

No : T-1869-07

FEDERAL COURT

BETWEEN :

Nathalie Marcotte

Plaintiff

And

Her Majesty the Queen

Defendant

And

Canada Revenue Agency

Defendant

And

Union des consommateurs

Third party

SETTLEMENT

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1. PREAMBLE

- 1.1. **WHEREAS** computers were stolen on September 4, 2003 from the Revenue Canada Agency formerly known as Tax Services Office of the Canada Customs and Revenue Agency (hereinafter the "Agency"), in Laval, Quebec;
- 1.2. **WHEREAS** the databases in the stolen computers contained certain personal information, including names and social insurance numbers, but no tax payer information;
- 1.3. **WHEREAS**, following the theft, the Agency sent a letter to approximately 120,000 persons in Canada, including some 35,000 residents of Quebec, advising them that some of their personal information was in the databases in the stolen computers and advising them on what measures to take to limit the risk of such personal information being used without their consent;
- 1.4. **WHEREAS** on or about October 7, 2003, Union des consommateurs and a designated person, who was later replaced by Nathalie Marcotte, filed a motion for authorization to institute a class action before the Superior Court of Quebec, 500-06-000210-035 (hereinafter "Superior Court") on behalf of the individuals in the class, described as follows :

[TRANSLATION] *"All individuals residing in Quebec regarding whom the Canada Customs and Revenue Agency (hereinafter the "CCRA") had personal and confidential information in the computers that were stolen on or about September 4, 2003 from the CCRA's Tax Services Office in Laval, Province of Quebec."*

- 1.5. **WHEREAS** by the motion for authorization in the Superior Court, Union des consommateurs seeks to obtain compensation for each member of the class described in said motion for costs and expenses and for lost time, hardship and inconvenience and stress caused by the theft of the computers containing personal information, as well as punitive damages.
- 1.6. **WHEREAS** the Parties hereto wish to resolve the rights and recourses of all individuals advised by the Agency and, as a result, Union des consommateurs shall, appoint one of its members and, if not already done, file a Class action in the Federal Court of Canada (hereinafter "Federal Court"), that shall have the same goal as the *motion for authorization to institute a class action* before the Superior Court, on behalf of the individuals in the class, to be described as follows:

[TRANSLATION] *"All individuals residing in Canada regarding whom the Canada Revenue Agency ("the Agency") had personal information in the computers that were stolen on September 4, 2003 from the Agency's Tax Services Office in*

Laval, Province of Quebec, and to whom the Agency had sent a letter advising them of such."

- 1.7. **WHEREAS** since the class action was filed in the Superior Court in October 2003, Union des consommateurs and the Agency have not known of any cases in which the personal information contained in the stolen computers was used for the purpose of stealing a Member's identity;
- 1.8. **WHEREAS** the parties hereto wish to resolve out of court all past, present and future rights and recourse of all Members of the Class action in the Federal Court as a result of the theft of computers from the Laval Tax Services Office on September 4, 2003, except rights and recourse that may be exercised by a Member who becomes victim of Identity Theft, as more fully described in paragraph 21 herein;
- 1.9. **WHEREAS** this settlement agreement constitutes a transaction in accordance with articles 2631 et seq. of the *Civil Code of Quebec* and a settlement in accordance with rule 299.31 of the *Federal Court Rules*;
- 1.10. **WHEREAS** the Class action before the Superior Court has not yet been certified and the Defendants agree to the Class action in the Federal Court to be certified as a "class action" in accordance with rules 299.12 and 299.17 et seq. of the *Federal Court Rules* for the sole purpose of approving the Settlement and the Petitioner, Union des consommateurs and the Designated Member, Nathalie Marcotte or her substitute agree to discontinue the Class action in the Superior Court, without costs, upon receipt of a final judgment from the Federal Court approving the Settlement;
- 1.11. **WHEREAS** the conclusion of the Settlement and the agreement to certify the Class action in the Federal Court as a class action are made, with no admission by the Defendants regarding facts or law, and nothing in the Settlement is to be interpreted as an admission of liability by the Defendants or to be interpreted as a waiver by the Petitioner, Union des consommateurs and the Designated Person Nathalie Marcotte or her substitute, of the allegations that they made against the Defendants, the Settlement having been reached for its own purpose;
- 1.12. **WHEREAS** the Parties hereto wish to bind all Class Members described in paragraph 1.6 hereof, for which a class action shall be filed in the Federal Court and the purpose of the Settlement is to provide compensation solely to Class Members who have submitted an Eligible Claim, the Parties having expressly agreed that the Settlement shall exclude the collective recovery of Claims by the Class Members;
- 1.13. **WHEREAS** the Parties agree that the Settlement shall remain confidential until the Federal Court Plaintiff file a motion for the certification of the action as a

Class action in the Federal Court, which shall not hinder the Parties from revealing the existence and scope to the Honourable André Prévost, Justice with the Superior Court of Quebec, to any other member of the Superior Court, members of the Federal Court and their staff;

1.14. **WHEREAS** the preamble is an integral part of the Settlement;

THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

- 2.1. In this Settlement, the Preamble and the Schedules, the following terms will have the following meanings. A word or expression that expresses a number shall be interpreted to include both the singular and the plural. Similarly, a masculine word or expression shall be interpreted as including the feminine and vice versa, where applicable.
- 2.2. **"Agency"** [*"Agence"*] refers, since December 12, 2005, to the Canada Revenue Agency and its former name, the Canada Customs and Revenue Agency (CCRA).
- 2.3. **"Appeals Branch"** [*"Direction générale des appels"*] means the division created under the *Canada Revenue Agency Act*, the main mission of which is to rule on taxpayer challenges of tax assessments and consumer tax assessments and determinations and challenges of rulings regarding the Canada Pension Plan and the *Employment Insurance Act*.
- 2.4. **"Attorney General of Canada"** [*"Procureur général du Canada"*] refers to the Government of Canada and Her Majesty the Queen in right of Canada.
- 2.5. **"Business Day"** [*"Jour ouvrable"*] means a day other than a Saturday or a Sunday or a day observed as a statutory holiday under the laws of a province or territory in which the person who needs to take action pursuant hereto is situated or a holiday under the federal laws of Canada, observed in the province or territory in question.
- 2.6. **"Claim"** [*"Réclamation"*] refers to a claim to obtain payment of the compensation set forth in the Settlement.
- 2.7. **"Claimant"** [*"Réclamant"*] refers to a Class Member who submits a claim to the Administrator.

- 2.8. **“Claim Form”** [*Formulaire de Réclamation*] refers to the form available to Class Members for submitting a claim. A copy of the form is attached hereto (**Schedule C**).
- 2.9. **“Claims Administrator”** [*Gestionnaire des Réclamations*] or **“Administrator”** [*Gestionnaire*] refers to the Agency.
- 2.10. **“Claim Period”** [*Délai de réclamation*] means a period of ninety (90) days following the date on which the Notice to Members is deemed to have been sent.
- 2.11. **“Class”** [*Groupe*] refers to all individuals residing in Canada regarding whom Canada Revenue Agency (*the Agency*) had personal information in the computers that were stolen on September 4, 2003 from the Agency’s Tax Services Office in Laval, Province of Quebec, and to whom the Agency sent a letter advising them of such.
- 2.12. **“Class action in the Federal Court”** [*Recours collectif en Cour fédérale*] refers to all proceedings to institute a class action that the Federal Court Plaintiff has filed or may file in the Federal Court of Canada in Montréal. A copy of the Plaintiff’s action is attached hereto (**Schedule D**).
- 2.13. **“Class action in the Superior Court”** [*Recours collectif en Cour supérieure*] refers to all class action proceedings that Union des consommateurs has filed against the Agency and the Attorney General of Canada in the matter bearing number 500-06-000210-035 in the files of the Superior Court, district of Montréal, Province of Quebec.
- 2.14. **“Class Counsels”** [*Procureurs du Groupe*] refers to the law firm of Unterberg, Labelle, Lebeau Attorneys, which represents Union des consommateurs, the Federal Court Plaintiff and the Class. For the purposes hereof, it is agreed that said Counsel does not represent the Members individually.
- 2.15. **“Class Member”** [*Membre du Groupe*] or **“Member”** [*Membre*] refers to individuals in the Class, except those who have opted out under paragraph 15 of the Settlement.
- 2.16. **“Consent”** [*Consentement*] means the express consent given by a Claimant in the Claim Form authorizing the Agency, as Claims Administrator, to provide to Equifax, Trans-Union or the Primary Financial Institution, as applicable, the personal information appearing on the said Claim Form and on the supporting documentation, in accordance with paragraphs 9.3 and 11.1 of the Settlement and solely for such purposes.

The purpose of the Consent is also to authorize Equifax, Trans-Union and the Primary Financial Institution to confirm to the Claims Administrator, as

applicable, that a Notice of Theft of Personal Information has been entered in the Claimant's file before midnight on November 30, 2003.

It is agreed that Consent does not authorize Equifax, Trans-Union or the Primary Financial Institution to disclose the existence of a Claim or the fact that an individual is or claims to be a Class Member to anyone other than the Parties, the Administrator and the Court, and solely for the purpose of giving effect to the Settlement.

- 2.17. **"Court"** [*"Tribunal"*] refers to the Federal Court of Canada.
- 2.18. **"Defendants"** [*"Défendeurs"*] means the Agency and the Attorney General of Canada.
- 2.19. **"Eligible Claim"** [*"Réclamation admissible"*] refers to a Claim made in accordance with the terms and deadline set forth in paragraph 9 of the Settlement by a Class Member who, due to the theft of computers from the Tax Services Office, in Laval, Quebec, on September 4, 2003, had a Notice of Theft of Personal Information entered in his file with Equifax, Trans-Union and/or his Primary Financial Institution before midnight on November 30, 2003. The entry of the Notice of Theft of Personal Information before midnight on November 30, 2003, must be confirmed, as applicable, by Equifax, Trans-Union or the Primary Financial Institution in accordance with the Consent.
- 2.20. **"Federal Court Plaintiff"** [*"Demanderesse en Cour fédérale"*] refers to Nathalie Marcotte or the Class Member appointed by Union des consommateurs to replace her.
- 2.21. **"Fonds d'aide"** [*"Fonds d'aide"*] refers to the Fonds d'aide aux recours collectifs, established by an Act respecting the Class action (R.S.Q. chapter R-2.1).
- 2.22. **"Identity Theft"** [*"Usurpation d'identité"*] refers to a situation by which a third party uses the personal information contained on the computers stolen from the Tax Services Office of the Agency, in Laval, Quebec, on September 4, 2003 to steal the identity of a Class Member and claim to be that person for fraudulent or criminal purposes.
- 2.23. **"Notice of Theft of Personal Information"** [*"Avis de vol de renseignements personnels"*] means an entry that a Class Member has had inserted in his credit file at Equifax or Trans-Union, or in an account with his Primary Financial Institution following the theft of computers from the Laval Tax Services Office on September 4, 2003, the purpose of which is to inform or alert his Primary Financial Institution and/or current, potential or future creditors or individuals or companies inquiring about his credit of the risk of Identity Theft. The Notice of Theft of Personal Information may also be known as a "notice of fraud" or "potential fraud victim".

- 2.24. **“Notice to Members”** [*“Avis aux membres”*] means the notice set forth in paragraph 14 informing Class Members of a hearing regarding approval of the Settlement, of the right of a Class Member to opt out and of the right to submit a Claim. A copy of said Notice is attached hereto (**Schedule A**).
- 2.25. **“Opt Out Form”** [*“Formulaire d’exclusion”*] refers to the form available to Class Members who wish to opt out of the Class. A copy of the form is attached hereto (**Schedule B**).
- 2.26. **“Opt Out Period”** [*“Délai d’exclusion”*] means a period of thirty (30) days after the date on which the Notice to Members is deemed to have been sent.
- 2.27. **“Opt Out Procedure”** [*“Procédure d’exclusion”*] refers to the procedure set forth in paragraph 15 of the Settlement, allowing a Class Member to opt out of the Class.
- 2.28. **“Opt Out Threshold”** [*“Seuil d’exclusion”*] refers to the threshold set forth in paragraph 16 hereof.
- 2.29. **“Settlement”** [*“Transaction”*] refers to this agreement, its Schedules and the amendments contained in any additional written agreement between the Parties regarding this matter.
- 2.30. **“Settlement Approval Date”** [*“Date d’approbation de la Transaction”*] means the date on which the judgment certifying the class action and approving the Settlement becomes final. If an appeal of the judgment approving the Settlement exists, by right or by leave, the judgment shall become final upon expiry of the right to appeal or seeking leave to appeal if no appeal or no motion for leave to appeal has been filed or, when an appeal or a motion for leave to appeal has been filed, when the appeal or the motion for leave to appeal has been dismissed and, as applicable, at the end of the period for appealing to a higher court.
- 2.31. **“Parties”** [*“Parties”*] refers collectively to the Federal Court Plaintiff, the Agency, the Attorney General of Canada and Union des consommateurs.
- 2.32. **“Primary Financial Institution”** [*“Principale Institution financière”*] refers to the financial institution with which the Class Member conducts most financial transactions.

3. HEADINGS

The division of this Settlement into Articles, Paragraphs and Schedules and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Settlement. The terms “herein”, “hereof”, “hereunder” and similar expressions refer to this

Settlement and not to any particular article or paragraph or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Paragraphs and Schedules are to Articles, Paragraphs and Schedules of this Settlement.

4. NO CONTRA PROFERENTEM

The Parties acknowledge that they have reviewed and participated in settling and writing the terms of this Settlement and they agree that any rule of construction to the effect that any ambiguity is to be interpreted against the drafting parties is not applicable in interpreting this agreement.

5. DAY FOR ANY ACTION

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

6. SETTLEMENT CONDITIONAL ON COURT APPROVAL

- 6.1. **Conditional Settlement:** This Settlement is conditional on full approval by the Court, failing which the Settlement shall be deemed null and void and the Parties shall return to their position prior to signing the Settlement.
- 6.2. **Defendants' obligations regarding the cost of Notices:** Notwithstanding paragraph 6.1, the Defendants shall assume the cost of the Notices provided under paragraph 14 of the Settlement and the costs incurred by the Administrator up to the date of the final judgment dismissing the approval of the Settlement.
- 6.3. **Cooperation:** The Parties agree to cooperate and act such that the Settlement has effect and the proceedings required for such are filed as soon as possible.
- 6.4. **Class action in the Federal Court:** Notwithstanding paragraph 6.1, in the event that the Court does not approve the Settlement, the Federal Court Plaintiff may pursue the Class action in the Federal Court and, as applicable, file a motion for the certification of the action as a class action. To this end, the service and filing of the Action in the Federal Court and the motion for the certification of the action as a class action under paragraph 7.1 of the Settlement shall be deemed to have been validly made for all legal purposes.

7. FEDERAL COURT PROCEEDINGS

- 7.1. **Commencement of the Action in the Federal Court:** The Defendants agree to their counsel receiving a copy of the Action in the Federal Court (**Schedule D**) and of all proceedings needed for the approval of the Settlement, as service and permission to file with the clerk of the Federal Court;
- 7.2. **Certification of the Class action in the Federal Court:** For the sole purpose of approving the Settlement, the Defendants agree that:
- (a) the Class action in the Federal Court be certified as "class action" on behalf of the class;
 - (b) the status of representative of the Class Members be given to the Federal Court Plaintiff
 - (c) Union des consommateurs be recognized as intervener in the Class action in the Federal Court, particularly to support the interests of the Class Members.
- 7.3. **Identification of common issues:** For the sole purposes of the approval of the Settlement, the Parties identify the following common issues:
- (a) Are the Defendants responsible to the Class Members for the theft of the computers from the Tax Services Office of the Agency, in Laval, Quebec, on September 4, 2003?
 - (b) What security measures were in place at the Tax Services Office of the Agency, in Laval, Quebec? Were such security measures sufficient, secure and appropriate?
 - (c) What type and amount of damages can the Class Members claim from the Defendants?

8. **COMPENSATION**

- 8.1. **Claim giving rise to compensation:** The Agency agrees to pay the compensation set forth hereinafter to each Claimant who submits an Eligible Claim. In particular, the Parties expressly agree that only Eligible Claims give rise to compensation pursuant to this Settlement.
- 8.2. **Compensation for a Notice of Theft of Personal Information at Equifax and/or Trans-Union:** The Agency shall pay compensation in the amount of **two hundred dollars (\$200)** for each Eligible Claim where the Claimant has had a Notice of Theft of Personal Information recorded with Equifax and/or Trans-Union.

- 8.3. **Compensation for a Notice of Theft of Personal Information at Primary Financial Institution:** The Agency shall pay compensation in the amount of **one hundred fifty dollars (\$150)** for each Eligible Claim where the Claimant has had a Notice of Theft of Personal Information recorded with his Primary Financial Institution.
- 8.4. **No accumulation of compensation:** Claimants having an Eligible Claim are only entitled to the greater of the compensation amounts set forth in the Settlement. Compensation shall not be cumulative, regardless of whether the Claimant had more than one Notice of Theft of Personal Information recorded.
- 8.5. **No other compensation:** The compensation set forth in paragraphs 8.2 and 8.3 shall be the only compensation payable pursuant to the Settlement, in capital, interest and expenses. Class Members who do not submit a Claim or whose Claim is not an Eligible Claim are bound by the Settlement but are not entitled to any compensation pursuant thereto.
- 8.6. **Compensation payment deadline:** The Administrator shall pay compensation due on Eligible Claims no later than one hundred twenty (120) days after the Settlement approval date.
- 8.7. **Extension of time:** Should the Administrator not receive any confirmation that the Agency may require for payment of compensation as consented from Equifax, Trans-Union and/or the Primary Financial Institution within the aforesaid one hundred twenty (120) days, the Parties may address the Court to extend the compensation payment deadline.

9. TERMS AND CONDITIONS OF CLAIM

A Claim shall only be eligible if it is submitted in accordance with the terms and deadline indicated in this paragraph.

- 9.1. **Claim Period:** All Claims shall be sent or submitted to the Claims Administrator no later than midnight on the day the Claim Period expires, with the postmark being proof of the mailing date. All Claims must be sent or submitted to the Shawinigan Tax Centre, in the province of Quebec, at the address indicated on the Claim Form (**Schedule C**);
- 9.2. **Terms of Claim:** To be entitled to the compensation set forth in the Settlement, a Class Member must provide the Claims Administrator with a duly completed and signed Claim Form (**Schedule C**), with supporting documents, as applicable.

Each Claim must include the Consent and a statement, certifying the accuracy of the information contained in the Claim signed by the Claimant. Where the

Claim is for compensation for a Notice of Theft of Personal Information at the Primary Financial Institution, the Claim must also be certified by a person empowered to administer the oath or signed before the Administrator or director (or their replacement) of the Claimant's Primary Financial Institution, certifying the Claimant's signature.

- 9.3. **Scope of Consent, restrictions regarding the use and destruction of personal information:** Subject to its obligations under the *Privacy Act* (R.S., 1985, c.P-21), *Access to Information Act* (R.S., 1985, c.A-1) and *Financial Administration Act* (R.S., 1985, c.F-11), the Administrator agrees that the information obtained in the Consents or Claims shall be used solely for the purposes of the Settlement and that such information shall only be accessible to Administrator's employees responsible for managing the Settlement.

The Administrator shall use the Consent solely for the purposes specifically set forth in paragraph 11.1 of the Settlement. The Administrator may use the Consent to verify that the names and contact information for the financial institution indicated on the Claim Form are the same as those indicated in the Claimant's tax file. However, the sole fact that the Primary Financial Institution indicated on the Claim Form is not indicated in the Claimant's tax file is not a ground to reject the Claim or deem it insufficient or incomplete.

Subject to the foregoing, the Administrator agrees not to use the Consent to access information regarding the Claimant's assets, credit or banking information or any other information than specifically required for the purposes herein, nor retain or record such information for any other purposes than the determination of the eligibility of a Claim.

The Administrator commits to safeguard the confidentiality of all information obtained regarding Class Members and Claimants, to not include it in their tax files or, subject to the following paragraph, in any database other than the one set forth in the Settlement.

Pursuant to the *Privacy Act* and *Access to Information Act*, the Administrator shall retain information gathered while managing and administering the Settlement in accordance with the guidelines set forth in the Info Source publication. In particular, the information gathered shall be kept in a file named "Losses of Money and Damage Claims By and Against the Crown" and retained for a period of five (5) years, after which it shall be saved on DVD. The provisions in Info Source regarding retention of such information are available online at: http://www.infosource.gc.ca/inst/nar/fed07_e.asp.

Such information shall then be permanently disposed of in accordance with the provisions of the *Library and Archives of Canada Act* (2004, c.11).

- 9.4. **Incomplete Claims:** If a Claim forwarded to the Administrator prior to the period set forth in paragraph 9.1 does not meet the conditions set forth in paragraph 9.2, the Claims Administrator shall send the Claimant a "Notice of Incomplete Claim" (**Schedule F**), asking that the problems indicated in the Notice be corrected within thirty (30) days of receipt of the Notice or before the expiry of Claim Period whichever date comes last, failing which the Claim will be rejected. The Notice of Incomplete Claim is deemed to have been received by the Claimant five (5) days after the date on which it was sent.

10. SETTLEMENT ADMINISTRATION

- 10.1. **Administration:** The Agency, under the supervision and monitoring of the Court, shall be responsible for managing the Settlement and processing Claims diligently and efficiently. The Agency shall, in a confidential manner, provide the Court and Class Counsel with the names, positions and business telephone numbers of Agency employees to be responsible for the management of the Settlement and processing of Claims and, as applicable, their substitutes.

The Notice to Members and any other communication with Class Members shall indicate the mailing address of the Shawinigan Tax Centre, province of Quebec, and a toll-free telephone number.

The Administrator shall report to the Court and Class Counsel regarding its administration, management and payments made pursuant to paragraph 11.2.

The Administrator may address Counsel for the Parties to obtain advice and instructions. In case of doubt as to the interpretation of the Settlement, the Administrator must address Counsel for the Parties to obtain advice and instructions. In the event of disputes between Counsel for the Parties or, as deemed necessary, Counsel may address the Court to obtain instructions.

- 10.2. **Limitation of recourses:** Subject to the right to appeal set forth in paragraph 11.5 and recourse set forth in paragraph 10.6 hereof, no legal proceedings may be brought against the Administrator to review its decisions in managing this Settlement.
- 10.3. **Administration and management fees:** The Agency shall assume all fees related to the administration and management of the Settlement and all fees or expenses that may be required for implementation and enforcement of the Settlement.
- 10.4. **Creation of a database:** The Agency agrees to create a database, to be made available, on request, to the Court and Class Counsel throughout the Settlement administration and management process and until the date of the

final judgment rendered on the Motion provided for in paragraph 18. The database shall include the entries set forth in paragraph 10.5.

10.5. **Entries in the database:** Upon receipt of a Claim, the Administrator shall link the claim to the Claimant's name and social insurance number and enter, as applicable, the following in the database:

- (a) the date on which the Claim was received;
- (b) the nature of the compensation being claimed;
- (c) the date on which the verification provided for in the Consent were made and the response obtained;
- (d) the date on which a Notice of Incomplete Claim was sent;
- (e) acceptance of a Claim, indicating the approved amount of compensation;
- (f) the date on which a letter was sent rejecting a Claim;
- (g) the date on which a Claimant's file was transferred to the Appeals Branch;
- (h) the date on which a cheque was requisitioned from Public Works and Government Services Canada to pay the compensation;

10.6. **Disputes regarding the administration, management or interpretation of the Settlement:** The Court shall be the sole jurisdiction to hear any disputes between the Parties regarding implementation of the Settlement or its administration, management or interpretation.

11. DECISIONS AND APPEALS

11.1. **Verification:** Before the date on which it is required to pay compensation, and subject to paragraph 8.7, the Claims Administrator may, under authority of the Consent, contact Equifax, Trans-Union or the Primary Financial Institution indicated by the Claimant, as applicable, to verify whether a Notice of Theft of Personal Information has been entered in the Claimant's file, before midnight on November 30, 2003.

Communication between the Administrator and Equifax, Trans-Union and/or the Primary Financial Institution shall be in accordance with the Agency's communications security (COMSEC) policy.

The Agency may, at its sole discretion, waive its right to make verifications authorized by Consent contained in the Claim Form, in whole or in part.

- 11.2. **Approved Claims:** The Claims Administrator shall approve Eligible Claims and pay compensation within the time set forth in the Settlement by sending a cheque payable to the Claimant at the address indicated on the form and shall indicate the following on the cheque stub: *"payment is made in accordance with the Settlement reached in the class action suit bearing number T-1869-07 in the files of the Federal Court and as full and final settlement of the Claim."*
- 11.3. **Rejected Claims:** The Claims Administrator shall reject all Claims:
- (a) submitted or sent to the Administrator after the Claim Period;
 - (b) that, after the period granted the Claimant to correct any problems described in the Notice of Incomplete Claim, do not meet the conditions set forth in paragraphs 9.1 and 9.2; or
 - (c) that is revealed to be false or unfounded, particularly if Equifax, Trans-Union and/or the Primary Financial Institution identified by the Claimant, as applicable, advises the Administrator that the Claimant has not had a Notice of Theft of Personal Information entered in his file before midnight on November 30, 2003.
- 11.4. **Notice of Rejection:** Where the Administrator rejects a Claim, a letter of refusal shall be sent to the Claimant, indicating the reasons for his decision using the Claim Administrator's Letter of refusal template attached hereto as **Schedule G** and the Appeal Form attached hereto as **Schedule H** with a return envelope.
- 11.5. **Appeal procedure and period:** Appeals of decisions by the Claims Administrator must be filed with the Appeals Branch within thirty (30) days from the date of receipt of the letter of refusal (**Schedule G**). The Appeal form must be received by the Appeals Branch before midnight of the appeal period, the postmark being proof of the mailing date. The letter of refusal (**Schedule G**) is deemed to have been received by the Claimant five (5) days after the date it was sent.
- Upon receipt of the Appeal Form by the Appeals Branch, the appeals officer shall advise the Administrator and counsel for the parties in writing and shall obtain the Claimant's claim file from the Administrator.
- The appeal officer shall base his decision on the sole file as constituted and no testimony shall be heard. The decision shall be sent to the Claimant and a copy is transmitted to Claims Administrator and counsel for the parties.
- 11.6. **Final Decision:** The decision by the appeals officer at the Appeals Branch or the Administrator's decision if there is no appeal within the prescribed time, is final and binding and there shall be no other possibility for appeal.

- 11.7. Class Counsel is not required to represent or assist Class Members individually for the Claims to the Administrator or for appeals and shall only represent Class Members who have retained their services under a specific mandate, set forth in writing.

12. EQUIFAX AND TRANS-UNION

- 12.1. Counsel for the Parties, in cooperation with the Claims Administrator, shall take the necessary steps to agree on a process for Equifax and Trans-Union, upon presentation of a request by the Claims Administrator with a Consent signed by the Claimant, to confirm or deny that a Notice of Theft of Personal Property has been made in the Claimant's file before midnight, November 30, 2003. The Parties shall submit the Claim Form (Schedule C) to Equifax and Trans-Union to have reasonable changes made that may be needed to obtain this information.
- 12.2. In the event that the Parties cannot reach agreement with Equifax and/or Trans-Union, the Parties shall address the Superior Court to obtain the orders needed to carry out the Settlement.

13. MOTION TO CERTIFY THE CLASS ACTION AND TO AUTHORIZE THE PUBLICATION OF THE NOTICE TO MEMBERS

- 13.1. Within a reasonable time after signing the Settlement, the Federal Court Plaintiff shall, if not already done, file the Action in the Federal Court (**Schedule D**). The Federal Court Plaintiff will later file the motion for the certification of the action as a class action and for the approval of the Settlement and a motion asking the Court to make an order to:
- (a) certify the Class action in the Federal Court on behalf of the Class Members for the sole purpose of approving the Settlement and the publication of the Notice to Members;
 - (b) appoint the Federal Court Plaintiff as "Class Representative" for the purposes of the Settlement and the publication of the Notice to Members;
 - (c) identify, for the sole purposes of approving the Settlement, the main common issues as defined in paragraph 7.3 of the Settlement;
 - (d) authorize, for the sole purpose of approving the Settlement, Union des consommateurs as intervener in the Class action in the Federal Court to assist the Federal Court Plaintiff and support the interests of the Class Members;

- (e) approve the form and content of the Notice to Members substantially in the form provided for in **Schedule A**;
- (f) order that the Notice to Members be distributed and published in accordance with the terms set forth in paragraph 14 of the Settlement within thirty (30) days of the judgment allowing the motion to publish the Notice to Members;
- (g) set the deadline for the Opt Out period in accordance with the terms of the Settlement;
- (h) set the date of the hearing regarding approval of the Settlement as early as possible after the end of the Opt Out Period;
- (i) appoint the Agency to act as Claims Administrator to receive Claim Forms (**Schedule C**), Opt Out Forms (**Schedule B**) or Notices of Objection to the Settlement (**Schedule E**) from Class Members in accordance with the Settlement, agreeing that its role as Administrator and its obligations as such shall cease if the Court refuses to approve the Settlement;
- (j) order that Class Members who wish to object to the Settlement provide a written notice to the Administrator in the format prescribed in **Schedule E**, no later than thirty (30) days after the date at which the Notice to Members is deemed to have been sent failing which the objection shall be deemed null and void and shall not be considered by the Court. The Administrator shall forward objections received to Counsel for the Parties and Class Counsel shall forward the objections to the Court and counsel for the Defendants no later than two (2) days prior to the hearing of the motion for the approval of the Settlement.

Counsel for the Defendants shall receive copies of the procedures on behalf of the Defendants as service and leave to file.

14. NOTICES

- 14.1. **Notification, translation and other incidental costs:** The Agency shall assume all costs for distribution and publication of Notices to Members and all other costs incidental to implementing the Settlement, including the cost of translating notices, the Settlement and all other related documents.
- 14.2. **Notice to Members:** Class Members shall be advised of the existence and content of the Settlement, of the hearing to approve it, of the right to opt out of it and of the right to make a claim using the Notice to Members prepared in the format set forth in **Schedule A**, which shall be distributed and published by the Defendants in accordance with the terms set forth hereinafter. The Parties

agree that the notification procedure meets the requirements set forth in the *Code of Civil Procedure* and rules 299.34 et seq. of the *Federal Court Rules*. The Notice to Members shall be deemed to have been sent five (5) days after the date on which the last Notice to a Member was sent under paragraph 14.3(a).

14.3. **Terms for distributing and publishing the Notice to Members:** The Notice to Members shall be the only notice Members shall receive regarding the Settlement and shall be distributed and published as follows:

(a) By sending a copy of the Notice to Members (**Schedule A**) with the Claim Form (**Schedule C**), the Opt Out Form (**Schedule B**), the Notice of Objection (**Schedule E**) and a self-addressed return envelope to all Class Members at the last address indicated in their tax file at the Agency, in the language of correspondence indicated in said file. To this end, the Agency shall, based on the social insurance numbers of the Class Members, update contact information for Class Members and their language of correspondence. This mailing shall be deemed to have been sent on the same day, by regular mail.

(b) By posting the Notice to Members (**Schedule A**), the Claim Form (**Schedule C**), the Opt Out Form (**Schedule B**), the Notice of Objection (**Schedule E**) and the full text of the Settlement on the following Web sites in Acrobat® PDF format:

(i) **Union des consommateurs, at the following address:**
<http://www.consommateur.qc.ca/union/>*[to be completed]*

(ii) **Counsel for the Class, at the following address:**
www.recours-collectifs.ca/*[to be completed]*

(iii) **The Agency, at the following address:**
[www.cra-arc](http://www.cra-arc.gc.ca/)*[to be completed].gc.ca*

14.4. **Proof of distribution and publication of the Notice to Members:** Within fifteen (15) days following the date on which the last Notice to a Member was sent in accordance with paragraph 14.3(a), the Agency, upon advising Class Counsel, shall file an affidavit from a person responsible for the management with the Court, informing it of the date on which the last letter was sent and certifying that distribution and publication are complete.

15. OPT OUT PROCEDURES AND PERIOD

15.1. **Right to Opt Out:** Class Members are entitled to opt out of the Class.

- 15.2. **Procedures and Opt Out Period:** All Class Members who wish to opt out of the Class shall file or forward an Opt Out Form (**Schedule B**) to the Administrator by registered or certified mail no later than the end of the Opt Out Period.
- 15.3. **Opt Out Form:** Class Members who wish to opt out must use the Opt Out Form (**Schedule B**), which shall be included with the Notice to Members.
- 15.4. **Members bound by the Settlement:** All Class Members who have not opted out prior to the end of the Opt Out Period and in accordance with the prescribed procedure shall be deemed to be bound by the Settlement.
- 15.5. After the end of the Opt Out Period, the Administrator shall count the Opt Out Forms received and forward the information to Counsel for the Parties with a copy of the Opt Out Forms to inform the Parties and the Court of the number of members who have opted out of the Class action for the purposes of paragraph 16 herein.

16. OPT OUT THRESHOLD

Within thirty (30) days after the end of the Opt Out Period, if more than 5,000 Class Members opt out of the Settlement, the Defendants may, at their discretion, withdraw from the Settlement by advising the Court and Class Counsel. In such a case, the Parties shall be in the same position as if the Court had not approved the Settlement.

17. MOTION FOR CERTIFICATION THE ACTION AS A CLASS ACTION AND FOR THE APPROVAL OF THE SETTLEMENT

- 17.1. On the date set by the Court under paragraph 13.1(h), the Parties shall present to the Court a *Motion for certification of the action as a class action and for the approval of the Settlement* in order to obtain from the Court an order:
- (a) approving the Settlement and ordering the Parties and Class Members to abide by it;
 - (b) declaring that the Settlement is fair, reasonable and in the interests of the Class Members;
 - (c) ordering and declaring that the release set forth in paragraph 21 of the Settlement is binding upon all Class Members who have not opted out;
 - (d) approving the fees and expenses of Class Counsel as set forth in the Settlement;

- (e) confirming the Agency's role and status as Claims Administrator in accordance with the Settlement.

18. REPORTING AND TERMINATION OF ADMINISTRATION

Within forty-five (45) days of processing the last claim, i.e. the mailing of the last cheque to a Claimant or the deadline for appealing the last refusal, whichever is later, the Administrator shall provide the Court with a sworn statement that the Agency has met its obligations under the Settlement and that the information in the final version of the database created under paragraph 10.4 is complete and accurate, and shall provide a copy of the statement to Counsel for the Parties. A summary of the final content of the database shall be included with the affidavit.

The Claims Administrator shall then seek a judgement discharging him from obligations under the Settlement and declaring its administration and management complete.

19. FEES AND EXPENSES INCURRED BY CLASS COUNSEL

On the Settlement Approval date, the Agency agrees to pay Class Counsel two hundred seventy-five thousand dollars (\$275,000) for their judicial and extrajudicial fees and further agree to the repayment of the judicial and extrajudicial expenses that they have incurred or may in the future incur pending final implementation of the Settlement, both in the Superior Court and the Federal Court. Taxes on the fees and expenses incurred by Class Counsels shall also be payable by the Agency.

Should an appeal court be asked to rule on the Settlement or its implementation, Class Counsel shall address the Court to determine whether they are entitled to an additional amount for judicial and extrajudicial fees and expenses and to determine the amount, as applicable. Unless the Defendants filed the appeal, such additional fees and expenses, if awarded, shall be taken from all Eligible Claims and shall be deducted *pro rata* among them.

20. THE FONDS D'AIDE AUX RECOURS COLLECTIFS

- 20.1. Counsel for the Parties are of the opinion that the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectif* (c. R-2.1, r.3.1) does not apply to this Settlement and, as a result, no percentage should be withheld from the compensation and no amounts due to the Fonds d'aide aux recours collectifs under the *Act respecting the Class action* (R.S.Q., c. R-2.1) or

its *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectif* (c. R-2.1, r.3.1).

- 20.2. Should the Court rule that the *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs* (c. R-2.1, r.3.1) applies to this Settlement, the Administrator shall withhold the amounts from the compensation paid to the Class Members and shall remit any amounts due to the Fonds d'aide aux recours collectifs under the *Act respecting the Class action* (R.S.Q., c. R-2.1) or its *Regulation respecting the percentage withheld by the Fonds d'aide aux recours collectifs* (c. R-2.1, r.3.1);
- 20.3. Class Counsel shall repay all financial assistance received to the Fonds d'aide aux recours collectifs upon receipt of payment of the fees and expenses set forth in paragraph 19 to a maximum of the amounts collected under said paragraph.

21. RELEASE

- 21.1. **Full and final release:** Subject to paragraph 21.2 of the Settlement, Class Members who have not opted out by the end of the Opt Out Period are giving full and final release to all Defendants, including current and former employees, servants, agents, officers, directors and other officials, successors and assigns regarding all claims, demands, obligations and causes of action of every nature or kind available under civil law, Common Law, public law or statutory law for any damages, contributions, indemnity, costs, disbursements, expenses and interest of any nature, material or moral, exemplary or punitive, including past, present or future fear of being a victim of Identity Theft, stress, hardship and inconvenience resulting directly or indirectly from the theft of computers from the Agency's Tax Services Office, in Laval, Quebec, on September 4, 2003 and/or from the letter sent to Class Members by the Agency. Class Members who have not opted out by the end of the Opt Out Period agree not to file proceedings against the Defendants or any other individual who may exercise a recourse in warranty, third-party claim, recourse for contribution or recourse for damages against the Defendants.
- 21.2. **Reservation of rights:** Class Members shall retain their individual rights and recourses that may result from Identity Theft as defined in paragraph 2.22 of the Settlement, on the understanding that the Defendants reserve their rights to use all means of defence in fact and in law.
- 21.3. **No admission:** For greater certainty, it is agreed that this Settlement in no way constitutes an admission of liability by the Defendants, in fact or in law, and that each Class Member must provide proof of each element giving rise to liability that may result in an Identity Theft claim. This Settlement may not be submitted or admitted into evidence in an action or proceedings based on Identity Theft.

22. SUSPENSION OF THE CLASS ACTION IN THE QUEBEC SUPERIOR COURT AND DISCONTINUANCE

As soon as possible after the Settlement is signed, the Parties shall ask the Superior Court of Quebec to suspend the proceedings for the authorization to institute a class action. On the Settlement approval date, Class Counsel shall ask the Superior Court of Quebec to permit a discontinuance of the *Motion for authorization to institute a class action*, without cost or condition.

23. COURT JURISDICTION

Subject to paragraph 12.2, the Court shall have sole jurisdiction regarding the Class action in the Federal Court and the Settlement.

24. DEADLINES

All deadlines contained in this Settlement are mandatory, except those set forth in paragraphs 8.6, 8.7, 13.1(h), 14.4 and 18.

25. NO VERBAL AMENDMENTS OR WAIVER

No amendments to this Settlement shall have effect unless they are in writing and signed by or on behalf of each Party. No Party shall be deemed to have waived exercise of its rights or performance of its obligations under the Settlement, unless such waiver is in writing and signed by or on behalf of that Party. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in the Agreement.

26. SCOPE OF AGREEMENT

Once approved by the Court, the Settlement will be binding upon the Parties, the Class Members and their respective heirs, assigns, executors, liquidators and successors of the Parties.

27. APPLICABLE LAW AND ELECTION OF DOMICILE

The Settlement shall be governed by the law of the Province of Quebec and shall be interpreted in accordance with such law. For the purposes of the

Settlement and the Class action in the Federal Court and Class action in the Superior Court, the Parties shall elect domicile in the District of Montréal.

28. LANGUAGES AND TRANSLATION

The Settlement and its Schedules have been prepared in French. The Agency shall, at its own expense, translate the Settlement, its Schedules and any other documents needed for implementation, distribution and publication of the Settlement into English. All translations shall be submitted to Class Counsel for approval. The Settlement shall be signed in French and English. In case of discrepancies between the French and English version or in the event of a dispute regarding the meaning or interpretation of said documents, the French version shall have precedence.

29. NO ASSIGNMENT

No amount payable to a Class Member under this Settlement can be assigned and such assignment is null and void.

30. COUNTERPARTS

The Parties may execute several counterparts of the Settlement and any related documents. In such cases, each counterpart shall constitute an original. All said counterparts shall constitute one and same Settlement.

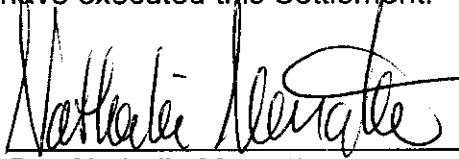
31. SCHEDULES

The following schedules to this Settlement are incorporated into and form part of it as fully as if contained in the body of this Settlement:

- Schedule A - Notice to Members [Instructions and Summary of the Notice]
- Schedule B - Opt Out Form
- Schedule C - Claim Form
- Schedule D - Action in the Federal Court
- Schedule E - Notice of Objection
- Schedule F - Notice of Incomplete Claim
- Schedule G - Letter of refusal from Claims Administrator
- Schedule H - Appeal Form

IN WITNESS WHEREOF, the Parties have executed this Settlement.

This 13th of ^{December} ~~November~~ 2007.



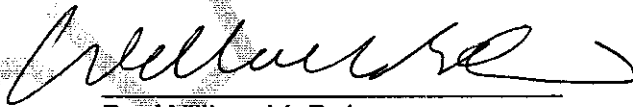
By : Nathalie Marcotte
Plaintiff and Class representative



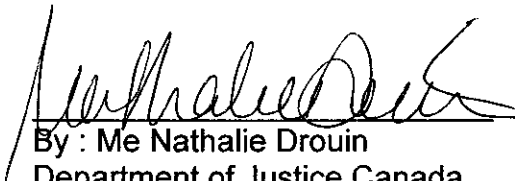
By: Marcel Deschêre
For ; Union des consommateurs
Intervener



By: Me François Lebeau, Counsel
Unterberg, Labelle, Lebeau
Counsel of the Class and the Intervenor



By: William V. Baker
Commissioner
Commissioner's Office
For: Revenue Canada Agency,
Defendant



By : Me Nathalie Drouin
Department of Justice Canada
Quebec Regional Office
For : Her Majesty the Queen and the
Attorney General of Canada,
Defendants