

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL**

No: 500-06-001010-194

**SUPERIOR COURT
(Class Actions)**

MICHAEL ROYER

and

ALA'A ABOU-KHADRA

Petitioners

v.

CAPITAL ONE BANK (CANADA BRANCH)

and

CAPITAL ONE FINANCIAL CORPORATION

and

**CAPITAL ONE BANK (USA) NATIONAL
ASSOCIATION**

and

AMAZON.COM.CA, INC.

and

AMAZON.COM, INC.

and

AMAZON WEB SERVICES CANADA, INC.

and

AMAZON WEB SERVICES, INC.

and

AMAZON TECHNOLOGIES, INC.

Respondents

APPLICATION FOR AUTHORIZATION TO ADDUCE RELEVANT EVIDENCE
(Article 574 CCP)

TO THE HONOURABLE BERNARD TREMBLAY, J.S.C., THE RESPONDENTS
CAPITAL ONE BANK (CANADA BRANCH), CAPITAL ONE FINANCIAL
CORPORATION, AND CAPITAL ONE BANK (USA) NATIONAL ASSOCIATION
SUBMIT THE FOLLOWING:

1. The Respondents Capital One Bank (Canada Branch), Capital One Financial Corporation, and Capital One Bank (USA) National Association (collectively referred to as “**Capital One**”) hereby seek the authorization of this Honourable Court to adduce relevant evidence pursuant to article 574, para. 3 of the *Code of Civil Procedure*, RLRQ c C-25.01 (“**CCP**”).
2. More specifically, Capital One seeks this Honourable Court’s authorization to adduce as relevant evidence the following:
 - a. A Sworn Statement of Sevren Williams, Senior Associate, Data Science, at Capital One Bank (Canada Branch), dated August 28, 2020, and the annex in support thereof, a copy of which is filed herewith as **Exhibit CO-1**, namely:
 - i. A chart of the relevant extracted data regarding the credit card transactions and authorizations made to Petitioner Ala’a Abou-Khadra’s Capital One credit card ending in “...0684” from July 29, 2019 to August 17, 2019 (“**Transaction Authorization Chart**”) (Annex A)

I. The Amended Application to Authorize the Bringing of a Class Action & to Appoint the Petitioners as Representatives

3. On July 30, 2019, Petitioner Michael Royer filed an *Application to Authorize the Bringing of a Class Action & to Appoint the Petitioner as Representative* as against Capital One Bank (Canada Branch) and Capital One Financial Corporation, which was later amended on January 29, 2020 (the “**Amended Authorization Application**”).
4. By way of the amendment, Petitioner Ala’a Abou-Khadra and six respondents, including five Amazon entities and Capital One Bank (USA) National Association, were added as parties to the Amended Authorization Application.
5. Petitioners Michael Royer and Ala’a Abou-Khadra seek this Honourable Court’s authorization to institute a class action on behalf of the following proposed class:

“all persons, entities, or organizations resident in Quebec who were either Capital One Credit Card holders or who had applied for a Capital One Credit Card 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;” (the “**Proposed Class**”).
6. In the Amended Authorization Application, the Petitioners allege that the Respondents:
 - a. failed to adequately protect and safeguard the Proposed Class members’ personal and private information which was compromised by allowing for

unauthorized access by an outside individual on or around March 22 and 23, 2019 (the “**Cyber Incident**”);

- b. failed to disclose the Cyber Incident to the Proposed Class members in a timely manner; and
 - c. made false and/or misleading representations that customers personal and private information was safe and protected in Amazon’s AWS public cloud for storage and processing of sensitive information.
7. The Petitioners allege to have suffered damages as a result of the Cyber Incident, and to thus be entitled to damages resulting from *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 personal and private information, which they were unaware was subject to unlawful access and use (c) inflated prices for Capital One’ services, (d) any additional credit monitoring services not already covered by the Respondents, (e) possible future fraud, (f) stress and anxiety, and (g) punitive damages.
8. With regard to Petitioner Ala’a Abou-Khadra’s particular situation, which the Court must analyze along with the particular situation of Petitioner Michael Royer to determine if the proposed class action meets the criteria for authorization under article 575 CCP, it is alleged that:
- a. Petitioner Ala’a Abou-Khadra is a Costco Capital One credit card holder since 2015. In order to fill out the application form, he was required to furnish his personal, private, and sensitive information, including his SIN number (para. 15.1 of the Amended Authorization Application);
 - b. On July 30, 2019, in watching the news, he learned that Capital One credit card holders’ personal and private information had been compromised by the Cyber Incident (para. 15.2 of the Amended Authorization Application);
 - c. Also on July 30, 2019, he checked his online credit card statement and found two suspicious transactions on his Capital One credit card ending in “...0684” (“**Credit Card Number**”) with the merchant PowerKeto (para. 15.3 and Exhibit R-29 a), b) and c) of the Amended Authorization Application) (the “**Fraudulent Transactions**”);
 - d. He called Capital One to report the suspicious transactions (para. 15.4 of the Amended Authorization Application);
 - e. The charges were reversed to his credit card after it was confirmed that his account had been compromised (para. 15.5 of the Amended Authorization Application);
 - f. As a result of this, he had to cancel his Capital One credit card and request a replacement (para. 15.6 of the Amended Authorization Application); and

- g. His damages are a direct and proximate result of the Respondent's conduct allowing the Cyber Incident (para. 15.8 of the Amended Authorization Application).

II. The Relevance of the Sworn Statement of a Capital One Representative

9. Capital One seeks this Honourable Court's permission to file the Sworn Statement of Sevren Williams, Senior Associate, Data Science at Capital One Bank (Canada Branch) (Exhibit CO-1), in order to correct and supplement certain allegations and evidence already produced in support of the Amended Authorization Application and to clarify the facts surrounding the Fraudulent Transactions alleged by Petitioner Ala'a Abou-Khadra.
10. Indeed, Petitioner Ala'a Abou-Khadra relies on general, vague and ambiguous allegations regarding the Fraudulent Transactions and their supposed relation to the Cyber Incident without providing any details, palpable facts or evidence to support this assertion.
11. The Sworn Statement of Sevren Williams (Exhibit CO-1) serves to clarify and confirm that the Fraudulent Transactions were neither related to nor the result of the Cyber Incident.
12. In this regard, the Sworn Statement (Exhibit CO-1) refers to the Transaction Authorization Chart (Annex A) to complete and explain the Fraudulent Transactions by setting out relevant data in respect of certain information that was provided to the merchant PowerKeto to make the Fraudulent Transactions, namely the Petitioner's Credit Card Number and card verification value number - the 3 digit number that appears on the back of the credit card ("**CVI2 Number**").
13. The Sworn Statement (Exhibit CO-1) further clarifies that credit card numbers were not compromised by the Cyber Incident, as evidenced by the Petitioners own Exhibits R-1 a), R-1 b), and R-28, filed in support of the Amended Authorization Application.
14. It follows that the Sworn Statement and supporting Annex A (Exhibit CO-1) serves to complete and clarify the vague and ambiguous allegations regarding the Fraudulent Transactions and their relation, or rather the total absence of any relation, to the Cyber Incident, and provides the Court with a true and complete factual matrix relating to the allegations of the Amended Application for Authorization.
15. It is thus in the interests of justice and the parties that Capital One be authorized to adduce as relevant evidence the Sworn Statement of Sevren Williams and the supporting Transaction Authorization Chart at Annex A (Exhibit CO-1) in order to correct, clarify and explain the allegations in the Amended Authorization Application and thus provide this Honourable Court with a complete and comprehensive picture of the factual allegations in the Amended Authorization Application which are both useful and necessary to assist this Honourable Court in its analysis of the criteria for authorization pursuant to article 575 CCP.

16. The relevant and very specific evidence which Capital One seeks this Honourable Court's authorization to adduce also satisfies the principle of proportionality found at article 18 CCP.
17. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS COURT TO:

GRANT the present Application;

AUTHORIZE the Respondents Capital One Bank (Canada Branch), Capital One Financial Corporation, and Capital One Bank (USA) National Association to file the sworn statement of Sevren Williams, dated August 28, 2020 (Exhibit CO-1), and the Transaction Authorization Chart (Annex A).

THE WHOLE without legal costs, unless the present Application is contested.

Montréal, this August 28, 2020

Fasken Martineau DuMoulin

Fasken Martineau DuMoulin LLP

Attorneys for the Respondents Capital One Bank (Canada Branch), Capital One Financial Corporation, and Capital One Bank (USA) National Association

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LIST OF EXHIBITS

Exhibit CO-1: Sworn Statement of Sevren Williams, Senior Associate, Data Science, at Capital One Bank (Canada Branch), dated August 28, 2020, and the supporting Transaction Authorization Chart at Annex A

Montréal, this August 28, 2020

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SWORN STATEMENT

I, Sevren Williams, Senior Associate, Data Science, at Capital One Bank (Canada Branch), having my professional address at 161 Bay Street, Suite 1900, in the city of Toronto, Province of Ontario, M5J 2S1, do solemnly declare:

1. I make this Sworn Statement in support of the Respondents' Capital One Bank (Canada Branch), Capital One Financial Corporation, Capital One Bank (USA) National Association *Application for Authorization to Adduce Relevant Evidence*.
2. I have reviewed the *Amended Application to Authorize the Bringing of a Class Action and to Appoint the Petitioners as Representatives* dated January 29, 2020 (the "**Amended Authorization Application**"), and its supporting exhibits which were filed in this matter.

FACTS SPECIFIC TO PETITIONER ALA'A ABOU-KHADRA

3. Petitioner Ala'a Abou-Khadra alleges to have been the victim of two (2) fraudulent transactions on his Capital One credit card on July 30, 2019, one for \$267,00¹ and the other for \$2,55² (the "**Fraudulent Transactions**"), and to have suffered damages as a "direct and proximate result" of a cyber security incident that occurred on or about March 22 and 23, 2019 (the "**Cyber Incident**"), as appears from paragraphs 15.3 to 15.8 of the Amended Authorization Application.
4. Petitioner Ala'a Abou-Khadra alleges that the Fraudulent Transactions were both made with the merchant PowerKeto (the "**Merchant**"), and that his Capital One credit card ending in "...0684" ("**Credit Card Number**") was charged, as appears from Exhibit R-29 a), b) and c) filed in support of the Amended Authorization Application.
5. A review of the relevant extracted data regarding Petitioner's credit card transactions and authorizations from July 29, 2019 to August 17, 2019 ("**Transaction Authorization Chart**"), attached hereto as **Annex A** to this Sworn Statement, confirms the following:
 - i. The two alleged Fraudulent Transactions were made with the Merchant "PowerKeto 855-648-2378" on July 30, 2019 at 3:04 am and 3:09 am respectively, as appears from rows 6 and 7 of columns A, B and C of the Transaction Authorization Chart (Annex A);
 - ii. The authorized amount of the Fraudulent Transactions that was approved was \$260.90 and \$2.49 respectively as appears from rows 6 and 7 of columns D and E of the Transaction Authorization Chart (Annex A) and as evidenced by Exhibit R-29 a) filed in support of the Amended Authorization Application;
 - iii. The two Fraudulent Transactions were of the "MOTO" (Mail Order/Telephone Order) type, as set out in rows 6 and 7 of column F of the Transaction Authorization Chart.

¹ Initial charge with the merchant PowerKeto of \$260.90 (Exhibit R-29 a)).

² Initial charge with the merchant PowerKeto of \$2.49 (Exhibit R-29 a)).

- iv. Both the Credit Card Number and the Card Verification Value Number - the 3 digit number that appears on the back of the credit card ("**CVI2 Number**") - were provided to the Merchant. The CVI2 Number was entered by the Merchant in order to proceed with the Fraudulent Transactions, as appears from the number "1" (Present) identified in rows 6 and 7 of column G of the Transaction Authorization Chart (Annex A); and
- v. The CVI2 Number provided to the Merchant in relation to both Fraudulent Transactions matched Petitioner's Credit Card Number, as appears from the letter "M" (Match) identified in rows 6 and 7 of column H in the Transaction Authorization Chart (Annex A), and the transactions were authorized.

THE INFORMATION COMPROMISED BY THE CYBER INCIDENT

- 6. Certain personal information relating to people who either were Capital One credit card customers or who had applied for Capital One credit card products was obtained through unauthorized access by an outside individual as a result of the Cyber Incident, as appears from Exhibits R-1 a), R-1 b), R-1 c), and R-28 filed in support of the Amended Authorization Application.
- 7. More specifically, the information accessed included personal information Capital One routinely collects at the time it receives credit card applications, including names, addresses, zip codes/postal codes, phone numbers, email addresses, dates of birth, and self-reported income (Exhibits R-1 a), R-1 b), and R-28).
- 8. Beyond the credit card application data, portions of Canadian customer data were also obtained, including certain Social Insurance Numbers (SINs), customer status data, such as credit scores, credit limits, balances, payment history and contact information, and fragments of transaction data from a total of 23 days during 2016, 2017 and 2018 (Exhibits R-1 a), R-1 b), and R-28 in support of the Amended Authorization Application).
- 9. No credit card numbers, credit card account numbers, PIN codes or login credentials were compromised by the Cyber Incident (Exhibits R-1 a), R-1 b), and R-28).
- 10. Petitioner Ala'a Abou-Khadra's Credit Card Number, which was provided to the Merchant and required for the Fraudulent Transactions, is not information that was compromised by the Cyber Incident.
- 11. All the facts alleged in this Sworn Statement are true to my knowledge.

AND I HAVE SIGNED:

Sevren Williams

Sevren Williams, Senior Associate, Data Science, at Capital One Bank (Canada Branch)

Solemnly affirmed before me,
in Montreal, on August 28, 2020

Marie Joan Lai Kwan

Commissioner for Oaths for Québec



ANNEX A

TRANSACTION AUTHORIZATION CHART

(Transactions from 2019-07-29 to 2019-08-17)

	A	B	C	D	E	F	G	H	I	J	K
	AUTHZN_RQST_PROC_DT	AUTHZN_RQST_PROC_TM	MRCH_NM	AUTHZN_AMT	AUTHZN_APPRD_AMT	DCSN_HIER_TRXN_TYPE_CD	CARD_VFCN_PRESNC_CD	CARD_VFCN2_VLDTN_CD	MRCH_CITY_NM	AUTHZN_RESPNS_MSG_TXT	AUTHZN_PLSTC_EXPIRN_DT
1	2019-07-29	06:33:58	COSTCO ESSENCE W521	49	0				BROSSARD	ABOU-KHADALAA	2019-10-31
2	2019-07-29	06:33:58	COSTCO ESSENCE W521	150	150	PURC			BROSSARD	ABOU-KHADALAA	2019-10-31
3	2019-07-29	06:35:50	COSTCO ESSENCE W521	150	0				BROSSARD	*CANCELED	2019-10-31
4	2019-07-29	08:09:17	COSTCO WHOLESALE W528	23,97	23,97	PURC			POINTE CLAIRE	ABOU-KHADALAA	2019-10-31
5	2019-07-29	08:13:24	COSTCO WHOLESALE W528	1,73	1,73	PURC			POINTE CLAIRE	ABOU-KHADALAA	2019-10-31
6	2019-07-30	03:04:25	POWERKETO 855-648-2378	260,9	260,9	MOTO	1		855-648-2378	ABOU-KHADALAA	2019-10-31
7	2019-07-30	03:09:36	POWERKETO 855-648-2378	2,49	2,49	MOTO	1		855-648-2378	ABOU-KHADALAA	2019-10-31
8	2019-07-30	07:04:32		570,36	570,36	PYMT				ABOU-KHADRA, A	
9	2019-08-03	08:55:29	COSTCO WHOLESALE W528	45,98	0	PURC			POINTE CLAIRE	*** CODED SECURITY/FRAUD - LOST ***	2019-10-31
10	2019-08-17	04:31:56	COSTCO ESSENCE W1213	25	0				VAUDREUIL-DOR	ABOU-KHADALAA	2023-10-31
11	2019-08-17	04:31:56	COSTCO ESSENCE W1213	150	150	PURC			VAUDREUIL-DOR	ABOU-KHADALAA	2023-10-31
12	2019-08-17	04:33:31	COSTCO ESSENCE W1213	150	0				VAUDREUIL-DOR	*CANCELED	2023-10-31
13	2019-08-17	08:37:20	COSTCO WHOLESALE W528	296,75	296,75	PURC			POINTE CLAIRE	ABOU-KHADALAA	2023-10-31

DATA REFERENCE DESCRIPTIONS

<u>Data Reference</u>	<u>Descriptions</u>
AUTHZN_RQST_PROC_DT	Authorization date : For all message types except advice records, this is the date of the authorization request.
AUTHZN_RQST_PROC_TM	Authorization time (EST) : For all message types except advice records, this is the Eastern Standard Time of the authorization request.
MRCH_NM	Merchant name: Name of the merchant submitting the authorization request. When a posted transaction is a Person to Person Payment, the Merchant ID is the person to whom the "payment" is being sent.
AUTHZN_AMT	Authorization amount requested : The transaction amount is amount of funds requested by the cardholder in the authorization request.
AUTHZN_APPRD_AMT	Authorization amount approved: Amount of the authorization request transaction that was approved.
DCSN_HIER_TRXN_TYPE_CD	Authorization type: The transaction type identifies the authorization type used to access the decision hierarchy table and is part of the key. Values are: (PURC = Purchase)(CASH = Cash Advances)(ATM = ATM Cash Advances)(INQ = Balance Inquiry)(MOTO = Mail Order/Telephone Order)(BTCH = Batch Authorizations)(OR = Authorization Override)(PYMT = Payment)(RETN = Return)(PINC = Pin Change)(PINU= Pin Unblock)
CARD_VFCN_PRESNC_CD	CVI2 present : A code that uniquely identifies the presence of the CVI2 value on the authorization. CVI2 stands for Card Verification Value 2 (3 digit value on back of card). This value is entered by the merchant. Values are: (0 = Not provided) (1 = Present)(2 = Illegible)(9 = Not on card)
CARD_VFCN2_VLDTN_CD	CVI2 verification result code : A code that describes if the card verification (CVI2) was validated. Values are: (M = CVI2 Matched)(N = Not Matched)(P = Not Processed)(S = Not Present)(U = Issuer Not CERT)
MRCH_CITY_NM	Merchant city: City where the merchant submitting the authorization request is located.
AUTHZN_RESPNS_MSG_TXT	Authorization response message: This field contains any verbiage associated with the authorization transaction.
AUTHZN_PLSTC_EXPIRN_DT	Plastic credit card expiration date: This is the date after which the plastic credit card is no longer acceptable for processing authorization request. This field displays the expiration date that was received with the authorization message. The source is MMYYY.

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ORIGINAL

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