

CANADA

(Class Action)  
SUPERIOR COURT

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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**M. ROYER**

NO: 500-06-001010-194

*Petitioner*

-vs.-

**CAPITAL ONE BANK (CANADA BRANCH)**,  
legal person duly constituted having its  
principal establishment at 950 avenue  
Beaumont, City of Montreal, Province of  
Quebec, H3N 1V5

and

**CAPITAL ONE FINANCIAL CORPORATION**,  
legal person duly constituted having its  
principal place of business at 1680 Capital  
One Drive, City of McLean, State of Virginia,  
22102, U.S.A.

*Respondents*

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**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
& TO APPOINT THE PETITIONER AS REPRESENTATIVE  
(Art. 574 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT, SITTING  
IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS  
FOLLOWS:

**I. GENERAL PRESENTATION**

**A) The Action**

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
  - all persons, entities, or organizations resident in Quebec who are Capital One Credit Card holders and whose personal and private

information was compromised by the incident that occurred on or about March 22 and 23, 2019 (though such breach was only disclosed to the public on July 29, 2019), or any other group to be determined by the Court;

2. This is a case of negligence, whereby the Respondents, through their failure to adequately protect and safeguard Class Members' private information (including by properly encrypting sensitive data), have compromised their clients' personal information by allowing for unauthorized access by an outside individual;
3. Further, this is a case of a delayed notice to Class Members, as the theft occurred on March 22 and 23, 2019, was apparently discovered on July 17, 2019, was confirmed on July 19, 2019, and was only disclosed to the public on July 29, 2019;
4. It is estimated that approximately 100 million persons were affected in the U.S. and approximately 6 million persons in Canada. With respect to Canadians, approximately 1 million social insurance numbers ("SIN") were compromised in the incident;
5. In addition to SIN numbers, it is believed at this time that the data breach affects the following sensitive information: names, addresses, zip codes/postal codes, phone numbers, email addresses, dates of birth, self-reported income, credit card application data, portions of credit card customer data, including, customer status data, e.g., credit scores, credit limits, balances, payment history, contact information, fragments of transaction data from a total of 23 days during 2016, 2017 and 2018, the whole as appears more fully from a press release issued by the Respondents on July 29, 2019 entitled "Capital One Announces Data Security Incident", produced herein as **Exhibit R-1**;
6. By reason of the Respondents' failure to safeguard their customers' personal and private information, Petitioner and Members of the Class have suffered damages and are entitled to claim *inter alia*: (a) trouble and inconvenience by having to carefully review their transactions and be on the lookout for fraud, (b) the lost value of their private information, which was under their own personal control, (c) any additional credit monitoring services not already covered by the Respondents, (d) possible future fraud, and (e) punitive damages;

## **B) The Respondents**

7. Respondent Capital One Financial Corporation ("Capital One U.S.") is a publicly-traded company under the laws of the State of Delaware, U.S.A. Capital One issues MasterCard-branded credit cards throughout Canada, including within the province of Quebec;

8. Credit is extended through Respondent Capital One Bank (Canada Branch) (“Capital One Canada”). “Capital One” is a registered trademark of Capital One U.S. Financial Corporation, used under license in Canada;
9. The most popular of the Respondents’ products are those credit cards used to cardholders for use by customers of Costco, Hudson’s Bay, and Saks;
10. Given the close ties between the Respondents and considering the preceding, they are solidarily liable for the acts and omissions of the other;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER**

11. The Petitioner is a Costco Capital One Credit Card holder, which he applied for (and was accepted) approximately 4-5 years ago. In order to fill out the application form, he was required to furnish his personal, private, and sensitive information, including his SIN number;
12. It is safe to say that his personal and private information has been compromised;
13. The Petitioner had every reason to believe, and did indeed believe, that the Respondents would safeguard his personal and private information from any unauthorized access – they failed in this duty;
14. Petitioner’s damages are a direct and proximate result of the Respondents’ conduct;
15. In consequence of the foregoing, the Petitioner is justified in claiming damages;

## **III. FACTS GIVING RISE TO INDIVIDUAL ACTIONS BY EACH MEMBER OF THE CLASS**

16. Every member of the Class is a holder of a Capital One Credit Card and has or will suffer the damages as alleged in paragraph 6 above;
17. All of these damages to the Class Members are a direct and proximate result of the Respondents’ conduct;

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

- A) The composition of the Class makes it difficult or impractical to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings
18. Petitioner is unaware of the specific number of persons who have a Capital One Credit Card, but the Respondents have admitted that approximately 6 million Canadian customers were affected by the data reach and 1 million Canadian SIN numbers were compromised;

19. Class Members are numerous and are scattered across the entire province;
  20. 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 Class Members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
  21. Also, a multitude of actions instituted in different jurisdictions, both territorial and judicial districts, risks having contradictory judgments on issues of fact and law that are similar or related to all members of the Class;
  22. 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;
  23. 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;
- B) The claims of the members of the Class raise identical, similar or related issues of law or fact
24. Individual issues, if any, pale by comparison to the numerous common issues that will advance the litigation significantly;
  25. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
  26. The claims of the Class Members raise identical, similar or related issues of fact or law, namely:
    - a) Were the Defendants negligent in the safekeeping of Class Members' personal information, which were compromised on or about March 22 and 23, 2019?
    - b) Did the Defendants timely disclose the data breach to Class Members on July 29, 2019?
    - c) Are the Defendants responsible for all related damages, including, but not limited to monetary losses, trouble and inconvenience, moral damages, additional credit monitoring, lost time, lost value of their personal information, and in what amount?
    - d) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?



27. The interests of justice favour that this application be granted in accordance with its conclusions;

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

28. The action that the Petitioner wishes to institute on behalf of the members of the Class is an action in damages;

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

GRANT the class action of the Plaintiff and each of the members of the Class;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the Class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

A) Petitioner requests that he be attributed the status of representative of the Class

30. The Petitioner is a member of the Class;

31. The Petitioner is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined

to lead the present file to a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the *Fonds d'aide aux actions collectives*, as the case may be, and to collaborate with his attorneys;

32. The Petitioner has the capacity and interest to fairly and properly protect and represent the interest of the members of the Class;
  33. The Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
  34. The Petitioner, with the assistance of his attorneys, is 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;
  35. The Petitioner has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing;
  36. The Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
  37. The Petitioner understands the nature of the action;
  38. The Petitioner's interests are not antagonistic to those of other members of the Class;
  39. The Petitioner is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary;
  40. The Petitioner has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread;
  41. The Petitioner, with the assistance of his attorneys, has created a webpage at [www.clg.org](http://www.clg.org) wherein other Class Members can enter their coordinates to join the class action and be kept up to date on its development;
- B) Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal

42. A great number of the members of the Class reside in the judicial district of Montreal and in the appeal district of Montreal;

43. The Petitioner's attorneys practice their profession in the judicial district of Montreal;

44. 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;

**APPOINT** the Petitioner as representative of the persons included in the class herein described as:

- all persons, entities, or organizations resident in Quebec who are Capital One Credit Card holders and whose personal and private information was compromised by the incident that occurred on or about March 22 and 23, 2019 (though such breach was only disclosed to the public on July 29, 2019), or any other group to be determined by the Court;

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

- a) Were the Defendants negligent in the safekeeping of Class Members' personal information which were compromised on or about March 22 and 23, 2019?
- b) Did the Defendants timely disclose the data breach to Class Members on July 29, 2019?
- c) Are the Defendants responsible for all related damages, including, but not limited to monetary losses, trouble and inconvenience, moral damages, additional credit monitoring, lost time, lost value of their personal information, and in what amount?
- d) Are the Defendants responsible to pay punitive damages to Class Members and in what amount?

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

GRANT the class action of the Plaintiff and each of the members of the Class;



DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendants to pay to each member of the Class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

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

**DECLARE** that all members of the Class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in The Montreal Gazette and *La Presse*;

**ORDER** that said notice be available on the Respondents' websites, Facebook pages, and Twitter accounts with a link stating "Notice to Capital One Credit Card Holders";

**ORDER** that said notice be sent by individual letters emailed and/or mailed to Class Members by using the Respondents' customer list;



**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 costs, including all publication and dissemination fees.

Montreal, July 30, 2019

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorneys for the Petitioner

**CONSUMER LAW GROUP INC.**

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