

CANADA  
 PROVINCE OF QUEBEC  
 DISTRICT OF MONTREAL  
 NO: 500-06-000583-118

(Class Action)  
 SUPERIOR COURT

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**M. BLACKETTE**

*Plaintiff / Class Representative*

-vs.-

**RESEARCH IN MOTION LIMITED**, legal person duly constituted, having its head office at 295 Phillip Street, City of Waterloo, Province of Ontario, N2L 3W8

*Defendant*

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**MOTION TO INSTITUTE PROCEEDINGS**  
**(Art. 110 and following C.C.P.)**

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TO THE HONOURABLE MR. JUSTICE SCHRAGER, JUDGE OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PLAINTIFF / CLASS REPRESENTATIVE STATES AS FOLLOWS:

**I. INTRODUCTION**

1. On March 19<sup>th</sup> 2013, the Superior Court of Quebec authorized (certified) the Plaintiff / Class Representative to institute a class action against the Defendant on behalf of the group of "All persons who are consumers (as defined in the Québec Consumer Protection Act) residing in Québec 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";
2. The Defendant is a prominent and prestigious national telecommunications company that designs, manufactures and markets the BlackBerry smartphone and it is also in the business of operating, maintaining and supporting its own network supporting the data service for these devices;
3. The present action rests on the service disruption that occurred between October 11<sup>th</sup> and October 14<sup>th</sup> 2011 during which consumers had their e-mail, BBM, and/or internet services interrupted ("Service Disruption Period") while continuing to pay for their monthly data plan;



4. In the judgment granting class action status on March 19<sup>th</sup> 2013, the Superior Court of Quebec identified the principle questions of fact and law to be treated collectively as the following:
  - a) Did the Defendant fail to provide BlackBerry users with adequate e-mail, 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 reimbursement of the prorated amount of their monthly data plans for the time period that they were deprived of proper services?

## **II. THE DEFENDANT**

5. The Defendant Research in Motion Limited (“RIM”) is a large Canadian telecommunications corporation based in Ontario;
6. The Defendant is in the business of manufacturing the BlackBerry Smartphone device which combines a cellular phone with the capability to send and to receive electronic data in the form of e-mails and messages on the BlackBerry Messenger service (“BBM”) and to access the internet, for which the Defendant is responsible;
7. The Defendant is also in the business of the operation, maintenance and support of its own network that supports the data service for these devices;
8. The BlackBerry Smartphone is not sold by the Defendant directly to the consuming public, but rather through internet/telephone carriers such as, in the case of the Plaintiff / Class Representative, Rogers Wireless;
9. The Defendant 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 the Defendant for data services, the whole as appears more fully from a copy of the affidavit of Andrew Bocking, a representative of the Defendant and from a copy of the transcript of the examination of Andrew Bocking, produced herein *en liaison* as **Exhibit P-1**;

## **III. THE SITUATION**

10. Customers ordinarily purchase their BlackBerry Smartphones from authorized third-party cellular service providers;
11. Customers 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 the Defendant to compensate it for the provision of its network;
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, the whole as appears more fully from a copy of the BlackBerry Solution Licence Agreement and from a copy of the BlackBerry Prosumer Service Agreement, produced herein *en laisse* as **Exhibit P-2**;
  13. BlackBerry messages are routed through the Defendant's Network Operations Centre, and while this produces an extra point of failure, it also adds extra layers of encryption;
  14. On Monday, October 10<sup>th</sup> 2011, BlackBerry Smartphones began having problems overseas with their e-mail, BBM, and internet services;
  15. On Tuesday, October 11<sup>th</sup> 2011, the Defendant announced that the problems were caused by a core switch failure within the company's infrastructure. The Defendant explained that a transition to a backup switch did not function as tested, causing a large backlog of data;
  16. On Wednesday, October 12<sup>th</sup> 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. A copy of the Defendant's "BlackBerry Service Update" is attached hereto and produced herein as **Exhibit P-3**;
  18. The Defendant is responsible for the maintenance and support of its own network, including providing a proper backup system so as to ensure that the Defendant's Network Operations Centre does not crash;
  19. Had the Defendant properly maintained its network and/or had the Defendant's backup system been functioning properly, the outage would either not have occurred or would have been remedied without delay;
  20. In Canada, BlackBerry users were unable to send and to receive e-mails, BBM messages, and/or to browse the internet from as early as October 11<sup>th</sup> 2011 until the problem was fully resolved on October 14<sup>th</sup> 2011;
  21. On October 17<sup>th</sup> 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 31<sup>st</sup> 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

The whole as appears more fully from a copy of said Press Release, produced herein as **Exhibit P-4**;

22. It was also reported in the news that the Defendant was discussing the possibility of refunding wireless service providers certain sums that they received from these wireless service providers who pay a monthly fee for each active BlackBerry user;
23. The Defendant, however, made no mention anywhere of either directly refunding or arranging with BlackBerry users' wireless service providers compensation for the amount of time that their customers were deprived of the use of their data, despite having admitted in their Press Release (Exhibit P-2) that "service interruptions" occurred for "1.5 days in Canada";
24. 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;
25. 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 not be sufficient to pay for the actual costs that wireless service providers charge to BlackBerry users in the form of monthly data plans;
26. To date, the Defendant has failed to take action to either directly compensate BlackBerry users or to indirectly compensate BlackBerry users by arranging for wireless service providers to refunds their customers and has failed to take full responsibility for these damages;
27. The Plaintiff / Class Representative and Class Members have economic loss and damages as a result of breaches by the Defendant of its obligations with

regard to the proper maintenance and support of its network, as well as, the provision of continuous and uninterrupted service, including the provision and maintenance of a proper backup system;

#### **IV. THE EXAMPLE OF THE PLAINTIFF / CLASS REPRESENTATIVE**

28. The Plaintiff / Class Representative owns a BlackBerry Curve 9300 and pays a monthly data fee of 25\$ to Rogers Wireless for 1 GB, the whole as appears more fully from a copy of Plaintiff / Class Representative's service agreement with Roger's Wireless and from a copy of his invoices for October, November and December of 2011, produced herein *en liasse* as **Exhibit P-5**;
29. The Plaintiff / Class Representative specifically uses his BBM and e-mail for friends he has in Trinidad, England, Barbados, and in the United States. Text messaging them would cost him significant money for each text message;
30. From October 12<sup>th</sup> 2011 until October 13<sup>th</sup> 2011, the Plaintiff / Class Representative was unable to effectively use his e-mail and BBM services;
31. After the problem was resolved, the Plaintiff / Class Representative 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 the Defendant was only offering some free App downloads that he does not want or need;
32. On October 24<sup>th</sup> 2011, the Plaintiff / Class Representative called Rogers Wireless to inquire if they would compensate him for the loss of service and they said that the problem was not their fault, directing him to call the Defendant if he has a complaint to make, which he did but did not reach the Defendant;
33. In any case, it has become abundantly clear at this point that the Defendant had no intention of compensating the Plaintiff / Class Representative nor Class Members for their loses;
34. In the Plaintiff / Class Representative's case his prorated share of the damages that he suffered is \$1.25, namely \$25 for his monthly data plan / 30 days x 1.5 days;
35. The Plaintiff / Class Representative's damages are a direct and proximate result of the Defendant's conduct and its failure to properly maintain and to support its network and its failure to provide continuous and uninterrupted service, including providing and maintaining a proper backup system;
36. In consequence of the foregoing, Plaintiff / Class Representative is justified in claiming damages;



## V. THE DAMAGES

37. Every member of the class has a BlackBerry Smartphone and has paid a monthly fee for their data plan, but was unable to effectively access their e-mail, BBM, and/or internet for the period of October 11<sup>th</sup> to 14<sup>th</sup> 2011;
38. Each member of the class is justified in claiming damages in the amount of their prorated share of their monthly data fees which they were unable to adequately use (i.e. \$ of monthly data fee / 30 days x 1.5 days);
39. All of these damages to the class members are a direct and proximate result of the Defendant's conduct and its failure to properly maintain and to support its network and its failure to provide continuous and uninterrupted service, including providing and maintaining a proper backup system;
40. In consequence of the foregoing, members of the class are justified in claiming as damages an estimated, *sauf à parfaire* when further information is available so as to better evaluate the number of Class Members in Canada:

\$2,144,768 in compensatory damages (3.2 billion dollars in annual revenue derived from BlackBerry service for 2011 x 7.1%, the Canadian portion x 23.6% for Quebec x 80% for consumers / 30 x 1.5 days)

The whole as appears more fully from a copy of the Defendant's 2011 Annual Report, produced herein as **Exhibit P-6**;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the class action of the Plaintiff / Class Representative and each of the members of the class;

DECLARE the Defendant liable for the damages suffered by the Plaintiff / Class Representative and each of the members of the class;

CONDEMN the Defendant to pay to the Plaintiff / Class Representative the sum of \$1.25 in compensatory damages;

CONDEMN the Defendant to pay to the class members a sum of \$2,144,768 in compensatory damages and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from October 25<sup>th</sup> 2011, the date of service of the motion to authorize a class action;

ORDER the Defendant to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

Montreal, November 20, 2013

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Plaintiff / Class  
Representative