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

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

N° : 500-06-001081-203

STEVE HOLCMAN

Applicant

-vs-

RESTAURANT BRANDS INTERNATIONAL INC.

-and-

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP

-and-

THE TDL GROUP CORP.

Defendants

DEFENDANTS RESTAURANT BRANDS INTERNATIONAL INC. AND THE TDL GROUP CORP'S
APPLICATION FOR DECLINATORY EXCEPTION
(Art. 3148 (2) *Civil Code of Quebec* and art. 167 *Code of Civil Procedure* ("CCP"))

TO THE HONOURABLE JUSTICE MARTIN F. SHEEHAN, S.C.J. SITTING IN THE CLASS ACTION DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE DEFENDANTS RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Applicant Steve Holcman (the "**Applicant**") seeks to institute a class action on behalf of the following class, as appears from his *Application to authorize the bringing of a class action and to appoint the status of representative plaintiff* dated June 30, 2020 (the "**Application**"):

   "All Quebec resident who downloaded the Tim Hortons mobile application."

2. The Applicant alleges that the Tim Hortons mobile application (the "**App**") is "*logging detailed location date of its customers (unbeknownst to them) and was using a location-tracking service from a company called Radar Labs Inc., a US*

Corporation, who boasts that it can ping its customers' phones as often as every three to five minutes" (paragraph 7 of the Application).

3. The three Defendants, Restaurant Brands International Inc. ("**RBII**"), Restaurant Brands International Limited Partnership ("**RBILP**") and The TDL Group Corp. ("**TDL**"), are distinct entities. "Tim Hortons" is a brand and not a legal entity.

4. TDL is the franchisor of the Tim Hortons brand and system in Canada. TDL also owns and operates a few Tim Hortons restaurants in Canada. TDL is an indirect subsidiary of 1011778 B.C. Unlimited Liability Company, which is an indirect subsidiary of Restaurant Brands International Limited Partnership ("**RBILP**").

5. The general partner of Restaurant Brands International Limited Partnership is Restaurant Brands International Inc. ("**RBII**").

6. Contrary to the Application's baseless allegation at paragraph 4, TDL is and always has been the sole operator of the App.

7. TDL is an indirect subsidiary of 1011778 B.C. ULC, which is an indirect subsidiary of RBILP. Aside from this indirect ownership, neither RBILP nor RBII were involved with the development, maintenance and marketing of the App.

II.   DECLINATORY EXCEPTION

A.   The App's Terms of Service

8. The use of the App is governed by Terms of Service (Exhibit T-2) which contain an unconditional, binding and non-elective arbitration clause (the "**Arbitration Clause"**) that reads as follows:

> "*These Terms of Service (the "Terms") govern your use of any website, mobile or tablet application, digital in-restaurant kiosk, or other online service or platform of Restaurant Brands International, Inc., or any of its companies, including without limitation the BURGER KING®, the TIM HORTONS® and the POPEYES® restaurant brands (collectively, "RBI"), that provides an authorized link to the Terms (collectively, the "Services"), regardless of who owns or operates the Services or the restaurant you ultimately visit, as well as our interactions with you on third party platforms.*
>
> *[…]*
>
> *12. Governing Law, Arbitration, and Class Action Waiver*
>
> *Except where prohibited by applicable law, which may include the Province of Quebec, the following terms apply to all legal disputes between you and RBI. These Terms are governed by the laws of the United States and the State of Florida, without giving effect to their principles of conflicts of law. Except where prohibited by applicable law, which may include the Province of Quebec, by using the Services, you*

waive any claims that may arise under the laws of other states, provinces, countries, territories, or jurisdictions.

Except where prohibited by applicable law, which may include the Province of Quebec, with respect to any and all disputes arising out of or relating to the Services or these Terms (including without limitation the Privacy Policy), <u>RBI and you agree to negotiate in good faith to achieve a mutually satisfactory resolution. If you and RBI do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding arbitration as described in this section.</u> You are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury. <u>Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the Federal Arbitration Act.</u> Any court with jurisdiction over the parties may enforce the arbitrator's award.

EXCEPT WHERE PROHIBITED BY APPLICABLE LAW, WHICH MAY INCLUDE THE PROVINCE OF QUEBEC, ANY PROCEEDINGS TO RESOLVE OR LITIGATE ANY DISPUTE WILL BE CONDUCTED SOLELY ON AN INDIVIDUAL BASIS. NEITHER YOU NOR RBI WILL SEEK TO HAVE ANY DISPUTE HEARD AS A CLASS ACTION OR IN ANY OTHER PROCEEDING IN WHICH EITHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY.

No arbitration or proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.

Except where prohibited by applicable law, which may include the Province of Quebec, <u>all disputes arising under these Terms that cannot be settled through informal negotiation will be settled exclusively through confidential binding arbitration in accordance with the Consumer Arbitration Rules of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in a court of competent jurisdiction.</u> You agree that RBI may seek any interim or preliminary relief from a court of competent jurisdiction in New York, necessary to protect its rights or property pending the completion of arbitration. In the event a dispute cannot, by applicable law, be subject to binding arbitration, the parties hereto irrevocably submit to the jurisdiction of the state and/or federal courts in the Southern District of Florida, except where prohibited by applicable law, which may include the Province of Quebec."

[Our emphasis]

9. The Terms of Service are binding on RBII and TDL. They do not concern RBILP which is not involved whatsoever with the App.

B.   The Applicant is bound by the Terms of Service

10.   The use of the App is governed by Terms of Service. As such, in order to use the App, the Applicant was required to review and agree to the then-current Terms of Service and the Privacy Policy. The Applicant is therefore bound by the App's Terms of Service.

11.   The contractual relationship formed through the use of the App is not a consumer contract and therefore not subject to the limitations provided at article 3149 of the *Civil Code* or sections 11.1 and 22.1 of the *Consumer Protection Act.*

12.   Indeed, the contract formed upon downloading and using the App is a gratuitous contract which does not form a consumer relationship between TDL (or RBII) and its users.

13.   The App is available for download for free and the Defendants do not draw any type of revenue from the act of downloading the App onto a user's device.

14.   Once downloaded, the App does not require its users to actually use the App or to purchase any product.

15.   The App is free to use. The Defendants do not draw any type of revenue from the use of the App nor do they draw any revenue from advertising third-party products or services.

16.   The App only enables its users who so choose to order their beverage, snack or meal and pay, much as users would do if they were to order at a Tim Hortons location (each order being a distinct transaction). These functionalities are also free.

17.   Each order passed using the App constitutes a distinct transaction, then forming a consumer relationship for each instance where products are purchased. However, the mere action of downloading the App and its use for other purposes than purchasing products (e.g. locating a nearby restaurant) do not qualify said contract as a consumer contract under civil law.

18.   While the App can be used without an account for limited functionalities such as to find Tim Hortons locations, users who sought to use the App to complete separate transactions by ordering menu items either for delivery or pick-up in store are first required to proceed through the account creation process.

19.   This process required users to affirmatively click an electronic "Sign Up" button agreeing to create a Tim Hortons account (see Figure 3 below).

20.   At all times relevant to this litigation, users, including the Applicant, were required to review and agree to the then-current Terms of Service and the Privacy Policy before they could create an account on the App.

21.   The account creation process also required users to agree to certain other policies and agreements. In order to be able to click on the "Sign Up" button, users necessarily had to check a box stating as follows (see Figure 3): "*I agree to the following: **Privacy Policy, Terms of Service, Tims Rewards Terms and Conditions***".

Figure 3
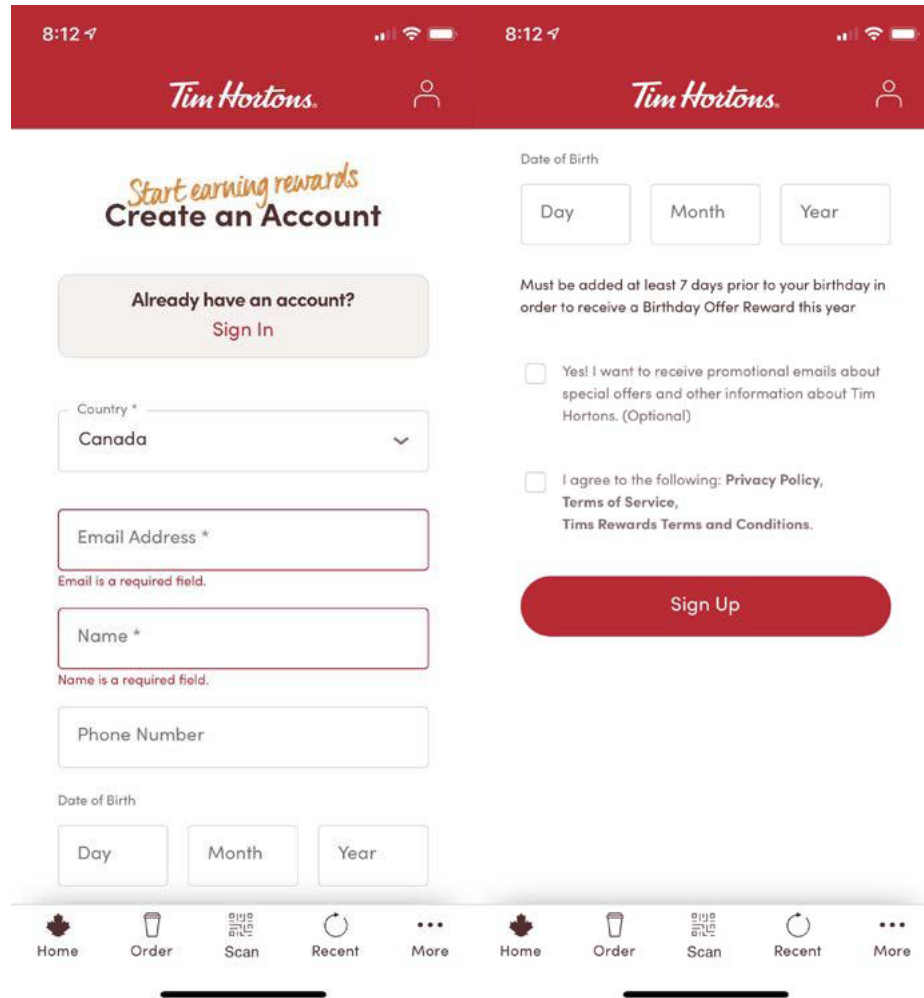
22.   The phrase "Terms of Service" was set off as a text in bold font and hyperlinked to the then-current version of the full Terms of Service.

23.   Users were thus notified about the Terms of Service, had the opportunity to review them, and agreed to them in the process of signing up and creating a Tim Hortons account.

C.   Conclusion

24.   In light of the foregoing, this Honourable Court has no jurisdiction to hear and determine the Application as regards the Defendants RBII and TDL. Only an Arbitral Tribunal constituted pursuant to the Arbitration Clause shall have

jurisdiction to hear a dispute arising from the use of the App between TDL, RBII and a User.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT Defendants' Restaurant Brands International Inc. and The TDL Group Corp.'s *Application for declinatory exception*;

DISMISS the Applicant's *Application to authorize the bringing of a class action and to appoint the status of representative plaintiff* dated June 30, 2020;

THE WHOLE with costs.

MONTRÉAL, November 20th, 2020

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Attorneys for Defendants.

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NOTICE OF PRESENTATION

To: Mtre Joey Zukran
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Co-Counsel for Applicant Steve Holcman

TAKE NOTICE that the *Application for declinatory exception* will be presented before the Honourable Justice Martin F. Sheehan of the Superior Court, sitting in and for the District of Montreal, on such date and time as he may deem fit, in a room to be determined of the Montreal Courthouse, located at 1 Notre-Dame Street West, Montreal, Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, November 20th, 2020

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STEVE HOLCMAN

Applicant

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RESTAURANT BRANDS INTERNATIONAL INC.

-and-

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP

-and-

THE TDL GROUP CORP.

Defendants

AFFIDAVIT OF MATTHEW MOORE
(Art. 574 C.C.P.)

I, Matthew Moore, Head of Digital and Loyalty at The TDL Group Corp. ("**TDL**"), having a place of business at 130 King Street West, Suite 300, Toronto, Ontario, being duly sworn, do solemnly swear and affirm the following:

1.   I am currently employed by TDL as Head of Digital and Loyalty. As such, I am familiar with the Tim Hortons mobile application available on mobile device operating systems (the "**App**") and have obtained input from the relevant subject matter experts within my broader organization.

2.   I am swearing this affidavit in the context of Mr. Steve Holcman's Application to authorize the bringing of a class action and to appoint the status of representative plaintiff dated June 30, 2020.

Presentation of the Defendants

3.   TDL is the franchisor of the Tim Hortons brand and system in Canada. TDL also owns and operates certain Tim Hortons restaurants in Canada. TDL is an indirect subsidiary of 1011778 B.C. Unlimited Liability Company, which is an indirect subsidiary of Restaurant Brands International Limited Partnership ("**RBILP**").

4.   The general partner of Restaurant Brands International Limited Partnership is Restaurant Brands International Inc. ("**RBII**"). RBII is a public company traded on the Toronto Stock Exchange (QSR.TO).

5.   While a few Tim Hortons restaurants are owned and operated directly by TDL, almost all Tim Hortons restaurants are owned and operated by third-party franchisees. TDL offers and sells Tim Hortons licenses to franchisees consisting of the right to operate a Tim Hortons restaurant at a licensed location. Tim Hortons is a brand and not a legal entity.

6.   Indeed, TDL is the sole operator of the App. The use of the App is governed by Terms of Service, which are binding on RBII and TDL and include an arbitration clause at section 12. Attached hereto as **Exhibit T-1** and **Exhibit T-2** are copies of the Terms of Service in effect from the launch of the App until March 30, 2019 and since March 31, 2019, respectively.

7.   TDL is an indirect subsidiary of 1011778 B.C. ULC, which is an indirect subsidiary of RBILP. Aside from this indirect ownership, neither RBILP nor RBII were involved with the development, maintenance and marketing of the App.

8.   Pursuant to an inter-company services agreement, TDL leverages support and services from Restaurant Brands International US Services LLC ("**RBI US Services**"), including in connection with TDL's privacy practices and App development services.

9.   As outlined in more detail below, the relevant period with respect to the collection by the App of users' location data is from May 2019 to June 2020 (the "**Relevant Period**"). As such, the contents of this affidavit refer to practices implemented by TDL and the applicable terms of service and policies during the Relevant Period.

10.   Throughout the Relevant Period, the agreement of users of the App was sought with respect to the collection and use of their location data through (1) two prompts in the App namely (a) by agreeing to the Terms of Service and the Privacy Policy and (b) to allow location services, and (2) one prompt generated by the device's operating system, the whole as described in further detail herein.

Downloading and Using the App

11.   The App was first released and available for download by users on February 22, 2017 for Google's Android operating system and on July 27, 2017 for Apple's iOS operating system.

12.   The App is available for download for free and TDL does not draw any type of revenue from the act of downloading the App onto a user's device.

13.   Prior to downloading the App, users are provided with a link to the Tim Hortons Privacy Policy in their operating system's App Store. Users were also presented with information about the purposes for which their information would be used, within the description of the App in the relevant operating system store. Attached hereto as **Exhibit T-3** and **Exhibit T-4** are printouts of the description of the current App in, respectively, the iOS store and the Google Play store, both of which include a hyperlink to the current Tim Hortons Privacy Policy (i.e. the February 5, 2020 version). Attached hereto as **Exhibit T-5**, **Exhibit T-6** and **Exhibit T-7** are copies of the Tim Hortons Privacy Policy in effect, respectively as of October 31, 2018, January 1, 2020 and February 5, 2020.

14.   Once downloaded, the App does not require its users to actually use the App or to purchase any product.

15.   The App is free to use. The Defendants do not draw any type of revenue from the use of the App nor does it draw any revenue from advertising third-party products or services.

16.   The App only enables its users who so choose to order their beverage, snack or meal and pay, much as users would do if they were to order at a Tim Hortons location (each order being a distinct transaction). These functionalities are also free.

Users Consent to Sharing Device Location with the App

17.   Handheld devices operate on one of two operating systems or platforms: Google's Android and Apple's iOS.

18.   By way of the design and architecture of the iOS and Android platforms, the collection of geolocation and other types of data from a device by any mobile application is generally initiated by its user through a permissions process.

19.   Whether it be on Apple's iOS operating system or on Google's Android operating systems released October 5, 2015 and later, user consent to sharing device location with the App is obtained through both (1) the App and (2) the device's operating system.

20.   By default, the App is technically unable to collect geolocation data of a user unless and until:

> (1) notice is provided by the App to a user requesting permission for the collection of location data (see Figure 1 below); and

> (2) the user grants the geolocation permission through the express consent process designed by the device's operating system (see Figure 2 below).

21.   On iOS and Android operating systems released since October 2015, user choice is first offered by the iOS and Android platforms when a user first uses a function of the App that uses their geolocation, such as the restaurant-locating feature (see Figure 1 below). This express consent-based permissions process means that a user must take a proactive step to grant a location-based permission prior to the App collecting such data from the user's device.
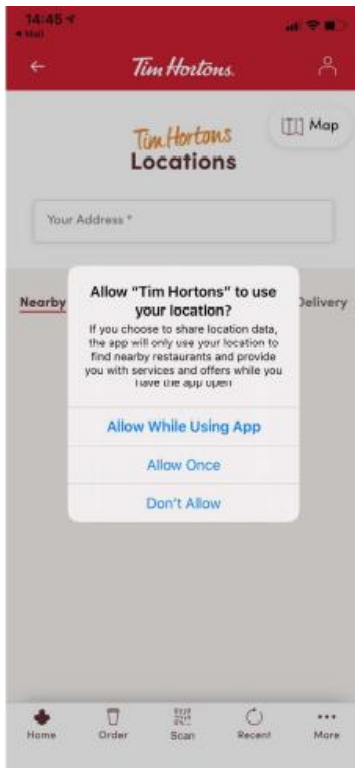
22.   Permission to allow location services is requested by the App when the user first attempts to place an order or locate a restaurant. The user is not presented with the device prompt illustrated at Figure 2, if they press the "Select Manually" button. A user that opts to search for restaurants manually, or does not allow the App to access location information, is presented with the option of searching for restaurants by (1) manually scrolling through a map and searching for restaurants in a specific area, or (2) by entering an address, after which they would be provided with information regarding restaurants near to that address.

Figure 1 (as of July 31, 2020)

Allow location services to find

OUR RESTAURANTS NEAR YOU
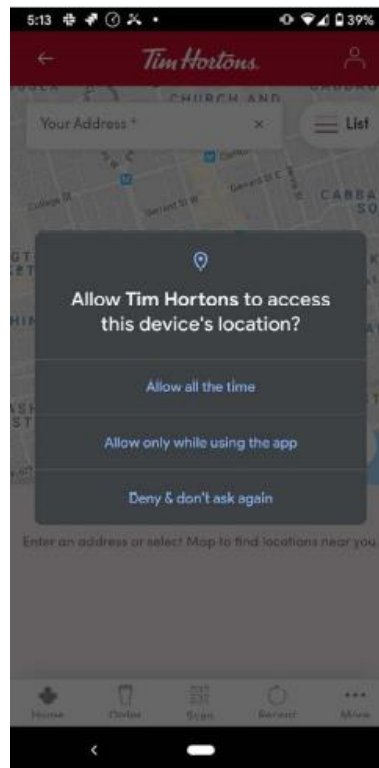
Allow location services

Select Manually

23.   If the user presses the "Allow location services" button on the previous page (Figure 1), they are presented for a second time with a consent request to share their location information through a prompt generated by the device's operating system (see Figure 2).

Figure 2 (as of July 31, 2020)
iOS   Android

24.   Permission screens are generated by the iOS and Android operating systems, and not the App. For example, Android permission screens do not include any additional notice.

25.   Before September 2019, the notice included in the prompt generated by the iOS operating system read as follows:

"Allow us to access your location? We use your location to find your closest Tims."

26.   The notice language used was updated for iOS users on September 4, 2019 to read as follows:

"Allow Tim Hortons to access your location while you are using the app? We use your location to help you find nearby restaurants and provide you with more relevant marketing & offers."

27.   The notice language used was updated again for iOS users on July 9, 2020 to read as per the screenshot at Figure 2:

"Allow 'Tim Hortons' to use your location? If you choose to share location data, the app will only use your location to find nearby restaurants and provide you with services and offers while you have the app open."

28.   The user who granted their permission for the App to collect their device location data may easily change or revoke this permission through their device's settings at any time thereafter.

29.   The App's Frequently Asked Questions ("**FAQs**") provided users details on how to modify their location settings for the App. Attached hereto as **Exhibit T-8**, *en liasse*, are copies of the App FAQs on March 12, 2019, October 25, 2019, March 17, 2020 and June 10, 2020.

30.   Operating systems also provide information to users on how to modify a device's settings, including with respect to device location data. Attached hereto as **Exhibit T-9**, *en liasse*, are printouts of the support pages, respectively, for iOS devices and Android devices.

31.   For greater certainty, the App, like all mobile applications on the iOS and Android platforms released since October 2015, cannot collect location-based information of a user if (i) the user has not granted the location permission through the express consent process of their device, or (ii) the user subsequently revokes their location-based permission using their device's settings.

Account Creation

32.   While the App can be used without an account for limited functionalities such as to find Tim Hortons locations, users who sought to use the App to complete separate transactions by ordering menu items either for delivery or pick-up in store are first required to proceed through the account creation process.

33.   This process required users to affirmatively click an electronic "Sign Up" button agreeing to create a Tim Hortons account (see Figure 3 below).

34.   At all times relevant to this litigation, users, including the Applicant, were required to review and agree to the then-current Terms of Service and the Privacy Policy before they could create an account on the App.

35.   The account creation process also required users to agree to certain other policies and agreements. In order to be able to click on the "Sign Up" button, users necessarily had to check a box stating as follows (see Figure 3): "*I agree to the following: **Privacy Policy, Terms of Service, Tims Rewards Terms and Conditions***".

Figure 3
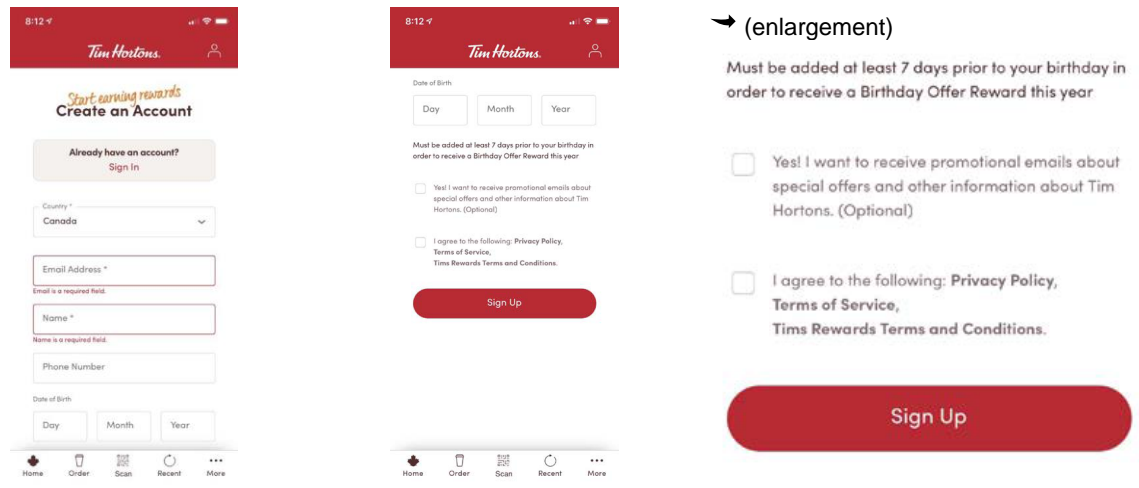
36.   The phrases "Privacy Policy" and "Terms of Service" were set off as a text in bold font and hyperlinked to the then-current version of the full Privacy Policy and Terms of Service, respectively.

37.   Users were thus notified about the Terms of Service and the Privacy Policy, had the opportunity to review them, and agreed to them in the process of signing up and creating a Tim Hortons account.

Details of the Privacy Policy

38.   Throughout the Relevant Period, Section 2 of the Terms of Service provide as follows: "*By using the Services, you acknowledge that you have reviewed and understand our Privacy Policy (https://timhortons.com/ca/en/privacy.php), and consent to the practices described in that policy*".

39.   As mentioned above, users had the opportunity to review the Privacy Policy before downloading the App and, if they wished to sign up and create an account, they had to affirmatively click a box stating that they agreed to the Privacy Policy (and the Terms of Service).

40.   Privacy practices associated with the App are described in the Tim Hortons Privacy Policy. The Tim Hortons Privacy Policy is set out on the Tim Hortons website (https://www.timhortons.com/privacy-policy) and is also accessible through the App at all times.

41.   The Tim Hortons Privacy Policy is explicit about the type of information collected by the App, how TDL can use the information and the extent to which the information is shared with third parties such as business partners, amongst other information which may be of interest to users.

Location Data Collected through the App

42.   In circumstances where a user granted geolocation permission to the App, location-based information may have been collected by the App through Radar Labs, Inc. ("**Radar**").

43.   The Radar software development kit ("**SDK**") technology was introduced in May 2019 and was removed in June 2020. Radar's SDK collected location data via standard location services on iOS (CoreLocation) and Android (Google Play Services Location) (collectively, the "**Radar Location Data**").

44.   Before May 2019, the App did not have any similar location data collection feature and the extent of the App's geolocation data usage was exclusively to (1) determine restaurant location or (2) to optimally send an order to the kitchen based on a user's proximity to the restaurant. Location data of a specific user was not stored by TDL nor was it otherwise used outside of these two use cases.

45.   Prior to engaging Radar, as part of its standard diligence program, RBI US Services, on behalf of TDL, ensured that Radar, as a service provider, was thoroughly assessed with regards to the means at its disposal to store and protect the personal information collected through the App, and to the processes in place with respect to data management and processing and strict access controls, as can be seen in Exhibit A (RBI - Security and Privacy Vendor Assessment, "**Assessment**") and Addendum A (Data Processing and Security) to the Master Services

Agreement entered into between RBI US Services and Radar on October 1, 2018 (the "**Radar MSA**"), a copy of which is attached hereto as **Exhibit T-10**, to be filed under seal.

46.   Radar's geofencing product turns the Radar Location Data collected by the SDK into context (e.g. the user's current country) and events (e.g. entry or exit from a place). The product uses Radar's "Places" database (e.g. for restaurant chain / category detection).

47.   Through a feature called "insights" (which Radar's website reports is now deprecated), the geofencing product could also infer when a user was at home, work or travelling, which Radar advised could *potentially* be used (i) to trigger messages based on home, office or traveling events, (ii) to target messages, for example according to a user's province or (iii) to suppress messages, for example when a user is travelling far away from home and is not likely to engage with the App. However, and as further described below, it is important to note that the Defendants never used these functionalities.

Defendants' Limited Use of the Location Data Collected through the App

48.   TDL only used Radar Location Data on an aggregated, de-identified basis to conduct limited analytics related to user trends.

49.   These analytics activities were conducted infrequently, and the results of such analytics did not contain personal information of any user. Radar Location Data was used, on an aggregated basis only, to (1) assess trends in users' movements over time as the Covid-19 pandemic took hold (e.g. away from downtown Tim Hortons restaurants locations and toward suburban locations instead) and (2) conduct a high level competitive analysis.

50.   Critically, TDL never used Radar Location Data to tailor or personalize marketing to a particular user, or to conduct analytics or generate any reports with respect to a particular user.

51.   Furthermore, and this is true for all personal data collected through the App, without limitation, access to user profiles has always been and remains strictly limited to individuals on a need-to-know basis and who require access for the purposes of their job functions. These individuals work with the RBI Consumer Technology Group (i.e. software engineering team) as well as the Tim Hortons brand marketing and digital teams at TDL. By way of example, RBI's strict IT Security Policies provide for strict access controls and audit logs which discourage any improper access to user information on an individualized basis. Attached hereto as **Exhibit T-11**, to be filed under seal, is a copy of RBI's IT Security Policies.

52.   As mentioned above, some 13 months after its implementation, the Radar SDK was removed from the App on June 21, 2020, which resulted in the cessation of location data collection in the background for users with an up-to-date App.

53.   On June 23, 2020, TDL implemented a further modification to the App's programming interface (API) which resulted in the cessation of location data collection in the background for all App users (i.e. on any version of the App).

Other Types of Data Collected through the App

54.   As disclosed to users in the Privacy Policy, the App may collect the following types of personal information about users:

a) Basic user information (e.g. name, birthday, email address, residential address);

b) User preferences (e.g. communications preferences (e.g. email, push notifications settings), favourite Tim Hortons restaurant(s));

c) Device or browser information (e.g. operating system, device type, advertising identifier, App referral source);

d) Certain location data (e.g. for pre-determined events; for the period between May 2019 and June 2020); and

e) Connection information (e.g. IP address, carrier).

55.   The sources of personal information that may be collected and stored include (1) users themselves when they provide personal information while creating an account and using the App, (2) the users' device when using the App as well as (3) payment and transactional information where users place orders.

Defendants' Use of Data Collected through the App

56.   TDL uses personal information collected by the current and previous versions of the App for the purposes of (1) facilitating mobile ordering of Tim Hortons products, (2) customer relationship management, including user accounts, stored-value card and rewards programs, and improving TDL's customer service, (3) communications with users, (4) targeted advertising, promotions and offers (when users have consented to receive marketing communications), and (5) analyzing the usage of the App.

57.   None of these purposes require location data to be used.

58.   Generally, the data within the profiles will be maintained for the time period that the individual remains an App user or otherwise requests deletion.

59.   User profiles are <u>not</u> disclosed to third parties for marketing purposes, and otherwise would only be disclosed in limited circumstances (and only as required or as otherwise strictly in accordance with the *Personal Information Protection and Electronic Documents Act* or, if applicable, the provincial *Act respecting the Protection of Personal and Private Information in the Private Sector*).

60.   User profiles are <u>not</u> sold, in whole or in part, to any third parties.
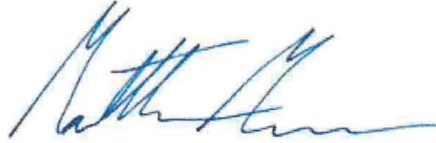
61.   The foregoing information is explicitly mentioned (in even greater detail) in the Privacy Policy, to which each user affirmatively agreed before using the App.

62.   It was also reiterated in an email sent to all users on June 10, 2020. Attached hereto as **Exhibit T-12** are the English and French copies of this email message.

63.   All the facts in this declaration are true based on information provided to and accessible by me as an employee of TDL.
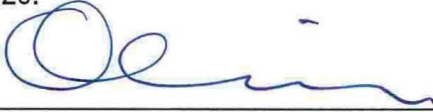
AND I HAVE SIGNED:

MATTHEW MOORE

SOLEMNLY AFFIRMED before me by videoconference, this 20th day of November 2020.

Commissioner of Oaths for Quebec

COMMISSAIRE À L'ASSERMENTATION
Danielle Tremblay
126,246
POUR LA PROVINCE DE QUÉBEC

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-001081-203

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

STEVE HOLCMAN

Applicant

-vs-

RESTAURANT BRANDS INTERNATIONAL INC.

-and-

RESTAURANT BRANDS INTERNATIONAL LIMITED PARTNERSHIP

-and-

THE TDL GROUP CORP.

Defendants

LIST OF EXHIBITS
AFFIDAVIT OF MATTHEW MOORE

Exhibit T-1:   Copy of the Terms of Service in effect from the launch of the App until March 30, 2019;

Exhibit T-2:   Copy of the Terms of Service in effect since March 31, 2019;

Exhibit T-3:   Printout of the description of the current App in the iOS store, which includes a hyperlink to the current Tim Hortons Privacy Policy;

Exhibit T-4:   Printout of the description of the current App in the Google Play store, which includes a hyperlink to the current Tim Hortons Privacy Policy;

Exhibit T-5:   Copy of the Tim Hortons Privacy Policy in effect as of October 31, 2018;

Exhibit T-6:   Copy of the Tim Hortons Privacy Policy in effect as of January 1, 2020;

Exhibit T-7:   Copy of the Tim Hortons Privacy Policy in effect as of February 5, 2020;

Exhibit T-8: Copies of the App FAQs on March 12, 2019, October 25, 2019, March
en liasse 17, 2020 and June 10, 2020;

Exhibit T-9: Printouts of the support pages, respectively, for iOS devices and
en liasse Android devices;

Exhibit T-10: Copy of the Radar MSA;
under seal

Exhibit T-11: Copy of RBI's IT Security Policies;
under seal

Exhibit T-12: Copy of email sent to all users on June 10, 2020, in English and
French;

Montréal, November 20, 2020

(S) *STIKEMAN ELLIOTT S.E.N.C.R.L., s.r.l.*

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Attorneys for Defendants Restaurant Brands
International Inc., Restaurant Brands
International Limited Partnership, The TDL
Group Corp.

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Objet : Notification - Steve Holcman vs. Restaurant Brands International Inc. and al.

TRANSMISSION SLIP OF NOTIFICATION BY EMAIL (Art. 134 C.C.P.)

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Place, date and time of transmission: Montreal, November 20, 2020, at 5:20 p.m.

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Court number: 500-06-001081-203

Our file: 147352-1001

Number of pages transmitted: 19

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SUPERIOR COURT (Class Action)

Nº. 500-06-001081-203

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

STEVE HOLCMAN

Applicant

- vs -

RESTAURANT BRANDS INTERNATIONAL INC. and al.

Defendants

BS0350   **File:** 147352-1001

**DEFENDANTS RESTAURANT BRANDS
INTERNATIONAL INC. AND
THE TDL GROUP CORP'S
APPLICATION FOR DECLINATORY EXCEPTION**
(Art. 3148 (2) *Civil Code of Quebec* and art. 167 *Code
of Civil Procedure*

ORIGINAL

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