

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-001123-211

SUPERIOR COURT
(Class Action)

MICHAEL HOMSY, residing at [REDACTED]
[REDACTED]
Applicant

-vs-

GOOGLE LLC., a legal person, duly constituted according to law, with its head office located at 1600 Amphitheatre Parkway, Mountain View, California, 94043, USA

Respondent

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

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

A. SUMMARY

1. This Application shall be presented in the following matter:

A. SUMMARY

B. GENERAL PRESENTATION

C. THE PARTIES

D. THE FACTS

- i. Biometric identifiers implicate privacy and integrity concerns
- ii. The Respondent's Extraction, Collection, and Retention of Facial Biometric Identifiers
- iii. The Respondent's Privacy Misrepresentations
- iv. The Applicant's Personal Claims

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



v. The Claims of Each Class Member

E. THE RESPONDENT'S LIABILITY

- i. Breach of obligations stemming from of the *PPIPS* and the *CCQ*
- ii. Breach of obligations under the *Charter*
- iii. Breach of obligations under the *Consumer Protection Act*

F. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION (art. 575 *CCP*)

- i. The claims of the members of the Class raise identical, similar or related issues of law or fact (art. 575 (1) *CCP*)
- ii. The facts alleged appear to justify the conclusions sought (art. 575 (2) *CCP*)
- iii. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (art. 575 (3) *CCP*)
- iv. The Applicant is in a position to properly represent the Class Members (art. 575 (4) *CCP*)

G. JUDICIAL DISTRICT

B. GENERAL PRESENTATION

2. Since October 2015, Respondent, Google, LLC (the "**Respondent**"), has extracted, collected, stored, and used the facial biometric identifiers of tens of thousands of unwitting individuals throughout Quebec whose faces appear in photos uploaded to Google Photos, a cloud-based photo sharing and storage service included on all Android phones;
3. Facial biometric identifiers are biologically unique and intrinsically private to each Class Member. Like fingerprints and DNA, they enable the identification of an individual with precision in a wide range of circumstances;
4. The Respondent engaged in its extraction, collection, and retention of Quebec residents' facial biometric data without providing any or adequate notice, obtaining informed consent, or publishing biometric data retention policies;
5. Applicant Michael Homsy (hereinafter referred to the "**Applicant**") wishes to institute a class action on behalf of the following sub-classes of persons (collectively, the "**Class**" or "**Class Members**"):

User Class: All individuals residing in the Province of Quebec, except for the Excluded Persons*, who used Google Photos and who had their facial biometric identifiers extracted, collected, captured, received, or otherwise obtained by Google from photos uploaded to Google Photos since October 28th, 2015 (the "**Class Period**");

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



Non-User Class: All individuals residing in the Province of Quebec, except for the Excluded Persons, who did not use Google Photos and who had their facial biometric identifiers extracted, collected, captured, received, or otherwise obtained by Google from photos uploaded to Google Photos during the Class Period;

*"Excluded Persons" means Google and its parent corporations, subsidiaries, affiliates, predecessors, successors and assigns; and their current or former officers, directors, and legal representatives;

6. The Applicant alleges that the Respondent violated Class Members' rights to inviolability and privacy under the *Charter of human rights and freedoms*, CQLR c C-12 ("**Charter**");
7. He alleges that the Respondent acted unlawfully and with knowledge that its conduct would violate individuals' privacy and inviolability rights. In particular, the Respondent failed to meet its obligations under the *Civil Code of Quebec*, CQLR c CCQ-1991 (the "**CCQ**") and the *Act respecting the protection of personal information in the private sector*, CQLR c P-39.1 (the "**PPIPS**"), which inform the scope and content of the Respondent's obligations under the *Charter*;
8. The Applicant further alleges that, in violation of the *Consumer Protection Act*, CQLR, c P-40.1 ("**Consumer Protection Act**"), the Respondent made representations to the users of Google Photos about its privacy practices and policies that were misleading because they omitted, or were otherwise ambiguous about, the material fact of the Respondent's collection and retention of sensitive personal information in the form of facial biometric data;
9. This class action seeks an award of moral damages for Class Members' inconvenience and anxiety and for the vindication of their rights, an award of material damages for sums spent by Class Members in order to store their photos on an alternative platform in order to protect their privacy and inviolability, and an award of punitive damages sufficient to condemn the Respondent's unlawful conduct, impose a just penalty, and deter future breaches of Class Members' rights;

C. THE PARTIES

10. The Applicant, Michael Homsy, is an individual who lives in Vaudreuil-Dorion, Quebec;
11. The Respondent is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043, USA, the whole as appears from the corporate search results disclosed as **Exhibit P-1**. The Respondent carries on business worldwide, including in Quebec and Canada. Google is a subsidiary of Alphabet Inc;

D. THE FACTS

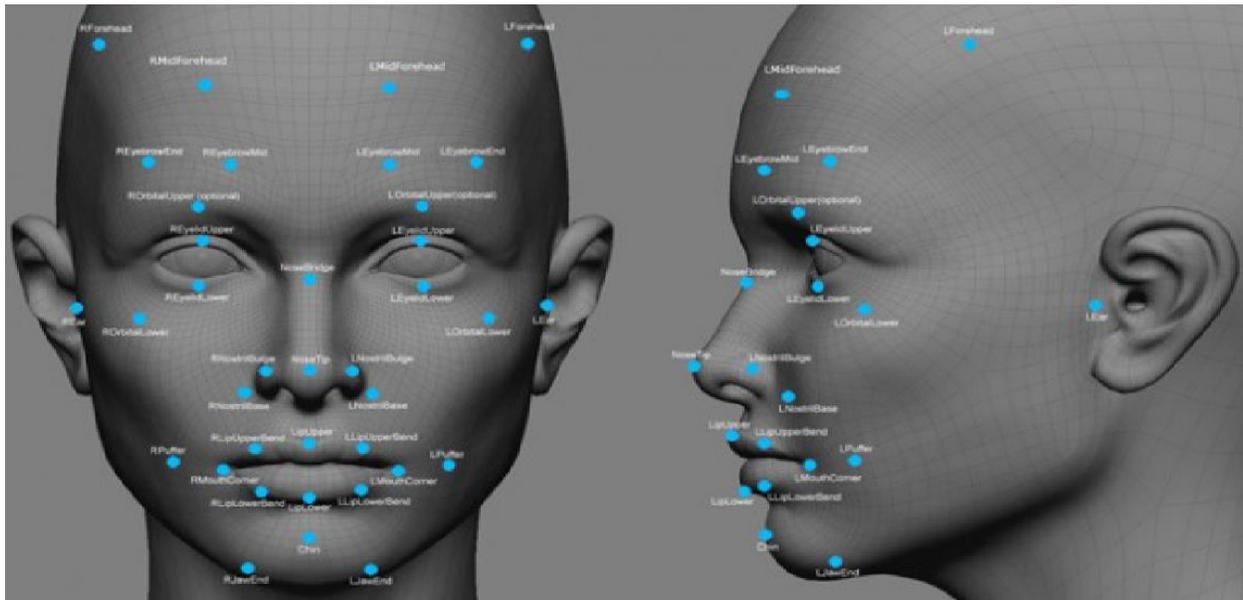
i. Biometric identifiers implicate privacy and integrity concerns

12. "*Biometrics*" are unique physical characteristics used to identify an individual;

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



13. The *Commission d'accès à l'information du Québec* has published guidance on biometrics, reproduced as **Exhibit P-2**, that clearly affirms that biometric information is personal;
14. An investigation report published on October 28, 2020 by the Privacy Commissioner of Canada and privacy commissioners in Alberta and British Columbia, reproduced as **Exhibit P-3**, stated that biometric data is “is distinctive, stable over time, difficult to change and largely unique to the individual”;
15. Within the category of biometrics, there are degrees of data sensitivity. According to Canadian privacy commissioners, facial biometric data is more sensitive because its possession can allow for identification of an individual through comparison against a vast array of images readily available on the internet or via surreptitious surveillance (**Exhibit P-3**);
16. As a result, the use of facial recognition technology in the commercial context has been recognized as presenting serious consumer inviolability and privacy concerns (**Exhibit P-3**);
17. Facial recognition technology works by capturing images that are converted and encoded through the computation of a series of measurements of the human face’s geometry as determined by facial points and contours;
18. This embedding process generates biometric data in the form of a numerical representation of the human face. An individual can then be identified when the unique biometric representation of his or her face is compared against others in a database;
19. The following is an example of geometric data points of a human face:



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



20. Canadian privacy commissioners have underscored the importance of companies' obtaining an individual's express, opt-in consent before extracting and collecting the individual's facial biometric identifiers (**Exhibit P-3**);
 21. The importance of the privacy concerns raised by the exploitation of data in the private sector, including biometric data, is further highlighted in the government of Canada's proposition of the Digital Charter Implementation Act, 2020 (Bill C-11, reproduced as exhibit **P-4**), published on November 17 2020, which seeks to implement the *Canadian Digital Charter and the Consumer Privacy Protection Act*, in order to increase Canadians' control over their data and information;
- ii. **The Respondent's Extraction, Collection, and Retention of Facial Biometric Identifiers**
22. Google Photos is a cloud-based photo-sharing and storage service;
 23. The Respondent first released Google Photos in the United States in May 2015. It later made the service available in Canada on or about October 28, 2015. Produced herewith as **Exhibit P-5** is an article announcing the availability of Google Photos in Canada;
 24. As of July 2019, Google Photos had over one billion users worldwide, as described in the article produced herewith as **Exhibit P-6**;
 25. As of November 2020, more than 4 trillion photos were stored in Google Photos, and, every week 28 billion new photos and videos are uploaded, as described in the article produced herewith as **Exhibit P-7**;
 26. The Google Photos application comes pre-installed on all Android phones, which are set by default to automatically upload photos taken by the user to the cloud-based service;
 27. Android is the Respondent's smartphone operating system software;
 28. Google Photos is also available for iOS, Apple's mobile operating system, and was accessible via web browsers;
 29. Google Photos ran a proprietary neural network-based algorithm called FaceNet developed by the Respondent's researchers that had the highest accuracy in facial recognition at 99.63%. Produced herewith as **Exhibit P-8** is an article describing the FaceNet technology;
 30. Unbeknownst to Class Members, whenever a photo was uploaded to Google Photos, it was scanned for images of faces, and facial biometric identifiers were extracted from any detected face image;
 31. Google Photos performed this extraction and collection of facial biometric identifiers without consideration for whether a particular face belonged to a Google Photos user or a non-user whose face happened to appear in the photo;

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



32. The facial biometric identifiers of the Applicant and other Class Members that were extracted and collected by the Respondent through Google Photos was stored and has remained accessible to the Respondent, its personnel, and any party that the Respondent permits to access such data including, but not limited to, third-party developers through application program interfaces, or “APIs”;
33. The Respondent collected, stored, and used the facial biometric data of the plaintiff and other Class Members for its own competitive advantage in the marketplaces for photo-sharing and other services integrated with Google Photos, which services the Respondent has monetized, or may monetize, through data mining and targeted advertising;
34. Each Class Member had a right to control his or her own facial biometric identifiers. The Respondent did not obtain Class Members’ consent to its extraction, collection, storage and use of facial biometric identifiers through Google Photos;
35. The Respondent never disclosed the specific purpose(s) and length of term for which Class Members’ facial biometric identifiers would be extracted, collected, stored, and used;
36. The Respondent did not have any written, publicly available policies identifying its retention schedules, or guidelines for permanently destroying Class Members’ biometric identifiers;

iii. The Respondent’s Privacy Misrepresentations

37. During the Class Period, the Respondent made representations in its terms of service and in its privacy policies about the nature of the personal information it collected, how it collected that information, and how its services used “*pattern recognition*”;
38. Produced herewith are the versions of the Respondent’s Terms of Service applicable to Google Photos during the Class Period, with the effective dates April 30, 2014 (**Exhibit P-9**); October 25, 2017 (**Exhibit P-10**); and March 31, 2020 (**Exhibit P-11**);
39. Produced herewith are certain versions of the Respondent’s Privacy Policy during the Class Period, with the effective dates of August 19, 2015 (**Exhibit P-12**); March 25, 2016 (**Exhibit P-13**); May 25, 2018 (**Exhibit P-14**); and September 30, 2020 (**Exhibit P-15**);
40. Produced herewith as **Exhibit P-16** is a page from the Respondent’s websites entitled “Key Terms” which provides definitions of “personal information” and “sensitive personal information”;
41. Produced herewith as **Exhibit P-17** is a page from the Respondent’s website entitled “Our Privacy and Security Principles”;
42. Produced herewith as **Exhibit P-18** is a page from the Respondent’s website entitled “How Google uses pattern recognition to make sense of images”;
43. The Respondent’s representations were misleading because they omitted, or otherwise used ambiguity about, the material fact that the Respondent was extracting, collecting,

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



storing, and using Class Members' personal information in the form of facial biometric identifiers (the "**Privacy Misrepresentations**");

44. The Privacy Misrepresentations included the following:

- "We build privacy that works for you ... We keep you informed about what data we collect, how it's used, and why.";
- "Be clear about what data we collect and why ... To help people make informed decisions about how they use Google products, we make it easy to understand what data we collect, how it's used, and why. Being transparent means making this information readily available, understandable, and actionable.";
- "[Personal information] is information that you provide to us which personally identifies you, such as your name, email address, or billing information, or other data that can be reasonably linked to such information by Google, such as information we associate with your Google Account.";
- "Information Google collects ... We want you to understand the types of information we collect as you use our services. We collect information to provide better services to all our users — from figuring out basic stuff like which language you speak, to more complex things like which ads you'll find most useful, the people who matter most to you online, or which YouTube videos you might like. The information Google collects, and how that information is used, depends on how you use our services and how you manage your privacy controls.
...

Things you create or provide to us ... When you create a Google Account, you provide us with personal information that includes your name and a password. You can also choose to add a phone number or payment information to your account. Even if you aren't signed in to a Google Account, you might choose to provide us with information — like an email address to receive updates about our services.

We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.";

- "We collect information in two ways:

Information you give us.

For example, many of our services require you to sign up for a Google Account. When you do, we'll ask for personal information, like your name, email address, telephone number or credit card. If you want to take full advantage of the sharing features we offer, we might also ask you to create a publicly visible Google

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



Profile, which may include your name and photo.

Information we get from your use of our services.

We collect information about the services that you use and how you use them, like when you watch a video on YouTube, visit a website that uses our advertising services, or you view and interact with our ads and content. This information includes:

Device information

[...]

Log information

[...]

Internet protocol address

[...]

Location information

[...]

Unique application numbers

[...]

Local storage

[...]

Cookies and anonymous identifiers

[...];

- “How Google uses pattern recognition to make sense of images...Computers don’t ‘see’ photos and videos in the same way that people do. When you look at a photo, you might see your best friend standing in front of her house. From a computer’s perspective, that same image is simply a bunch of data that it may interpret as shapes and information about color values. While a computer won’t react like you do when you see that photo, a computer can be trained to recognize certain patterns of color and shapes.

A computer might also be trained to recognize the common patterns of shapes and colors that make up a digital image of a face. This process is known as face

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



detection, and it's the technology that helps Google to protect your privacy on services like Street View, where computers try to detect and then blur the faces of any people that may have been standing on the street as the Street View car drove by.

If you get a little more advanced, the same pattern recognition technology that powers face detection can help a computer to understand characteristics of the face it has detected. For example, there might be certain patterns that suggest a face is smiling or has its eyes closed. Information like this can be used to help with features like Google Photos' suggestions of movies and other effects created from your photos and videos.

Similar technology also powers the face grouping feature available in Google Photos in certain countries, which helps computers detect similar faces and group them together, making it easier for users to search and manage their photos.”;

iv. The Applicant's Personal Claims

45. The facts upon which the Applicant's personal claims against the Respondent are based are as follows;
46. The Applicant is a resident of Vaudreuil-Dorion, Quebec, in the greater Montreal area;
47. The Applicant used an Android phone during the Class Period;
48. On or about the month of March 2020 the Applicant purchased an Android phone and began using Google Photos;
49. When the Applicant started using Google Photos, he accepted the Respondent's Terms of Use and Privacy Policy;
50. The Applicant took photos of himself and others using his Android phone and uploaded them to Google Photos;
51. Since the Applicant started using Google Photos, he has uploaded an estimated 5,500 photos to the platform;
52. At no time did the Applicant know that the Respondent was extracting, collecting, storing, and using facial biometric identifiers from his photos;
53. The Applicant was made aware of the Respondent's illegal storage and use of his facial biometric data during the month of January 2021;
54. Therefore, the Respondent engaged in these practices without the Applicant's knowledge and consent;

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



55. Had the Applicant been made aware that the Respondent was illegally storing and using his facial biometric data, the Applicant would not have used the Google Photos application on his phone to store his personal photos;
56. Indeed, soon after realizing that the Respondent was illegally storing and using his facial biometric data, the Applicant transferred his photos to an alternative cloud-based photo sharing and storage service, Dropbox;
57. Produced herewith as **Exhibit P-19** is a receipt confirming the applicant's subscription to Dropbox cloud storage as of January 14, which forced the defendant to pay an annual amount of 171,44\$;
58. As a result of the Respondent's blatant violation of the Applicant's right to privacy and inviolability, the Applicant suffered damages, including inconvenience, anxiety and pecuniary damages;
59. At the thought of his personal biometric data being in the hands of third parties with no control on its use, the Applicant has been overcome with feelings of powerlessness, betrayal, fear, stress, and anxiety;

v. The Claims of Each Class Member

60. The facts giving rise to personal claims by each of the members of the Class against the Respondent are as follows;
61. Every member of the Class had their facial biometric data extracted from photos uploaded on Google Photos which data was collected, stored, and used by the Respondent;
62. Every Class Member had a privacy interest in his or her facial biometric data;
63. Every Class Member's right to integrity was violated by the collection of his or her facial biometric data;
64. Each Class Member did not consent to the collection, retention, and use of their facial biometric identifiers by the Respondent;
65. Each Class Member's inviolability and privacy rights were violated by the Respondent's unlawful, unfair, abusive and/or misleading acts and practices and intentional and malicious conduct;
66. The Class Members each suffered damages, including inconvenience and anxiety;
67. Some Class Members have bought a subscription to an alternative cloud-based photo sharing and storage service;

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



E. THE RESPONDENT'S LIABILITY

i. Breach of obligations stemming from of the *PPIPS* and the *CCQ*

68. The Applicant and Class Members' facial biometric data, which was extracted, collected, retained, used and made accessible to third parties by the Defendant, is "personal information" as provided for by the *PPIPS*;
69. The Respondent was therefore subject to the obligations in the *PPIPS* in respect of its collection, retention, and use of the personal information of both users and non-users of Google Photos and had the obligation to protect, and not to misuse, their personal information;
70. The Respondent breached its obligations by extracting, collecting, retaining, and using, the Applicant and Class Members' personal information, in the form of their facial biometric identifiers, without their consent and without ever disclosing its actions to them;
71. More particularly, the Respondent breached its obligations under articles 10 and 13, 14 and 17 of *PPIPS* and articles 35 to 37, and 1457 and/or 1458 of the *CCQ*;
72. As a result of the Respondent's breaches, the Applicant and other Class Members are entitled to damages;

ii. Breach of obligations under the *Charter*

73. The Respondent's conduct, as set out above, also breached the Applicant and Class Members' rights to inviolability and respect for their private lives as guaranteed by articles 1 and 5 of the *Charter*;
74. The Respondent extracted, collected, stored and used highly sensitive personal information, namely facial biometric data, without the consent of Class Members and intentionally omitted to disclose these practices to them;
75. The Respondent chose to put its own financial interests before the interests of the Applicant and the Class Members. It showed a disregard of the rights of both users and non-users of Google Photos who unwittingly had sensitive personal information collected from them;
76. This unlawful and intentional interference with its users' rights warrants an award of punitive damages under article 49 of the *Charter*;

iii. Breach of obligations under the *Consumer Protection Act*

77. Through its actions as set out above, Google breached the *Consumer Protection Act*;
78. The Respondent breached articles 219 and 228 of the *Consumer Protection Act* by making the Privacy Misrepresentations, which were misleading to the Applicant and other Class Members because they omitted, or otherwise used ambiguity as to, the material fact that

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



Google was extracting, collecting, storing, and using the facial biometric identifiers of both users and non-users of Google Photos;

79. The Respondent's conduct warrants an award of punitive damages under article 272 of the *Consumer Protection Act*;

F. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION (art. 575 CCP)

i. The claims of the members of the Class raise identical, similar or related issues of law or fact (art. 575 (1) CCP)

80. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation;

81. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, the Respondent's misconduct;

82. The claims of the members raise identical, similar or related issues of fact or law, namely:

- A. Did the Respondent breach articles 3,10, 35, 36, and/or 37, and 1457 and/or 1458 of the *CCQ*?
- B. Did the Respondent breach its statutory obligations under the *PPIPS*?
- C. Did the Respondent breach articles 1 and/or 5 of the *Charter*?
- D. Did the Respondent breach articles 219 and 228 of the *Consumer Protection Act*?
- E. Are Class Members entitled to material and/or moral damages?
- F. Are Class Members entitled to punitive damages?
- G. What are the amounts of the aggregate moral, material and punitive damages to be awarded to the Class?

ii. The facts alleged appear to justify the conclusions sought (art. 575 (2) CCP)

83. In this regard, the Applicant refers to paragraphs 2 to 79 of this Application;

84. The action that the Applicant wishes to institute on behalf of the members of the Class is:

An action in damages against the Respondent in reparation of the harm caused by the Respondent's unlawful violation of the Class Member's right to privacy and inviolability, and its misrepresentations and omissions regarding the privacy features of its Google Photos application.

85. The conclusions that the Applicant wishes to introduce by way of an application to institute

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



proceedings are:

- a. **GRANT** the applicant's action against the Respondent;
- b. **DECLARE** that the Respondent:
 - i. Violated its statutory obligations under the *CCQ* and the *PPIPS*;
 - ii. Intentionally and unlawfully violated class members' rights to privacy and inviolability under the *Charter*;
 - iii. Violated its statutory obligations under the *Consumer Protection Act*;
- c. **CONDEMN** the Respondent to pay the Class Members material, moral and punitive damages in amounts to be determined by the Court based on the evidence at trial;
- d. **ORDER** collective recovery in accordance with articles 595-598 of the *CCP* for the moral and punitive damages, and individual recovery in accordance with articles 599-601 of the *CCP* for the material damages;
- e. **CONDEMN** the Respondent to any other remedy deemed appropriate, just, and reasonable;

THE WHOLE with legal costs, including the costs of all publications of notices, experts and expert reports and the attendance fees of the experts to present these reports in Court;

iii. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (art. 575 (3) CCP)

86. The Applicant is not privy to the specific number of persons residing in Quebec whose facial biometric data were extracted and collected by the Respondent through Google Photos;
87. However, given that Google Photos is pre-installed on devices using the Android operating system, which is used by approximately half of Canadians, it is reasonable to assume that the Class number is in the tens of thousands;
88. Further, the Defendant's electronic databases could easily establish the number of Class Members;
89. Class Members are numerous and are scattered across the entire province;
90. 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 Respondent;
91. Even if the Class Members themselves could afford such individual litigation, it would place

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



an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy;

92. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;
93. By their very nature, wrongdoing in the smartphone market affects many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard;
94. It is expected that the majority of Class Members have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding;
95. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restores the parties to parity;
96. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class;
97. 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 together into one action;
98. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective legal rights and have access to justice;

iv. The Applicant is in a position to properly represent the Class Members (art. 575 (4) CCP)

99. The Applicant is a member of the Class;
100. The Applicant 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 action until a final resolution of the matter, the whole for the benefit of the Class, as well as and to dedicate the time necessary for the present action before the Courts, as the case may be, and to collaborate with his attorneys;
101. The Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class;
102. The Applicant 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;
103. The Applicant, with the assistance of his attorneys, is ready and available to dedicate the

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



time necessary for this action and to collaborate with other members of the Class and to keep them informed;

104. The Applicant 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;
105. The Applicant has also given instructions to his attorneys to create a *Facebook* page allowing the Class Members to be kept informed of the evolution of the present matter;
106. The Applicant 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 Respondent's conduct;
107. The Applicant understands the nature of the action;
108. The Applicant's interests do not conflict with the interests of other Class Members and further Applicant has no interest that is antagonistic to those of other members of the Class;
109. The Applicant 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;

G. JUDICIAL DISTRICT

110. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal;
111. A great number of the members of the Class reside in the judicial district of Montreal;
112. Some of the Applicant's attorneys practice their profession in the judicial district of Montreal;
113. The present application is well founded in fact and in law;

WHEREFORE THE APPLICANT PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the applicant's originating application for authorization to institute a class action and to obtain the status or representative against the Respondent;

AUTHORIZE the following Class action:

An action in damages against the Respondent in reparation of the harm caused by the Respondent's unlawful violation of the Class Member's right to privacy and inviolability, and its misrepresentations and

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



omissions regarding the privacy features of its Google Photos application.

GRANT the status of representative to Michael Homsy for the purpose of instituting the said Class action for the benefit of the following group of persons, namely:

All individuals residing in the Province of Quebec, except for Excluded Persons, who had their facial biometric identifiers extracted, collected, captured, received, or otherwise obtained by Google from photos uploaded to Google Photos during the Class Period.

IDENTIFY the principal questions of law and of fact to be dealt with collectively as follows:

- A. Did the Respondent breach articles 3,10, 35, 36, and/or 37, and 1457 and/or 1458 of the *CCQ*?
- B. Did the Respondent breach its statutory obligations under the *PPIPS*?
- C. Did the Respondent breach articles 1 and/or 5 of the *Charter*?
- D. Did the Respondent breach articles 219 and 228 of the *Consumer Protection Act*?
- E. Are Class Members entitled to material and/or moral damages?
- F. Are Class Members entitled to punitive damages?
- G. What are the amounts of the aggregate moral, material and punitive damages to be awarded to the Class?

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

- f. **GRANT** the applicant's action against the Respondent;
- g. **DECLARE** that the Respondent:
 - iv. Violated its statutory obligations under the *CCQ* and the *PPIPS*;
 - v. Intentionally and unlawfully violated class members' rights to privacy and inviolability under the *Charter*,
 - vi. Violated its statutory obligations under the *Consumer Protection Act*;
- h. **CONDEMN** the Respondent to pay the Class Members material, moral and punitive damages in amounts to be determined by the Court based on the evidence at trial;
- i. **ORDER** collective recovery in accordance with articles 595-598 of the *CCP* for the moral and punitive damages, and individual recovery with articles 599-601 of the

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



CCP for the material damages;

- j. **CONDEMN** the Respondent to any other remedy deemed appropriate, just, and reasonable;

THE WHOLE WITH COST, with legal costs, including the costs of all publications of notices, experts and expert reports and the attendance fees of the experts to present these reports in Court.

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 article 579 of the CCP, pursuant to a further Order of the Court;

ORDER that the class action be tried in the judicial district of Montreal;

THE WHOLE with legal costs, including the costs of all publications of notices, experts and expert reports and the attendance fees of the experts to present these reports in Court.

TORONTO, January 15, 2021

MONTREAL, January 15, 2021

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AND TO OBTAIN THE STATUS OF REPRESENTATIVE
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SUMMONS **(articles 145 and following C.C.P.)**

Filing of a judicial application

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

Respondent's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1 rue Notre-Dame Est, Montréal, Québec within 15 days of service of this application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the applicant's lawyer or, if the applicant is not represented, to the applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of this summons. However, in family matters or if you have no domicile, residence or establishment in Québec, it must be filed within 3 months after service; or
- 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.

Where to file the judicial application

Unless otherwise provided, the judicial application is heard in the judicial district where your domicile is located, or failing that, where your residence or the domicile you elected or agreed to with applicant is located. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the court.

However, if the application pertains to an employment, consumer or insurance contract or to the exercise of a hypothecary right on the immovable serving as your main residence, it is heard in

the district where the employee's, consumer's or insured's domicile or residence is located, whether that person is the applicant or the respondent, in the district where the immovable is located or, in the case of property insurance, in the district where the loss occurred. If it was not filed in the district where it can be heard and you want it to be transferred there, you may file an application to that effect with the special clerk of that district and no contrary agreement may be urged against you.

Transfer of application to the Small Claims Division

If you qualify to act as a applicant under the rules governing the recovery of small claims, you may 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.

Convening a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing that, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the applicant intends to use the following exhibits:

Exhibit P-1 : Google LLC, State of California Filing ;

Exhibit P-2 : Biometrics: Principles and Legal Duties of Organizations, by the *Commission d'accès à l'information du Québec* ;

Exhibit P-3 : Investigation report published October 28, 2020 by the *Privacy Commissioner of Canada and privacy commissioners in Alberta and British Columbia* ;

Exhibit P-4 : Bill C-11 ;

Exhibit P-5 : Article *Google Photos update brings facial recognition to Canadian users* ;

Exhibit P-6 : Article *How Google Photos joined the billion-user club* ;

Exhibit P-7 : Article *Updating Google Photos' storage policy to build for the future* ;

Exhibit P-8 : Article *FaceNet: A Unified Embedding for Face Recognition and Clustering* ;

Exhibit P-9 : Google Terms of service, effective date April 30, 2014 ;

Exhibit P-10 : Google Terms of service, effective date October 25, 2017 ;

Exhibit P-11 : Google Terms of service, effective date March 31, 2020 ;

Exhibit P-12 : Google Privacy policy, effective date August 19, 2015 ;

Exhibit P-13 : Google Privacy policy, effective date March 25, 2016 ;

Exhibit P-14 : Google Privacy policy, effective date May 25, 2018 ;

Exhibit P-15 : Google Privacy policy, effective date September 30, 2020 ;

Exhibit P-16 : Google Key terms ;

Exhibit P-17 : Google Our Privacy and Security Principles ;

Exhibit P-18 : Article *How Google uses pattern recognition to make sense of images* ;

Exhibit P-19 : Receipt confirming the applicant's subscription to Dropbox cloud storage as of January 14 2021 ;

These exhibits are available on request.

Notice of presentation of an application

Applications filed in the course of a proceeding and applications under Book III or V of the Code— but excluding applications pertaining to family matters under article 409 and applications pertaining to securities under article 480—as well as certain applications under Book VI of the Code, including applications for judicial review, must be accompanied by a notice of presentation, not by a summons. In such circumstances, the establishment of a case protocol is not required.

NOTICE OF PRESENTATION

RECIPIENT : **GOOGLE LLC**, a legal person, duly constituted according to law, with its head office located at 1600 Amphitheatre Parkway, Mountain View, California, 94043, USA;

Respondent

TAKE NOTICE that this application for authorization to institute a class action will be presented before the Superior Court at the Montréal courthouse, located at 1 Rue Notre-Dame Est, in the city and district of Montréal, on a date to be determined by the coordinating judge of the Class Action Division.

PLEASE ACT ACCORDINGLY.

TORONTO, January 15th 2021

MONTREAL, January 15th 2021

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Administrative information's

Matter of dispute:
CLASS ACTION

Amount: **N/A**

O/R: **1349-01**

No. 500-06-001123-211

SUPERIOR COURT OF QUEBEC
CLASS ACTION
DISTRICT OF MONTRÉAL



MICHAEL HOMSY

Applicant

c.

GOOGLE LLC.

Respondent



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