

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001152-210

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

TANIA SCISCENTE

Plaintiff

v.

AUDI CANADA INC.

and

VOLKSWAGEN GROUP CANADA INC.

Defendants

**APPLICATION OF THE DEFENDANT AUDI CANADA INC. FOR AUTHORIZATION TO
ADDUCE RELEVANT EVIDENCE AND TO EXAMINE THE PLAINTIFF**

(Article 574 (3) of the *Code of Civil Procedure*)

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TO THE HONOURABLE THOMAS M. DAVIS, s.c.J, DESIGNATED JUDGE IN THIS INSTANCE, SITTING IN AND FOR THE CLASS ACTION DIVISION OF THE DISTRICT OF MONTREAL, THE DEFENDANT AUDI CANADA INC. RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. By way of this Application, the Defendant Audi Canada Inc. (“**ACI**”) is seeking the authorization to adduce relevant evidence in anticipation of the hearing of the Corrected and Amended Application for Authorization to Institute a Class Action dated June 14, 2021 (the “**Claim**”), namely:
 - a) The filing of a succinct sworn statement of an ACI representative in relation to the facts and circumstances in dispute; and
 - b) An examination of the Plaintiff Tania Sciscente (the “**Plaintiff**”) in relation to her allegations in relation to the Claim;
2. ACI submits that this evidence will be useful and allow the Court to conduct an efficient verification as to whether the criteria of Article 575 of the *Code of Civil Procedure* (“**CCP**”) are met in the case at bar;

II. THE PROPOSED CLASS ACTION

3. By way of the Claim and as a result of the data security incident described therein for which the Volkswagen Canada Inc. (“**VGCA**”) and ACI were purportedly made aware on or about March 10, 2021 (the “**Data Security Incident**”), the Plaintiff alleges, *inter alia*, that the Defendants failed to:
 - a) Protect the proposed class members’ personal information;
 - b) Promptly and clearly notify the proposed class members of the Data Security Incident;
 - c) Ensure that the proposed class members are adequately protected by credit monitoring services and fraud alerts;
 - d) Timely detect and prevent the Data Security Incident;as appears from the Claim;
4. As a result, the Plaintiff intends to claim compensatory damages for the monetary losses and moral damages allegedly suffered, as well as punitive damages for the Defendants’ alleged unlawful and intentional interference with their right to privacy, for herself and each proposed member of the proposed class, comprising all persons in Canada whose personal or financial information held by VGCA or ACI was purportedly compromised by the Data Security Incident, as appears from the Claim;

III. THE EVIDENCE SOUGHT TO BE ADDUCED BY ACI

A. The Sworn Statement of ACI

5. The evidentiary basis in support of the Claim emanates from the United States and has limited factual underpinning in relation to the relevant circumstances applicable in Canada;
6. Indeed, the Plaintiff has filed the following Exhibits to describe the circumstances of the Data Security Incident:
 - a) Exhibit R-3: Notice, dated June 11, 2021;
 - b) Exhibit R-4: Letter addressed to the Attorney General of the State of Maine, Aaron Frey, dated June 10, 2021;
 - c) Exhibit R-6: IDX information document titled “Recommended Steps to Help Protect Your Information”;
7. However, as appears from the ACI Sworn Statement, Exhibits R-3, R-4 and R-6 were not disseminated in Canada, but rather in the United States only:
 - a) Exhibit R-3 is the template Notice from Audi of America (“**AoA**”) dated June 11, 2021 which was sent to U.S. customers and interested buyers;
 - b) Exhibit R-4 is the notification letter addressed to the Attorney General of the State of Maine by U.S. counsel for Volkswagen Group of America (“**VWGoA**”), on behalf of its operating divisions AoA and Volkswagen of America (“**VoA**”), regarding a security incident affecting residents of Maine;
 - c) Exhibit R-6 is the IDX document providing information on the enrollment process for the credit monitoring services offered to U.S. customers and interested buyers;
8. The sworn statement of an ACI representative sought to be filed in the court record describes the following:
 - a) The fact that the Exhibits R-3, R-4 and R-6 the Plaintiff relies on to establish the Data Security Incident relate only to U.S. customers and interested buyers and were disseminated in the U.S. only;
 - b) ACI’s voluntary disclosure of the Data Security Incident to the Commission d’accès à l’information (“**CAI**”) on June 15, 2021 (the “**CAI Letter**”) and its scope and extent in Quebec;
 - c) The notice ACI sent to the Plaintiff and other Audi customers and interested buyers in Canada to advise them of the Data Security Incident and its scope and extent (the “**ACI Notice**”),

as appears from the sworn statement of Douglas Black, Director, Business Development at ACI dated December 8, 2021, and the Exhibits ACI-1 and ACI-2 filed in support thereof (the “**ACI Sworn Statement**”), **Exhibit D-1**;

9. The ACI Sworn Statement thus purports to provide the court with the circumstances applicable in Canada to ensure that the criteria of Article 575 *CCP* are assessed on the right set of facts and circumstances that are relevant to the case at bar;
10. The ACI Sworn Statement is also relevant and useful to allow the Court to conduct an efficient verification of the criteria of Article 575 *CCP*, including in relation to the following:
 - 1. The criterion of Article 575 (1) CCP**
 - a) Whether the Claim raises issues and questions of law or fact that are common for the putative class members or capable of common adjudication;
 - b) Whether the conclusions sought may be adjudicated on a collective basis;
 - c) Whether the class definition is appropriate or permits to identify class members based on objective criteria not depending on the outcome of the dispute;
 - 2. The criterion of Article 575 (2) CCP**
 - a) Whether the Plaintiff has a cause of action against ACI and/or VGCA;
 - b) Whether the factual allegations are sufficient to justify the conclusions sought;
 - 3. The criterion of Article 575 (4) CCP**
 - a) Whether the Plaintiff has the capacity and a personal, legitimate and genuine interest to properly represent the proposed class members;
- B. The examination of the Plaintiff**
11. As appears from the Claim and the court record, this case purportedly arose from the following circumstances:
 - a) The Plaintiff read an article from TechCrunch.com published on June 11, 2021 (i.e. a Friday) entitled “Volkswagen Says a Vendor’s Security Lapse Exposed 3.3. Million Drivers’ Details”, Exhibit R-5, and contacted her attorneys to mandate them to institute the present class action;¹
 - b) On June 14, 2021 (i.e. a Monday), at 8:30 am, the Plaintiff filed the original Application for Authorization to Institute a Class Action, in which she alleges, *inter alia*, having “paid \$199.95 for twelve months of Equifax Canada credit monitoring services”, relying on Exhibit R-7 in relation thereto;²
 - c) The same day, the Plaintiff filed the Claim, i.e. the Corrected and Amended Application for Authorization to Institute a Class Action, in which she now alleges, *inter alia*, having “purchased the recurring monthly subscription of the Equifax Canada Complete Premier credit monitoring services, at a price of \$21.94 per month”, also relying on Exhibit R-7 in relation thereto and having also “activated the Equifax Canada 6-year fraud alter on her credit file”;³

¹ Claim, para. 35.

² Application for Authorization to Institute a Class Action, para. 36.

³ Claim, para. 36.

- d) At the time of the Application for Authorization to Institute a Class Action was filed, the Plaintiff and purported class members had and have continued to experience anxiety, stress, inconvenience, loss of time and/or fear due to the loss of their personal information;⁴
12. Accordingly, over a 3-day period that includes a weekend, the Plaintiff would have learned about the Data Security Incident, conducted an investigation and retained and mandated a lawyer to draft and initiate this proposed class action;
 13. More importantly, the Equifax Canada email confirmation, Exhibit R-7, was sent to the Plaintiff on June 14, 2021, at 6:06:53 pm, i.e. after both the Application for Authorization to Institute a Class Action and the Claim were filed, indicating that:
 - a) Upon seizing the court on June 14, 2021, the Plaintiff had not purchased twelve months of Equifax Canada credit monitoring services, contrary to her firm allegation;
 - b) Upon filing the Claim, the Plaintiff had not purchased the recurring monthly subscription of the Equifax Canada Complete Premier credit monitoring services, contrary to her firm allegation;
 14. In addition, the proper consideration of the Claim and Exhibit R-5 reveal the following:
 - a) The Claim is silent as to when the Plaintiff would have read the “TechCrunch.com article” that incepted the Claim and how it was brought to her attention;
 - b) Unlike all other media articles included in Exhibit R-5 which disclose the date they were printed out of the Internet and their respective URL, the “TechCrunch.com article” was edited to remove its date of printing and its URL;
 15. The foregoing circumstances raise serious questions about the legitimacy of the Claim and whether the Plaintiff is personally and genuinely responsible for the inception of this proposed class action;
 16. The examination of the Plaintiff thus seeks to provide the court with useful and relevant information with respect to the following:
 - a) When and how the Plaintiff became aware of the Data Security Incident and the facts alleged in the Claim, including the TechCrunch.com article;
 - b) The circumstances and timing of the Plaintiff’s purchase of credit monitoring services;
 - c) The anxiety, stress, inconvenience, loss of time and/or fear the Plaintiff would have experienced at the time the Claim was filed;
 - d) The nature and extent of the enquiry the Plaintiff conducted in relation to the Claim;
 - e) The Plaintiff’s knowledge of the impact of the Data Security Incident on other proposed class members;

⁴ Claim, para. 38.

17. ACI estimates that the examination of the Plaintiff regarding the above topics will not exceed two (2) hours and suggests that it be held out-of-court prior to the hearing of the Claim;
18. The examination of the Plaintiff is relevant and useful to allow the Court to conduct an efficient verification as to whether the criteria of Article 575 *CCP* are met, including in relation to the following:
 - 1. The criterion of Article 575 (1) *CCP***
 - a) Whether the Plaintiff's situation is unique or raises issues and questions of law or fact that are common for the putative class members or capable of common adjudication;
 - b) Whether the conclusions sought may be adjudicated on a collective basis;
 - 2. The criterion of Article 575 (2) *CCP***
 - a) Whether the Plaintiff has a cause of action against ACI and/or VGCA;
 - b) Whether the factual allegations in the Claim and the evidence provided by the Plaintiff in support thereof are sufficient to justify the conclusions sought;
 - c) Whether the Plaintiff genuinely suffered harm and the damages she is claiming for;
 - 3. The criterion of Article 575 (3) *CCP***
 - a) Whether the Plaintiff conducted an appropriate investigation prior to the filing of the Claim;
 - b) Whether there are other putative class members who suffered similar damages to that of the Plaintiff making it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceeding.
 - 4. The criterion of Article 575 (4) *CCP***
 - a) Whether the Plaintiff has the capacity and a personal, legitimate and genuine interest to properly represent the proposed class members;

IV. CONCLUSION

19. ACI submits that the evidence it seeks to adduce by way of the ACI Sworn Statement and its supporting Exhibits and the examination of the Plaintiff is useful, relevant and appropriate with respect to the opportunity to authorize or not the institution of the class action in this case;
20. The evidence sought to be adduced by ACI also satisfies the requirements of Articles 9, 18 and 19 *CCP*;
21. It is in the best interests of the parties and in the interest of justice that the evidence sought to be adduced by way of this Application be authorized by the Court;

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT this Application of the Defendant Audi Canada Inc. for Authorization to Adduce Relevant Evidence and Examine the Plaintiff;

AUTHORIZE the Defendant Audi Canada Inc. to file in the court record the sworn statement of Douglas Black, Director, Business Development at Audi Canada Inc. dated December 8, 2021, Exhibit D-1, and the Exhibits ACI-1 and ACI-2 filed in support thereof;

AUTHORIZE the Defendant Audi Canada Inc. to examine the Plaintiff out-of-court prior to the authorization hearing and **ORDER** the filing of the transcript of said examination in the court record;

WITH COSTS TO FOLLOW.

Montreal, this 9th day of December 2021



LANGLOIS LAWYERS, LLP

Attorneys for the Defendants AUDI CANADA INC. AND VOLKSWAGEN GROUP CANADA INC.

1250 René-Lévesque Blvd. West
Suite 2000
Montreal (Quebec) H3B 4W8

Tel.: 514 842-9512
Fax: 514 845-6573

Mr. Vincent de l'Étoile
Direct line: 514 282-7808
Email: vincent.deletoile@langlois.ca

Ms. Caroline Deschênes
Direct line: 438 844-7827
Email: caroline.deschesnes@langlois.ca

Notifications: notificationmtl@langlois.ca
Our File: 343237.0001

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001152-210

(Class Action Division)
SUPERIOR COURT

TANIA SCISCENTE

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SWORN STATEMENT

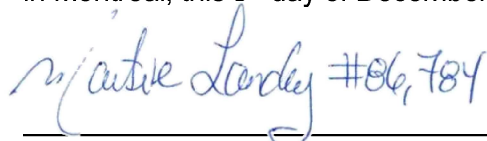
I, the undersigned, Vincent de l'Étoile, practicing my profession at Langlois Lawyers LLP, 1250 René-Lévesque Blvd. West, 20th Floor, Montreal, Quebec, H3B 4W8, having been duly sworn, do depose and solemnly affirm that:

1. I am one of the attorneys representing the Defendant Audi Canada Inc. in the present matter;
2. I verily believe that the facts alleged in this application to which this sworn statement is attached that do not appear from the court record, if any, are true.

AND I HAVE SIGNED


VINCENT DE L'ÉTOILE

SOLEMNLY AFFIRMED TO BEFORE ME
in Montreal, this 9th day of December 2021



Commissioner for taking oaths in the
Province of Quebec



NOTICE OF PRESENTATION

TO: Mr. David Assor
Ms. Joanie Lévesque
LEX GROUP INC.
4101, Sherbrooke St. West
Westmount, Quebec H3Z 1A7
Attorneys for the Plaintiff

TAKE NOTICE that the present *Application of the Defendant Audi Canada Inc. for authorization to adduce relevant evidence and to examine the Plaintiff* will be presented for hearing and allowance before the Honourable Thomas M. Davis, J.S.C., at a time and place to be determined, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montréal, Quebec, H2Y 1B6.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, this 9th day of December 2021



LANGLOIS LAWYERS, LLP

Attorneys for the Defendants AUDI CANADA INC. AND
VOLKSWAGEN GROUP CANADA INC.

1250 René-Lévesque Blvd. West
Suite 2000
Montreal (Quebec) H3B 4W8

Tel.: 514 842-9512
Fax: 514 845-6573

Mr. Vincent de l'Étoile
Direct line: 514 282-7808
Email: vincent.deletoile@langlois.ca

Ms. Caroline Deschênes
Direct line: 438 844-7827
Email: caroline.deschesnes@langlois.ca

Notifications: notificationmtl@langlois.ca
Our File: 343237.0001

N°: 500-06-001152-210

SUPERIOR COURT (Class Action Division)
DISTRICT OF MONTREAL

TANIA SCISCENTE

Plaintiff

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CANADA INC. FOR AUTHORIZATION TO
ADDUCE RELEVANT EVIDENCE AND TO
EXAMINE THE PLAINTIFF AND EXHIBIT D-1**
(Article 574 (3) of the *Code of Civil Procedure*)

ORIGINAL



LANGLOIS

AVOCATS - LAWYERS

Langlois avocats, S.E.N.C.R.L.

1250, boul. René-Lévesque Ouest, 20^e étage
Montréal (Québec) H3B 4W8

Tél.: 514 842-9512 / Télécopieur: 514 845-6573

Me Vincent de l'Étoile / Me Caroline Deschênes

Courriel : vincent.deletoile@langlois.ca /

caroline.deschenes@langlois.ca

Adresse de notification : notificationmtl@langlois.ca

☎: 343237.0001

Casier : BL 0250