

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE ROBERT J. SMITH

March 18, 2019 [Date]

B E T W E E N:

GLEN SNOWBALL

Plaintiff

- and -

BLACKBERRY LIMITED
(FORMERLY, RESEARCH IN MOTION LIMITED)

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O., 1992, c. 6

ORDER

THIS MOTION, made by the Plaintiff for an order certifying this proceeding as a class proceeding, appointing the Plaintiff as representative Plaintiff, and providing for notice to the Class pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended (the “CPA”), was heard this day at the court house, 161 Elgin Street, Ottawa, Ontario, K2P 2K1.

ON READING the all the materials filed, and on hearing the submissions of counsel for the Plaintiff and the Defendant,

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

2. **THIS COURT ORDERS** that the Class (or “Class Members” as applicable) is defined as follows:

All persons in Canada excluding Québec consumers (as defined in the Québec Consumer Protection Act), 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 (the “Service Disruption Period”).

3. **THIS COURT ORDERS** that Glen Snowball is appointed as the Representative Plaintiff on behalf of the Class.

4. **THIS COURT ORDERS** that Consumer Law Group P.C. is appointed as lawyers for the Class (“Class Counsel”).

5. **THIS COURT ORDERS** that the common issues are as follows:

- (a) Did the Defendant fail to provide BlackBerry users with adequate email, BlackBerry Messenger service (“BBM”), and/or internet services during the Service Disruption Period?
- (b) Did the Defendant owe the Class Members a duty to use reasonable care to maintain stable, continuous and uninterrupted service on its system/data centre?
- (c) Did the Defendant act negligently in failing to meet the above standard?
- (d) Was the Defendant’s failure to use reasonable means so as to provide Class Members with stable, continuous, and uninterrupted email, BBM, and/or internet services a breach of:

- (i) contract?
 - (ii) its express or implied warranties?
 - (iii) the implied covenant of good faith and fair dealing?
 - (iv) the implied warranty that its services would be of a “reasonably acceptable quality” as per the *Consumer Protection Act*, s. 9 (1) or other similar/equivalent Consumer Protection Legislation?
- (e) Did the Defendant’s negligence, breach of contract, express or implied warranties, implied covenant of good faith and fair dealing, and/or s. 9 (1) of the *Consumer Protection Act* or other similar/equivalent Consumer Protection Legislation proximately cause loss or injury and damages to Class Members?
- (f) Was the Defendant unjustly enriched by having received monies for its services during the Service Disruption Period?
- (g) Is the Defendant liable to Class Members for:
- (i) reimbursement of the prorated amount of Class Members’ monthly data plans for the period covering the Service Disruption Period?
 - (ii) disgorgement of the monies received by the Defendant for its services during the Service Disruption Period?
- (h) Is the Defendant responsible to pay punitive damages to Class Members and in what amount?

6. **THIS COURT ORDERS** that the Notice of Certification, in the form attached as Schedule A to this Order (the “Notice of Certification”), is approved.

7. **THIS COURT ORDERS** that within 60 days of the issuance of this Order, the Notice of Certification be provided to the Class by Class Counsel as follows:

- (a) by sending a copy of the Notice of Certification via email to each Class Member who has provided their email address to Class Counsel;
- (b) by publishing once in The Globe and Mail and the National Post in a size no less than 1/3 of a page;
- (c) by issuing a press release on CNW Canada Newswire attaching a copy of the Notice of Certification;
- (d) by posting the Notice of Certification on Class Counsel's website at www.clg.org; and
- (e) by posting the Notice of Certification on the Defendant's website with a link stating "Notice to BlackBerry users".

8. **THIS COURT ORDERS** that within 30 days of the issuance of this Order, the Defendant will provide Class Counsel with an electronic list (in Excel or other database format), containing, in separate fields, the names and last known addresses and email addresses of all Class Members.

9. **THIS COURT ORDERS** that within 30 days of the issuance of this Order, the Defendant shall pay a sum to be determined, in trust to Consumer Law Group P.C., for the sole purpose of funding the publication of the notice to Class Members as described in paragraphs 7 and 8 above.

10. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering to Class Counsel written notice in the manner described in the Notice of Certification on or before the expiry of the 90th day after the issue of this Order.

11. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the 90th day after the issuance of this Order.

12. **THIS COURT ORDERS** that Class Counsel will serve on the Defendant and file with the court an affidavit stating the number of persons who have opted out of the class proceeding in accordance with this Order within 30 days of the opt-out deadline set out in paragraph 10 above.

13. **THIS COURT ORDERS** that any other proposed class action relating to this class proceeding be stayed pending further order of this Court and that no other class proceeding may be issued relating to this class action without first obtaining leave of this Court.

14. **THIS COURT ORDERS** that this motion shall be granted with costs, as agreed between the parties.


Justice Robert J. Smith

GLEN SNOWBALL
Plaintiff

-and-

Court File No. 13-57203 CP
BLACKBERRY LIMITED
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED IN OTTAWA

CERTIFICATION ORDER

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