

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) THURSDAY, THE 28TH
JUSTICE PERELL) DAY OF SEPTEMBER, 2017

B E T W E E N:

(Court Seal)



DANIEL BENNETT

Plaintiff

and

LENOVO (CANADA) INC. and SUPERFISH INC.

Defendants

ORDER

THIS MOTION, made by the plaintiff for judgment in the terms of an accepted offer, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Notice of Motion and the Affidavit of David Sterns sworn August 25, 2017, and upon hearing the submissions of counsel for the parties,

1. THIS COURT ORDERS that the motion is adjourned to November 2, 2017.

2. THIS COURT ORDERS that the plaintiff shall serve the following on the defendant, Superfish Inc., prior to the return of this motion on November 2, 2017:

- (a) A Notice of Motion and any supporting affidavits for an order certifying the action as against Superfish Inc., and for approval and enforcement of the alleged settlement;
- (b) The Motion Record of the Plaintiff for Certification, dated February 27, 2017; the Responding Motion Record (Certification Motion) of Lenovo (Canada) Inc., dated June 9, 2017; the Moving Party's Factum (Certification), dated August 31, 2017; and the Factum of the Responding Party Lenovo (Canada) Inc., all of which, taken together, are the motion records and factums delivered for the certification motion as against Lenovo (Canada) Inc., heard September 26, 2017;
- (c) The Motion Record dated August 28, 2017, delivered by the Plaintiff, in respect of the within motion; and
- (d) The Endorsement of Justice Perell in respect of the within motion, released September 28, 2017.

3. THIS COURT ORDERS that service of the materials described in paragraph 2, above, shall be effected pursuant to Justice Belobaba's Order dated May 9, 2016, attached as Schedule "A".

4. THIS COURT ORDERS that the costs of the adjournment are reserved to the return of the motion.



(Signature of Judge)

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LE / DANS LE REGISTRE NO:

OCT 10 2017

PER / PAR:



SCHEDULE "A"

Court File No. CV-1500-523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
JUSTICE BELOBABA)

MONDAY, THE 9TH
DAY OF MAY, 2016



DANIEL BENNETT

Plaintiff

and

LENOVO (CANADA) INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiff for an order for substituted service, made without notice, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

ON READING the Affidavit of Sabrina Callaway, sworn April 29, 2016, and all exhibits attached thereto and on hearing the submissions of the lawyers for the Plaintiff, appearing in person,

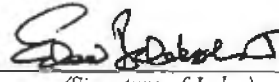
1. THIS COURT ORDERS that service of a copy of an Amended Fresh as Amended Statement of Claim, attached hereto as Schedule "A", may be made by personally serving the Amended Fresh as Amended Statement of Claim, together with a copy of this Order, upon

JustVisual Inc. and by emailing a PDF copy of the Amended Fresh as Amended Statement of Claim, together with a PDF copy of this Order, to Rodger Cole, a lawyer at Fenwick & West LLP, to RCole@fenwick.com, and that same shall be good and sufficient service of the Amended Fresh as Amended Statement of Claim upon the defendant, Superfish Inc.

2. **THIS COURT ORDERS** that service in accordance with this Order is effective on Superfish Inc. when the Amended Fresh as Amended Statement of Claim has been personally served on JustVisual Inc. and has been emailed to Rodger Cole, in accordance with paragraph 1, above.

3. **THIS COURT ORDERS** that this Order is made without notice.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO
MAY - 9 2016
AS DOCUMENT NO.:
A TITRE DE DOCUMENT NO.
PER / PAR:



(Signature of Judge)

SCHEDULE "A"

Court File No. CV-15-00523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DANIEL BENNETT

Plaintiff

- and -

LENOVO (CANADA) INC. and SUPERFISH INC.

~~Defendant~~ Defendants

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED STATEMENT OF CLAIM

TO THE ~~DEFENDANT~~ DEFENDANTS:

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by

the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

March 11, 2015

Issued by: "Sylvia Slaunwhite"
Local registrar

Address of Court Office:
Superior Court of Justice
393 University Ave., 10th Floor
Toronto, ON M5G 1E6

TO: LENOVO (CANADA) INC.
55 Idema Road
Markham, ON L3R 1A9

AND TO: SUPERFISH INC.
2595 East Bayshore Road, Suite 150
Palo Alto, CA 94303, U.S.A.

CLAIM

1. The plaintiff claims:
 - (a) the sum of \$10,000,000.00 for:
 - i. breach of contract;
 - ii. breach of the *Consumer Protection Act*, 2002 S.O. 2002, C. 30, Sched. A;
 - iii. breach of the *Privacy Act*, RSBC 1996, Chapter 373;
 - iv. breach of *The Privacy Act*, CCSM c. P125;
 - v. breach of *The Privacy Act*, RSS 1978, c P-24;
 - vi. breach of the *Privacy Act*, RSNL 1990 C. P-22;
 - vii. negligence; and
 - viii. intrusion upon seclusion;
 - (b) punitive and exemplary damages in the amount of \$5,000,000.00;
 - (c) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
 - (d) costs of this action on a substantial indemnity scale, plus HST; and
 - (e) such further or other relief as this Honourable Court deems just, including all further necessary or appropriate accounts, inquiries and directions.

A. SUMMARY OF CLAIM

2. The defendant, Lenovo (Canada) Inc. ("**Lenovo**") deliberately sacrificed its customers' security by preloading certain models of its consumer laptops with a malicious adware program called Visual Discovery manufactured by ~~a company known as the defendant~~, Superfish Inc. ("**Superfish Inc.**").

3. Visual Discovery intercepts the user's secure internet connections and scans the user's web traffic to inject unauthorized advertisements into the user's web browser without the user's knowledge or consent. Visual Discovery allows hackers to intercept and scan a user's web traffic including highly sensitive and confidential personal and financial information. As a result of Lenovo's actions, thousands of its customers have had the integrity of their personal and financial information seriously compromised.

B. THE PLAINTIFF

4. The plaintiff, Daniel Bennett ("**Bennett**"), is a barrister and solicitor residing in the City of St. John's, Newfoundland and Labrador.

5. Bennett brings this action individually and on behalf of all persons in Canada who purchased one or more of the following laptops (the "**Affected Models**") from Lenovo from September 1, 2014 to March 11, 2015 (the date of issuance of this claim) (the "**Class Members**"):

- G Series: G410, G510, G710, G40-70, G50-70, G40-30, G50-30, G40-45, G50-45, G50-50, G40-80, G50-80, G50-80Touch
- U Series: U330P, U430P, U330Touch, U430Touch, U530Touch
- Y Series: Y430P, Y40-70, Y50-70, Y40-80, Y70-70

- Z Series: Z40-75, Z50-75, Z40-70, Z50-70, Z70-80
 - S Series: S310, S410, S40-70, S415, S415Touch, S435, S20-30, S20-30Touch
 - Flex Series: Flex2 14D, Flex2 15D, Flex2 14, Flex2 14(BTM), Flex2 15, Flex2 15(BTM), Flex2 Pro, Flex 10
 - MIIX Series: MIIX2-8, MIIX2-10, MIIX2-11, MIIX 3 1030
 - YOGA Series: YOGA2Pro-13, YOGA2-13, YOGA2-11, YOGA2-11BTM, YOGA2-11HSW, YOGA3 Pro
 - E Series: E10-30
 - Edge Series: Lenovo Edge 15
6. Excluded from the class are: the ~~defendant~~ defendants, its affiliates and subsidiaries, and its current employees, officers and directors.

C. THE ~~DEFENDANT~~ DEFENDANTS

7. Lenovo is a Canadian corporation with its head office in the City of Markham, Ontario. Lenovo is a subsidiary of Lenovo Group Limited (“Lenovo Group”), a Hong Kong corporation with its principal place of business in Beijing, China. Lenovo Group is a computer technology company that, through its subsidiaries including Lenovo, designs, develops, manufactures and sells personal computers, tablet computers, smartphones, workstations, servers, electronic storage devices and smart televisions.

8. Lenovo Group was originally founded under the name Legend Holdings in 1984 with seed money from the Chinese Academy of Sciences, an agency of the government of the People’s Republic of China. The Chinese Academy of Sciences maintained its majority position following Legend Holdings’ initial public offering in 1994.

9. In 2003, Legend Holdings changed its name to Lenovo Group.

10. In 2005, Lenovo Group purchased IBM's personal computing division. Since 2013, Lenovo Group has been the largest personal computer manufacturer in the world.

11. Lenovo carries on business in the province of Ontario and throughout Canada and enters into agreements for the sale of products in the province of Ontario on behalf of Lenovo Group.

12. Superfish Inc. is an American corporation with its head office in Palo Alto, California, U.S.A.. Superfish Inc. develops various advertising-supported software products based on a visual search engine, including Visual Discovery.

D. THE PLAINTIFF PURCHASED AN AFFECTED MODEL

13. ~~12-~~In September 2014, Bennett purchased from Lenovo a Lenovo "Flex 2" laptop for personal and business use (the "Laptop"). The purchase was made online using Lenovo's website.

14. ~~13-~~The order was received by Lenovo and processed on September 9, 2014. The Laptop was shipped to Bennett's home in St. John's, Newfoundland and Labrador on September 15, 2014.

15. ~~14-~~Unknown to Bennett, Visual Discovery was pre-installed on the Laptop before it was shipped to him. Bennett discovered this on or about March 2, 2015 by checking a website recommended on www.slate.com.

16. ~~15-~~Bennett uses the Laptop for a variety of purposes including personal banking, storing personal information and browsing the internet. Bennett used the Laptop to remotely log on to his firm's server.

E. THE VISUAL DISCOVERY SOFTWARE

(i) *Superfish Inc.*

17. ~~16.~~ Superfish Inc. is a privately held software development company with offices in Palo Alto, California, U.S.A. and Petah Tikva, Israel. The company develops search technology that enables customers to search for an item based on its appearances rather than a text based description.

18. ~~17.~~ Before developing Visual Discovery, Superfish Inc. released a program called WindowShopper. Like Visual Discovery, WindowShopper was criticized as malware that would show customers unwanted advertisements and divert them to unwanted websites.

(ii) *Visual Discovery*

19. ~~18.~~ Visual Discovery is a software program manufactured by Superfish Inc. Visual Discovery was purportedly designed originally to detect web traffic and load specifically-designed JavaScript on online shopping sites. Visual Discovery would use its access to the data being transmitted to assist in generating relevant advertisements that were then sent back to the user and displayed either as part of the webpage or in a pop-up advertisement.

20. ~~19.~~ However, once Visual Discovery JavaScript was loaded into a webpage, it was capable of significantly interfering with a user's browser and did not distinguish between shopping sites and other websites.

21. ~~20.~~ Visual Discovery used a hidden proxy, known as a Man-in-the-Middle proxy, to act as an intermediary between the user and the intended server in order to intercept and redirect network

traffic. In this way, Visual Discovery would take over the connection between a user's browser and a website.

22. ~~21.~~ Normally, there would be one encrypted connection between the user's browser and the website. However, with Visual Discovery, two connections were created: one between the browser and the Visual Discovery proxy, and one between the Visual Discovery proxy and the intended website. The Visual Discovery proxy would decrypt, review, then re-encrypt information as it was sent between the browser and the website, mimicking a direct encrypted connection.

23. ~~22.~~ Superfish Inc. received assistance from B.W. Komodia, a privately held Israeli company, to create a code that would hijack SSL connections in order to decrypt information sent between a user's browser and an HTTPS-secured webpage.¹ With B. W. Komodia's assistance, Visual Discovery was able to generate fake certificates falsely representing that it had authority to decrypt secure information being diverted through its proxy.

24. ~~23.~~ A legitimate certificate authority would also have a private key kept secret from the public. However, the private key for the Visual Discovery certificate authority was visible in the software itself because it was not properly secured. The private key was the same for every Affected Model and the password was simply "komodia."

25. ~~24.~~ Through Visual Discovery, Superfish Inc. was able to: hijack legitimate SSL connections; monitor user activity; collect personal information and upload it to Superfish Inc.'s servers; insert advertising on legitimate web pages; display pop-ups with advertising software; use

¹ Secure Socket Layer (SSL) is a standard security technology for establishing an encrypted link between a server and a client; typically a web server (website) and a browser or a mail server and a mail client (e.g., Outlook). Hypertext Transfer Protocol (HTTPS) is a protocol for secure communication over a computer network within a connection encrypted by SSL.

a Man-in-the-Middle technique to open secure connections; and present users with its own fake certificate instead of the legitimate site's certificate.

26. ~~25.~~ Visual Discovery allows anyone on a Wi-Fi network to hijack the user's browser. By extracting a Superfish Inc. certificate and private key and issuing his or her own certificate, a malicious hacker could easily create a fake certificate allowing him or her to intercept a user's internet connections, create fake versions of certain websites and collect their bank credentials, passwords and other highly sensitive information.

27. ~~26.~~ Users were not made aware that the Affected Models came pre-installed with Visual Discovery. The manner in which Visual Discovery was installed on the Affected Models made it virtually impossible for users or internet security and antivirus programs to detect the presence of the program.

28. ~~27.~~ Lenovo only disclosed Visual Discovery to users by way of a one-time pop-up window that appeared during an internet search session. In the pop-up window, a user would need to click in one particular spot in order to disable (but not remove) the program. The pop-up did not contain any details on Visual Discovery and resembled a regular pop-up advertisement. If the user chose to simply exit the pop-up like any regular pop-up advertisement, they would be deemed to have accepted the program on an ongoing basis. Visual Discovery was an opt-out program in which the opt-out was designed to avoid triggering opt-outs.

29. ~~28.~~ The user continued to be exposed to this risk even after uninstalling Visual Discovery. Although Lenovo has worked with large antivirus providers to provide automated tools to remove Visual Discovery, Lenovo's removal tool leaves behind several files related to Visual Discovery. The only way to ensure that the security issues caused by Visual Discovery are completely

resolved is to completely wipe an Affected Model's memory and reinstall a non-Lenovo version of Windows.

30. ~~29.~~ Operating Visual Discovery on a Lenovo laptop also decreased the quality of the computer's performance.

31. ~~30.~~ Visual Discovery increased CPU usage, which increased power consumption by the Affected Models. This in turn decreased both the lifespan of the battery in terms of the number of times it could be recharged before being replaced and the number of hours that the laptop could operate on a single charge.

32. ~~31.~~ Visual Discovery also caused certain web pages to load incorrectly, if at all.

(iii) Lenovo Group's historical use of bloatware

33. ~~32.~~ As part of its strategy to gain market dominance, Lenovo Group has been aggressively competing on price, resulting in very slim margins.

34. ~~33.~~ In an effort to offset its discounted prices, Lenovo Group accepts payments from software developers like Superfish Inc. to preload its computers with the developers' programs. This preloaded software, commonly referred to as "bloatware," often loads at startup, wastes memory, creates potential conflicts with other applications, and slows the performance of computers on which it is installed.

35. ~~34.~~ Despite these negative effects on performance, Lenovo Group continues to preload "bloatware" onto its computers.

36. ~~35.~~Lenovo Group has a history of preloading its computers with bloatware. Even before its association with Superfish Inc., Lenovo Group had installed software and hardware on Lenovo computers that both allowed unauthorized access to those computers after sale and created potential security vulnerabilities.

37. ~~36.~~Since its association with Superfish Inc., Lenovo Group continues to preload its computers with bloatware. Recently in late 2014 to early 2015, Lenovo Group sold various computers to consumers that included a previously undisclosed program called Lenovo Service Engine ("LSE"), which was built directly into the firmware at the lowest level of the operating system.

38. ~~37.~~LSE allowed Lenovo Group to connect to the internet to download and install drivers, a system optimizer and any other software it desired, including bloatware. LSE also sent system data back to a Lenovo Group server. All of this was done without the user's consent.

39. ~~38.~~As a result of the security vulnerabilities created by such software and hardware, Lenovo computers are banned for use in the intelligence and defence services of the United States, Australia, Canada, New Zealand and the United Kingdom.

(iv) Partnership between Lenovo Group and Superfish Inc.

40. ~~39.~~Before entering into an agreement and installing the software on Lenovo laptops, Lenovo Group had received a demonstration of the operation of Visual Discovery. Lenovo Group screened the Visual Discovery software and requested that Superfish Inc. remove certain features that abused the SSL connections.

41. ~~40.~~ Superfish Inc. provided Lenovo Group with a revised version of Visual Discovery and assured Lenovo Group that the SSL connection issues identified in the previous version had been resolved. Without screening the software again, Lenovo Group installed Visual Discovery on the Affected Models and shipped them to customers.

42. ~~41.~~ Lenovo Group has a rigorous protocol for testing software developed in house. However the testing for third-party software, such as Visual Discovery, is less rigorous. Had Lenovo Group screened the revised version of Visual Discovery, it would have discovered that the SSL connection issues had not been resolved by Superfish Inc.

43. ~~42.~~ On February 19, 2015, Lenovo Group issued a press release admitting that Visual Discovery had been pre-loaded on the Affected Models. The press release stated that Lenovo had learned about the security issues and stopped pre-loading the software as of January 2015.

44. ~~43.~~ At no time prior to the February 19, 2015 press release did Lenovo or its affiliates inform the Class Members that Visual Discovery had been installed on their computers.

45. ~~44.~~ The Affected Models were those models that were primarily used by retail customers. Lenovo did not install Visual Discovery on devices that were primarily sold to its corporate customers.

F. BREACH OF CONTRACT

46. ~~45.~~ The Affected Models were and continue to be dangerous and defective. When Lenovo entered into contracts for the sale of the Affected Models to the Class Members, there was an express or implied term that the computers would be free of any defects and, at the very least, not include malicious software that exposed the Class Members to significant security risks. In

addition, there was an implied term in the contract between Lenovo and the Class Members that if any dangerous software was installed in the computers, Lenovo would provide adequate warnings to the Class Members before they made their decision to purchase the computers. At no time was any warning provided by Lenovo to the Class Members.

47. 46.—By installing Visual Discovery before the computers were shipped to the Class Members, Lenovo breached the contracts it entered into with the Class Members. The computers purchased by the Class Members were unsafe, non-merchantable and exposed the Class Members to significant risks.

G. BREACH OF THE *CONSUMER PROTECTION ACT*

48. 47.—The Lenovo Licence Agreement states that the laws of Ontario apply to govern, interpret, and enforce all rights, duties, and obligations arising from, or relating in any manner to, the warranties under which the Affected Models are sold in Canada, without regard to conflict of law principles.

49. 48.—Section 9(2) of the *Consumer Protection Act*, RSO 2002, S.O. 2002 C 30, Sched. A provides:

The implied conditions and warranties applying to the sale of goods by virtue of the *Sale of Goods Act* are deemed to apply with necessary modifications to goods that are leased or traded or otherwise supplied under a consumer agreement.

50. 49.—Section 15 para. 2 of the *Sale of Goods Act*, RSO 1990, c. S.1. includes the following implied condition as to quality or fitness:

Where goods are bought by description from a seller who deals in goods of that description (whether the seller is the manufacturer or not), there is an implied condition that the goods will be of

merchantable quality, but if the buyer has examined the goods, there is no implied condition as regards defects that such examination ought to have revealed. (Emphasis added)

51. ~~50.~~ The Affected Models were not of merchantable quality. Rather, they were unsafe, non-merchantable products that exposed the Class Members to significant risks.

H. BREACH OF PROVINCIAL PRIVACY ACTS

52. ~~51.~~ Section 1 of the *Privacy Act*, RSBC ~~1998~~, 1996, c. 373 (“**BC Privacy Act**”) provides:

(1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

(2) The nature and degree of privacy to which a person is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, giving due regard to the lawful interests of others.

(3) In determining whether the act or conduct of a person is a violation of another's privacy, regard must be given to the nature, incidence and occasion of the act or conduct and to any domestic or other relationship between the parties.

(4) Without limiting subsections (1) to (3), privacy may be violated by eavesdropping or surveillance, whether or not accomplished by trespass.

53. ~~52.~~ Section 2 of *The Privacy Act*, CCSM c. P125 (“**Manitoba Privacy Act**”) provides:

(1) A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.

(2) An action for violation of privacy may be brought without proof of damage.

54. ~~53.~~ Section 2 of *The Privacy Act*, RSS 1978, c. P-24 (“**Saskatchewan Privacy Act**”)

provides:

It is a tort, actionable without proof of damage, for a person wilfully and without claim of right, to violate the privacy of another person.

55. ~~54.~~ Section 3 of the *Privacy Act*, RSNL 1990 Cc. P-22 (Newfoundland and Labrador *Privacy Act*) provides:

- (1) It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of an individual.
- (2) The nature and degree of privacy to which an individual is entitled in a situation or in relation to a matter is that which is reasonable in the circumstances, regard being given to the lawful interests of others; and in determining whether the act or conduct of a person constitutes a violation of the privacy of an individual, regard shall be given to the nature, incidence, and occasion of the act or conduct and to the relationship, whether domestic or other, between the parties.

56. ~~55.~~ The Affected Models contained malware which was designed by Superfish Inc. to invade the privacy of and cause harm to the Class Members, as pleaded above in paragraphs 18 to 28. Visual Discovery was designed to gather information about the user of an Affected Model without the user's consent and exploit that information for unknown, illicit purposes.

57. ~~56.~~ The degree of invasion into the Class Members' privacy was not reasonable in this case. The Class Members had contractual relationships with Lenovo and reasonably expected that it would not intentionally install malware on their laptops that exposed them to risk and harm. Further, the Class Members were predominantly consumers who expected that Lenovo would conduct itself as a responsible manufacturer and distributor of consumer goods. The Visual Discovery software designed by Superfish Inc. is one of the most malicious and invasive forms of software known to have been installed and distributed by a computer manufacturer or retailer.

58. ~~57.~~ Class Members residing in British Columbia, Manitoba, Saskatchewan and Newfoundland and Labrador are entitled to damages pursuant to the BC Privacy Act, the Manitoba Privacy Act, the Saskatchewan Privacy Act and Newfoundland and Labrador Privacy Act respectively.

I. NEGLIGENCE

59. ~~58.~~ As detailed above in paragraphs 40 to 42, the defendants were negligent in the design, development, review and distribution of Visual Discovery. Lenovo was negligent in failing to properly screen Visual Discovery before loading it on the Affected Models, as detailed above in paragraphs 39 to 41. Superfish Inc. was negligent in resolving SSL connections identified by Lenovo in previous versions of Visual Discovery. As a result of ~~Lenovo's~~ the defendants' negligence, Class Members who purchased Affected Models suffered harm.

J. INTRUSION UPON SECLUSION

60. ~~59.~~ Consumers use the Affected Models for a variety of purposes, which are known to ~~Lenovo~~ the defendants, including: banking; storing personal and financial data; accessing work servers remotely, and transmitting and receiving highly sensitive and confidential information.

61. ~~60.~~ ~~Lenovo~~ The defendants exposed the Class Members to significant risks, including the risk that their personal and financial information will be stolen and sold to third parties for commercial purposes.

62. ~~61.~~ ~~Lenovo was~~ The defendants were reckless and intruded on the seclusion of the Class Members by facilitating access by third parties to sensitive personal, financial and confidential information via Visual Discovery.

63. ~~62.~~ ~~Lenovo's~~ The defendants' acts were driven purely by the pursuit of profit. There was no lawful justification for the installation of Visual Discovery on the Class Members' computers.

K. HARM TO CONSUMERS

64. ~~63.~~ Visual Discovery compromises the security of sensitive personal, financial and otherwise confidential information that is commonly stored on computers and other electronic devices. In addition, it causes computers to slow down, takes up bandwidth over internet connections, uses up memory on computers, causes data loss, decreases computer battery life, compromises computer security features and creates a substantial nuisance for consumers who own an infected computer. It also devalues the Affected Models as would-be purchasers of second-hand computers would be wary of buying a computer in which Visual Discovery had been pre-installed.

65. ~~64.~~ The installation of Visual Discovery has exposed the Class Members to significant harm.

L. PUNITIVE AND EXEMPLARY DAMAGES

66. ~~65.~~ Lenovo is part of one of the largest computer conglomerates in the world. It knew that Visual Discovery would cause injury to its customers. It chose to sell its customers' security and breach their consumer trust and confidence for the sake of profit. Lenovo's malevolent and deliberate actions merit significant punitive and exemplary damages.

67. Superfish Inc. has a long history of disseminating adware, spyware and malware. Visual Discovery was not the first program designed by Superfish Inc. that was criticized by consumers. As detailed above in paragraph 18, WindowShopper, which was designed by Superfish Inc., was widely criticized as unwanted malware. Superfish Inc.'s malevolent and deliberate actions merit significant punitive and exemplary damages.

M. SERVICE OF STATEMENT OF CLAIM OUTSIDE ONTARIO

68. The plaintiff is entitled to serve this statement of claim outside Ontario without a court order pursuant to the following rules of the *Rules of Civil Procedure*, RRO 1990, Reg 194 because:

- (a) Rule 17.02(g) – the claim relates to a tort committed in Ontario;
- (b) Rule 17.02 (h) – the claim relates to damages sustained in Ontario arising from a tort; and
- (c) Rule 17.02 (o) – the defendants residing outside of Ontario are necessary and proper parties to this proceeding.

March 11, 2015

First amendment: January 6, 2016

Second amendment: February __, 2016

SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1200
Toronto, Ontario M5G 1Z8

David Sterns (LSUC # 36274J)
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Lawyers for the Plaintiff

DANIEL BENNETT
Plaintiff

-and-

LENOVO (CANADA) INC. et al
Defendant Defendants

Court File No. CV-1500-523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AMENDED FRESH AS AMENDED
STATEMENT OF CLAIM

SOTOS LLP
180 Dundas Street West
Suite 1200
Toronto ON M5G 1Z8

David Sterns (LSUC # 36274J)
Adrienne Boudreau (LSUC # 57348D)
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Lawyers for the Plaintiff

DANIEL BENNETT
Plaintiff

-and-

LENOVO (CANADA) INC.
Defendant

Court File No. CV-1500-523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

Proceeding under the *Class Proceedings Act, 1992*

ORDER

SOTOS LLP
180 Dundas Street West
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David Sterns (LSUC # 36274J)
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Lawyers for the Plaintiff

DANIEL BENNETT
Plaintiff

-and-

LENOVO (CANADA) INC. et al.
Defendants

Court File No. CV-15-00523714-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

ORDER

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