

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500
06-000511-101

**SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)**

PATRICE ST-ARNAUD, residing and domiciled
at 400 Rue St-Philippe, Montréal, Province of
Québec, H4C 2V3;

Petitioner

vs.

FACEBOOK INC., a legal person duly constituted
according to the law, having its principal place of
business at 156 University Avenue, Palo Alto,
California, 94301, U.S.A.,

Respondent

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

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUÉBEC,
SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE PETITIONER STATES THE
FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following Group, of which he
is a member, namely:

*All physical persons (including their estates, executors, or personal representatives),
corporations, and other entities, who:*

- a) were subject to misrepresentation and other wrongful practices by the Respondent in regards to their personal information as described herein;
- b) were subject to a breach of privacy and in the addition or alternative, an invasion of privacy and in the addition or alternative, a breach of confidence in regards to their personal information; or
- c) were subject to the conversion of said personal information for unauthorized use.
(hereinafter both resident and non-resident Group Members are collectively referred to as "Petitioners", "Group Members", the "Group", or "Users");
2. The Respondent Facebook Inc. (hereinafter "Facebook") operates the social networking website found at <http://www.facebook.com> (hereinafter "Facebook.com" or the "website") which is the largest social networking website in the world. The Respondent offers and carries on business in the Province of Québec and throughout Canada, and derives revenue as a result of its presence and users located in Québec and throughout Canada.
- (herein references to the "Respondent" is intended to include the above mentioned corporation, subsidiaries, affiliates, predecessors and associated companies, their officers, employees, representatives and agents)
3. Facebook.com is the largest social networking site in the world and is estimated to have over 350 million individual subscribers creating revenues for Facebook of over \$500 million per year. It is estimated that 42% of Canadians have a Facebook.com account;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

4. The Petitioner, **PATRICE ST-ARNAUD**, resides in the City of Montréal in the Province of Québec and at all material times was a registered user of the website Facebook.com. Mr. St-Arnaud has been a member of Facebook.com since 2007 and has been subject to, *inter alia*, breach of privacy and/or the conversion of said information for commercial use

through the materially deceptive conduct of the Respondent as outlined herein and other statutory breaches of the Respondent as outlined herein.

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

5. Facebook.com allows members to communicate and share information with friends, family, co-workers, classmates and other people who share similar interests. Facebook.com requires Users such as those in the position of the Petitioner to register an account to access these services.
6. Registering an account requires a User to provide a name, gender, date of birth, and a valid e-mail address. After providing this information Users can create personal profiles and post messages, photos, and videos. To assist in the creation of their profiles Users are asked to provide personal information including, but not limited to, schools they attended, their home city, interests, and employers.
7. Users can add friends and send them messages and may further update their profiles to notify friends about their activities and opinions. Users can also join "networks" or people with similar interests and backgrounds. Such network criteria may include, by way of example, users organized by city, school, workplace, and region.
8. The Petitioner, as with other Users, is the owner of all of the content and information posted on his Facebook.com account and said content and information cannot lawfully be appropriated by the Respondent without the proper and informed consent of the Petitioner and other Users. As set forth below, Facebook converts and misappropriates said content and information for its benefit and gain.
9. Because of the amount of personal information provided by the Petitioner and Group Members to the Respondent, it is vital that Users be provided with a high degree of

control over the release of said information to third parties. The compromise of a User's personal information may leave the User open to such detrimental effects as, *inter alia*, identity theft, harassment, embarrassment, or threats to their personal and financial security.

10. Facebook.com originally provided Users such as those in the position of the Petitioner with simple "one-click" methods by which Users could keep their information private. Prior to the most recent privacy policy revisions enacted the Respondent on or about November 19, 2009 and on or about December 9, 2009 and on or about January 20, 2010, the only categories of personal information made publicly available by Facebook.com were:
 - i. a User's name; and
 - ii. networks the User belonged to.
11. On February 4, 2009, without proper communication to or agreement by its Users, Facebook revised its Terms of Service, asserting broad, permanent, and retroactive intentions to reveal Users' information, even as to Users who deleted their Facebook.com accounts. The Respondent stated it could make public a User's "*name, likeness and image for any purpose, including commercial or advertising.*" Having met with numerous objection by Users and threatened action by U.S. federal government regulators, Facebook withdrew the proposed changes and replaced them with changes announced variously on or about April 24, 2009, on or about November 19, 2009 and on or about December 9, 2009.
12. These changes announced variously on or about April 24, 2009, on or about November 19, 2009 and on or about December 9, 2009, and implemented by Facebook on or about said dates made the following categories of personal data "*publicly available information*":

- i. Users' names;
 - ii. profile photos;
 - iii. Friend Lists;
 - iv. pages Users are fans of, including controversial political causes, organizations, individuals, and products they support;
 - v. their genders;
 - vi. their geographic regions; and
 - vii. networks they belong to.
13. Said changes in making previously protected personal data "*publicly available information*" were made without proper and informed consent and authorization of Users, without proper or any consideration, in breach of Facebook's contractual obligations to Users to keep the Users' personal information private, and amounted to the conversion of Users' personal information for the benefit of Facebook. Facebook intentionally or negligently misrepresented these changes as giving Users greater control over the release of their personal information and enhancing the privacy of its' Users, whereas said changes decreased Users' control over their personal information.
14. The Respondent accordingly has made and continues to make public and otherwise shares, uses, and disseminates the personal information of its Users to third parties for commercial purposes or economic benefit.
15. Without limiting the generality of the foregoing, at the time of the changes to its privacy policy as referred to in the paragraphs above, Facebook set the default privacy setting for certain types of information Users post on Facebook to "Everyone". Facebook allows the "*publicly available information*" set to "Everyone" to be: "*accessed by everyone on the Internet (including people not logged into Facebook);*" made subject to "*indexing by third party search engines;*" "*associated with you outside of Facebook (such as when you visit other sites on the internet);*" and "*imported and exported by us and others without privacy limitations.*"

16. At the time of the privacy policy changes, Facebook "pre-clicked" certain options which diminish the privacy of the User, a method known in the Internet and marketing industries as a "negative option." Accordingly many Users such as those in the position of the Petitioner had their information made publicly available even if they had previously selected that this information not be made publicly available.
17. Not only do the revised privacy settings result in the disclosure of the aforementioned personal information, impacting privacy directly, but the revelation of this data violates the privacy of Users and allows the unauthorized revelation of Users' personal and private information to third parties, and results in consequential damages and injury to the Users.
18. The tools provided by Facebook to the Petitioner and Users in the position of the Petitioner are materially misleading and calculated to result in unauthorized breaches of Users privacy and conversion of their personal information, including but not limited to the breach of *Personal Information Protection and Electronic Documents Act., S.C., 2000, c. 5.* (hereinafter "PIPEDA") and other breaches of statute.
19. Facebook intentionally or negligently designs its privacy policies in such a way as to mislead Users into putting their personal information and privacy at further risk. Such design and dissemination constitutes a material misrepresentation of the effects of Facebook.com's privacy settings in such fashion as to increase the damage to Users. The default privacy settings are all set at such fashion as to expose Users personal and private information to unauthorized third party access and appropriation.
20. As a result, the privacy setting procedures are intentionally, or in the alternative negligently, designed such that the Petitioner and Group Members are misled on a Group wide basis into allowing Facebook to have their personal and private information easily accessed for commercial or other use. This process further exposes the Petitioner and Group Members to, *inter alia*, identity theft, data mining, harassment, embarrassment, intrusion, and all types of unauthorized use.

21. The control mechanisms as provided by Facebook are materially deceptive, confusing, and ineffective, and permit third party application developers and websites to access more information than Facebook previously authorized.

FACEBOOK VIOLATION OF USERS' PRIVACY AND CONVERSION OF THEIR PERSONAL INFORMATION THROUGH THE FACEBOOK APPLICATION PROGRAMMING INTERFACE (HEREINAFTER "API")

22. API, is the generic term for a detailed Group of commands and interfaces which permit an application to run on Facebook.com. Third-party applications through the API permits access to "*profile, friend, page, group, photo and event data*" through Facebook.com by Third-party application developers who, create, *inter alia*, applications and games on Facebook.com.
23. Facebook's original privacy settings contained a universal one-click option to prevent the disclosure of Users' personal information through the Facebook API system. Users were presented with a click box which stated "*Do not share any information about me through the Facebook API.*" Users accordingly could restrict the sharing of their personal information.
24. Under the revised privacy policy settings as set out in this class action motion, Facebook has eliminated the one-click option and substituted it with multiple check boxes the User must *de-select* if they wish to refrain from sharing the corresponding information. The checkboxes include:
- i. Personal info (activities, interests, etc.);
 - ii. Status updates;
 - iii. Online presence;
 - iv. Website;
 - v. Family and Relationship;
 - vi. Education and Work;

- vii. My videos;
- viii. My links;
- ix. My notes;
- x. My photos;
- xi. Photos and videos of me;
- xii. About me;
- xiii. My birthday;
- xiv. My hometown; and
- xv. My religious and political views.

25. The revised setting states that "*applications will always be able to access [User] publicly available information (Name, Profile Picture, Gender, Current City, Networks, Friend List, and Pages) and information that is available to Everyone,*" making publicly available information mandatorily accessible to third parties. A User merely has the option to safeguard other personal information by un-checking the respective boxes containing their personal information as referenced in Paragraph 23, above, of this class action motion.
26. Thus, the new "security setting" mandates that the Facebook Platform share Users' personal information with application developers without the Users' knowledge or consent, and Users have no way to countermand this change.
27. The Facebook altered privacy rules do not properly or reasonably protect Users' personal information or present Users with realistic options to restrict third party access to all User information through the Facebook Platform. To block the more than 350,000 applications from accessing their information, Users would have to perform the steps described in Paragraph 23 of this class action motion for every single application.
28. The controls offered to the Petitioner and Group Members by the Respondent require Users to search the Application Directory and visit the application's "*about*" page. Even assuming a User has a limited number of applications, locating and correctly setting the myriad privacy settings of each such application is a daunting and formidable task.

29. Facebook has misrepresented, intentionally or negligently the effect of their privacy policy changes and default settings and other controls such as to materially increase the risk to Users of unauthorized use of their personal information.
30. On or about January 20, 2010, Facebook implemented a program providing unauthorized access of Users' e-mail addresses to third-party developers. Said e-mail addresses being personal information that Facebook.com requires Users to provide but that is not necessarily available to others. In so doing, Facebook mandated provision of such personal information to third party developers without proper, informed consent of Users.
31. The changes enacted by Facebook on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010 were deceptively described by Facebook, leading Users to believe their personal information was protected from unauthorized sharing, use, and dissemination.
32. The aforementioned changes made to the privacy policy by the Respondent violate Users' expectations, diminish User privacy, and contradict Facebook's own representations.
33. Facebook profits from their aforementioned conversion of Users' personal information, and violation of Users' privacy. Such conduct generates revenue primarily through various types of advertisements which are targeted to Users based on their profiles and information. The data collected from its Users is the key commercial asset Facebook employs to sell advertising and drive traffic to the Facebook.com website.
34. Facebook monetizes the personal information provided by the Petitioner and Group Members through, *inter alia*, the sale of targeted advertising to third parties. Said advertising is catered towards the personal information provided by the User. These advertisements appear throughout the Facebook.com website and on user pages such as, *inter alia*, a User's home page or news feed.

35. Facebook's new privacy settings are confusing, materially deceptive, and have resulted in Users such as those in the position of the Petitioner inadvertently revealing large amounts of personal and private information to third parties without the consent of the User.
36. Facebook owed and continues to owe the Petitioner and Group Members a duty to release only the personal information for which Facebook has obtained the consent of a User to so release.
37. Facebook has benefitted and been enriched by its alleged conduct as described above. Facebook has collected fees and generated revenue from the sharing, use, and dissemination of information to which use its Users did not consent.
38. Facebook has knowledge of this benefit and has voluntarily accepted and retained all benefit that it received regarding its unlawful conduct. It would be unjust to allow Facebook to retain the economic benefit it procured through its' misrepresentation and unlawful practice without compensating the Petitioner and Group Members.
39. The representations made by Facebook towards its Users when describing the privacy policy upgrade and the way in which Facebook would treat the personal information of Users were untrue, inaccurate, and misleading.
40. Facebook acted negligently in making its representations to the Petitioner and Members of the Group. The Petitioner and Group Members relied, in a reasonable manner, upon the representations made by Facebook.
41. The reliance of the Petitioner and Group Members upon the representations made by Facebook resulted in a detriment to the Petitioner and Group Members in that their personal information was shared, used and disseminated to third parties without the proper consent of the Petitioner and Group Members, and for the financial or other benefit of Facebook.

42. The Petitioner and Group Members relied upon Facebook and expected that it would take proper precautions and safety measures when dealing with the personal and private information uploaded by Users, and would make truthful and full representations as to the character and effect of the Respondent's privacy policies and the manner in which Facebook would share, use, and disseminate the personal information provided by the Petitioner and Group Members.
43. At all material times Facebook knew or ought to have known that its privacy policy, when used as represented by the Respondent, would cause or contribute to the compromise of the security of Users' personal and private information and the unauthorized sharing, use, and dissemination of Users' personal and private information and an increased risk to the unauthorized sharing, use, and dissemination of Users' personal and private information.
44. Facebook owed a duty to warn Users of the risks associated with Users providing their personal and private information to the Respondent and a duty to obtain Users' consent. Facebook breached its duty to its Users by failing to provide proper warning prior to the privacy policy changes enacted by Facebook on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010 and by failing to provide any adequate warning thereafter, of, *inter alia*, the risks associated with Users providing their personal and private information.
45. Any warnings that were provided were inadequate and ineffective in that said warnings, *inter alia*:
- a) failed to warn of the actual and known risks;
 - b) were insufficient to give Users, prospective Users, and the public a true indication of the risks associated with Users providing their personal and private information; and
 - c) failed to make clear, credible, complete and current disclosure of the risks associated with Users providing their personal and private information to

Facebook and therefore failed to permit free and informed decisions by Users concerning same.

46. The Respondent knew or ought to have known that risks were associated with Users in providing their personal and private information to the Respondent, but failed to provide warnings sufficient to inform Users of said risks.
47. The Respondent suppressed information regarding the risks of Users providing their personal and private information to the Respondent. Facebook misinformed and misled Users about the risks of Users providing their personal and private information to the Respondent.
48. As a result of these wrongful acts, Users started or continued to use the services of the Respondent and thereby suffered the compromise of their personal and private information and the unauthorized sharing, use, and dissemination of their personal and private information, as well as an increased risk to the unauthorized sharing, use, and dissemination of their personal and private information.
49. By reason of the foregoing, Facebook is liable in damages to the Petitioner and Group Members.
50. The Respondent increased the risk to the personal and private information communicated by Users to the Respondent, by *inter alia*:
 - a) failing to take reasonable steps to ensure information provided by Users was kept private;
 - b) failing to provide simple methods by which Users could select their privacy settings; and
 - c) failing to properly inform Users of the true impact of the changes to its privacy policy.

51. As a result of these actions, the Petitioner and Users in the position of the Petitioner continued to use Facebook.com, or started to use Facebook.com, and thereby suffered the compromise of their personal and private information and the unauthorized sharing, use, and dissemination of their personal and private information and an increased risk to the unauthorized sharing, use, and dissemination of their personal and private information.
52. Pursuant to a contract or a series of contracts made between the Petitioner and Group Members and Facebook within the Province of Québec, or otherwise within the jurisdiction of this Honourable Court, the Respondent was obliged to provide services to the Petitioner and Group Members and allow for the storage of the Petitioner and Group Members' personal information in adherence with the terms of the agreement between the parties.
53. The privacy settings as selected by the Petitioner and Group Members were an essential term or condition of the aforementioned contract. The Petitioner and Group Members selected their privacy settings and chose sharing levels as related to their personal information pursuant to the terms of the aforementioned contract.
54. Unilaterally and without the consent of the Petitioner and Group Members, Facebook changed the privacy settings of Users by way of modifications to the Respondent's privacy policy and the associated site changes implemented by the Respondent on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010.
55. As a result of the aforementioned changes, Facebook increased the amount of Users' personal information shared, used and disseminated by Facebook without the consent of the Petitioner and Group Members.
56. By reason of the foregoing Facebook breached the contract it had with the Petitioner and Group Members by making fundamental changes which were not consented to by the

Petitioner and Group Members. These changes are incompatible with the terms or conditions of the original agreement between the parties.

57. The Petitioner and Group Members have performed their obligations pursuant to the contract.
58. The Petitioner and Group Members had a reasonable expectation of privacy with regard to how Facebook would share, use, and disseminate their personal information.
59. Facebook shared, used, and disseminated the personal information of the Petitioner and Group Members without their consent and continues to share, use, and disseminate the personal information of the Petitioner and Group Members without the consent of the Petitioner and Group Members.
60. The actions of the Respondent constitute an invasion of privacy in that such conduct involves:
 - i. the Respondent's use of the Users' identities and likeness;
 - ii. the appropriation of Users' names or likenesses to Respondent's advantage and benefit, commercially or otherwise;
 - iii. the lack of Users' consent; and
61. In its "Statement of Rights and Responsibilities" under "Privacy Policy," Facebook represents that:

"You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings."
62. The Petitioner and Group Members had and continue to have clear legal ownership and right to possession of their personal information at the time said personal property was

converted and continues to be converted by Facebook. The Respondent's conversion took place by way of a wrongful act and without regard to the property rights of the Petitioner and Group Members.

63. The Petitioner and Group Members have suffered and continue to suffer damages resulting from the unlawful conversion of their personal information by Facebook.

64. As per the provisions of *An Act Respecting the Protection of Personal Information in the Private Sector* (R.S.Q., c. P-39.1), and the related Regulations:

13. *No person may communicate to a third person the personal information contained in a file he holds on another person, or use it for purposes not relevant to the object of the file, unless the person concerned consents thereto or such communication or use is provided for by this Act.*

14. *Consent to the collection, communication or use of personal information must be manifest, free, and enlightened, and must be given for specific purposes. Such consent is valid only for the length of time needed to achieve the purposes for which it was requested*
Consent given otherwise than in accordance with the first paragraph is without effect.

65. The actions of Facebook constitute a breach of *An Act Respecting the Protection of Personal Information in the Private Sector* (R.S.Q., c. P-39.1), including but not limited to, sections 13 and 14 of said Act.

66. Creating an account is a pecuniary and commercial transaction in that Users such as those in the position of the Petitioner provide their property (personal information) to Facebook in exchange for use of the Facebook.com website and associated services.

67. The conduct of Facebook constitutes, *inter alia*, a deceptive practice, violation, or is otherwise in contravention of *The Consumer Protection Act, R.S.Q. c. P-40.1*, and its *Regulations*, and the *Civil Code of Québec*, S.Q. 1991, c. 64.
68. In particular, the privacy settings instituted by Facebook on or about November 19, 2009, and on or about December 9, 2009 and on or about January 20, 2010 were unfit for the purpose contracted between the Users and Facebook. Users contracted with the Respondent that software utilized in their Facebook.com accounts would have the specific purpose of:
- a) Safeguarding information provided by Users, i.e. that it would be kept private; and
 - b) Users' personal and private information would not be shared, used, or disseminated in an unauthorized fashion.
69. Facebook, in breach of its statutory duty and obligations to consumers, engaged in deceptive acts or practices in relation to consumer transactions by representations or other conduct that has the capability, tendency, or effect of deceiving or misleading consumers.
70. The manner in which Facebook has engineered and communicated its privacy policies and organized the sharing of the personal information of its Users is deceptive and negligent in design, and the Respondent designed and utilizes these practices in a manner which it knew, or ought to have known, would be deceptive and misleading.
71. Facebook knew or should have known that its representations to consumers regarding its privacy policies and the methods by which it would share, use, and disseminate the personal information uploaded by its Users had the tendency, capacity and likelihood to deceive the Petitioner and Group Members and said representations were and continue to be made with wilful blindness or are reckless as to their accuracy.
72. The Petitioner and Group Members have suffered injury, economic loss, and damages

caused by the misrepresentations made by the Respondent with respect to its privacy policies and descriptions as to how Facebook would share, use and disseminate the personal information of its Users and the manner in which the foregoing were presented to the Petitioner and Group Members.

73. Facebook has failed to correct statements made by itself and by its employees, agents, and retailers to the Petitioner and Group Members, when Facebook knew that the information and impressions being provided to the Petitioner and Group Members was incorrect, inaccurate, false, or misleading. The Respondent's failure to correct this misinformation is a misrepresentation by omission or silence.
74. By reason of the acts, omissions, wrong doings, and breaches of the legal duties and obligations of Facebook, the Petitioner and Group Members have suffered injury, economic loss, and damages, the particulars of which include, *inter alia*, the following:
- a) Being subject to breach of contract including breach of contract due to the actions of the Respondent which were either not disclosed, misrepresented, or not properly explained, when contracting with the Petitioners;
 - b) Being subject to invasion of privacy and appropriation of personal information;
 - c) Being subject to negligent misrepresentations and insufficient warnings;
 - d) Being subject to the conversion of personal information, said being the property of the Petitioner and members of the Group;
 - e) Being subject to contraventions of, *inter alia*, *An Act Respecting the Protection of Personal Information in the Private Sector (R.S.Q., c. P-39.1, The Consumer Protection Act, R.S.Q., c. P-40.1, the Charter of Human Rights and Freedoms, R.S.Q., c. C-12, and the Civil Code of Québec, S.Q. 1991, c. 64*; and
 - f) Harm caused to the Petitioner and Group Members through the use of their personal information by Facebook for which purposes Facebook was not authorized to so use.

75. Facebook has demonstrated a cavalier and arbitrary approach with respect to its legal obligations to the Petitioner and Group Members and the methods by which Facebook misrepresented its privacy policies and how the Facebook would share, use and disseminate the personal information of the Petitioner and Group Members.
76. Facebook has shown a lack of good faith with respect to its legal obligations to Users regarding the fair representation of its policies and the way in which it shared, used and disseminated and continues to share, use, and disseminate the personal information shared by the Petitioner and Group Members.
77. The conduct of the Respondent as set forth above was malicious, deliberate, and oppressive towards the Petitioner and Group Members, and Facebook conducted itself in a wilful, wanton, and reckless manner, as set forth herein. The Respondent's aforesaid acts, omissions, wrong doings, and breaches of legal duties and obligations constitute a wanton disrespect for fair business practices and contractual dealings with consumers and the public.
78. Perception of Facebook by other corporations as going unpunished will encourage other corporations to attempt to cheat and mislead customers in the absence of consequence. The largest and most respected corporations must act responsibly and honestly with a view to protecting the interests of the public. Punitive, aggravated, and exemplary damages are mandated in this case as and must be of a material consequence and deterrent in order to demonstrate that this type of conduct by domestic and foreign business will not be tolerated in Canada.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

79. The composition of the Group makes the application of article 59 or 67 C.C.P. impractical for the following reasons:

- a) The number of persons included in the Group is estimated in the hundreds of thousands or higher in Canada, considering that Respondent is the largest social networking site in the world and is estimated to have over 350 million individual subscribers worldwide;
 - b) The names and addresses of persons included in the Group are not known to the Petitioner, but are clearly known to Respondent.
80. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- a) Was Respondent negligent in making personal information related to the Group Members publicly available?
 - b) Is Respondent liable to pay damages to the Group Members as a result of making personal information related to Users publicly available, or as a result of the divulgation and accessibility to such information?
 - c) What categories of damages have Group Members suffered, including actual monetary losses incurred, inconvenience, anxiety and other moral and/or punitive damages caused by the making said personal information publicly available?
81. The interests of justice favour that this motion be granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

82. The action that Petitioner wishes to institute for the benefit of the members of the Group is an action in damages.

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

GRANT Petitioner's action against Respondent;

CONDEMN Respondent to pay to the members of the Group compensatory damages caused as a result of Respondent making publicly available personal information related to the Group Members;

CONDEMN Respondent to pay an amount in punitive, exemplary and/or moral damages to every Group Member, in an amount to be determined by the Court, with interest as well the additional indemnity;

GRANT the Group action of Petitioner on behalf of all the members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the *Civil Code of Québec* and with full costs and expenses including expert's fees and publication fees to advise members.

84. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montréal for the following reasons:

- a) Respondent provides its services in the District of Montréal;
- b) The proposed Group Representative resides in the District of Montréal;
- c) Many Group Members are domiciled and/or work in the District of Montreal;
- d) Petitioner's legal counsel practice in the District of Montréal.

85. 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) Petitioner is a member of Facebook.com, and is thus a Group Member;
- b) Petitioner has already and will continue to suffer damages as a result of Respondent making his personal information publicly available;
- c) Petitioner understands the nature of the action;
- d) Petitioner is available to dedicate the time necessary for an action and to collaborate with members of the Group;
- e) Petitioner's interests are not antagonistic to those of other members of the Group.

86. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT Petitioner's present Motion against Respondent;

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

All physical persons (including their estates, executors, or personal representatives), corporations, and other entities, who:

- a) *were subject to misrepresentation and other wrongful practices by the Respondent in regards to their personal information as described herein;*
- b) *were subject to a breach of privacy and in the addition or alternative, an*

invasion of privacy and in the addition or alternative, a breach of confidence in regards to their personal information; or

- c) *were subject to the conversion of said personal information for unauthorized use.*

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

- a) Was Respondent negligent in making personal information related to the Group Members publicly available?
- b) Is Respondent liable to pay damages to the Group Members as a result of making personal information related to Users publicly available, or the divulgation and accessibility to such information,
- c) What categories of damages have Group Members suffered, including actual monetary losses incurred, inconvenience, anxiety and other moral and/or punitive damages caused by the making said personal information publicly available?

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

GRANT Petitioner's action against Respondent;

CONDEMN Respondent to pay to the members of the Group compensatory damages for all monetary losses caused as a result of Respondent making publicly available personal information related to the Group Members;

CONDEMN Respondent to pay an amount in punitive, exemplary and/or moral damages to every Group Member, in an amount to be determined by the Court, with interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the members of the Group;

ORDER the treatment of individual claims of each member of the Group in accordance with articles 1037 to 1040 C.C.P.;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Québec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all members of the Group that have not requested their exclusion from the Group 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 90 days from the date of the publication of the notice to the members;

ORDER the publication of a notice to the members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, QUEBEC, July 6, 2010

Copie conforme / True Copy

(s) / (sgd.) Merchant Law Group, LLP
Merchant Law Group, LLP

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioner