

**CANADA**

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO.: 500-06-000894-176

**SUPERIOR COURT**  
(Class Action)

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**MICHEL CARRIÈRE,** [REDACTED]  
[REDACTED]

Plaintiff

-VS-

**SYMANTEC CORPORATION,** a legal person, duly constituted according to law, with its head office located at 350 Ellis Street, in the City of Mountain View, State of California, USA, 94043, accepting service of the present proceeding at its counsel's office, namely, Norton Rose Fulbright Canada LLP, 1 Place Ville-Marie, Suite 2500, Montreal (Quebec) H3B 1R1;

Defendant

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**ORIGINATING APPLICATION OF A CLASS ACTION LAWSUIT**  
(Article 583 C.C.P.)

**TO THE HONOURABLE JUSTICE OF THE SUPERIOR COURT OF QUEBEC DESIGNATED TO PRESIDE THE PRESENT CLASS ACTION, SITTING IN AND FOR THE DISTRICT OF MONTREAL, PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

## **INTRODUCTION**

1. At all times from July 24, 2010 to June 27, 2016 (the “**Class Period**”), the Defendant, Symantec Corporation (“**Symantec**”), sold and/or licensed products to Quebec consumers that Symantec held out would offer protection against viruses and cyberattacks, including, in particular, *Norton™ Antivirus*, *Norton™ Internet Security*, *Norton™ Security*, *Norton™ Security with Backup*, *Norton 360™* or *Norton™ One* (collectively, the “**Norton Products**”);
2. It turns out that, throughout the Class Period, the Norton Products were defective; in particular, the Norton Products could not and did not provide the protection that Symantec held out would be provided against online threats to users’ computer systems, and in fact, rendered its customers’ computers *more* susceptible to viruses and cyberattacks than they would otherwise have been in the absence of the Norton Products;
3. As a result, Symantec collected millions of dollars from several hundred thousand Quebec consumers for products intended to provide protection that the Norton Products did not in fact provide;
4. The present class action seeks to recover from Symantec, collectively, damages equivalent to the monies collected from Quebec consumers during the Class Period for Norton Products which did not in fact provide the protection against viruses and cyberattacks that they were intended and held out to provide. Furthermore, the Plaintiff seeks a condemnation against Symantec of punitive and exemplary damages, in light of Symantec’s systematic violation of numerous public order provisions of the *Consumer Protection Act*, CQLR c. P-40.1 (“**CPA**”) throughout the Class Period;

## **THE AUTHORIZATION JUDGMENT**

5. The Superior Court of Quebec (the Honourable François P. Duprat) authorized the Plaintiff to institute the present class action against Symantec, on behalf of the following individuals:

*“All natural persons resident in Quebec at the time they purchased and/or licensed, for purposes other than their business, any of the following products: Norton™ Antivirus, Norton™ Internet Security, Norton™ Security, Norton™ Security with Backup, Norton 360™ or Norton™ One (collectively, the “**Norton Products**”), at any time between July 24, 2010 and June 27, 2016 (the “**Class Period**”).*

*(the “**Class Members**” or the “**Class**”).*

6. The Authorization Judgment determined that the following questions would be dealt with at the present stage of this class action:
- 6.1. Is Symantec a “merchant” governed by the Quebec *Consumer Protection Act*?
  - 6.2. Is the contractual relationship between the Class Members and Symantec governed by the Quebec *Consumer Protection Act*?
  - 6.3. Did the Class Members pay a price for protection which the Norton Products did not in fact provide?
  - 6.4. Does a Class Member’s purchase or license of a Norton Product through one of the websites [www.norton.com](http://www.norton.com) or [www.symantec.com](http://www.symantec.com), or payment to renew a license of a Norton Product through an automatic renewal service provided by Symantec, give rise to a consumer agreement pursuant to the terms of the Quebec *Consumer Protection Act*?
    - (i) If a Class Member’s purchase or license of a Norton Product through one of the websites [www.norton.com](http://www.norton.com) or [www.symantec.com](http://www.symantec.com) does not give rise to a consumer agreement under the *Consumer Protection Act*, or if a Class Member’s payment to renew a purchase or license of a Norton Product through an automatic renewal service provided by Symantec does not give rise to a consumer agreement under the *Consumer Protection Act*, what remedies, if any, is the Class Member entitled to under the *Consumer Protection Act*?
  - 6.5. Were the Norton Products goods which were affected by design defects rendering them unfit for the purposes for which goods of that kind are ordinarily used during the class period, in contravention of section 37 of the Quebec *Consumer Protection Act*?
  - 6.6. Did Symantec engage in a prohibited practice by making false or misleading representations regarding the Norton Products during the Class Period, in violation of sections 219, 220(a) and 221(g) of the Quebec *Consumer Protection Act*?
  - 6.7. Did Symantec fail to mention an important fact in its representations to the Class Members regarding the Norton Products during the Class Period, in violation of section 228 of the Quebec *Consumer Protection Act*?
  - 6.8. Did Symantec breach its obligation to deliver the Norton Products in conformity to their description in the contracts, statements and/or advertisements made to Class Members during the Class Period, in

contravention of sections 16, 40 and 41 of the Quebec *Consumer Protection Act*?

- 6.9. Is Symantec liable to reimburse, collectively, the portion of the price paid by Class Members during the Class Period for any Norton Product, in an amount commensurate with the period of time that Symantec failed to provide the security and protection that they paid for, pursuant to section 272(c) of the Quebec *Consumer Protection Act*?
- 6.10. Is Symantec liable to the payment of punitive damages as a result of its alleged violations of the *Consumer Protection Act* and, if so, what amount of punitive damages should Symantec be condemned to pay, collectively?

## **THE PARTIES**

7. Symantec is a legal person incorporated in virtue of the laws of the State of Delaware, USA, with its head office in Mountain View, California;
8. At all relevant times, Symantec held itself out as one of the world's leading security technology companies. Symantec manufactures, sells and licenses the Norton Products throughout the world, including in Quebec, the whole as appears more fully from its 2016 Annual Report, a copy of which is produced herewith as **Exhibit P-1**;
9. Symantec has a market value in excess of \$15 billion and, in 2016 alone, generated revenues in excess of \$2 billion from the sale and licensing of the Norton Products in the Americas;
10. Symantec sells the Norton Products to customers through *inter alia* its wholly owned, controlled and operated websites Symantec.com and Norton.com (the "**Websites**");
11. Symantec carries on business in Quebec through the Websites and it sells and/or licenses the Norton Products to Quebec consumers directly through the Websites and indirectly through third-party retailers;
12. Symantec purported to impose terms and conditions on all of its customers who wished to use the Norton Products, an example of same, entitled "*Norton AntiVirus PCNorton 360, Norton 360 Premier Edition, Norton Internet Security 2014 License Agreement*" is produced herewith as **Exhibit P-2** (the "**Terms and Conditions**");
13. Symantec is accordingly a "Merchant" pursuant to the CPA, and the contracts of sale and/or license of the Norton Products throughout the Class Period to Class Members are governed by the CPA;

14. The Plaintiff is one of Symantec's consumers, who purchased Norton Products during the Class Period. In particular:
- i) At the end of December 2009, the Plaintiff purchased the "Norton Internet Security" (serial number: HKC3KYJ3JB8H, and licence key number: JT3684QM6BMJPX4JY4J6BK2VV), one of the Norton Products, from "Bureau en Gros". The Norton Internet Security licence was to provide protection for a period of one year from the time of activation. The Plaintiff has been unable to locate an invoice or proof of payment, however he encloses herewith a document originating from the Defendant, evidencing the expiry date of the licence on January 2, 2011 (hereinafter, "**Licence History**"), communicated herewith as **Exhibit P-3**. As Plaintiff purchased the Norton Product during a Boxing Day sale, Plaintiff believes that he paid approximately \$20 for the Norton Product in 2009;
  - ii) At the end of December 2010, the Plaintiff again purchased "Norton Internet Security", one of the Norton Products, valid for another year (serial number: K8GD4GD7KB6F, and licence key number: J3H7WYTB74QRGFWRWRWJFCG2DR6) from "Bureau en Gros", the whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 4, 2012, the Plaintiff having been unable to locate an invoice or proof of payment. Plaintiff believes that he paid approximately \$20 for the Norton Product in 2010;
  - iii) At the end of December 2011, the Plaintiff again purchased "Norton Internet Security", one of the Norton Products, valid for another year (serial number: DXKX296FCYVJ, and licence key number: J4RDYCB307TQRYH9W8T27WT) from "Bureau en Gros", the whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 5, 2013, the Plaintiff having been unable to locate an invoice or proof of payment. Plaintiff believes that he paid approximately \$20 for the Norton Product in 2011;
  - iv) On December 29, 2012, the Plaintiff again purchased "Norton Internet Security", one of the Norton Products, valid for another year (serial number: FBH4QXG93Y7H, and licence key number: JJH8VQ68FGKV2H2TYR2PGQYW) from "Bureau en Gros", the

whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 7, 2014, as well as an extract of the Plaintiff's credit card statement, evidencing a purchase price of \$22.98, a copy of which is communicated herewith as **Exhibit P-4**, the Plaintiff having been unable to locate an invoice;

- v) On December 26, 2013, the Plaintiff again purchased "Norton Internet Security", one of the Norton Products, valid for another year (serial number: C9P3JMG3BM8F, and licence key number: JQB27K88KXDTC3MCRK4KP69KG) from "Bureau en Gros", the whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 8, 2015, as well as an extract of the Plaintiff's credit card statement, evidencing a purchase price of \$22.98, a copy of which is communicated herewith as **Exhibit P-5**, the Plaintiff having been unable to locate an invoice;
- vi) At the end of December 2014, the Plaintiff again purchased "Norton Internet Security", one of the Norton Products, valid for another year (serial number: 3XXM77CPCWQK, and licence key number: JPTRMJ7BHMJ2GV6TDCTWJHT79) from "Bureau en Gros", the whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 8, 2016, the Plaintiff having been unable to locate an invoice or proof of payment. Plaintiff believes that he paid approximately \$20 for the Norton Product in 2014;
- vii) On December 26, 2015, the Plaintiff purchased the "Deluxe" version of "Norton Security", one of the Norton Products, valid for another year (serial number: GVMMPM2B4P26, and licence key number: J8DC3RVJYBP89CDKTH2KGT4W) from "Bureau en Gros", the whole as appears more fully from the Licence History emanating from the Defendant (Exhibit P-3) evidencing the expiry date of the licence on January 8, 2017, as well as an extract of the Plaintiff's credit card statement, evidencing a purchase price of \$22.95, a copy of which is communicated herewith as **Exhibit P-6** and a copy of the invoice, communicated herewith as **Exhibit P-7**;

15. The Class consists of consumers who, like the Plaintiff, paid for Norton Products during the Class Period, yet did not receive the protection that Symantec represented and was required to provide;
16. The Plaintiff does not have a list of the members of the Class who acquired the Norton Products during the Class Period, and calls upon Symantec to provide to Plaintiff's counsel the names and last-known coordinates of all of the Class Members. Considering that there are apparently in excess of 600,000 customers residents in the Province of Ontario envisaged by a similar class action who purchased and/or licensed Norton Products only through Symantec's websites directly, and considering that the Quebec Class Members not only acquired Norton Products directly Symantec's websites, but also indirectly through retailers, the Plaintiff conservatively estimates that the present Class consists of at least 500,000 Quebec consumers;
17. Plaintiff further estimates that members of the Class paid on average \$50 per year for the Norton Products during the Class Period, ranging from the estimated \$20 paid by the Plaintiff during Boxing Day sales (as detailed in paragraph 14 above) to prices in the range of \$109.99 set forth in Symantec's marketing and advertising materials examples, produced herewith *en liasse* as **Exhibit P-8**;

### **THE DEFECTIVE NORTON PRODUCTS**

18. At all relevant times, Symantec marketed the Norton Products as capable of protecting personal computers from viruses and cyberattacks;
19. The Class Members accordingly pay money to acquire Norton Products from Symantec, in order to secure their personal computers from potential viruses and attacks;
20. Unbeknownst to the Class Members, throughout the Class Period, all of the Norton Products were affected by design defects, such that the Class Members' personal computers were susceptible to viruses and cyberattacks which Symantec represented the Norton Products were capable of preventing, and would in fact prevent (the "**Design Defects**");
21. In particular, each of the Norton Products contained Design Defects in a critical component of the anti-virus software, namely the "decomposer";
22. As a result of the Design Defects associated with the decomposer, Symantec's security software was susceptible to attack and to compromising users' computers and data, thereby detrimentally affecting the protection that Class Members had paid to enjoy;

23. Google's Project Zero, an independent third party, reported the Design Defects associated with the Norton Products to Symantec. Google's Project Zero noted that Symantec had i) unnecessarily assigned the highest levels of trust in the decomposer component; and ii) failed to implement security updates to patch known vulnerabilities in the open source code used in the decomposer for a period of seven years. Google's Project Zero's reports dated April 28 and June 28, 2016 are produced herewith *en liasse* as **Exhibit P-9**;
24. By doing so, Symantec failed to adhere to "best practices" recommendations that Symantec itself made to its own customers (numerous examples of which are produced herewith, *en liasse*, as **Exhibit P-10**) and also failed to adhere to two fundamental rules standard in the industry in order to secure customers' personal computers from viruses and attacks, namely:
  - a) The principle of "least privilege", in virtue of which any user, program or process should have only the bare minimum privileges necessary to perform its function; and,
  - b) The necessity of promptly updating all operating systems and applications with the latest security patches as soon as they are available;
25. The foregoing failures were easily preventable, as admitted by Symantec in a report entitled "SYM07-019, July 11, 2007 Symantec Antivirus Malformed RAR and CAB Compression Type Bypass", a copy of which is produced herewith as **Exhibit P-11**, in which Symantec publicly acknowledged that it was necessary to respect the principle of "least privilege";
26. On June 28, 2016, Symantec publicly admitted that the Norton Products contained Design Defects, the whole as appears more fully from a Symantec Security Advisory Note, a copy of which is produced herewith as **Exhibit P-12**;
27. As a result of the Design Defects, the Norton Products were unfit for their intended purpose as, i) until such time as the latest security patches were installed, the vulnerabilities in the decomposer (based on known vulnerabilities in the open source code Symantec used in the decomposer) remained exploitable by viruses, malware and hackers; and, ii) by unnecessarily running the decomposer at the highest privilege levels, there was lesser protection against such attacks, and the decomposer was capable of making unrestricted, potentially adverse, system-wide changes on a user's computer, thereby defeating the principal reason why a customer acquires the Norton Products;
28. Moreover, not only did the Norton Products fail to provide the protection that they were supposed to provide, but the Design Defects also increased the susceptibility to a wide variety of cyberattacks, viruses, malware, spyware, hacking and other cybersecurity threats, thereby exposing the Class Members' personal computers to a greater risk of viruses and cyberattacks than would have



existed if the customers had not acquired the Norton Products in the first place. Worse, given the nature of the Design Defects, malware and hackers could conceal their hacking or cyberattacks by disabling the reporting features of the Norton Products, preventing both Symantec and the Class Members from being notified or confirming that those intrusive activities had ever occurred;

29. As a result of the existence of the Design Defects throughout the Class Period, numerous representations made by Symantec proved to be objectively false. In particular, as set forth in Exhibit P-8, Symantec repeatedly made false representations during the Class Period to the effect that the Norton Products would provide "*improved*" "*superior*", "*proactive*", "*rock-solid*", "*up-to-date*" and "*layered*" protection against viruses, malware and hacking;
30. Furthermore, throughout the Class Period, Symantec failed to inform consumers of the Design Defects and the fact that it was not itself adhering to its own fundamental and basic security best practices, such that Symantec omitted to advise consumers of facts that are necessarily important, in violation of the CPA;
31. As a result, numerous statements made by Symantec throughout the Class Period regarding the effectiveness of the Norton Products were false, inaccurate and/or misleading;

## **DAMAGES**

32. Each and every Class Member, including the plaintiff, is entitled to be reimbursed the amount that he/she paid for the defective Norton Products, given that neither the Plaintiff nor any Class Member received what he/she bargained for;
33. The Plaintiff and the Class Members are accordingly entitled to claim damages equivalent to the price paid for the defective Norton Products from July 24, 2010 up to June 27, 2016;
34. The Plaintiff's claim amounts to \$126.80, representing the portion of the price he paid for Norton Products for the period from July 24, 2010 to June 27, 2016 as per paragraph 14, above and Exhibits P-4 to P-7;
35. Plaintiff conservatively estimates that Symantec has collected approximately \$100 million from Quebec consumers during the Class Period for Norton Products which did not deliver the protection that Symantec held out would be provided. This estimate is based on the following assumptions:
  - i. There are 500,000 Class Members;
  - ii. Each Class Member paid on average \$50 per year for defective Norton products;

- iii. Class Members purchased and/or renewed a license for Norton Products an average of four (4) times during the Class Period of approximately six (6) years;
36. Until such time as Defendant provides detailed information to enable a sufficiently precise determination of the revenues generated from the sale and/or license of the Norton Products to the Class Members during the Class Period, the whole in accordance with Article 595 of the *Code of civil procedure*, Plaintiff accordingly conservatively claims \$100 million from Symantec, representing the amount Symantec has unlawfully collected from the Class Members during the Class Period, collectively, in respect of the defective Norton Products, *sauf à parfaire*;

### **PUNITIVE DAMAGES**

37. In light of the fact that several hundred thousand Quebec consumers paid Symantec for products which did not in fact deliver the protection against viruses and cyberattacks that Symantec committed to provide, given the amount of time that Symantec sold and/or licensed the defective Norton Products without making corrections, given the fact that Symantec has breached the CPA for numerous years, and considering the patrimonial situation of Symantec, the Plaintiff is well-founded to seek an order of this Honourable Court condemning Symantec to pay punitive damages of \$10 million to be recovered collectively;

### **WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT BY THIS HONOURABLE COURT TO:**

**GRANT** the Class Action against the Plaintiff;

**CONDEMN** the Defendant to pay to the Plaintiff, for the benefit of the Class, the aggregate amount of the price paid by the Class Members for the license and any renewal license of the Norton Products during the Class Period in respect of security and protection that Symantec in fact failed to provide which, at the time being, is evaluated at \$100 million, *sauf à parfaire*, the whole with interest and the additional indemnity provided by law,;

**ORDERS** that the claims of the Class Members be the object of individual liquidation in accordance with Articles 596 to 598 C.C.P. and, subject to the power of the Court, render any order the Court deems just relative to the payment of punitive damages, which, at the time being, is evaluated at \$10 million, if applicable, with interest and the additional indemnity provided by law from the date of service of the *Application for Authorization to Institute a Class Action*, dated December 1, 2017;

**CONDEMN** the Defendant to any further relief as may be just and proper;

**THE WHOLE** with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

MONTREAL, June 5, 2019

*(sgd) Kugler Kandestin LLP*

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**TRUE COPY**

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**KUGLER KANDESTIN LLP**

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**SUMMONS**  
(articles 145 and following C.C.P.)

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**Filing of a judicial application**

Take notice that the Plaintiff has filed this originating application in the office of the court of Montreal in the judicial district of Montreal.

**Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at **1 Notre-Dame Street East, Montreal, Quebec, H2Y 1B6** within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

**Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

**Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiff in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

**Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as a Plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the Plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Whithin 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the originating application, the Plaintiff intends to use the following exhibits :

- EXHIBIT P-1: 2016 Annual Report;
- EXHIBIT P-2: Norton AntiVirus PCNorton 360, Norton 360 Premier Edition, Norton Internet Security 2014 License Agreement;
- EXHIBIT P-3: Plaintiff License History;
- EXHIBIT P-4: Extract of the Plaintiff's credit card Statement of December 2012-January 2013;
- EXHIBIT P-5: Extract of the Plaintiff's credit card Statement of December 2013-January 2014;
- EXHIBIT P-6: Extract of the Plaintiff's credit card Statement of December 2015-January 2016;
- EXHIBIT P-7: Invoice dated December 26, 2015;
- EXHIBIT P-8: Symantec's marketing and advertising materials examples;
- EXHIBIT P-9: Google's Project Zero's reports dated April 28 and June 28, 2016;
- EXHIBIT P-10: Examples of Symantec best practices representations;
- EXHIBIT P-11: Report entitled SYM07-019, July 11, 2007 Symantec Antivirus Malformed RAR and CAB Compression Type Bypass;
- EXHIBIT P-12: Symantec Security Advisory Note dated June 28, 2016.

These exhibits are annexed hereto.

**Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.