

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

500-06-000752-150

**SUPERIOR COURT
(Class Action)**

SERGE SAUMUR, resident of the City of Longueuil, Quebec herein electing domicile for purposes of these proceedings c/o 151 Bloor St. West, Suite 890, Toronto, ON M5S 1P7

Petitioner

v.

AVID LIFE MEDIA INC., a legal person duly constituted under the laws of Ontario, having its principal place of business at 20 Eglinton Avenue West, Suite 1200, Toronto, Ontario, M4R 1K8

and

AVID DATING LIFE INC., a legal person duly constituted under the laws of Ontario, having its principal place of business at 20 Eglinton Avenue West, Suite 1200, Toronto, Ontario, M4R 1K8

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
OBTAIN THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

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

GENERAL PRESENTATION

1. The Petitioner wishes to institute a class action on behalf of the following group, of which he is a member (collectively, the "Class" or "Class Members"):

all persons in Quebec who registered an account on Ashley Madison and whose Personal Information was disclosed, disseminated, published and/or otherwise posted on the internet on or about August 18, 2015, and anytime thereafter;

or such other class definition as may be approved by the Court.

DEFINED TERMS

2. The following definitions apply for the purpose of this motion to authorize the bringing of a class action:
- (a) “**Ashley Madison**” means the website with URL AshleyMadison.com;
 - (b) “**Avid Dating**” means Avid Dating Life Inc.;
 - (c) “**Avid Life**” means Avid Life Media Inc.;
 - (d) “**CCP**” means the *Code of Civil Procedure*, CQLR c C-25;
 - (e) “**CCQ**” means the *Civil Code of Quebec*, SQ 1991;
 - (f) “**Class**” and “**Class Members**” means all persons in Quebec who registered an account on Ashley Madison and whose Personal Information was disclosed, disseminated, published and/or otherwise posted on the internet on or about August 18, 2015, and anytime thereafter;
 - (g) “**Personal Information**” means **Class Members**’ names, addresses, e-mail addresses, phone numbers, gender, dates of birth, profile captions, weight and height, lifestyle attributes and preferences, relationship statuses, sexual preferences, credit card information, and transaction history;
 - (h) “**PPIPS**” means *An Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q., c.P-39.1; and
 - (i) “**Quebec Charter**” means *Charter of Human Rights and Freedoms*, RSQ c C-12.

THE PARTIES**The Petitioner**

3. The Petitioner, Serge Saumur, resides in Longueuil, Québec. In or about February of 2015, the Petitioner registered an account with Ashley Madison. On several occasions after he opened his account on Ashley Madison, he paid fees to Avid Dating in order to chat with other users.

The Respondents

4. The Respondent Avid Dating is an Ontario Corporation with head office in Toronto, Ontario. At all material times, Avid Dating owned and operated Ashley Madison.
5. The Respondent Avid Life is an Ontario Corporation with head office in Toronto, Ontario. At all material times, Avid Life was the parent corporation and oversaw and directed all operations of its wholly-owned subsidiary, Avid Dating.
6. Avid Life, as the parent corporation of Avid Dating, created, oversaw and/or directed the operations of Ashley Madison.

7. At all material times, Avid Dating entered into Contracts with the Petitioners and Class Members for the provision of online dating services through Ashley Madison.

THE FACTS

Overview

8. This motion and action arise out of a breach of privacy that occurred on or about August 18, 2015, when hackers identifying themselves as the “Impact Team” publically released data of approximately 33-36 million registered users of Ashley Madison, an online dating service marketed to married people and people in committed relationships.
9. Ashley Madison’s slogan is “Life is short. Have an affair.” and its service is premised on a guarantee of the anonymity of its users.
10. People who wish to use Ashley Madison register on the website by providing their Personal Information to the defendant Avid Dating. The Personal Information includes information about the users’ relationship statuses and their sexual preferences.
11. If users wish to have all of their Personal Information deleted from Ashley Madison, they are charged a \$19 fee by Avid Dating to do so. Avid Dating agreed to delete the users’ information from Ashley Madison, upon receipt of payment of the \$19 fee.

12. On or about July 15, 2015, Ashley Madison was hacked by an individual, or group of individuals, who identified themselves, himself, or herself as the "Impact Team". The Impact Team claimed to have stolen data about all registered users on Ashley Madison. The Impact Team also threatened to publish and release the users' Personal Information if the website was not shut down.

13. On or about August 18, 2015, the Impact Team made publically available on the internet the data obtained from Ashley Madison. The data contains account details and log-ins of some 33-36 million users of Ashley Madison, including the Petitioner's and Class Members' Personal Information and seven years worth of their payment transaction details.

14. The data also includes the Personal Information of those Ashley Madison users who had paid Avid Dating to delete their Personal Information.

15. Subsequently, on August 20, 2015, the Impact Team made publically available on the internet further data it had obtained from Ashley Madison.

16. The data is available for anyone with an internet connection and ability to access it using a peer-to-peer downloading service known as BitTorrent.

17. Immediately following the release of the data, websites, including the website www.trustify.info/check, were created which allow anyone to search whether specific email addresses are contained in the data released by the Impact Team.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

Breach of Contract

18. The Petitioner and the Class Members all entered into contracts with Avid Dating. Under the contracts, Avid Dating agreed to provide the Petitioner and Class Members access to Ashley Madison's online dating services in exchange for fees.
19. All contracts were similar or identical with respect to the terms associated with Avid Dating's collection, retention, and disclosure of its users' Personal Information and contained the following express or implied terms:
 - (a) That the Respondents would comply with all relevant statutory obligations regarding the collection, retention and disclosure of the Petitioner's and Class Members' personal information, including the obligations set out in the *PIPEDA* and sections 10 and 13 of the *PPIPS*; and
 - (b) That the Respondents would not disclose a Customer's personal information to a third party or parties, without the Petitioner's or Class Members' consent.
20. Avid Dating breached these express and implied terms of its contracts with the Petitioner and the Class Members by failing to take the security measures necessary to ensure the

protection of the Personal Information Avid Dating collected, used, communicated and/or kept.

21. Avid Dating also failed to destroy the accounts and Personal Information of users who had paid a fee to have their accounts deleted from Ashley Madison. Failure to do so was a breach of the express agreement that Avid Dating would delete the Personal Information on payment of the agreed upon fee.

22. These breaches mean that Avid Dating failed to comply with the statutory obligations set out in s. 10 of the *PPIPS* that it employ sufficient security measures to ensure the protection of the extremely private Personal Information provided by the Petitioner and Class Members to them. As an implicit term of the contract, s. 10 of *PPIPS* was breached by Avid Dating.

23. By failing to have adequate security measures in place, and the Petitioner's and Class Members' Personal Information having been compromised by a data breach, the Respondent Avid Dating fundamentally breached its contracts with the Petitioner and Class Members.

24. The Class claims damages for breach of contract equivalent to all fees paid by them for the use of Ashley Madison's dating services and mental distress or alternatively nominal damages.

25. The Class Members reasonably expected that in exchange for a fee to use Ashley Madison as a discrete and anonymous dating service, the Respondents would take appropriate steps to ensure that security measures were in place such that the Class Members' Personal Information would not be published on the internet. The Respondents failed to do so.

Breach of section 219 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1

26. The Respondents are subject to the obligations of the *Consumer Protection Act*, which prohibits persons who enter into agreements or conduct transactions with consumers from engaging in prohibited practices. The representations that the Respondents made to the users of Ashley Madison were false and misleading contrary to section 219, the particulars of which are as follows:
 - (a) At the time that the users registered accounts on Ashley Madison, the Respondents represented through the terms of service and privacy policy that they would comply with their own privacy policy, *PIPEDA* and *PPIPS*, that they would protect their users' privacy and that they would prevent their Personal Information from being disclosed to unauthorized third parties; and
 - (b) The Respondents failed to maintain and use sufficient security measures to keep Ashley Madison users' Personal Information secure.

27. As a result of the breaches of the *Consumer Protection Act*, the Petitioner pleads that he and the Class have suffered damages for the false and misleading representations made to them by the Respondents. The damages include the return of all amounts paid to the Respondents by Class Members for the use of Ashley Madison on the basis that the online dating services that the Petitioners and Class Members paid for were not as represented. The actual value of the online dating services offered by the Respondents is zero because privacy is a fundamental component of the service Customers purchased. In addition, the Petitioners and Class Members are entitled to punitive damages pursuant to section 272 of the *Consumer Protection Act*.

Intrusion upon Seclusion

28. The Respondents intruded upon the seclusion of the Petitioner and the Class Members by intentionally and/or recklessly allowing access of the Petitioner's and the Class Members' Personal Information to unauthorized third parties without their express consent and contrary to the express and/or implied terms of the contracts.
29. Specifically, the Respondents intruded by disclosing the extremely private Personal Information to third parties who could potentially identify the Ashley Madison users by scrutinizing the account details, including names, addresses, phone numbers, billing addresses, locations, and physical and lifestyle attributes.

30. This intrusion is highly offensive because of the sensitive nature of the Personal Information, including the sexual preferences and lifestyle attributes and preferences of Ashley Madison users. The Personal Information also contains particulars of payment transactions and billing information for each transaction made on Ashley Madison.

31. The intrusion was especially offensive to those Class Members who had previously paid the \$19 fee to have their Personal Information deleted by Avid Dating because that information was not deleted, despite representations by the Respondents that it was, and was in fact obtained and disclosed publically by the Impact Team.

32. The Respondents were well aware that there are standards for security measures employed in the online dating industry with respect to protecting the confidential and personal information of users on those websites, yet they did not employ those measures. The Respondents knew that the vast majority of the Class would never register an account with Ashley Madison if they did not have those security measures in place and so decided to unlawfully misrepresent to the Class about the security of their personal information.

33. The Petitioner pleads that he and the Class have suffered damages for the unlawful intrusion by the Respondents. These damages include damages to their reputation and social stigma; harm to their personal and business relationships; and emotional distress, all of which are associated with the release of their Personal Information to the public.

34. Avid Media is jointly and severally liable to the Petitioners and the Class along with Avid Dating for intrusion upon seclusion.

Breach of Privacy

35. The Petitioner and Class Members have claims for moral and material damages under the laws of Quebec because the civil wrong occurred in the province of Quebec to residents of Quebec.
36. The Respondents, through its employees, failed to abide by the rules of conduct which lay upon them so as not to cause injury to the Plaintiffs and the Class Members contrary to articles 1457 and 1463-1464 of the *CCQ* and as a result are liable to the Plaintiffs and the Class Members for moral and material damages.
37. As a result of the Respondents' acts and omissions particularized above, the Respondents:
- (a) failed to respect the reputation and privacy of the Petitioner and Class Members by communicating the Personal Information to third persons without authorization under law or the consent of the Plaintiffs and Class Members, contrary to articles 3, 35, and 37 of the *CCQ*; and
 - (b) used the Personal Information for purposes that are inconsistent with the purposes for which the file on the Petitioner and Class Members was established by retaining the Personal Information of those Class Members who paid a fee to have their Personal Information removed from Ashley Madison, contrary to article 37 of the *CCQ*.

38. The Respondents, through the acts and omissions particularized above, unlawfully interfered with the Petitioner's and Class Members' right to the safeguard of their dignity, honour and reputation, their right to respect their private lives, and their right to non-disclosure of confidential information as protected by sections 4, 5 and 9 of the *Quebec Charter*.
39. As a result of the Respondents' unlawful interference with the Petitioner's and Class Members' rights as protected by the *Quebec Charter*, the Respondents are liable to the Petitioner and the Class for moral, material and punitive damages pursuant to section 49 of the *Quebec Charter*.

REMEDIES

40. The Petitioner and each Class Member has suffered damages and loss as a result of Avid Dating's breach of contract, breach of the *Consumer Protection Act*, and the Respondents' intrusion upon seclusion and breach of privacy as particularized above.
41. The Petitioner pleads that he and the Class are entitled to damages, including for emotional distress, damage to reputation, dignity, and privacy, and harm to their personal and business relationships. Damages for breach of contract and breach of the *Consumer*

Protection Act are equal to the amount paid by the Petitioner and Class Members to use Ashley Madison anonymously and confidentially.

42. The Petitioner seeks on his own behalf, and on behalf of members of the Class, punitive damages for the Respondents' conduct in:
- (a) Failing to have appropriate security measures in place to prevent the data breach;
 - (b) misleading the Petitioner and Class Members about the security measures in place for the protection of their Personal Information; and
 - (c) unlawfully breaching the Petitioner's and Class Members' privacy rights under Quebec law and as such the Respondents are liable under section 49 of the *Quebec Charter*.
43. The Respondents were lax, passive, ignorant with respect to the Petitioner and Class Members' rights and to their own obligations; displayed ignorance, carelessness, and serious negligence; and such conduct was high-handed, outrageous, reckless, wanton, deliberate, callous, disgraceful, willful and in complete disregard for the rights of the Petitioner and Class Members.
44. The Petitioner pleads that only a punitive damages award will prevent the Respondents from continuing their unlawful conduct as particularized herein.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

45. The composition of the Class makes the application of Articles 59 or 67 of the *CCP* impractical for the following reasons:
- (a) Class Members are numerous and are scattered across the province and are estimated to be in the hundreds of thousands;
 - (b) The names and addresses of the Class Members are not known to the Petitioner (but are likely known to the Respondents);
 - (c) Given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded;
 - (d) Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the Court system;
 - (e) A multitude of actions risks having contradictory judgments on questions of fact and law that are similar or related to all Class Members;
 - (f) These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action; and
 - (g) In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.
46. The claims of the Class Members raise identical, similar or related questions of fact or law namely:
- (a) Did Avid Dating enter into a contract with the Class Members for the provision of online dating services through Ashley Madison?
 - (b) If so, did the contract between Avid Dating and the Class Members contain terms that Avid Dating would ensure that sufficient security measures were in place

such that the Class Members' Personal Information would not be obtained by unauthorized third parties and disclosed publically?

- (c) Are one or more of the Respondents liable to the Class for breaches of the *Consumer Protection Act*?
- (d) Did one or more of the Respondents commit the tort of intrusion upon seclusion?
- (e) Did one or more of the Respondents breach the privacy rights of the Class Members?
- (f) Are the Respondents or any one of them liable for damages to the Class?
- (g) Are the Respondents liable for punitive damages?

47. The interests of justice weigh in favour of this motion being granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

48. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages;

49. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the Petitioner's action against the Respondents;

DECLARE that the Respondents are liable to the Class Members for the following:

- (a) breach of contract;
- (b) breaches of the *Consumer Protection Act*;
- (c) intrusion upon seclusion; and
- (d) breach of privacy.

CONDEMN the Respondents to pay the Class Members damages;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 *CCP*;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 C.C.P; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

50. The Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal because the Class Members and Respondents reside everywhere in the Province of Quebec.

51. The Petitioner, who is requesting to obtain the status of representative will fairly and adequately protect and represent the interest of the Members of the Group for the following reasons:

- (a) He understands the nature of the action;
- (b) He is available to dedicate the time necessary for an action to collaborate with Class Members; and
- (c) His interests are not antagonistic to those of other Class Members.

52. The present motion is well-founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the Petitioner's action against the Respondents;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

all persons in Quebec who registered an account on Ashley Madison and whose Personal Information was disclosed, disseminated, published and/or otherwise posted on the internet on or about August 18, 2015, and anytime thereafter;

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

- (a) Did Avid Dating enter into a contract with the Class Members for the provision of online dating services through Ashley Madison?
- (b) If so, did the contract between Avid Dating and the Class Members contain terms that Avid Dating would ensure that sufficient security measures were in place such that the Class Members' Personal Information would not be obtained by unauthorized third parties and disclosed publically?
- (c) Are one or more of the Respondents liable to the Class for breaches of the *Consumer Protection Act*?

- (d) Did one or more of the Respondents commit the tort of intrusion upon seclusion?
- (e) Did one or more of the Respondents breach the privacy rights of the Class Members?
- (f) Are the Respondents or any one of them liable for damages to the Class?
- (g) Are the Respondents liable for punitive damages?

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

DECLARE that the Respondents are liable to the Class Members for the following:

- (a) breach of contract;
- (b) breaches of the *Consumer Protection Act*;
- (c) intrusion upon seclusion; and
- (d) breach of privacy.

CONDEMN the Respondents to pay the Class Members damages;

GRANT an order directing reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

GRANT the class action of the Petitioner on behalf of all the Class Members;

ORDER collective recovery in accordance with articles 1031 to 1036 *CCP*;

ORDER the treatment of individual claims of each Class Member in accordance with articles 1037 to 1040 *CCP*; and

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Quebec* and with full costs and expenses including expert fees and notice fees and fees relating to administering the plan of distribution of the recovery in this action.

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 1006 *CCP*, pursuant to a further Order of the Court, and **ORDER** Respondents to pay for said publication costs;

THE WHOLE with costs, including the costs of all publications of notices.

Montreal, August 24 , 2015

for and on behalf of Legal Logik Inc.
CHARNEY LAWYERS
151 Bloor St. W., Suite 890
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Lawyers for the Petitioner

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Legal Logik Inc.
LEGAL LOGIK INC.

NOTICE TO DEFENDANTS AS TO CONTESTATION

Take notice that the Plaintiff has filed this application in the office of the **Superior Court** of the judicial district of Montreal.

To file an answer to this application, you must file an Appearance, personally or by advocate, at the courthouse of Montreal, 1, rue Notre-Dame Est, Montréal (Québec), H2Y 1B6, within 10 days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the 10-day period.

If you file an Appearance, the application will be presented before the court on **October 23, 2015, at 9h00, in Room 2.16**. On that date, the court may exercise such powers as are necessary to ensure the orderly progress of the proceeding of the court may hear the case, unless you make a written agreement with the Plaintiff or the Plaintiff's advocate on a timetable for the orderly progress of the proceeding. The timetable must be filed in the office of the Court.

REQUEST FOR TRANSFER OF A SMALL CLAIM

As the Defendant, you may make a request to the clerk for the action to be disposed of before the small claims division of the Quebec Court, pursuant to the rules of Book VIII of the *Code of Civil Procedure of Quebec* (R.S. Q. C-25), if the amount claimed does not exceed \$15,000.00, exclusive of interest, if you would be admissible as a Plaintiff under that Book and if the action would be admissible under that Book.

Should you fail to make such a request, you may be liable for costs greater than those applicable under Book VIII of this Code.

MONTREAL, August 24, 2015

for and on behalf of Legal Logik Inc.
CHARNEY LAWYERS
Attorneys for Plaintiffs

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Legal Logik Inc.
LEGAL LOGIK INC.

NO:

SUPERIOR COURT
(Class Action)

SERGE SAUMUR

Petitioner

-VS-

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DEFENDANT COPY

Mon dossier :

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