

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL
 NO:

(Class Action)
 SUPERIOR COURT

STUART THIEL, an individual residing at
 5183 Mariette Ave., Montreal, QC, H4V
 2G3

Applicant

v.

FACEBOOK, INC., a legal person duly
 constituted pursuant to the laws of
 Delaware, having its principal place of
 business at 1601 Willow Road, Menlo
 Park, CA 94025, USA

and

FACEBOOK CANADA LTD., a legal
 person duly constituted pursuant to the
 laws of Canada, having its principal place
 of business at 661 University Avenue,
 Suite 1201, 12th Floor, Toronto, ON M5G
 1M1, Canada

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
 AND TO OBTAIN THE STATUS OF REPRESENTATIVE
 (Art. 574 C.C.P. and following)**

**TO ONE OF THE HONOURABLE JUSTICES OF THE QUEBEC SUPERIOR COURT,
 SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES
 AS FOLLOWS:**

GENERAL PRESENTATION

1. The applicant wishes to institute a class action on behalf of the following group,
 of which he is a member (the "Class" or "Class Members"):

all persons in Quebec whose Facebook account was compromised as a result of the security breach announced on or about September 28, 2018

or such other class definition as may be approved by the Court.

DEFINED TERMS

2. The following definitions apply for the purpose of this application to authorize the bringing of a class action:

- (a) “**CCP**” means *Code of Civil Procedure*, C-250.1;
- (b) “**CCQ**” means *Civil Code of Quebec*, c. CCQ-1991;
- (c) “**Charter**” means the *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12;
- (d) “**Class**” or “**Class Member(s)**” means all persons in Quebec whose Facebook account was compromised as a result of the security breach announced on or about September 28, 2018;
- (e) “**CPA**” means *Consumer Protection Act*, C.Q.L.R. c. P-40.1;
- (f) “**PIPEDA**” means the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5; and
- (g) “**PPIPS**” means *An Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c. P-39.1,

THE PARTIES

The applicant

3. The applicant, Stuart Thiel, is an individual who lives in Montreal, Quebec.

The Defendants

4. The defendant Facebook, Inc. is a company organized under the laws of Delaware and headquartered and carrying on business in Menlo Park, California, as can be seen from the Corporate Search Report attached as **Exhibit P-1**.

5. Among other things, Facebook, Inc. owns and operates www.facebook.com, the world's largest social networking service, with approximately 2 billion monthly active users around the world, and approximately 23 million monthly active users in Canada, as can be seen from the article from Mobilesyrap.com entitled "Facebook has 23 million monthly users in Canada", dated June 21, 2017, attached as **Exhibit P-2**.

6. The defendant Facebook Canada Ltd. is a wholly-owned subsidiary of Facebook, Inc. with its offices located in Toronto, Canada, as can be seen from the Corporate Search Report attached as **Exhibit P-3**.

7. At all material times, Facebook, Inc. and Facebook Canada Ltd. (hereinafter collectively referred to as "Facebook") functioned as an ongoing, organized and continuing business unit sharing common purposes and objectives. Facebook, Inc. and Facebook Canada Ltd. were agents of each other and each is vicariously responsible for the acts and omissions of the other as particularized herein.

THE FACTS

8. On or about September 28, 2018, the defendants Facebook announced a new security breach affecting approximately 90 million Facebook user accounts (the "Breach"). Facebook's announcement stated that it had detected the Breach on September 25, 2018, after it noticed an unusual spike in user activity earlier in the month, beginning on September 16, 2018. Facebook's investigations into the Breach established that hackers had been able to exploit a series of vulnerabilities in Facebook's code to gain control over as many as 50 million user accounts, as can be seen from; the article from the Globe and Mail entitled "Facebook says hacker breach

affected 50 million users” dated September 28, 2018; the article from Market Watch entitled “If Facebook logged you out, your account was likely accessed” dated September 29, 2018; the article from Wired entitled “Everything we know about Facebook’s Massive Security Breach” dated September 28, 2018; and the article from CTV News entitled “Facebook says 50M accounts affected by breach” dated September 28, 2018, filed jointly as **Exhibit P-4**.

9. In a post on its Newsroom blog dated September 28, 2018, which is attached as **Exhibit P-5**, Facebook explained that the Breach was caused by hackers exploiting bugs affecting the “View As” feature, which is ostensibly a privacy tool which allows Facebook users to see what their profiles look like to other Facebook users. The bugs in the “View As” feature allowed the hackers to steal “user access tokens” for Facebook accounts.

10. Facebook provided more information regarding the Breach during two media press calls, as can be seen from the call transcripts dated September 28, 2018, filed jointly as **Exhibit P-6**.

11. A user access token is a form of digital credential which identifies a user account and its security and access privileges for a login session, as can be seen from the “Access Tokens” page from the Facebook for Developers website attached as **Exhibit P-7**.

12. In colloquial terms: when a user logs in to a Facebook account, they are granted a user access token, which is akin to a digital “tag”. Each time the user account interacts with Facebook’s software, this digital “tag” confirms that the account was

logged in validly, and that the account is permitted to access certain information across the Facebook platform. For example, it is the user access token which allows a Facebook user to view their friends' account information but prevents them from viewing strangers' account information. It is also the user access token which allows a Facebook user to remain logged into their Facebook account over multiple sessions without having to re-enter their password.

13. Since Facebook's user access tokens control what information a user can access, stealing a user access token allows a hacker to effectively "seize control" of a user account until the access token is ended by logging out of the account, according to Facebook.

14. Facebook further stated:

we have reset the access tokens of the almost 50 million accounts we know were affected to protect their security. We're also taking the precautionary step of resetting access tokens for another 40 million accounts that have been subject to a "View As" look-up in the last year. As a result, around 90 million people will now have to log back in to Facebook, or any of their apps that use Facebook Login. After they have logged back in, people will get a notification at the top of their News Feed explaining what happened.

15. Hackers were able to exploit the "View As" tool through a number of bugs in the platform, including one involving a video upload tool which has been available on Facebook since in or around July 2017.

16. On or around September 29, 2018, Facebook confirmed that the hackers were also able to gain access to other applications and websites which allow their users to log in using their Facebook account credentials. These applications and websites include Facebook-owned social media networks Instagram and Whatsapp, as well as

third parties such as e-commerce marketplace Etsy and music streaming platform Spotify.

17. Facebook reset the logins of approximately 50 million hacked user accounts, as well as an additional 40 million user accounts which may have been affected because they were subject to a “View As” lookup in the past year.

18. Facebook represents, in both its Data Policy and publicly, that it is committed to protecting the Account Information of all its users, as can be seen from the Data Policy attached as **Exhibit P-8**.

19. While the full extent of the damage is still to be determined, the stolen access tokens would have likely allowed attackers to view private posts and to post status updates or shared posts as the compromised user.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT

20. The applicant is a resident of Montreal, Quebec.

21. Like most Facebook account users, the applicant has provided Facebook with a significant amount of private information, including his login credentials, name, gender, birthday, contact information, and location information, as well as pictures of himself and loved ones, his interests, and his personal messages with other Facebook users (collectively, “Account Information”).

22. The applicant’s Facebook account was breached as a result of the Breach and hackers were able to gain access to his account, similar to the approximately 90 million

other users whose accounts were logged out when Facebook determined there was a security breach involving user access tokens.

23. In addition, the applicant received multiple emails from Facebook informing him that his account password had been changed, which password changes were not initiated by the applicant. This led the applicant to believe that hackers had gained access to his Facebook account.

24. The applicant pleads that the defendants are liable per art. 1457 of the *CCQ*, for failing to limit the exposure of the Class Members' Account Information even in case of a successful cyberattack. Moreover, the defendants did not act with diligence and prudence in the circumstances given the private nature of Class Members' Account Information. Furthermore, the defendants also committed a fault in the sense of art. 1457 *CCQ* by contravening art. 10 of the *PPIPS*, which is a law of public order.

25. The applicant pleads that the defendants breached their Contracts with the Class Members, in contravention of art. 1458 of the *CCQ*, by failing to comply with their obligations in the Facebook Data Policy, Terms of Service and other policies.

26. The applicant pleads that the defendants breached the privacy of the Class Members, in contravention of arts. 3, 35, 36 and/or 37 of the *CCQ*, by failing to obtain the consent of the Class Members to disclose their Account Information.

27. The applicant pleads that the defendants' failure to take reasonable measures to secure the information stored on their network when they promised and made assurances on their website that they had done so is a breach of art. 5 of the *Charter*.

28. The applicant pleads that Facebook's failure to take reasonable measures to secure the Account Information constitutes a prohibited practice because the representations that the defendants made to the Class Members in relation to their security measures were false and misleading contrary to art. 219 of the *CPA*.

29. In addition, the applicant pleads breach of confidence as against the defendants.

30. The applicant, in good faith, was reasonably justified in assuming that the defendant would properly safeguard their personal information as part of their Contract, which the defendants clearly did not.

31. Immediately following being made aware of the Breach by the defendants, the applicant experienced anxiety, stress, inconvenience, loss of time, and/or fear due to the loss of personal information.

32. As a result of the defendants' breach of their general duty not to cause harm, breach of contract, breach of privacy, breaches of the *CCQ*, breaches of the *CPA*, breaches of the *Charter of Human Rights and Freedoms*, breach of confidence, and unjust enrichment, the applicant claims compensation for their injury as well as punitive damages.

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

Civil liability

33. Facebook had a duty not to cause harm to the Class Members in its collection and storage of their Account Information, to keep the Account Information confidential and secure, and to ensure that the Account Information would not be lost, disseminated

or disclosed to unauthorized persons. Specifically, Facebook owed a duty of diligence and prudence to the Class Members to take reasonable steps to establish, maintain and enforce appropriate security safeguards against a cyberattack and to limit the exposure of the Class Members' Account Information even in case of a successful cyberattack.

34. As a result of Facebook's lack of diligence and prudence, in contravention of art. 1457 of the CCQ, anonymous hackers were able to gain access to the user accounts of the class members, as well as their Account Information on Facebook, and their private information on any other websites or applications utilizing Facebook login credentials.

Contractual liability

35. The applicant and every Class Member entered into an online standard form contract with Facebook by filling out a registration form to create a Facebook user account. In exchange for agreeing that Facebook could collect, use and store Account Information, customers were granted access to a Facebook account and associated services (the "Contract").

36. The Contract is a contract of adhesion, per art. 1379 of the CCQ, and is drafted and imposed by Facebook. The applicant and Class Members do not have the ability to negotiate the Contract.

37. It was an express or implied term of the Contract that Facebook would be responsible for all of the Class Members' Account Information under its control/possession and would utilize appropriate security safeguards to protect the Account Information from unauthorized access and distribution.

38. Facebook further represents, in both its Data Policy and publicly, that it is committed to protecting the Account Information of all its users. Facebook breached its Contract/warranty both directly and indirectly by not preventing the access of hackers to its users and their private Account Information.

39. All Contracts were similar or identical with respect to the terms associated with Facebook's collection, retention, and protection of its Customers' personal information and contained, *inter alia*, the following express or implied terms:

(a) that the defendants would comply with all relevant statutory obligations regarding the collection, retention and disclosure of the applicant's and Class Members' personal information, including the obligations set out in arts. 5 and 6 of the *PPIPS*;

(b) that the defendants would not disclose the applicant's or Class Members' personal information to a third party or parties, without their consent; and

(c) that the defendants would take reasonable efforts to protect Class Members' Account Information.

40. Facebook breached the express or implied terms of the Contract, in contravention of art. 1458 of the *CCQ*, by failing to comply with its obligations in its own Data Policy, Terms of Service, and other policies, and by recklessly failing to take steps to prevent the Account Information from being disclosed to unauthorized individuals.

41. Facebook also breached the express or implied terms of the Contract, in contravention of art. 1458 of the *CCQ*, by failing to comply with the statutory obligations

set out in arts. 5 and 6 of *PIPPS* by not protecting the Class Members' Account Information from access by unauthorized third parties.

42. Facebook's failure to take reasonable measures to secure the information stored on its network when it promised and made assurances on its website that it had done so is a breach of art. 1434 of the *CCQ* and Facebook's duties of honesty, and good faith and fair dealing.

Breach of privacy

43. The defendants breached the privacy of the Class Members, in contravention of arts. 3, 35, 36 and/or 37 of the *CCQ*, by failing to obtain the consent of the Class Members to disclose their Account Information.

44. More particularly, the defendants breached the Class Members' privacy because:

- (a) they were responsible for collecting, managing, storing, securing and/or deleting Class Members' Account Information;
- (b) they failed to take appropriate security safeguards/measures to protect the Class Members' Account Information from unauthorized access;
- (c) they allowed access to the Account Information of the Class Members resident in Québec without their authorization or consent, and without the invasion being authorized by law;
- (d) they allowed unauthorized access to the correspondence, manuscripts and other personal documents of Class Members resident in Québec; and

- (e) they communicated the Account Information of Class Members resident in Québec to unauthorized persons.

Breach of the *Charter*

45. Facebook's failure to take reasonable measures to secure the Class Member's personal information stored on its network is a breach of art. 5 of the *Charter*. Class Members are therefore entitled to punitive damages pursuant to art. 49 of the *Charter*.

Breach of the *CPA*

46. The defendants are subject to the obligations of the *CPA*, which prohibits persons who enter into agreements or conduct transactions with consumers from engaging in prohibited practices. Facebook's failure to take reasonable measures to secure the Account Information constitutes a prohibited practice because the representations that the defendants made to the Class Members in relation to their security measures were false and misleading contrary to art. 219, the particulars of which are as follows:

- (a) at the time that the Class Members registered for their Facebook accounts, the defendants represented through the Contract that they would comply with their own privacy policy, *PIPEDA* and *PPIPS* and protect the Class Members' privacy, including their Account Information and the information contained in their Facebook accounts; and
- (b) the defendants failed to disclose to the Class Members that their security measures were inadequate to secure the Class Members' privacy,

including their Account Information and the information contained in their Facebook accounts.

47. As a result of the breaches of the *CPA*, the applicant pleads that the Class Members have suffered damages for the false and misleading representations made to them by the defendants. In addition, Class Members are entitled to punitive damages pursuant to art. 272 of the *CPA*.

Breach of confidence

48. The Class Members were invited to provide Account Information to Facebook, which Facebook then stored electronically on its computer network. The Class Members' Account Information was confidential, exhibited the necessary quality of confidence, was not public knowledge, and involved sensitive private details about the personal affairs of the Class Members.

49. The Class Members' Account Information was imparted to Facebook in circumstances in which an obligation of confidence arose, and in which the applicant and the Class Members could have reasonably expected their sensitive information to be protected and secured.

50. Facebook misused or made unauthorized use of the Account Information by failing to determine and/or ensure that Facebook had taken appropriate security safeguards and measures that would prevent hackers from accessing the Account Information. As a result, Facebook is liable to the applicant and the Class Members for breach of confidence.

Damages

51. The applicant pleads that he and the Class are entitled to recover damages for the following:

- (a) injuries suffered as a result of the defendants' failure in their duty not to harm others per art. 1457 of the CCQ;
- (b) injuries suffered as a result of the breach of contract per art. 1458 of the CCQ;
- (c) breach of privacy, in contravention of arts. 3, 35, 36 and/or 37 of the CCQ;
- (d) breach of art. 5 of the *Charter*;
- (e) breach of art. 219 of the *CPA*;
- (f) breach of confidence;
- (g) unjust enrichment; and
- (h) punitive damages per art. 49 of the *Charter*, art. 272 of the *CPA*, and art. 1621 of the CCQ.

52. To the extent the amount of damages are uncertain, the applicant seeks nominal damages for breach of contract and/or moral damages for breach of confidence and breach of privacy.

53. Class Members are entitled to moral and material damages pursuant to arts. 1457, 1458, and 1463-64 of the *CCQ*, as well as punitive damages pursuant to art. 49 of the *Charter*, art. 272 of the *CPA*, and art. 1621 of the *CCQ*.

54. The defendants' conduct, as particularized above, was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful, and in complete disregard of the rights of the Class Members and, as such, renders the defendants liable to pay punitive damages.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

55. 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, with respect to art. 575(3) of the *CCP*, for the following reasons:

- (a) Class Members are numerous and are scattered across Québec estimated to be in the thousands;
- (b) the applicant is unaware of how many persons throughout Québec had their Facebook accounts accessed;
- (c) the names and addresses of the Class Members are not known to the applicant;
- (d) 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;
- (e) further, individual litigation of the factual and legal issues raised by the conduct of the defendants would increase delay and expense to all parties and to the court system;

- (f) a multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;
- (g) 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; and
- (h) in these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.

56. The claims of the Class Members raise identical, similar or related questions of fact or law, namely:

Civil Liability

1. Did one or more of the defendants commit a fault, either an act or omission, that a reasonable, diligent and prudent person would not have done?
2. Was there an injury suffered by the applicant and Class Members?
3. Is there a causal link between the fault and the injury?

Contractual liability

4. Did one or more of the defendants enter into a contract with the Class Members in respect of the collection, use, retention and/or disclosure of their account information?
5. Did the contract between the defendant(s) and the Class Members contain express or implied terms that Facebook would utilize appropriate safeguards to protect the Class Members' account information from unauthorized access and distribution?
6. Did one or more of the defendants breach the contract? If so how?

Duty of Honesty, Good Faith, and Fair Dealing

7. Did one or more of the defendants have a duty in the performance of its contractual obligations to act honestly and in good faith?

8. Did one or more of the defendants breach its duty in the performance of its contractual obligations to act honestly and in good faith? If so how?

Breach of privacy

9. Are one or more of the defendants liable to the Class for breaches of arts 3, 35, 36, and/or 37 of the CCQ?

Breach of the Charter

10. Did one or more of the defendants breach art. 5 of the *Charter*?
11. If so, are Class Members entitled to punitive damages per art. 49 of the *Charter*?

Breach of the CPA

12. Are one or more of the defendants liable to the Class for breaches of art. 219 of the *CPA*?

Breach of Confidence

13. Did the collection, use and retention of the Class Members' account information create an obligation of confidence in which one or more of the defendants were expected to protect and secure the Class Members' account information?
14. Did one or more of the defendants breach the confidence of the Class Members? If so, how?

Unjust Enrichment

15. Were one or more of the defendants unjustly enriched by not paying the costs of implementing appropriate cybersecurity measures, staffing, and/or practices, policies and procedures?

Compensation and Punitive Damages

16. Are the defendants or any one of them liable for damages to the Class for failure in their duty not to harm others, breach of contract, breach of privacy, breach of the *CPA*, breach of the *Charter*, breaches of the CCQ, and/or breach of confidence?
17. Is this an appropriate case for the defendants to disgorge profits?
18. Are the defendants liable for punitive damages?

19. Are any of the defendants liable to the Class Members for unjust enrichment and liable to Class Members to make restitution?
20. Can the court assess damages in the aggregate, in whole or in part, for the Class? If so, what is the amount of the aggregate damage assessment(s) and who should pay it to the Class?

57. The interests of justice weigh in favour of this application being granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

58. The action that the applicant wishes to institute for the benefit of the Class Members is an action in damages.

59. The conclusions that the applicant wishes to introduce by way of an application to institute proceedings are:

GRANT the applicant's action against the defendants;

DECLARE that the defendants are liable to the Class Members for the following:

- (i) failure in their duty not to harm others;
- (ii) breach of contract/warranty;
- (iii) breach of privacy/breach of arts. 3, 35, 36 and/or 37 of the CCQ;
- (iv) breach of art. 5 of the *Charter*;
- (v) breach of art. 219 the *CPA*;
- (vi) breach of confidence;

(vii) unjust enrichment/restitution; and

(viii) punitive damages per art. 49 of the *Charter*, art. 272 of the *CPA*, and art. 1621 of the *CCQ*.

CONDEMN the Respondents to pay the Class Members damages;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

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

ORDER collective recovery in accordance with arts. 595-598 of the *CCP*;

ORDER the treatment of individual claims of each Class Member in accordance with arts. 599 to 601 of the *CCP*; and

THE WHOLE with interest and additional indemnity provided for by art. 1619 of the *CCQ* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

JURISDICTION

60. The applicant suggests that this class action be exercised before the Superior Court in the District of Montreal because the Class Members and defendants reside everywhere in the Province of Québec;

61. 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 for the following reasons:

(a) He understands the nature of the action;

- (b) He is available to dedicate the time necessary for an action to collaborate with Class Members; and
- (c) His interests are not antagonistic to those of other Class Members.

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

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the applicant's action against the defendants;

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 group herein described as:

all persons in Quebec whose Facebook account was compromised as a result of the security breach announced on or about September 28, 2018;

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

Civil Liability

1. Did one or more of the defendants commit a fault, either an act or omission, that a reasonable, diligent and prudent person would not have done?
2. Was there an injury suffered by the applicant and Class Members?
3. Is there a causal link between the fault and the injury?

Contractual liability

4. Did one or more of the defendants enter into a contract with the Class Members in respect of the collection, use, retention and/or disclosure of their account information?
5. Did the contract between the defendant(s) and the Class Members contain express or implied terms that Facebook would utilize

appropriate safeguards to protect the Class Members' account information from unauthorized access and distribution?

6. Did one or more of the defendants breach the contract? If so how?

Duty of Honesty, Good Faith, and Fair Dealing

7. Did one or more of the defendants have a duty in the performance of its contractual obligations to act honestly and in good faith?
8. Did one or more of the defendants breach its duty in the performance of its contractual obligations to act honestly and in good faith? If so how?

Breach of privacy

9. Are one or more of the defendants liable to the Class for breaches of arts 3, 35, 36, and/or 37 of the CCQ?

Breach of the Charter

10. Did one or more of the defendants breach art. 5 of the *Charter*?
11. If so, are Class Members entitled to punitive damages per art. 49 of the *Charter*?

Breach of the CPA

12. Are one or more of the defendants liable to the Class for breaches of art. 219 of the *CPA*?

Breach of Confidence

13. Did the collection, use and retention of the Class Members' account information create an obligation of confidence in which one or more of the defendants were expected to protect and secure the Class Members' account information?
14. Did one or more of the defendants breach the confidence of the Class Members? If so, how?

Unjust Enrichment

15. Were one or more of the defendants unjustly enriched by not paying the costs of implementing appropriate cybersecurity measures, staffing, and/or practices, policies and procedures?

Compensation and Punitive Damages

16. Are the defendants or any one of them liable for damages to the Class for failure in their duty not to harm others, breach of contract, breach of privacy, breach of the *CPA*, breach of the *Charter*, breaches of the *CCQ*, and/or breach of confidence?
17. Is this an appropriate case for the defendants to disgorge profits?
18. Are the defendants liable for punitive damages?
19. Are any of the defendants liable to the Class Members for unjust enrichment and liable to Class Members to make restitution?
20. Can the court assess damages in the aggregate, in whole or in part, for the Class? If so, what is the amount of the aggregate damage assessment(s) and who should pay it to the Class?

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

DECLARE that the defendants are liable to the Class Members for the following:

- (i) failure in their duty not to harm others;
- (ii) breach of contract/warranty;
- (iii) breach of privacy/breach of arts. 3, 35, 36 and/or 37 of the *CCQ*;
- (iv) breach of art. 5 of the *Charter*;
- (v) breach of art. 219 the *CPA*;
- (vi) breach of confidence;
- (vii) unjust enrichment/restitution; and
- (viii) punitive damages per art. 49 of the *Charter*, art. 272 of the *CPA*, and art. 1621 of the *CCQ*.

CONDEMN the defendants to pay the Class Members damages;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

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

ORDER collective recovery in accordance with arts. 595-598 of the *CCP*;

ORDER the treatment of individual claims of each Class Member in accordance with arts. 599 to 601 of the *CCP*; and

THE WHOLE with interest and additional indemnity provided for by art. 1619 of the *CCQ* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

DECLARE that all Class Members 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 Class Members;

ORDER the publication of a notice to the Class Members in accordance with art. 579 of the *CCP*, pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs, including the costs of all publications of notices.

Montreal, October 26, 2018

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SUMMONS
(Art. 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 Applicant in the office of the Superior Court 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 Est, Montreal, Québec, H2Y 1R6, 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 case 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 applicant 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 applicant'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 files, 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

Exhibit P-1: *Corporate Search Report of Facebook, Inc.*

Exhibit P-2: Article from Mobilesyrap.com entitled "Facebook has 23 million monthly users in Canada", dated June 21, 2017

Exhibit P-3: *Corporate Search Report of Facebook Canada Ltd.*

Exhibit P-4: *filed jointly*, article from the Globe and Mail entitled "Facebook says hacker breach affected 50 million users" dated September 28, 2018; article from Market Watch entitled "If Facebook logged you out, your account was likely accessed" dated September 29, 2017; article from Wired entitled "Everything we know about Facebook's Massive Security Breach" dated September 28, 2018; article from CTV News entitled "Facebook says 50M accounts affected by breach" dated September 28, 2018;

Exhibit P-5: Security Update from Facebook Newsroom Blog dated September 28, 2018

Exhibit P-6: Conference Call Transcripts dated September 28, 2018, *filed jointly*

Exhibit P-7: "Access Tokens" page from the Facebook for Developers website

Exhibit P-8: Facebook Data Policy

The exhibits in support of the application 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.

**NOTICE OF PRESENTATION
(Articles 146 and 574 CCP)**

TO:

FACEBOOK, INC.
1601 Willow Road
Menlo Park, CA 94025
USA

and

FACEBOOK CANADA LTD.
661 University Avenue
Suite 1201, 12th Floor
Toronto, ON M5G 1M1
Canada

Defendants

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* 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 YOURSELF ACCORDINGLY.

Montreal, October 26, 2018

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Attorneys for the Applicant

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL
 NO:

(Class Action)
 SUPERIOR COURT

STUART THIEL

Applicant

v.

FACEBOOK, INC.

and

FACEBOOK CANADA LTD.

Defendants

LIST OF EXHIBITS

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Montreal, October 26, 2018

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Code d'impliqué permanent: BS2828

Attorneys for the Applicant

500-06 000350-184

NO:

SUPERIOR COURT
DISTRICT OF MONTREAL
(Class Action)

STUART THIEL

Applicant

v.

FACEBOOK INC.;

And

FACEBOOK CANADA LTD.

Defendants

APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO OBTAIN
THE STATUS OF REPRESENTATIVE

ORIGINAL

Nature : Class Action

Mon dossier : 3846

BS2828



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