

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o: 500-06-000841-177

S U P E R I O R C O U R T
(Class Action)

MICHEL DEMERS residing and domiciled at [REDACTED]
[REDACTED]

Applicant

-vs-

YAHOO! INC., a legal person, and is a company
duly incorporated pursuant to the laws of Delaware
having its principal place of business at [REDACTED]
[REDACTED]

-and-

YAHOO! CANADA CO., a legal person, having its
principal place of business at [REDACTED]
[REDACTED]

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO
APPOINT A REPRESENTATIVE PLAINTIFF
(Art. 574 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 APPLICANT
STATES THE FOLLOWING:**

GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the following Class, of which he is a member, namely:

All persons residing in Quebec whose personal and/or financial information was lost by and/or stolen from The Defendants as a result of a data breach that occurred in August 2013 (hereinafter the “**Data Breach**”), and all other persons, businesses, entities, corporations,

financial institutions or banks who suffered damages or incurred expenses as a result of said Data Breach, or any other Class(es) or Sub-Class(es) to be determined by the Court; (herein after, “**Class Member(s)**”, the “**Class**”, the “**Member(s)**”;

The Defendants

2. The Defendants are directly connected as related, parent or wholly-owned subsidiary companies;
3. The Defendants collectively will be referred to as “YAHOO!” and individually as follows:
 - a) **Yahoo!, Inc.** as “**Yahoo!**”; and
 - b) **Yahoo! Canada Co.** as “**Yahoo! Canada**”;
4. Yahoo! is a publicly traded company incorporated in Delaware and is headquartered at 701 First Avenue, Sunnyvale, California, 94089, Unites States of America, as it appears in a page of the corporate database of the website of the state of Delaware, communicated herein as **Exhibit P-1**;
5. Yahoo! is a leading internet company that provides internet based services to hundreds of millions of users worldwide, including North America, on a regular basis. As part of its business, the Defendant Yahoo! collects and stores large volumes of sensitive personal and or financial information about its users, including but not limited to: user names, email addresses, telephone numbers, birth dates, passwords, and security questions linked to a user’s account. The Defendant Yahoo! requires this information to create an account;
6. Yahoo! Canada is a company duly incorporated according to the laws of the province of Nova Scotia, with its head office located at 207 Queen’s Quay West unit 801, Toronto, Ontario, M5J 1A7, as it appears in a page of the online Registry of Joint Stock Companies of Nova Scotia, communicated herein as **Exhibit P-2**. Yahoo! Canada is a wholly-owned subsidiary of Yahoo!. Yahoo! Canada also provides Internet based services;

7. Yahoo! Canada is registered to do business in the province of Quebec, in a copy of an extract from the *Registraire des entreprises du Québec*, produced herein as **Exhibit P-3**;
8. At all material times, Yahoo! intended that its business be operated as a global enterprise carrying out business worldwide, including in Quebec and elsewhere in Canada;
9. The Defendants at all material times carried on business as a partnership, joint venture or other common enterprise inextricably interwoven with each other, making each Defendant vicariously liable for the acts and omissions of the others;
10. Yahoo! And Yahoo! Canada shared the common purpose of operating a host of internet website services including but not limited to web portal, search engine and email services in Canada including the province of Quebec. The business interests of each of the Defendants is interwoven with that of the other and each is an agent of the other;
11. The Applicant, and no member of the public, could know what individual actions were taken by any of the individual Defendants because they act in concert and secretively;

General Facts:

12. The Defendant, Yahoo!, is a leading Internet company that provides Internet based services to hundreds of millions of users worldwide, including North America, on a regular and consistent basis. As part of its business, the Defendant, Yahoo!, collects and stores large volumes of sensitive personal and/or financial information about its users, including, inter alia, the users' names, email addresses, telephone numbers, birth dates, passwords, and security questions linked to a users' account. The Defendant, Yahoo!, requires all of this information in order to create an account;
13. While Yahoo!'s collection of customer information may itself be legal, by collecting and storing such extensive and detailed customer information, Yahoo! 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;

14. In November of 2016 the Defendants, Yahoo! and Yahoo! Canada, issued an email to account users in which they announced that a recent investigation by law enforcement confirmed that sensitive personal account information associated with at least 500 million user accounts was stolen from the company's network in August of 2013, by what it believes to be third party hackers. The stolen information included users' names, email addresses, telephone numbers, dates of birth, hashed passwords and in some cases, encrypted or unencrypted security questions and answers. Reports indicate that the data breach was the second largest from a single internet web site in history. The email notice stated in part as follows:

“A recent investigation by law enforcement provided Yahoo! Inc. (NASDAQ:YHOO) with data files which a third party claims was YAHOO! Data. YAHOO! has confirmed that a copy of certain user account information was stolen from the company's network in August of 2013. YAHOO! believes with the assistance of forensic experts that the data was stolen by an unauthorized third party. The account information may have included names, email addresses, telephone numbers, dates of birth, hashed passwords (the vast majority with bcrypt) and, in some cases, encrypted or unencrypted security questions and answers. The ongoing investigation suggests that stolen information did not include unprotected passwords, payment card data, or bank account information; payment card data and bank account information are not stored in the system that the investigation has found to be affected.”

The email notice is communicated herein as **Exhibit P-4**;

15. The Defendants Yahoo! and Yahoo! Canada, data breach could potentially have major consequences. The stolen data is critical because it not only leads to a single system but to users' connections to their banks, social media profiles, other financial services and users' friends and family;
16. The Applicant and Class Members are all individuals who communicated personal and financial information to the Defendants and who as a result of that confidential information being illegally accessed, have experienced inconveniences, mental distress, economic loss, or other losses associated with having their private data accessed and intruded upon;

17. This action is brought on behalf of the Applicant in his own right, and as a representative of all individuals resident in Quebec, who have communicated confidential personal and financial information to the Defendants;
18. This action concerns breaches of legal, equitable, and statutory duties by Yahoo! and its employees in a reported privacy breach of confidential personal and financial information;
19. The Applicant and Class Members seek damages, redress, and other compensation from the Defendants for harm, inconveniences, economic losses, mental distress or other losses resulting from the unauthorized access to their confidential personal and information records;
20. From August 2013 to the present, personal and financial information of millions of consumers stored by YAHOO! has been compromised;
21. The information stolen from Yahoo!, including the Applicant's and Class Members' financial and personal information, is extremely valuable to thieves;
22. 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;
23. According to the CAFC, from January to November 2015, more than 17,000 Canadians reported being victimized by identity fraud and losses totaled \$10.7-million; however, more often than not identity theft goes unreported and the actual totals are much higher, as it appears in the article "Waging War On Fraud And Identity Theft", by Cairine Wilson, CPA Canada, communicated herein as **Exhibit P-5**;
24. Personal and financial information such as that stolen in the Data Breach is highly coveted by and a frequent target of hackers. Legitimate organizations and the criminal underground alike recognize the value of such data. Otherwise, they would not pay for or maintain it, or aggressively seek it. Criminals seek personal and financial information of consumers because they can use biographical data to perpetuate more and larger thefts;

25. The ramifications of Yahoo's failure to keep the Applicant's and Class Members' personal and financial information secure are severe. According to the Canadian Anti-Fraud Centre ("CAFC"), criminals can use a person's stolen or reproduced personal or financial information to, among other things, access the person's computer, email accounts, bank accounts, open new bank accounts, transfer bank balances, apply for loans, credit cards and other goods and services, make purchases, hide their criminal activities, obtain passports or receive government benefits, as it appears more fully in a copy of a page of the CAFA's website, communicated herein as **Exhibit P-6**;
26. In addition, the thieves use the personal and or financial information to create fake credit cards that can be swiped and used to make purchases as if they were the real credit cards. Additionally, the thieves could reproduce stolen debit cards and use them to withdraw cash from ATMs;
27. Identity thieves can use personal information such as that pertaining to the Applicant and the Class, which Yahoo! 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. Privacy experts acknowledge that it may take years for identity theft to come to light and be detected;
28. The Defendants were negligent through the following acts and/or omissions:
- a) lost and/or allowed unauthorized access to personal and or financial information of the Class Members;
 - b) failed to protect the Class Members' private financial information by allowing for unlawful access or use of the confidential personal and financial information for purposes other than for which it was supplied to them;
 - c) failed to protect the Class Members' private financial information by allowing for unlawful access or use of the confidential personal and financial information for purposes other than for which it was supplied to them;

- d) allowed for unlawful access or use of the confidential personal and financial information for purposes other than for which it was supplied to them without the Class Members' consent;
- e) breached the Class Member's privacy;
- f) intruded upon the Class Members' seclusion;
- g) failed to warn and/or inform Class Members of the Data Breach in a timely manner;
- h) caused Class Members harm, inconveniences, economic losses, mental distress or other losses resulting from the unauthorized access to their confidential personal and information records;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

- 29. The Applicant, who resides in the city of l'Ange Gardien, in the province of Quebec, has an email account with Yahoo! Canada;
- 30. The Applicant's email account was compromised and it is not known at this time what information from the Applicant was taken as a result of the 2013 data breach only announced in November 2016. The thieves have basically been in possession of the information for the last two years;
- 31. The Applicant believed that Yahoo! would maintain the personal and financial information contained on his email account in a reasonably secure manner and provided his personal or financial information to Yahoo! On that basis. Had the Applicant known that Yahoo! Would not maintain his information in a reasonably secure manner, he would not have allowed his information to be used by Yahoo!;
- 32. The Applicant's personal and financial information associated with his Email account was compromised in and as a result of the Data Breach;
- 33. The Applicant 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 due to his financial and personal information being sold on the Internet black market and misused by criminals;

34. The Applicant must now take steps to protect his personal and financial information, such as purchasing identity protection services such as credit monitoring, all of which are highly inconvenient and may result in out-of-pocket costs;
35. The damages suffered by the Applicant are a direct and proximate result of the Defendants' conduct;
36. As a consequence of the foregoing, the Applicant is justified in claiming damages;

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

37. Members of the Class consist of individuals whose personal and/or financial information was lost by and/or stolen from the Defendants as a result of a data breach that occurred in August 2013;
38. Each Member of the Class is justified in claiming at least one or more of the following:
 - a) general and special damages in an amount to be determined at trial for:
 - (i) economic loss;
 - (ii) inconveniences;
 - (iii) mental distress; and
 - (iv) other losses;
 - b) aggravated, exemplary, and punitive damages;
 - c) pre- and post-judgment interest on the foregoing sums;
 - d) such further and other relief as counsel may advise and this Honourable Court may allow;

39. All of these damages to the Class Members are a direct and proximate result of the Defendants' conduct;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

The composition of the Class makes the application of Article 91 or 143 C.C.P. impractical or impossible for the reasons detailed below:

40. The number of persons included in the Class is estimated to be in the thousands;
41. The names and addresses of all persons included in the Class are not known to the Applicant but are known to the Defendants;
42. 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 Defendants. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual, scientific, and legal issues raised by the conduct of the Defendants would increase delay and expense to all parties and to the Court system;
43. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Class to obtain mandates and to join them in one action;
44. 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;

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

45. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Were the Defendants negligent in the storing and safekeeping of the personal and financial information of the Class Members whose information was ultimately lost and/or stolen in August 2013?

- b) Are the Defendants 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, moral damages, and/or punitive damages caused by the loss of said information, and if so in what amounts?
46. The interests of justice favour that this application be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

47. The action that the Applicant wishes to institute for the benefit of the members of the Class is an action in damages;
48. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

GRANT Applicant's action against the Defendants;

ORDER and CONDEMN Defendants to reimburse the purchase price or amounts paid by the Class Members, and any other amounts paid by Class Members in connection with the purchase, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendants to pay compensatory damages to the Class Members for the loss of use of their personal information, trouble, inconvenience, loss of time, anxiety and fear, and other moral damages;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

GRANT the class action of the Applicant on behalf of all the Members of the Class;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Class;

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;

49. The Applicant suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Many Class Members are domiciled in the District of Montreal;
 - b) Many of the Class Members had their private personal and/or financial information accessed or stolen in District of the Montreal;
 - c) The Applicant's counsel is domiciled in the District of Montreal;
50. The Applicant, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Class, since Applicant:
- a) had private personal and/or financial information accessed and/or stolen;
 - b) understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Class;
 - c) is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class attorneys in this regard;
 - d) is ready and available to manage and direct the present action in the interest of the Class Members that the applicant wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class;
 - e) does not have interests that are antagonistic to those of other members of the Class;
 - f) has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
 - g) is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Class and to keep them informed;

51. The present application is well-founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an application to institute proceedings in damages;

ASCRIBE the Applicant the status of representative of the persons included in the Class herein described as:

- All persons residing in Quebec whose personal and/or financial information was lost by and/or stolen from The Defendants as a result of a data breach that occurred in August, and all other persons, businesses, entities, corporations, financial institutions or banks who suffered damages or incurred expenses as a result of said Data Breach, or any other Class(es) or Sub-Class(es) to be determined by the Court; or
- any other subclasses that this Court finds appropriate;

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

- a) Were the Defendants negligent in the storing and safekeeping of the personal and financial information of the Class Members whose information was ultimately lost and/or stolen in August 2013?
- b) Are the Defendants 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, moral damages, and/or punitive 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 Applicant's action against The Defendants;

ORDER Defendants to pay to the Class Members compensatory damages for all

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

GRANT Applicant's action against The Defendants;

ORDER Defendants to pay to the Class Members compensatory damages for all monetary losses or expenses caused as a result of Defendant's loss of said Class Member's personal information, and **ORDER** collective recovery of these sums;

CONDEMN Defendants to pay to the Class Members compensatory and/or moral damages to every Class Member in the amount to be determined by the Court as a result of Defendant's loss of said member's personal information, and **ORDER** collective recovery of these sums;

CONDEMN Defendants to pay punitive and/or exemplary damages to the Class Members, to be determined by the Court;

GRANT the class action of The Applicant on behalf of all the Members of the Class;

ORDER the treatment of individual claims of each Member of the Class in accordance with articles 599 to 601 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Class;

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 Class that have not requested their exclusion from the Class 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 Class in accordance with Article 579 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, JANUARY 26, 2017

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

Merchant Law Group LLP

MERCHANT LAW CLASS LLP

Attorneys for the Applicant

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 a Representative Plaintiff in the office of the Superior Court of Quebec in the judicial district of Montreal.

Defendants' Answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame Street Est, Montréal, Québec, 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 judgement 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 Applicant.

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 a Representative Plaintiff, the Applicant intends to use the following exhibits:

Exhibit P-1: Yahoo! corporate profile in the website of the state of Delaware;

Exhibit P-2: Yahoo! Canada corporate profile in the online Registry of Joint Stock Companies of Nova Scotia;

Exhibit P-3: Yahoo! Canada corporate profile in the *Registraire des entreprises du Québec* ;

Exhibit P-4: Copy of Yahoo Email Notice of December 14, 2016 for Canada (<https://s.yimg.com/sf/support/en-gb-dec-security-notice-content.pdf>);

Exhibit P-5 : Copy of "Waging War on Fraud and Identity Theft", by Cairine Wilson, CPA Canada, Huffinton Post (http://www.huffingtonpost.ca/Cairine-Wilson-CPA-Canada/fraud-and-identity-theft_b_9491434.html);

Exhibit P-6: copy of a page of the Canadian Anti-Fraud website on identity fraud, <http://www.antifraudcentre-centreantifraude.ca/fraud-escroquerie/types/identity-identite/index-eng.htm>

These Exhibits are available upon 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, January 26 , 2017

Merchant Law Group LLP

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Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

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

TO: YAHOO! INC.
701 First Avenue
Sunnyvale
California
United-States of America
94089

and

TO: YAHOO! CANADA CO.
207 Queen's Quay West
Unit 801
Toronto, Ontario
M5J1A7

TAKE NOTICE that the present APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO APPOINT A REPRESENTATIVE PLAINTIFF will be presented before one of the Honourable Judges of the Superior Court of Québec, at the Montreal courthouse, located at 1, rue Notre-Dame Est, in the city and District of Montréal, on the date set by the coordinator of the class actions chamber.

PLEASE ACT ACCORDINGLY.

Montreal, January 26, 2017.

Copie conforme / True Copy

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Merchant Law Group, LLP

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Merchant Law Class LLP
Attorneys for the Applicant