

CANADA

(Class Action)
SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

K [REDACTED] L [REDACTED]

Representative Plaintiff

N^o : 500-06-000907-184

v.

NISSAN CANADA INC.

Defendant

**APPLICATION BY THE REPRESENTATIVE PLAINTIFF FOR COMMUNICATION
OF DOCUMENTS**

(Articles 49, 101 and 169 C.C.P)

**TO THE HONORABLE JUSTICE PIERRE-C. GAGNON, OF THE SUPERIOR COURT
OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE
REPRESENTATIVE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

1. By Judgment of the Superior Court of Quebec dated September 19, 2019 and Judgment of the Court of Appeal of Quebec dated April 28, 2021, the Plaintiff was authorized to pursue the present class action proceedings against Defendant Nissan Canada Inc. (hereinafter "**Nissan**") regarding a data breach which occurred on or about December 11, 2017.
2. The class action was authorized on behalf of the following Class:

| | |
|--|--|
| Toutes les personnes au Québec : (i) dont les renseignements personnels ou financiers détenus par Nissan Canada ont été compromis dans une intrusion informatique dont l'intimée a été informée par les auteurs par courriel le 11 décembre 2017, ou (ii) qui ont reçu une lettre de Nissan Canada le ou vers le mois de janvier 2018 les informant de cette intrusion informatique; | All persons in Québec: (i) whose personal or financial information held by Nissan Canada was compromised in a data breach of which Respondent was advised by the perpetrators by email on December 11, 2017, or (ii) who received a letter from Nissan Canada on or about January 2018 informing them of such data breach; |
|--|--|
3. On August 17, 2021, this Honorable Court ordered the dissemination of authorization notices to Class Members by third party administration company RicePoint

Administration Inc. (“**RicePoint**”) and the Court noted in the Minutes of hearing that Defendant had located the following client lists in its records (after several months of Nissan searching its records in order to retrieve said lists):

- a) the two (2) lists of Nissan clients to which data breach notices had been sent by Nissan, by mail, in early 2018; and
- b) a list containing email addresses associated to approximately one third of the Nissan clients having received the 2018 data breach notices;

(hereinafter collectively the “**Requested Documents**”).

4. The Requested Documents were transmitted by Nissan to RicePoint without a copy of same being communicated to the undersigned Class Counsel.
5. On October 2, 2021, the authorization notices to Class Members were published in various newspapers by RicePoint.
6. On or about October 16, 2021, notices were sent by email to certain Class Members as well, by RicePoint.
7. Finally, and as ordered by the Court, the social media campaign on Facebook and Twitter began on October 16, 2021 and will run until November 16, 2021.
8. Following the dissemination of the authorization notices by email to certain Class Members and in the newspapers and social media, certain Nissan clients have contacted the undersigned Class Counsel to inquire whether they were part of the authorized Class herein.
9. Class Counsel are in the impossibility to fully represent the Class Members without access to the Requested Documents list and they are not in a position to respond with certainty to Class Member inquiries regarding whether they are or not included in the Class.
10. It is trite law that in an authorized class action, Class Counsel represent the Class /

Class Members without mandate¹.

11. Furthermore, given the principle of the representation of Class Members without mandate, Class Counsel are not to be considered as a third party with regards to the privacy laws².
12. Therefore, and in order to adequately represent the Class Members, Class Counsel are justified and have the right to receive copy of the Class Members lists held by Defendant in order to adequately represent the Class³.
13. In addition, and without limiting the generality of the foregoing, considering that Nissan has already demonstrated its inability to preserve the relevant documentation and evidence in this case, having struggled for months in order to simply locate the two Nissan clients lists it had itself used to send the data breach notices in 2018, Plaintiff is reasonably justified to ask to gain access to the Requested Documents now, in order to preserve them for use in the present matter and in order to properly communicate with Class Members herein.

FOR THESE REASONS MY IT PLEASE THE COURT:

GRANT the present Application;

ORDER Defendant Nissan Canada inc. to communicate to Class Counsel, within ten (10) days of the Judgment to intervene herein, the lists referred to at paragraph 3 (15h13) of the August 17, 2021 Minutes of hearing, namely: “*les deux listes d’envoi des avis postaux de Janvier 2019*” and “*une troisième liste qui comporte l’adresse*”

¹ *Thibault c. St-Jude Medical Inc.*, 2006 QCCS 2025, par. 21 – 22, cited in *Dick c. Johnson & Johnson Inc.*, 2015 QCCS 6049, Appeal to the Court of Appel rejected in *Johnson & Johnson inc. c. Dick*, 2016 QCCA 447, Leave to appeal to the Supreme Court of Canada refused, reference no: 36996;

² *Ibid.*; *Tremblay c. Capitale (La), assureur de l’administration publique inc.*, 2010 QCCS 2761, par. 3, 6 - 9;

³ *Dick c. Johnson & Johnson Inc.*, 2015 QCCS 6049, par. 20 - 23, 26 - 40, 49. Appeal to the Court of Appel rejected in *Johnson & Johnson inc. c. Dick*, 2016 QCCA 447, Leave to appeal to the Supreme Court of Canada refused, reference no : 36996. See also : *Samoisette c. IBM Canada Itée*, 2017 QCCS 1136, par. 33, 37; *Bérubé c. Fédération des inventeurs du Québec*, 2019 QCCS 325, par. 12 - 14, 17 ; *Schneider (Succession de) c. Centre d’hébergement et de soins de longues durée Herron*, 2021 QCCS 1186, par. 2, 2, 4, 6 - 10;

courriel de certains des membres mais seulement le tiers d'entre eux approximativement".

THE WHOLE without costs, except in case of contestation.

MONTREAL, November 2, 2021

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor and Joanie Lévesque
Class Counsels / Attorneys for Representative
Plaintiff
4101 Sherbrooke St. West
Westmount, (Québec), H3Z 1A7
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AFFIDAVIT

I, the undersigned, **DAVID ASSOR**, attorney, practicing my profession with the firm Lex Group Inc., located at 4101 Sherbrooke St. West, in the City and District of Montreal, Province of Quebec, H3Z 1A7, solemnly declare:

1. I am one of the attorneys representing the Plaintiff in the present matter;
2. All of the facts alleged in the present *Application by Representative Plaintiff for Communication of Documents*, are true to my personal knowledge

AND I HAVE SIGNED:

(s) David Assor

David Assor

SOLEMNLY DECLARED TO BEFORE ME
AT MONTREAL, on November 2, 2021

(s) Me Gregory Azancot

COMMISSIONER OF OATHS FOR
ALL THE DISTRICTS OF QUEBEC

NOTICE OF PRESENTATION

TO: Me Margaret Weltrowska
Me Erica Shadeed
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Attorneys for Defendant

TAKE NOTICE that the present *Application by Representative Plaintiff for Communication of Documents* will be presented for adjudication at a date and time to be determined by the Honourable Justice Pierre-C. Gagnon, sitting in class actions division of the Superior Court of Quebec, at the Montreal Courthouse located at 1 Notre-Dame Street East, or as soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, NOVEMBER 2, 2021

LEX GROUP INC.

(s) Lex Group Inc.

Per: David Assor and Joanie Lévesque
Class Counsels / Attorneys for
Representative Plaintiff

Nº.: 500-06-000907-184

(Class Action)
SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

K [REDACTED] L [REDACTED]

Representative Plaintiff

-vs-

NISSAN CANADA INC.

Defendant

**APPLICATION BY REPRESENTATIVE
PLAINTIFF FOR COMMUNICATION OF
DOCUMENTS**

ORIGINAL

Me David Assor

Me Joanie Lévesque



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