

**C A N A D A**

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

No: 500-06-001010-194

**SUPERIOR COURT  
(Class Actions)**

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**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*

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**AMENDED 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 [...] December 7, 2020, and the annex in support thereof, a copy of which is filed herewith as **Exhibit CO-1A**, 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 Re-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**”), and re-amended on October 16, 2020 (the “**Re-Amended Authorization Application**”).
4. By way of the first amendment on January 29, 2020, 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 Re-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 Re-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 Re-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 Re-Amended Authorization Application) (the "**Fraudulent Transactions**");
  - d. He called Capital One to report the suspicious transactions (para. 15.4 of the Re-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 Re-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 Re-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 Re-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-1A), in order to correct and supplement certain allegations and evidence already produced in support of the Re-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-1A) 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-1A) 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-1A) explains the information that was compromised by the Cyber Incident and clarifies that no bank account numbers of Canadian customers or credit card numbers were [...] compromised by the Cyber Incident, as evidenced by the Petitioner's own Exhibits R-1 a), R-1 b), and R-28, filed in support of the Re-Amended Authorization Application.
- 14. It follows that the Sworn Statement and supporting Annex A (Exhibit CO-1A) 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 Re-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-1A) in order

to correct, clarify and explain the allegations in the Re-Amended Authorization Application and thus provide this Honourable Court with a complete and comprehensive picture of the factual allegations in the Re-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 December 7, 2020 (Exhibit CO-1A), and the Transaction Authorization Chart (Annex A).

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

Montreal, this December 10, 2020

*Fasken Martineau DuMoulin LLP*

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**Fasken Martineau DuMoulin LLP**

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**AMENDED LIST OF EXHIBITS**

**EXHIBIT CO-1A** Sworn Statement of Sevren Williams, Senior Associate, Data Science, at Capital One Bank (Canada Branch), dated December 7, 2020, and the supporting Transaction Authorization Chart at Annex A

Montreal, this December 10, 2020

*Fasken Martineau DuMoulin LLP*

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**AMENDED APPLICATION  
FOR AUTHORIZATION TO ADDUCE  
RELEVANT EVIDENCE,  
AMENDED LIST OF EXHIBITS  
AND EXHIBIT CO-1A**

(Class Action)

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ORIGINAL

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