup> : 500-06-000566-113

SUPERIOR COURT  
(Class Action)

YOUVAL BENABOU, [REDACTED]  
[REDACTED];

*Petitioner*

-vs-

SONY OF CANADA LTD., [REDACTED]  
[REDACTED];

-and-

SONY COMPUTER ENTERTAINMENT  
AMERICA LLC, [REDACTED]  
[REDACTED];

-and-

SONY NETWORK ENTERTAINMENT  
INTERNATIONAL LLC, [REDACTED]  
[REDACTED];

*Respondents*

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**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, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER RESPECTFULLY STATES THE FOLLOWING:**

**GENERAL PRESENTATION**

1. Petitioner wishes to institute a class action on behalf of the following group, of which Petitioner is member, namely:
  - All persons in all of Canada (or subsidiarily all persons in Quebec), who were users of a Sony PlayStation® gaming console and the PlayStation® Network ("PSN") or Qriocity services, and whose personal information was lost by, or stolen from, Respondents on or about April 17 to 19, 2011, or any other group to be determined by the Court;

(hereinafter, both Quebec resident and non-Quebec resident Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", "Consumer(s)", "Users" or "Customers");
2. Respondent Sony of Canada Ltd. is a Canadian company, with its head office located at 115 Gordon Baker Road, in the City of Toronto, Province of Ontario;
3. Respondent Sony Computer Entertainment America LLC (formerly Sony Computer Entertainment America Inc.) is a Delaware company with its head office in Foster City, California;
4. Respondent Sony Network Entertainment International LLC is a Delaware company with its head office in Los Angeles, California;
5. Herein, references to the "**Respondents**" or collectively "**Sony**" are intended to include the above mentioned corporations, as well as their subsidiaries, affiliates, predecessors, parents, and associated companies or agents;
6. Sony are the manufacturers of the PlayStation® gaming consoles and also offer, manager and administer online service networks for PlayStation® console users, enabling online gaming, texting and chatting with friends, webpage viewing, downloading and purchasing games, demos, movies, TV series, etc., the whole as summarized on Sony's PlayStation websites, extracts of which are communicated herewith as **Exhibit R-1**. These online network services are known as *inter alia* PlayStation® Network ("PSN") or Qriocity service (hereinafter collectively "**PSN**");

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

7. Petitioner signed up with the Sony PSN approximately three (3) years ago and used its online services thereafter, and he purchased at least one online game on the PSN;
8. On or about April 26, 2011, Sony issued the following notice on its website:

### **“PlayStation® Knowledge Center**

Answer ID        2185  
Products         PlayStation@Network

Network Status

Date Updated    04/26/2011 04:39 PM

### **PlayStation@Network Service Outage**

We have discovered that between April 17 and April 19, 2011, certain PlayStation Network and Qriocity service user account information was compromised in connection with an illegal and unauthorized intrusion into our network. In response to this intrusion, we have:

1. Temporarily turned off PlayStation Network and Qriocity services
2. Engaged an outside, recognized security firm to conduct a full and complete investigation into what happened
3. Quickly taken steps to enhance security and strengthen our network infrastructure by re-building our system to provide you with greater protection of your personal information.

We greatly appreciate your patience, understanding and goodwill as we do whatever it takes to resolve these issues as quickly and efficiently as practicable.

Although we are still investigating the details of this incident, we believe that an unauthorized person has obtained the following information that you provided: name, address (city, state, zip), country, email address, birthdate, PlayStation Network/Qriocity password and login, and handle/PSN online ID. It is also possible that your profile data, including purchase history and billing address (city, state, zip), and your PlayStation Network/Qriocity password security answers may have been obtained. If you have authorized a sub-account for your

dependent, the same data with respect to your dependent may have been obtained. While there is no evidence at this time that credit card data was taken, we cannot rule out the possibility. If you have provided your credit card data through PlayStation Network or Qriocity, out of an abundance of caution we are advising you that your credit card number (excluding security code) and expiration date may have been obtained.

For your security, we encourage you to be especially aware of email, telephone, and postal mail scams that ask for personal or sensitive information. Sony will not contact you in any way, including by email, asking for your credit card number, social security number or other personally identifiable information. If you are asked for this information, you can be confident Sony is not the entity asking. When the PlayStation Network and Qriocity services are fully restored, we strongly recommend that you log on and change your password. Additionally, if you use your PlayStation Network or Qriocity user name or password for other unrelated services or accounts, we strongly recommend that you change them, as well.

To protect against possible identity theft or other financial loss, we encourage you to remain vigilant, to review your account statements and to monitor your credit reports. We are providing the following information for those who wish to consider it:

- U.S. residents are entitled under U.S. law to one free credit report annually from each of the three major credit bureaus. To order your free credit report, visit [www.annualcreditreport.com](http://www.annualcreditreport.com) or call toll-free (877) 322-8228.
- We have also provided names and contact information for the three major U.S. credit bureaus below. At no charge, U.S. residents can have these credit bureaus place a "fraud alert" on your file that alerts creditors to take additional steps to verify your identity prior to granting credit in your name. This service can make it more difficult for someone to get credit in your name. Note, however, that because it tells creditors to follow certain procedures to protect you, it also may delay your ability to obtain credit while the agency verifies your identity. As soon as one credit bureau confirms your fraud alert, the others are notified to place fraud alerts on your file. Should you wish to place a fraud alert, or should you have any questions regarding your credit report, please contact any one of the agencies listed below.

- Experian: 888-397-3742; [www.experian.com](http://www.experian.com); P.O. Box 9532, Allen, TX 75013
- Equifax: 800-525-6285; [www.equifax.com](http://www.equifax.com); P.O. Box 740241, Atlanta, GA 30374-0241
- TransUnion: 800-680-7289; [www.transunion.com](http://www.transunion.com); Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92834-6790

You may wish to visit the web site of the U.S. Federal Trade Commission at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or reach the FTC at 1-877-382-4357 or 600 Pennsylvania Avenue, NW, Washington, DC 20580 for further information about how to protect yourself from identity theft. Your state Attorney General may also have advice on preventing identity theft, and you should report instances of known or suspected identity theft to law enforcement, your State Attorney General, and the FTC. For North Carolina residents, the Attorney General can be contacted at 9001 Mail Service Center, Raleigh, NC 27699-9001; telephone (877) 566-7226; or [www.ncdoj.gov](http://www.ncdoj.gov). For Maryland residents, the Attorney General can be contacted at 200 St. Paul Place, 16th Floor, Baltimore, MD 21202; telephone: (888) 743-0023; or [www.oag.state.md.us](http://www.oag.state.md.us).

We thank you for your patience as we complete our investigation of this incident, and we regret any inconvenience. Our teams are working around the clock on this, and services will be restored as soon as possible. Sony takes information protection very seriously and will continue to work to ensure that additional measures are taken to protect personally identifiable information. Providing quality and secure entertainment services to our customers is our utmost priority. Please contact us at 1-800-345-7669 should you have any additional questions.

[Click here](#) for FAQs regarding the PSN/Qriocity outage.

From: [http://playstation.custhelp.com/app/answers/print/a\\_id/2185](http://playstation.custhelp.com/app/answers/print/a_id/2185)

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the whole as more fully appears from a copy of said notice, communicated herewith as **Exhibit R-2**;

9. The above-cited notice (R-2) summarizes the security breach concerning the Class Members' personal information. Additional information concerning this important security breach was also posted by Sony on their PlayStation®

websites and blogs<sup>1</sup>, the whole as more fully appears from certain extracts of the Sony PlayStation® websites and blogs, communicated herewith, as though recited at length herein, as **Exhibit R-3**, *en liasse*, (Sony being summoned to print, save, conserve and communicate to the undersigned attorneys full copies of the relevant portions or extracts of their websites dealing with this security breach, as the web pages existed on the Internet on the date of the initial filing of these proceedings (April 28, 2011 and thereafter);

10. As mentioned above and as appears from Exhibits R-1 to R-3, Class Members' personal information was lost, namely their name, address (city, state/province, zip or postal code), country, email address, birth date, PlayStation Network/Qriocity password, login, password security answers, and handle/PSN online ID;
11. Sony also mentions to Class Members that "it is also possible that [their] profile data may have been obtained, including purchase history and billing address (city, state/province, zip or postal code)" and that Sony cannot rule out that credit card data was taken as well;
12. As mentioned in Sony's April 27, 2011 blog (included in R-3), under the heading "Q: Was my personal data encrypted?", Sony answers as follows:

**"Q: Was my personal data encrypted?"**

A: All of the data was protected, and access was restricted both physically and through the perimeter and security of the network. The entire credit card table was encrypted and we have no evidence that credit card data was taken. The personal data table, which is a separate data set, was not encrypted, but was, of course, behind a very sophisticated security system that was breached in a malicious attack."

13. Although Sony learned of the system intrusion on April 19, 2011, Sony only informed the public and the media on April 26, 2010 (Exhibit R-2) and thereafter sent out e-mails to Class Members. As confirmed by Sony in R-3, it is quite possible that said e-mails will not be received by the Class Members, for example if the e-mail account is no longer active, or if the Class Member does not regularly check said account;
14. Obviously, until the Class Members are actually notified of the loss of their personal information, said Class Members are at greater risk of fraud or identity theft;
15. Petitioner's and the Class Members' personal information was negligently stored and saved by Sony and Petitioner and Class Members are at risk of identity theft and fraud and this incident has and will continue to cause them stress, fear and loss of time, aside from out-of-pocket expenses as detailed herein;

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<sup>1</sup> Note that [www.playstation.ca](http://www.playstation.ca) website, when clicking on the "support" link at the bottom of the page, redirects Class Members to the <http://us.playstation.com/support/index.htm> page.

16. Following the above-detailed security breach, Class Members were warned by the media to cancel their credit card (whereas Sony did not mention or suggest this), the whole as appears for example from the April 27, 2011 article published on the [www.thestar.com](http://www.thestar.com), communicated herewith as **Exhibit R-4**;

**The Negligence of Respondents and the Damages Suffered by the Class Members:**

17. Sony was clearly negligent in the manner in which the Class Members' personal information was being electronically stored and secured. In fact, such valuable personal information should be encrypted and should be stored on a secured server, with the proper firewalls and security measures in place;
18. Furthermore, and as appears from Exhibits R-1 to R-3, Sony 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 nor has Sony offered Class Members the option to have the appropriate security note posted on their credit files (with Equifax and TransUnion), at Sony's cost of course;
19. As stated above, Sony did not inform its clients of the loss of their personal information immediately after Sony discovered that it had occurred. All delays in actually notifying all Class Members of the incident is a fault that increases the risk of fraud and identity theft;
20. Moreover, Sony chose to only notify Class Members by issuing a notice on their website and sending e-mails, notwithstanding the fact that Sony had the necessary contact information and necessary means in order to contact many Class Members much quicker, for example by registered mail, which would have helped in preventing further fraud exposure for Class Members;
21. In fact and as mentioned above, it is quite possible that many Class Members (including Petitioner) have not yet received said notification e-mails and have not been otherwise made aware of the loss of their personal information. This represents a further indication of Sony's negligence in the preservation, protection and safe keeping of the Class Members' personal information and interests;
22. Because of the loss of their personal information, Class Members have now been imposed certain inconveniences, namely:
  - a) The obligation to closely monitor their accounts looking for possible fraud from now on and for all periods subsequent to the loss of information;

- b) The obligation to be even more attentive than normally necessary concerning the communication of their personal information (due to the higher chance of fraud caused by Sony's loss of information);
  - c) The obligation in some cases to inform their parties of the loss of information, for instance in the case of Class Members who cancel their credit card and must inform certain third parties of this credit card number change;
23. Petitioner and the Class Members, in good faith, were reasonably justified in assuming that Sony would properly safeguard their personal information;
  24. Petitioner and many Class Members have already and will continue to experience anxiety, inconvenience, loss of time and/or fear due to the loss of their personal information, which has made them potential targets for fraud and/or identity theft;
  25. Should Class Members choose to sign up for credit monitoring services or have a note posted on their credit files, following the loss of their personal information by Sony, 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 or post such a note. Sony is 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;
  26. In fact, as mentioned above, as a result of the loss of information by Sony, certain Class Members have decided or will decide to cancel their credit cards, or have the credit card numbers changed;
  27. In this regard, as a result of being forced to change their credit card numbers, said Class Members have been and/or will also be inconvenienced (including loss of time) by being obliged to inform certain third parties of the change, for example but not limited to informing corporations if automatic debits are being made on the existing credit card numbers;
  28. Moreover, said Class Members may be forced to pay service charges, interest, or penalties when dealing with issues of failed automatic debits during the transition period following the change of credit card number;
  29. Furthermore, should Class Members actually take any of these precautionary steps in order to prevent further fraud exposure, such as signing up for credit monitoring or changing their credit card number, these steps cannot guarantee that the Class Members' credit is safe from now, after the loss of information by Sony;
  30. 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;



31. 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 Sony will be responsible and liable to compensate and reimburse;
32. Class Members have also lost the benefit of using their PlayStation® on the PSN (for a certain period of time, the length of which is still unknown). Petitioner reserves his and the Class Members' rights and recourses in this regard;

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

33. Every member of the Group had his or her personal information lost by, or stolen from, Sony as described hereinabove;
34. Every member of the Group has or will experience anxiety, inconvenience, loss of time and/or fear due to the loss of personal information which has made them potential targets for fraud or identity theft;
35. Every member of the group has and/or will have to closely monitor his or her accounts looking for possible fraud from now on and for all periods subsequent to the loss of information (that is if they are aware of the loss of their personal information);
36. Every member of the Group has to be even more attentive then normally necessary concerning the communication of their personal information (due to the higher chance of fraud caused by Sony's loss of information) (that is if they are aware of the loss of their personal information);
37. Members of the Group have or may also have to inform third parties of the loss of information, as mentioned above;
38. Members 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, posting a notes on the credit file, or changing the credit card numbers, which, in any case, cannot guarantee that their credit files are safe from now on;
39. Furthermore, Members of the Group may be required to pay costs or fees in order to sign up for such credit monitoring services or for other safety measures, as mentioned above;
40. Moreover, considering the method used by Sony in order to notify Class Members of the loss of information, namely the sending of the e-mails and a notice on their website, 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;

41. Every member of the Group can still fall victim to fraud or identity theft, in the future, due to Sony's negligence in the safekeeping of their personal information;

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

42. 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 approximately 1 million, as mentioned in Exhibit R-4 (whereas there are 77 million registered accounts worldwide according to Exhibit R-3);
  - b) The names and addresses of all persons included in the Group are not known to the Petitioner, but are clearly known to Sony, who is summoned to conserve and provide the Court and the undersigned attorneys with the complete list of Class Members, under seal;
  - c) All the facts alleged in the preceding paragraphs make the application of articles 59 or 67 C.C.P. impossible;
43. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Was Sony negligent in the storing and safekeeping of the personal information of the Group Members?
  - b) Is Sony 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 inconvenience, anxiety, loss of time and other moral and/or punitive damages caused by the loss of said information?
44. The interests of justice favour that this motion be granted in accordance with its conclusions;

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

45. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages;

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

**GRANT** Plaintiff's action against Defendants;

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

**CONDEMN** Defendants to pay an amount to be determined by the Court in punitive, exemplary and/or moral damages to every Group Member, with interest as well the additional indemnity;

**GRANT** the class action of Petitioner 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;

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

- a) Many Class Members including Petitioner are domiciled and/or work in the District of Montreal and therefore they had used their PlayStation® in the District of Montreal;
- b) The undersigned attorneys practice in the District of Montreal;

48. Petitioner, who is requesting to obtain the status of representatives, will fairly and adequately protect and represent the interest of the members of the group for the following reasons:

- a) His personal information was lost by Sony as described hereinabove since he is a PSN account holder, who has in fact purchased at least one online game in the past, although he has to date not received any emails from Sony informing him of the loss of his information. He learned about this by chance by the media;
- b) He has already and will continue to suffer anxiety, inconvenience, loss of time, and possible other damages as a result of said loss of information;
- c) Petitioner 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 Group;

- d) Petitioner 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;
- e) Petitioner is ready and available to manage and direct the present action in the interest of the Class Members that Petitioner wishes to represent, and Petitioner is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- f) Petitioner's interests are not antagonistic to those of other members of the group;
- g) Petitioner 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;
- h) Petitioner, with the assistance of the undersigned attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

49. 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 in all of Canada (or subsidiarily all persons in Quebec), who were users of a Sony PlayStation® gaming console and the PlayStation® Network ("PSN") or Qriocity services, and whose personal information was lost by, or stolen from, Respondents on or about April 17 to 19, 2011, or any other group to be determined by the Court;

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

- a) Was Sony negligent in the storing and safekeeping of the personal information of the Group Members?
- b) Is Sony 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 inconvenience, anxiety, loss of time 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** Plaintiff's action against Defendants;

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

**CONDEMN** Defendants to pay an amount to be determined by the Court in punitive, exemplary and/or moral damages to every Group Member, with interest as well the additional indemnity;

**GRANT** the class action of Petitioner 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. **AND ORDER** Respondents to pay for said publication costs;

**THE WHOLE** with costs, including publication costs.

**MONTREAL, APRIL 28, 2011**

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**MERCHANT LAW GROUP LLP**  
Attorneys for Petitioner