

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000711-149

YVES THERIAULT [REDACTED]
[REDACTED];

Petitioner

vs

THE HOME DEPOT, INC., [REDACTED]
[REDACTED];

-and-

HOME DEPOT OF CANADA INC., [REDACTED]
[REDACTED].

Respondents

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

**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 he is a member, namely:

All persons in Quebec, whose personal and/or financial information was lost by and/or stolen from Respondent as a result of a data breach that occurred between at least April 1, 2014 and September 2, 2014 (hereinafter the "**Data Breach**");

(hereinafter referred to as "**Class Member(s)**", "**Group Member(s)**", the "**Group**", the "**Class**", the "**Member(s)**");

The Respondents

2. The Respondents collectively will be referred to as "**Home Depot**" and individually as follows:
 - a) The Home Depot, Inc. as "**The Home Depot**"; and
 - b) Home Depot of Canada Inc. as "**Home Depot Canada**";
3. The Home Depot is a publicly traded company incorporated in Delaware and is headquartered at 2455 Paces Ferry Road NW, Atlanta, Georgia, 30339, United States. The Home Depot stores sell an assortment of building materials, home improvement and lawn and garden products and provide a number of services;
4. Home Depot Canada is a private company incorporated pursuant to the laws of Ontario, with its head office located at 1 Concord Gate, Suite 900, Toronto, Ontario, M3C 4H9. Home Depot Canada is a wholly-owned subsidiary of The Home Depot. Home Depot Canada stores also sell an assortment of building materials, home improvement and lawn and garden products and provide a number of services;
5. Home Depot is the world's largest home improvement retailer with more than 1500 stores across North America, and with annual revenue of approximately \$75 billion;

General Facts:

6. Home Depot sells merchandise to millions of consumers in Canada. When consumers make purchases at Home Depot retail stores using credit or debit cards, Home Depot collects information related to that card, including but not limited to the card holder name, the account number, expiration date, and card verification value (CVV). Home Depot stores this information in its point-of-sale system and transmits this information to a third party for completion of the payment;
7. By collecting and storing such extensive and detailed customer information, Home Depot creates an obligation for itself to use every means available to it to protect this information from falling into the hands of identity thieves and other criminals;
8. In April 2014, computer hackers gained access to Home Depot's data network. From April to the present, personal and financial information of millions of consumers stored by Home Depot has been compromised;
9. On September 2, 2014, the first public report of the Data Breach was made by computer security blogger Brian Krebs who wrote:

Multiple banks say they are seeing evidence that Home Depot stores may be the source of a massive new batch of stolen credit and debit cards that went on sale this morning in the cybercrime underground. Home Depot says that it is working with banks and law enforcement agencies to investigate reports of suspicious activity.

Contacted by this reporter about information shared from several financial institutions, Home Depot spokesperson Paula Drake confirmed that the company is investigating.

the whole as more fully appears in a copy of the report, communicated herewith as **Exhibit P-1**;

10. Home Depot also provided the following update to customers regarding the Data Breach on their website <https://corporate.homedepot.com/MediaCenter/Pages/Statement1.aspx> :

Customer update on payment breach

On Sept. 8, we confirmed that our payment data systems were breached, which could potentially impact customers who used a payment card at our U.S. and Canadian stores in 2014, from April to September. Today, we are able to tell you that the malware used in the recent breach has been eliminated from our U.S. and Canadian networks.

We also want you to know that we have completed a major payment security project that provides enhanced encryption of payment card data at point of sale in our U.S. stores, offering significant new protection for customers. The rollout of enhanced encryption to Canadian stores will be completed by early 2015. Canadian stores are already enabled with EMV "Chip and PIN" technology.

We apologize for the frustration and inconvenience this breach may have caused.

We also want to emphasize that you will not be liable for any fraudulent charges to your accounts, and we're offering free identity protection services, including credit monitoring, to any customer who has shopped at a Home Depot store in 2014, from April on.

You can learn more about the identity protection services and how to sign up for them at <https://homedepot.allclearid.com/>.

It is important to closely monitor your payment card accounts and report unusual activity to your issuing bank.

the whole as more fully appears from a copy of Home Depot's message from their website, communicated herewith, as **Exhibit P-2**;

11. The ramifications of Home Depot's failure to keep the Petitioner's and Class Members' personal and financial information secure are severe. Identity theft occurs when someone uses another's personal and financial information such as that person's name, address, credit card number, credit card expiration dates, and other information, without permission, to commit fraud or other crimes;
12. Identity thieves can use personal information such as that pertaining to the Petitioner and the Class, which Home Depot failed to keep secure, to perpetuate a variety of

crimes that harm the victims. For instance, identity thieves may commit various types of crimes such as immigration fraud, obtaining a driver's license or identification card in the victim's name but with another's picture, using the victim's information to obtain government benefits, or filing a fraudulent tax return using the victim's information to obtain a fraudulent refund. The United States government and privacy experts acknowledge that it may take years for identity theft to come to light and be detected;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

13. The Petitioner, a resident of Gatineau, Quebec, regularly shops at Home Depot;
14. The Petitioner's Visa was swiped at a point-of-sale terminal while he made purchases at the Home Depot store located in Gatineau on several occasions since April 2014;
15. The Petitioner believed Home Depot would maintain the personal and financial information contained on his credit card in a reasonably secure manner and provided his credit card to Home Depot on that basis. Had the Petitioner known that Home Depot would not maintain his information in a reasonably secure manner, he would not have allowed his credit card to be swiped at Home Depot's point-of-sale terminal;
16. The Petitioner's personal and financial information associated with his credit card was compromised in and as a result of the Data Breach;
17. The Petitioner was harmed by having his financial and personal information compromised and faces the imminent and certainly impending threat of future additional harm from the increased threat of identity theft and fraud;
18. The Petitioner must now take steps to protect his personal and financial information, such as cancelling his credit card, or purchasing identity protection services such as credit monitoring, all of which are highly inconvenient and may result in out-of-pocket costs.
19. The damages suffered by the Petitioner are a direct and proximate result of the Respondents' conduct;
20. As a consequence of the foregoing, the Petitioner is justified in claiming damages;

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

21. Every Group Member had his or her personal, debit and/or credit information lost by respondents as described hereinabove;
22. Every Group Member had their right to privacy breached due to the negligence of Respondents;
23. Every Group Member has or will experience fear, confusion, inconvenience, or loss of time due to the loss of information;

24. The Group Members will need to closely monitor their accounts looking for possible fraud and will be inconvenienced by any safety measures that may become necessary in order to prevent further fraud exposure, such as signing up for credit monitoring service, posting an alert on their accounts or credit files, changing their personal information or account numbers, transferring money from one account to another, etc.;
25. All of these damages to the Group Members are a direct and proximate result of the Respondents' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the group makes the application of Article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below:

26. The number of persons included in the Group is estimated to be in the thousands;
27. The names and addresses of all persons included in the Group are not known to the Petitioner;
28. It would therefore not be possible to contact each and every Member of the Class to obtain mandates and to join them in one action;
29. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against the Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual, and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;
30. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

The questions of fact and law which are identical, similar, or related with respect to each of the Class Members:

31. The recourses of the Group Members raise identical, similar or related questions of fact or law, namely:
 - a) Were Respondents negligent in the storing and safekeeping of the personal and financial information of the Class Members?
 - b) Are the Respondents liable to pay damages to the Class Members as a result of the Data Breach, including actual monetary losses or expenses incurred, loss of time, inconvenience, and moral damages caused by the loss of said information, and if so in what amounts?
32. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

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

34. The conclusions that the 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 Group Members compensatory damages for the loss of said Group Member's personal information;

CONDEMN Defendants to pay to the Group Members compensatory and/or moral damages to every Group Member as a result of Defendant's loss of said member's personal information in the amount to be determined by the Court;

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

GRANT the class action of Plaintiff on behalf of all the Members of the Group;

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;

35. 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 Group Members are domiciled in the District of Montreal;
- b) The Respondents, through Home Depot Canada, carries on retail business in the District of Montreal;
- c) The Petitioner's counsel is domiciled in the District of Montreal;

36. The 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, since Petitioner:

- a) used a Visa card at Home Depot and had his private personal and/or financial information accessed and/or stolen;
- b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;

- c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
- d) is ready and available to manage and direct the present action in the interest of the Group Members that the Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
- e) does not have interests that are antagonistic to those of other members of the Group;
- f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

37. 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 Quebec, whose personal and/or financial information was lost by and/or stolen from Respondent as a result of a data breach that occurred between at least April 1, 2014 and September 2, 2014

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

- a) Were Respondents negligent in the storing and safekeeping of the personal and financial information of the Class Members?
- b) Are the Respondents liable to pay damages to the Class Members as a result of the Data Breach, including actual monetary losses or expenses incurred, loss of time, inconvenience, and moral damages caused by the loss of said information, and if so in what amounts?

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 Group Members compensatory damages for the loss of

said Group Member's personal information;

CONDEMN Defendants to pay to the Group Members compensatory and/or moral damages to every Group Member as a result of Defendant's loss of said member's personal information in the amount to be determined by the Court;

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

GRANT the class action of Plaintiff on behalf of all the Members of the Group;

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.

Montréal, September 22, 2014

(s) Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for the Petitioner

CERTIFIED COPY

Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for the Petitioner

NOTICE OF PRESENTATION

TO: **THE HOME DEPOT, INC**
2455 Paces Ferry Road NW
Atlanta, Georgia, 30339
United States of America

-and-

HOME DEPOT OF CANADA INC
Concord Gate, Suite 900
Toronto, Ontario, M3C 4H9
Canada

TAKE NOTICE that the Petitioner has filed this MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO ASCRIBE THE STATUS OF REPRESENTATIVE in the office of the Superior Court of the Judicial District of Montréal.

The Motion will be presented before one of the Honourable Judges of the Superior Court of Québec, District of Montréal, on **November 4, 2014 at 9:00 AM**, in room **2.16** of the Courthouse of Montréal situated at 1 Notre Dame East, Montréal, Québec. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

Montréal, September 22, 2014

(s) Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for the Petitioner

CERTIFIED COPY

Merchant Law Group LLP

Merchant Law Group LLP
Attorneys for the Petitioner

CANADA

SUPERIOR COURT
(Class Action)PROVINCE OF QUEBEC
DISTRICT OF MONTREALN^o:

YVES THERIAULT residing and domiciled at
A-31 Chevalier-de-Rouville in the city of Gatineau,
Province of Quebec;

Petitioner

vs

THE HOME DEPOT, INC., a legal person
constituted according to the laws of the United
States of America, having its principal place of
business at 2455 Paces Ferry Road NW, Atlanta,
Georgia, 30339, Unites States of America;

-and-

HOME DEPOT OF CANADA INC., a legal person
constituted according to the laws of Canada,
having its principal place of business at 1 Concord
Gate, Suite 900, Toronto, Ontario, M3C 4H9,
Canada.

Respondents

LIST OF EXHIBITS

- EXHIBITS P-1:** Copy of the report of the Data Breach dates September 22, 2014;
- EXHIBITS P-2:** Home Depôt's message from their website;