

Court File No.

13-57203 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

████████ SNOWBALL

Plaintiff

- and -

RESEARCH IN MOTION LIMITED

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: April 2, 2013

Issued by "N. Serdyuk" / Local Registrar

Address of court office: 161 Elgin Street
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Ottawa, ON K2P 2K1

TO: Research in Motion Limited
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DEFINED TERMS

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) “**BlackBerry Device(s)**” means any and/or all wireless handheld devices and services developed, designed and marketed by Defendant, **Research in Motion Limited** (“RIM”);
- (b) “**BlackBerry Smartphone(s)**” means any and/or all **BlackBerry Devices** that are mobile phones built on a mobile operating system, with more advanced computing capability and connectivity than a feature phone, including, but not limited to the BlackBerry Torch, the BlackBerry Bold and the BlackBerry Curve;
- (c) “**Mobile App(s)**” or “**Mobile Application(s)**” means software applications designed to run on smartphones, tablet computers and other mobile devices that are available through application distribution platforms typically operated by mobile operating systems such as BlackBerry World;
- (d) “**Blackberry PIN**” means the eight character hexadecimal identification number assigned and locked to each specific **BlackBerry Device**;
- (e) “**BlackBerry Messenger**” or “**BBM**” means the **Mobile App** for sending and receiving encrypted instant messages, voice notes, images and videos via **BlackBerry PIN**;
- (f) “**BlackBerry Solution Licence Agreement**” or “**B.B.S.L.A.**” means the software licence agreement that every purchaser of a **BlackBerry Smartphone** accedes to;

- (g) “**Service Disruption Period**” means the time period between October 11 and October 14, 2011 during which consumers had their e-mail, **BBM**, and/or internet services interrupted;
- (h) “**Class**” or “**Class Members**” means all physical persons in Canada, excluding Quebec residents, who had a **BlackBerry Smartphone**, paid for a monthly data plan, and had their e-mail, **BBM** and/or internet services interrupted during the period of October 11 to 14, or any other group to be determined by the court;
- (i) “*Courts of Justice Act*” means the Ontario Courts of Justice Act, RSO 1990, c C-43, as amended;
- (j) “*Class Proceedings Act*” means the Class Proceedings Act, 1992, SO 1992, c 6, as amended;
- (k) “*Consumer Protection Act*” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A, as amended;
- (l) “**Consumer Protection Legislation**” means:
- (i) *Fair Trading Act*, RSA 2000, c F-2, as amended;
 - (ii) *Business Practices and Consumer Protection Act*, SBC 2004, c 2, as amended;
 - (iii) *The Business Practices Act*, CCSM, c B120, as amended;
 - (iv) *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, as amended, and *Trade Practices Act*, RSNL 1990, c T-7, as amended;
 - (v) *Business Practices Act*, RSPEI 1988, c B-7, as amended; and

(vi) *Consumer Protection Act*, SS 1996, c C-30.1, as amended;

(m) “**Defendant**” or “**RIM**” means **Research in Motion Limited**;

(n) “**Plaintiff**” means [REDACTED] Snowball; and

(o) “**Blackberry Services**” means anything other than goods, including any service, right, entitlement or benefit from RIM as per the *Consumer Protection Act*, s. 1.

CLAIM

2. The proposed Representative Plaintiff, [REDACTED] Snowball, claims on his own behalf and on behalf of the members of the Class of persons as defined in paragraph 4 below (the “Class”) as against Research in Motion Limited (the “Defendant”):

- (a) An order pursuant to the *Class Proceedings Act* certifying this action as a class proceeding and appointing the Plaintiff as Representative Plaintiff for the Class Members;
- (b) A declaration that the notice given by the Plaintiff on April 2, 2013, on his own behalf and on behalf of “person similarly situated”, is sufficient to give notice to the Defendant on behalf of all Class Members;

- (c) In the alternative, a declaration, if necessary, that it is in the interests of justice to waive the notice requirement under Part III and s. 101 of the *Consumer Protection Act* and the parallel provisions of the Consumer Protection Legislation¹;
- (d) General damages in an amount to be determined in the aggregate for the Class Members to compensate them for the monies paid out for their data service plan during the Service Disruption Period;
- (e) Punitive, aggravated and exemplary damages in an amount that this Honourable Court deems appropriate;
- (f) In the alternative, an order for an accounting of revenues received by the Defendant for all monies indirectly collected from consumers through cellular service providers prorated for the Service Disruption Period;
- (g) A declaration that any funds collected by the Defendant during the Service Disruption Period are held in trust for the benefit of the Plaintiff and Class Members;
- (h) Restitution and/or a refund of all monies paid to or received by the Defendant indirectly for data usage from the Class during the Service Disruption Period, on the basis of unjust enrichment;

¹ Specifically, the *Fair Trading Act*, RSA 2000, c F-2, s 7.2(3).

- (i) In addition, or in the alternative, restitution and/or a refund of all monies paid to or received by the Defendant for data usage from the Class during the Service Disruption Period, on the basis of *quantum meruit*;
- (j) An order compelling the creation of a plan of distribution pursuant to ss. 23, 24, 25 and 26 of the *Class Proceedings Act*;
- (k) A declaration that the Defendant may not exclude itself from liability for fault in failing to provide uninterrupted service pursuant to ss. 7(1) and 9(1) of the *Consumer Protection Act*;
- (l) A declaration that the Defendant is liable for any and all damages awarded despite any stipulation to the contrary in the B.B.S.L.A. pursuant to section 7 of the *Consumer Protection Act*;
- (m) Pre-judgment and post-judgment interest on the foregoing sums in the amount of 2% per month, compounded monthly, or alternatively, pursuant to ss. 128 and 129 of the *Courts of Justice Act*;
- (n) Costs of notice and administration of the plan of distribution of recovery in this action plus applicable taxes pursuant to s. 2(9) of the *Class Proceedings Act*;
- (o) Costs of this action on a substantial indemnity basis including any and all applicable taxes payable thereon pursuant to the *Excise Tax Act*, R.S.C. 1990. C. E-15; and

- (p) Such further and other relief as counsel may advise and/or this Honourable Court may deem just and appropriate in all the circumstances.

THE PARTIES

The Representative Plaintiff

3. The Plaintiff, [REDACTED] Snowball, is an individual residing in the City of Barrie, in the Province of Ontario. Mr. Snowball owned a Blackberry Bold 9700 Smartphone and at that time, was paying for the Blackberry Value Package offered by his service provider, Rogers Wireless.

The Class

4. The Plaintiff seeks to represent the following class of which he is a member (the "Proposed Class"):

All physical persons in Canada, excluding Quebec residents, who had a BlackBerry Smartphone, paid for a monthly data plan, and had their e-mail, BlackBerry Messenger ("BBM"), and/or internet services interrupted during the period of October 11 to 14, 2011, or any other group to be determined by the court.

The Defendant

5. The Defendant Research in Motion Limited ("RIM") is a Canadian corporation with its principal place of business in Waterloo, Ontario. Its business is the manufacturing of BlackBerry Devices, as well as, the operation of its own network that supports the data service for these devices.

6. The Defendant is resident in Ontario for the purpose of s. 2 of the *Consumer Protection Act*.

THE NATURE OF THE CLAIM

7. The Defendant is and, has been at all relevant times, engaged in the telecommunications business and is best known for developing the BlackBerry Smartphone.

8. These class proceedings concern the failure of the Defendant to properly compensate the Class Members for monies that they paid out for data usage during the time period of October 11 to 14, 2011, when the service was not actually available or severely diminished (the "Service Disruption Period").

9. Customers purchase their BlackBerry Devices directly from BlackBerry or from an authorized third-party cellular service provider. Consumers then purchase a monthly service plan from the cellular service provider for voice and data service, of which a portion of the amount paid each month goes to RIM to compensate it for the provision of its network.

10. RIM provides Class Members' BBM, e-mail and internet services directly to customers through its own network.

11. RIM generates service revenues from BlackBerry customers primarily from a monthly access fee charged to cellular service providers, which the provider in turn bills the BlackBerry customer. In this way, the Plaintiff and the Class Members were indirectly paying RIM for data services.

12. Upon activating a BlackBerry Smartphone, every BlackBerry user accedes to a software licence agreement with the Defendant, that is available online called the BlackBerry Solution

Licence Agreement (“B.B.S.L.A.”). There is an on-screen acceptance of an addendum and a reference to a web address with the full text of the B.B.S.L.A.

13. On Monday, October 10th 2011, BlackBerry Smartphones began having problems overseas with their e-mail, BBM, and internet services.

14. On Tuesday, October 11th 2011, RIM announced that the problems were caused by a core switch failure within the company’s infrastructure. RIM explained that a transition to a backup switch did not function as tested, causing a large backlog of data.

15. This service outage would have been of little or no practical effect with respect to the provision of services had the backup system been properly functional.

16. On Wednesday, October 12th 2011, it was suggested that a technical failure in Europe was suspected of causing a huge backlog of messages worldwide for BlackBerry users, who had experienced three (3) days of outages and that this started affecting BlackBerry users globally;

17. In Canada, BlackBerry users were unable to adequately send and receive e-mails, BBM messages, and/or were unable to browse the internet from as early as October 11th 2011 until the problem was fully resolved on October 14th 2011.

18. On October 17th 2011, the Defendant published a press release that stated that they would be offering BlackBerry users one (1) month of free technical support to enterprise customers and free downloads of the following Apps until December 31st 2011:

- SIMS 3 - Electronic Arts

- Bejeweled - Electronic Arts
- N.O.V.A. - Gameloft
- Texas Hold'em Poker 2 - Gameloft
- Bubble Bash 2 - Gameloft
- Photo Editor Ultimate - Ice Cold Apps
- DriveSafe.ly Pro - iSpeech.org
- iSpeech Translator Pro - iSpeech.org
- Drive Safe.ly Enterprise - iSpeech.org
- Nobex Radio™ Premium - Nobex
- Shazam Encore - Shazam
- Vlingo Plus: Virtual Assistant – Vlingo

19. It was also reported in the news that RIM was discussing the possibility of refunding wireless service providers certain sums that they had received from these wireless service providers who prepay their monthly fees for each active BlackBerry user.

20. The Defendant, however, made no mention anywhere of either directly refunding or arranging with wireless service providers compensation for the amount of time that their customers were deprived of the use of their data, despite having admitted in its Press Release that “service interruptions” occurred for “1.5 days in Canada”.

21. The right to download specific free Apps (which RIM values at more than \$100) does not properly compensate BlackBerry users who have paid for services that they were unable to use.

22. In addition, refunding wireless service providers who pay a monthly fee for active BlackBerry users does not obligate them to pass these monies along to BlackBerry users. Further, even if they did pass those along, it would be insufficient to refund the actual costs that wireless service providers charge to BlackBerry users in the form of monthly data plans.

23. The Defendant failed to take action to either directly compensate BlackBerry users or to indirectly compensate BlackBerry users by arranging for wireless service providers to refund their customers and to take full responsibility for these damages.

24. In an attempt to limit its liability to consumers, Clause 19(b)(ii) of the B.B.S.L.A. provides as follows:

“RIM does not warrant or provide an (*sic*) other similar assurance whatsoever that uninterrupted use or operation of any service, continued availability of any service, or that any messages, content or information sent by or to you will be accurate, transmitted in uncorrupted form or within a reasonable period of time”.

25. Section 7(1) of the *Consumer Protection Act* states that: “the substantive and procedural rights given under this Act apply despite any agreement or waiver to the contrary”. Section 9(1) of the *Consumer Protection Act* provides: “The supplier is deemed to warrant that the services supplied under a consumer agreement are of a reasonably acceptable quality”, therefore the general limitations of liability in the B.B.S.L.A. as well as the specific waiver set out in the previous paragraph in this Statement of Claim is unenforceable as against the Plaintiff and Class Members.

26. Clause 29(d) of the B.B.S.L.A. provides as follows:

“...such disagreement or dispute shall be settled by final and binding arbitration to be conducted in Ontario....”

27. Section 7(2) of the *Consumer Protection Act* states that: “...any term or acknowledgment in a consumer agreement or a related agreement that requires or has the effect of requiring that disputes arising out of the consumer agreement be submitted to arbitration is invalid insofar as it

prevents a consumer from exercising a right to commence an action in the Superior Court of Justice given under this Act”. In addition, section 8(1) of the *Consumer Protection Act* provides: “A consumer may commence a proceeding on behalf of members of a class under the Class Proceedings Act, 1992 or may become a member of a class in such a proceeding in respect of a dispute arising out of a consumer agreement despite any term or acknowledgment in the consumer agreement or a related agreement that purports to prevent or has the effect of preventing the consumer from commencing or becoming a member of a class proceeding”. These provisions operate to nullify the clause in the B.B.S.L.A. purporting to require mandatory arbitration in the event of dispute.

28. Consumer Protection Legislation in other Canadian provinces also voids the arbitration clauses found in the B.B.S.L.A. The relevant clauses include: the *Business Practices and Consumer Protection Act*, S.B.C., 2004, C.2, s. 3, the *Fair Trading Act*, R.S.A. 2000, c. F-2 s. 2(1) the *Consumer Protection Act*, C.C.S.M, c C200, s. 96, the *Consumer Protection Act*, S.O. 2002, C.30, Schedule A, ss. 7(1) and 8(1) and other similar legislation in other Canadian provinces.

29. The Class Members have suffered injury, loss and damages as a result of the Defendant’s failure to compensate them for the period that they were deprived of the adequate use of their data services.

30. To date, Canadian consumers have still never been compensated for damages incurred as a result of the Service Disruption Period.

THE REPRESENTATIVE PLAINTIFF

31. In October 2011, the Plaintiff owned a Blackberry Bold 9700 and at that time was paying for the Blackberry Value Package that was offered by its service provider, Rogers Wireless. This package had a monthly data fee of 40\$.

32. From October 11th 2011 to October 14th 2011, the Plaintiff was unable to properly send or to receive emails, to use BBM services or to go onto the internet.

33. After the problem was resolved, the Plaintiff expected to be compensated for the loss of services to which he was paying a monthly fee for. Instead, he was disappointed to learn that RIM was only offering some free App downloads that he did not want or need.

34. The Plaintiff has suffered damages as a result of the Service Disruption Period, including the prorated share of costs for the services that were unavailable, including sales taxes. In his case, the prorated share of damages suffered is \$4.00, namely \$40 for his monthly data plan/ 30 days x 3 days.

CAUSES OF ACTION

Breach of Contract

35. Upon purchasing the BlackBerry Smartphones and service plans, the Plaintiff and Class Members entered into a service agreement with RIM – the B.B.S.L.A. – whereby RIM would provide data service, allowing them to send and to receive e-mails and BBM messages, and to browse the internet.

36. There was either an express or implied contractual term between the Class Members and the Defendant that the Defendant would provide service to the Class Members on their BlackBerry Devices and that the Class Members would pay for this service pursuant to s. 9(1) of the *Consumer Protection Act* as is set out above in paragraph 25.

37. By reason of the service interruption as described above, the Defendant is in breach of contract having breached its express or implied warranty to Class Members by failing to provide adequately reasonable data service to Class Members during the Service Disruption Period. Class Members were unable to receive a substantial benefit from the service during the Service Disruption Period to their detriment.

38. The Defendant's breach of contract with regard to the proper provision of data service to Blackberry Devices has resulted in injury, economic losses and damages to the Plaintiff and Class Members.

39. The aforesaid loss suffered by the Plaintiff and the Class Members was caused by this contractual breach, particulars of which includes, but is not limited to the fact that the Class Members paid money for a service that they did not receive and subsequently, the Defendant failed to adequately compensate the Class Members for their prorated service payments during the Service Disruption Period.

40. By virtue of the acts and omissions described above, the Plaintiff and Class Members are entitled to recover damages from the Defendant.

41. The loss, damage and injuries were foreseeable.

Breach of Implied Covenant of Good Faith and Fair Dealing

42. It is a well-established tenet of contract law that there is an implied covenant of good faith and fair dealing in every contract.

43. The Plaintiff and Class Members were charged ~~for and paid for~~ service on days in which service was not adequately provided.

44. As a result of the Defendant's conduct, the Plaintiff and Class Members have suffered injury, been damaged and lost money.

45. By failing to provide uninterrupted service to the Class Members on all days in which they paid for service, RIM is under an obligation to compensate the Class Members for their damages.

Tort of Negligence

46. RIM had a positive legal duty to use reasonable care to maintain stable, continuous and uninterrupted service on its system/data center for its customers.

47. RIM knew that its customers (including Plaintiff and the Class) relied on it to provide stable data service.

48. It was certainly reasonably foreseeable that if RIM failed to maintain its system/data center so as to provide stable, uninterrupted data service, its customers would sustain injury and

damages as they would be unable to maintain the communications and make use of the services that they were entitled to expect when using a BlackBerry Smartphone.

49. By its acts described herein, the Defendant failed to maintain reasonable care of its systems so as to provide uninterrupted data service for its customers and, in so doing, breached its duties to Plaintiff and the Class.

50. This breach was a direct and proximate result of Defendant's failure to use reasonable care to implement and maintain appropriate procedures reasonably designed to protect against such outages.

51. By reason of the foregoing, Plaintiff and each member of the Class are entitled to recover damages and other relief from Defendant.

CAUSATION

52. The acts, omissions and breaches of legal obligations on the part of the Defendant are the direct and proximate cause of the Plaintiff's and Class Members' injuries.

53. The Plaintiff pleads that by virtue of the acts, omissions and breaches of legal obligations as described above, they are entitled to legal and/or equitable relief against the Defendant, including damages, consequential damages, specific performance, rescission, attorneys' fees, costs of suit and other relief as appropriate in the circumstances.

DAMAGES

Compensatory Damages (Economic Losses)

54. By reason of the acts, omissions and breaches of legal obligations of the Defendant, the Plaintiff and Class Members have suffered injury, economic loss and damages, the particulars of which include the prorated cost of their monthly rate plan during the Service Disruption Period.

Punitive, Exemplary and Aggravated Damages

55. The Defendant has taken a cavalier and arbitrary attitude to its legal and moral duties to the Class Members.

56. In addition, it should be noted since the Defendant is a highly-revered, multi-billion dollar Canadian corporation, it is imperative to avoid any perception of evading the law without impunity. Should the Defendant only be required to disgorge monies which should not have been charged due to the service interruption, such a finding would be tantamount to an encouragement to other businesses to overcharge their customers as well. Punitive, aggravated and exemplary damages are necessary in the case at hand to be material in order to have a deterrent effect on other corporations in Canada.

57. At all material times, the conduct of the Defendant as set forth was malicious, deliberate and oppressive towards its customers and the Defendant conducted itself in a wilful, wanton and reckless manner.

STATUTORY REMEDIES

58. The Defendant is in breach of the *Consumer Protection Act* and/or other similar/equivalent legislation.

59. The Plaintiff pleads and relies upon consumer protection and trade legislation and common law, as it exists in this jurisdiction and the equivalent/similar legislation and common law in other Canadian provinces and territories. The Class Members have suffered injury, economic loss and damages caused by or materially contributed to by the Defendant's inappropriate and unfair business practices, which includes the Defendant being in breach of applicable Consumer Protection laws.

Breach of the *Consumer Protection Act*

60. At all times relevant to this action, the Plaintiff and Class Members were “consumer[s]” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

61. At all times relevant to this action, the Defendant was a “supplier” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

62. The agreement entered into between the Plaintiff and Class Members and the Defendant (the B.B.S.L.A.) is a “consumer agreement” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

63. The transactions by which the Plaintiff and Class Members entered into the consumer agreement to pay for the Defendant's services were “consumer transaction[s]” within the meaning of that term as defined in s.1 of the *Consumer Protection Act*.

64. By virtue of entering into the service agreement with consumers, the Defendant has impliedly warranted that the services supplied be of a “reasonably acceptable quality” as per section 9(1) of the *Consumer Protection Act*. The Defendant breached the consumer agreement when it failed to discharge its contractual obligation to provide full service to consumers thereby being in breach of contract.

65. Class Members held up their end of the bargain through payment of a sum of money and the Defendant is delinquent and in default as it breached its implied warranty as to service.

66. The Plaintiff states that the breach of contract and the refusal to compensate Class Members for the fees paid for services that were not provided constitutes an unfair practice as a result of which they are entitled to damages pursuant to the *Consumer Protection Act*.

67. Pursuant to section 8(1) of the *Consumer Protection Act*, the Plaintiff is entitled to commence a proceeding on behalf of Class Members under the *Class Proceedings Act* and the members of the class are entitled to become a member of the class in respect of the breach of the consumer agreement despite any clause to the contrary purporting to waive these rights.

68. The Plaintiff and Class Members are entitled to recover damages and costs of administering the plan to distribute the recovery of the action in accordance with the *Consumer Protection Act*.

WAIVER OF TORT, UNJUST ENRICHMENT AND CONSTRUCTIVE TRUST

69. The Plaintiff pleads and relies on the doctrine of waiver of tort and states that the Defendant’s conduct, including the alleged breaches of the *Consumer Protection Act* constitutes

wrongful conduct which can be waived in favour of an election to receive restitutionary or other equitable remedies.

70. The Plaintiff reserves the right to elect at the Trial of the Common Issues to waive the legal wrong and to have damages assessed in an amount equal to the monies paid by the Class Members for their data usage during the Service Disruption Period.

71. Secondly and in the alternative, damages may be assessed in an amount equal to the monies received by the Defendant or a prorated portion of the monies collected for the services during the Service Disruption Period which resulted in revenues and profit for the Defendant.

72. Further, the Defendant has been unjustly enriched as a result of the revenues generated from the monies collected for services not rendered and as such, *inter alia*, that:

- (a) The Defendant has obtained an enrichment through revenues and profits from the monies collected;
- (b) The Plaintiff and other Class Members have suffered a corresponding deprivation including the price paid for BlackBerry service on days in which service was not provided; and
- (c) The benefit obtained by the Defendant and the corresponding detriment experienced by the Plaintiff and Class Members has occurred without juristic reason as the Defendant failed to provide uninterrupted service to the Class Members on all days for which they paid for service. There is and can be no

juridical reason justifying the Defendant retaining any portion of such money paid.

73. Further, or in the alternative, the Defendant is constituted as a constructive trustee in favour of the Class Members for all of the monies received because, among other reasons:

- (a) The Defendant was unjustly enriched by receipt of the monies paid for the service during the Service Disruption Period;
- (b) The Class Members suffered a corresponding deprivation by paying for service not provided;
- (c) The monies were acquired in such circumstances that the Defendant may not in good conscience retain them;
- (d) Equity, justice and good conscience require the imposition of a constructive trust to return the prorated portion of money received by the Defendant to the Class Members;
- (e) The integrity of the market would be undermined if the court did not impose a constructive trust; and
- (f) There are no factors that would render the imposition of a constructive trust unjust.

74. Further, or in the alternative, the Plaintiff claims an accounting and disgorgement of the benefits which accrued to the Defendant.

COMMON ISSUES

75. Common questions of law and fact exist for the Class Members and predominate over any questions affecting individual members of the Class. The common questions of law and fact include:

- (a) Did the Defendant fail to provide BlackBerry users with adequate email, BlackBerry Messenger service (“BBM”), and/or internet services during the period of October 11 to 14, 2011?
- (b) Is the Defendant liable to the Class Members for the prorated amount of their monthly data plans for the time period that they were deprived of services?
- (c) Did the Defendant impliedly warrant their services to be of a “reasonably acceptable quality” as per the *Consumer Protection Act*, s. 9(1)?
- (d) Did the Defendant breach the express or implied warranties by failing to provide the data service during the Service Disruption Period?
- (e) Is the Defendant in breach of contract?
- (f) Did the Defendant’s breach of contract proximately cause loss or injury and damages?

- (g) Did the Defendant act negligently in failing to properly maintain their network system for BlackBerry Smartphone users?
- (h) Did the Class Members suffer losses or damages?
- (i) Is the Defendant responsible to pay compensatory and/or punitive damages to Class Members and in what amount?
- (j) Did the Defendant's acts or practices breach the *Consumer Protection Act* or other similar/equivalent legislation?
- (k) Should an injunctive remedy be ordered to ensure that the Defendant properly compensate the Class Members?

EFFICACY OF CLASS PROCEEDINGS

76. The members of the proposed Class potentially number in the hundreds of thousands. Because of this, joinder into one action is impractical and unmanageable. Conversely, continuing with the Class Members' claim by way of a class proceeding is both practical and manageable.

77. Class counsel proposes to prosecute these claims on behalf of the Class through this Action and through other actions commenced by the offices of Consumer Law Group. These actions include *Michael Blackette v. Research in Motion Limited*, an action commenced before the Quebec Superior Court in Montreal (October 25, 2011, File No.: 500-06-000583-118).

78. On March 19th 2013, the Honourable Mr. Justice Mark Schrager, J.S.C. of the Quebec Superior Court in the district of Montreal issued a judgment authorizing the bringing of a class action within the province of Quebec. Mr. Justice Schrager granted the Petitioner's Re-Amended Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative pursuant to the Quebec Code of Civil Procedure.

79. Members of the proposed Class have no material interest in commencing separate actions. In addition, given the costs and risks inherent in an action before the courts, and the small amount being claimed by each person, many people will hesitate to institute an individual action against the Defendant. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.

80. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory and inconsistent judgements on questions of fact and law that are similar or related to all members of the class.

81. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice.

82. The Plaintiff has the capacity and interest to fairly and fully protect and represent the interests of the proposed Class and has given the mandate to his counsel to obtain all relevant information with respect to the present action and intends to keep informed of all developments. In addition, class counsel are qualified to prosecute complex class actions. Neither the Plaintiff

nor his attorneys have interests which are contrary to or conflicting with the interests of the Class.

LEGISLATION

83. The Plaintiff pleads and relies on the *Class Proceedings Act*, the *Courts of Justice Act*, the *Consumer Protection Act* and other Consumer Protection Legislation.

JURISDICTION AND FORUM

Real and Substantial Connection with Ontario

84. There is a real and substantial connection between the subject matter of this action and the province of Ontario because:

- (a) Defendant Research in Motion Limited has its head office in Ontario;
- (b) The Defendant engages in business with residents of Ontario;
- (c) The Defendant derives substantial revenue from carrying on business in Ontario;
and
- (d) The damages of Class Members were sustained in Ontario.

85. The Plaintiff proposes that this action be tried in the City of Ottawa, in the Province of Ontario as a proceeding under the *Class Proceedings Act*.

Date: April 2, 2013

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Court File No. 13-57203 CP

 SNOWBALL
Plaintiff

RESEARCH IN MOTION LIMITED
Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED IN OTTAWA

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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