

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE MORGAN

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WEDNESDAY, THE 14th
DAY OF NOVEMBER, 2018

BETWEEN:

RYAN LAWRENCE AND FLORENCE FAZARI

Plaintiffs

—and—

SYMANTEC CORPORATION

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs for an order that this action be certified pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 was heard this day at the Courthouse in Toronto, Ontario.

ON READING the Certification Motion Record and Supplementary Certification Motion Record for certification filed by the Plaintiffs and on hearing the submissions of the parties and on consent of the parties:

1. **THIS COURT ORDERS** that the within action is certified as a class proceeding as against Symantec Corporation ("Symantec").
2. **THIS COURT ORDERS** that the Class is described as:

All individuals who, between July 24, 2010 and June 27, 2016, were located in the province of Ontario and, for personal, family or household purposes, and not for business purposes, (a) purchased or licensed one or more of the following Norton-branded software products Norton™ AntiVirus , Norton™ Internet Security, Norton™ Security, Norton™ Security with Backup, Norton 360™, Norton™ One (collectively, the "Norton Products") through the websites www.norton.com or www.symantec.com, or (b) paid to renew a purchase or license of one or more of the Norton Products through an automatic renewal service provided by Symantec (the "Class Members" or the "Class").

3. **THIS COURT ORDERS** that Ryan Lawrence and Florence Fazari are hereby appointed as the representative plaintiffs for the Class.

4. **THIS COURT ORDERS** that the following claims are asserted on behalf of the Class Members against Symantec:
 - (a) engaging in unfair practices contrary to section 17 of the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A (the "*Consumer Protection Act*") by:
 - (i) making false, misleading and deceptive representations within the meaning of section 14 of the *Consumer Protection Act*; and/or
 - (ii) making unconscionable representations within the meaning of section 15 of the *Consumer Protection Act*;

thereby causing damages to Class Members to which they are entitled in lieu of rescission of their agreements for the purchase or licensing of a Norton Product;
 - (b) breaching implied conditions and warranties as to quality and fitness of goods contrary to section 9(2) of the *Consumer Protection Act* and section 15 of the *Sale of Goods Act*, R.S.O. 1990, c. S.1 (the "*Sale of Goods Act*"), thereby causing damages to Class Members to which they are entitled in lieu of rescission of their agreements for the purchase or licensing of a Norton Product; and
 - (c) engaging in conduct justifying an award of punitive damages.

5. **THIS COURT ORDERS** that the disputed common issues for the Class, to be adjudicated, are:

- (a) In supplying the Norton Products to Class Members, did Symantec breach the implied conditions or warranties described in section 15 of *the Sale of Goods Act*?
- (b) Does a Class Member's purchase or license of a Norton Product through one of the websites www.norton.com or www.symantec.com, or payment to renew a purchase or 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 *Consumer Protection Act*?
 - (i) If a Class Member's purchase or license of a Norton Product through one of the websites www.norton.com or 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*?
- (c) Did Symantec make the Security Protection Representation (as defined in the Amended Statement of Claim) during the Class Period?
 - (i) If so, as a result of having made the Security Protection Representation, did Symantec engage in an unfair practice by making a false, misleading or deceptive representation within the meaning of section 14 of the *Consumer Protection Act*?
 - (ii) If so, as a result of having made the Security Protection Representation, did Symantec engage in an unfair practice by making an unconscionable representation within the meaning of section 15 of the *Consumer Protection Act*?
- (d) Did Symantec make the Best Practices Representation (as defined in the Amended Statement of Claim) during the Class Period?
 - (i) If so, as a result of having made the Best Practices Representation, did Symantec engage in an unfair practice by making a false, misleading or deceptive representation within the meaning of section 14 of the *Consumer Protection Act*?
 - (ii) If so, as a result of having made the Best Practices Representation, did Symantec engage in an unfair practice by making an unconscionable representation within the meaning of section 15 of the *Consumer Protection Act*?
- (e) If Symantec has engaged in an unfair practice within the meaning of section 14 or section 15 of the *Consumer Protection Act*, what remedy, if any, are the Class Members entitled to under the *Consumer Protection Act*?

- (f) Does the Class, or any portion thereof, require, and is it entitled to, a declaration waiving the notice provisions of section 18 of the *Consumer Protection Act*?
 - (g) Can damages be determined on an aggregate basis on behalf of the Class? If so, what is the quantum of those damages?
 - (h) Should Symantec be ordered to pay punitive damages? If so, in what amount?
6. **THIS COURT ORDERS** that the Amended Litigation Plan is hereby approved in the form attached hereto as **Schedule A**.
7. **THIS COURT ORDERS** that notice of certification of this action as a class proceeding, substantially in the form attached hereto as **Schedule B** (the "Notice") is hereby approved.
8. **THIS COURT ORDERS** that the Notice shall be disseminated in accordance with the notice program described in paragraph 3 of the Amended Litigation Plan attached hereto as **Schedule A**.
9. **THIS COURT ORDERS** that the costs associated with the Notice and its dissemination shall be in the cause.
10. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding only in accordance with the directions set out in the Notice, by no later than 90 days after the first publication of the Notice made under the notice program (the "Opt-Out Deadline"). No person may opt out of this proceeding after the Opt-Out Deadline and a person who opts out in accordance with the directions set out in the Notice by the Opt-Out Deadline shall not be a Class Member on or after the date such person opts out of the proceeding.
11. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the Opt-Out Deadline set out in paragraph 10 above.

12. **THIS COURT ORDERS** that, within ninety (90) days of this Order, affidavits confirming that the Notice was delivered to the Class Members in accordance with paragraph 8 above will be filed by:
- (a) Symantec's lawyers, Norton Rose Fulbright LLP, in respect of direct email notice to Class Members; and
 - (b) the Plaintiffs' lawyers, Investigation Counsel Professional Corporation ("ICPC") in respect of publication of the Notice on ICPC's website.
13. **THIS COURT ORDERS** that by no later than 30 calendar days after the Opt-Out Deadline, ICPC shall serve Symantec and file with the Court an affidavit listing the names of all persons, if any, who have opted out of the proceeding.
14. **THIS COURT ORDERS** that there shall be no costs on this motion.



THE HONOURABLE JUSTICE MORGAN

SCHEDULE A

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

RYAN LAWRENCE AND FLORENCE FAZARI

Plaintiffs

—and—

SYMANTEC CORPORATION

Defendant

Proceeding under the *Class Proceedings Act, 1992*

AMENDED LITIGATION PLAN

Class Counsel

1. The plaintiffs have retained *Investigation Counsel P.C. (“ICPC”)* to prosecute this proposed class action. *ICPC* has the requisite knowledge, skill, experience, and resources to prosecute the action to resolution.

Reporting and Communication

2. *ICPC* has posted information about the nature and status of this action on its website, www.investigationcounsel.com. That information will be updated regularly. Copies of important, publicly available court documents, court decisions, notices, documentation, and other information relating to the action are or will be accessible from the website. The website also contains a communication webpage, a feature that permits putative class members to submit inquiries to *ICPC*, who will promptly respond.

Notice of Certification

3. The Notice of Certification and Opt-Out Process approved by the Court (the “Notice”) shall be disseminated as follows:

- (a) Symantec Corporation (“Symantec”) shall send, or cause to be sent, the Notice electronically by email to class members’ email addresses associated with their Norton account, to the extent such email addresses are in Symantec’s possession and Symantec’s records indicate that the class members reside in Ontario; and,
- (b) *ICPC* will post a copy of the Notice on its website, send it to class members who have provided *ICPC* with their contact information and will provide a copy of the Notice to any class member who requests it.

Document Management

4. *ICPC* will use data management systems to organize, code and manage the documents produced by Symantec and all relevant documents in the plaintiffs’ possession. *ICPC* will seek the agreement of Symantec’s counsel to facilitate the electronic exchange of documents.

Expert Opinions

5. The plaintiffs shall deliver any expert opinion they intend to rely on at trial within 180 days of the completion of examinations for discovery. Symantec shall deliver any expert opinion responding to the plaintiffs’ trial expert opinions within 120 days of receiving said opinion(s).

Litigation Schedule

6. After disposition of the certification motion, absent agreement among counsel, the plaintiffs will ask the court to set a litigation schedule for the remaining steps in the action. The plaintiffs may ask from time to time that the litigation schedule be amended.

Refinement of Common Issues

7. Following the filing of statements of defence and the completion of discovery, the parties may seek an amendment of the order certifying this proceeding to deal with any necessary refinement to the common issues arising from those processes.

Dispute Resolution

8. The parties are willing to participate in mediation or non-binding alternative dispute resolution efforts.

Trial of the Common Issues

9. The plaintiffs will seek the early appointment of the common issues trial judge to address issues of trial management in advance of the trial to ensure the orderly and efficient determination of the common issues.

10. The trial date will be set after all expert opinions have been delivered.

11. To the extent possible, the plaintiffs will ask the trial judge to apply sections 23 and 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6 (the "CPA") to the assessment of damages.

Notice of the Resolution of the Common Issues

12. If the common issues, or some of them, are resolved in favour of the plaintiffs, the court will be asked to:

- (a) settle the form and content of the notice of resolution of the common issues;

- (b) order that the notice of the resolution of the common issues be distributed to those class members who did not validly opt out;
- (c) determine the most efficient method of distribution of the damages under sections 23, 24, and 26 of the *CPA*; and
- (d) if necessary, set a date by which each class member may be required to file a claim.

13. The plaintiffs will ask the court to order that the notice of resolution of the common issues be distributed substantially in accordance with the procedure set out in paragraph 3 above.

Claims Process If Aggregate Award of Damages

14. If the court at the common issues trial determines that damages can be determined on an aggregate basis and awards judgment accordingly, then the plaintiffs will ask the court to appoint a claims administrator, with such rights, powers and duties as the court directs, to receive and evaluate claims in writing and to distribute the monetary award in the most efficient and cost-effective manner in accordance with the protocols approved by the court pursuant to sections 24 and 26 of the *CPA*.

15. In order to simplify the claims process, the administrator will, wherever practical, utilize:
- (a) a paperless, electronic state-of-the-art web-based technology system which will include a secure database that is incorporated into the websites;
 - (b) standardized claims forms and filing procedures; and
 - (c) summary methods of introducing documentary evidence.

16. The types of records which shall constitute sufficient proof of a claim shall be specified in a protocol to be approved by the court and may include invoices, credit card statements, and other evidence confirming purchase of Norton security/anti-virus software from Symantec.

17. The court will be asked to set a deadline by which class members must file their claims with the administrator.

18. Any person who does not file a claim with the administrator before the claims deadline will not be eligible to participate in the damages assessment procedure and will not be entitled to recover any damages without leave of the court.

19. If any claimant disagrees with the administrator's decision relating to eligibility or calculation of damages, the claimant may elect to have the administrator reconsider its decision within a time period fixed by the court.

20. The administrator's decisions will be final. There shall be no right of appeal from the administrator's decisions.

Individual Issues Determination

21. If the court concludes that damages cannot be determined on an aggregate basis or there remain any other individual issues, the plaintiffs will ask the court to settle the manner of determining the remaining individual issues in the most efficient manner possible in accordance with section 25 of the *CPA*.

22. At the hearing, the parties will be at liberty to make submissions regarding the methodology for resolving the remaining individual issues. Potential methods include claims processes, references, mini-trials, mediation, arbitration or other means approved by the court pursuant to section 25 of the *CPA*. At this time, the plaintiffs intend to propose a method of resolving outstanding individual issues as set out below.

23. The court will be asked to specify procedures and deadlines by which class members shall identify themselves as claimants wishing to make claims for individual compensation.

24. The plaintiffs will ask the court to settle the form and content of a notice of resolution of the common issues and to set a date by which class members will be required to file a claim with a person designated by the court.

25. The plaintiffs will ask the court to order that the notice be distributed in accordance with the notice program set out above, except it shall not be mailed to class members who validly opted out of the class action.

26. The plaintiffs anticipate that given the nature of the damages suffered by class members, adjudication of the claims could be resolved through an efficient process which could involve the following steps, and which would be subject to the court's discretion:

- (a) Each claimant could submit a claim form to a referee appointed by the court (the "Referee"). The claim form shall include supporting documentation and/or expert evidence, as applicable.

- (b) The Referee shall deliver a copy of the claim form and any supporting documentation and/or expert evidence to Symantec.
- (c) Symantec shall have thirty days following receipt of the claim form and documentation, or such other time period as may be set by the court, in which to file with the Referee a written opposition to all or part of the claim, including responding documentation and/or expert evidence. The written opposition shall state the reasons for the opposition and shall be deemed to constitute their response. The defendant shall attach all supporting documentation and/or expert evidence, as applicable.
- (d) On request by either of the parties, the Referee shall determine what if any additional production is required by either party, what examination may be conducted, and whether participation by any other parties is necessary in the process.
- (e) The Referee shall communicate his/her decisions in writing to the claimant and to the defendant.
- (f) The assessment of damages may be in writing or by means of an oral hearing, depending on the nature and complexity of the claim and the severity of the alleged damages, in accordance with the court's determination. The availability and manner of appeal procedures will be determined by the court.
- (g) It may be possible to categorize and value claims in accordance with a grid according to the nature and severity of the damages.

27. The need for further procedures under section 25 of the *CPA* to resolve the individual issues will be determined by the court.

Orders Relating to *ICPC*'s Fees and the Costs of Administration

28. After the trial of the common issues, the plaintiffs will ask the court to approve an agreement respecting fees and disbursements of *ICPC*. To the extent that the approved fees, disbursements and HST are not completely paid by the costs recovered from the defendant, the

unpaid balance shall be a first charge on the total recovery and paid before any distribution to the class members.

29. The plaintiffs will ask the court to order that Symantec pay all administration costs, including the costs of all notices associated with the process and the fees and disbursements of the administrator and referee as these costs are incurred. Absent that court order, the plaintiffs will seek an order that these costs be paid out of the total recovery after payment of *ICPC's* fees and disbursements but before any distribution to the class members.

Further Orders Concerning This Plan

30. This litigation plan may be amended from time-to-time by directions given at case conferences or by further order of the court.

Effect of This Plan

31. This litigation plan shall be binding on all class members who do not opt out in accordance with the procedure directed by the court whether or not they make a claim under the litigation plan.

SCHEDULE B

NORTON ANTIVIRUS CLASS ACTION

NOTICE OF CERTIFICATION

THIS NOTICE IS IMPORTANT TO YOU.

IT IS PUBLISHED BY ORDER OF THE ONTARIO SUPERIOR COURT OF JUSTICE.

This notice is directed to:

All individuals who, between July 24, 2010 and June 27, 2016, were located in the province of Ontario and, for personal, family or household purposes, and not for business purposes, (a) purchased or licensed one or more of the following Norton-branded software products Norton™ AntiVirus, Norton™ Internet Security, Norton™ Security, Norton™ Security with Backup, Norton 360™, Norton™ One (collectively, the "Norton Products") through the websites www.norton.com or www.symantec.com, or (b) paid to renew a purchase or license of one or more of the Norton Products through an automatic renewal service provided by Symantec (the "Class Members" or the "Class").

THE CERTIFICATION ORDER

On October 9, 2018, the Ontario Superior Court of Justice (the "Court") certified the action *Lawrence et al. v. Symantec Corporation*, Court File No. V-16-562278-00CP (the "Class Action") as a class proceeding and appointed Ryan Lawrence and Florence Fazari as representative plaintiffs (the "Representative Plaintiffs") for the Class. The defendant in the Class Action is Symantec Corporation ("Symantec"), which manufactures and sells the Norton Products.

The Class Action relates to certain alleged defects in Norton Products. On behalf of Class Members, the Representative Plaintiffs allege that longstanding and serious vulnerabilities made the protection and security features of the Norton Products ineffective and that the Norton Products made users more susceptible to security breaches due to hacking, malware, and computer viruses. The Representative Plaintiffs seek compensation on behalf of Ontario residents who purchased or licensed the Norton Products through Symantec's websites, www.norton.com and www.symantec.com or who paid to renew their purchase or license of a Norton Product through an automatic renewal service provided by Symantec.

The certification order means that the Class Action may proceed to trial as a class action. Certification is a preliminary procedural matter. The merits of the claims in the Class Action, and the allegations of fact on which the claims are based, have not been finally determined by the Court. Symantec denies that the claims in the action have merit.

DO NOTHING IF YOU WANT TO PARTICIPATE IN THE CLASS ACTION

Class Members who want to participate in the Class Action are automatically included and need not do anything at this time.

YOU MUST OPT OUT IF YOU DO NOT WANT TO PARTICIPATE IN THE CLASS ACTION

Class Members who do not want to participate in the Class Action must opt out. If you want to opt out of the Class Action, you must complete a signed letter stating that you elect to opt out of the Norton AntiVirus Class Action and the letter must provide all of the following information:

- (i) The Norton Product(s) you purchased;
- (ii) The date(s) you purchased, or paid for the renewal of, the Norton Product(s);

AND

- (iii) Your name, address, telephone number, and signature. If you are submitting an opt-out request on behalf of a corporation or other entity, you must state your position and authority to bind the corporation or entity.

Your opt-out request must be sent by email, fax or mail to:

Investigation Counsel P.C.
Re: Norton AntiVirus Class Action
350 Bay Street, Suite 300
Toronto ON M5H 2S6
Email: nortonclassaction@investigationcounsel.com
Fax: 416-637-3445

In order for your opt out request to be valid, it must be postmarked or received no later than January __, 2019 and it must contain all of the required information.

Each Class Member who does not opt out of the Class Action will be bound by the terms of any judgment or settlement, whether favourable or not, and will not be allowed to prosecute an independent action against Symantec for any of the factual matters raised in the Class Action. If the Class Action is successful, you may be entitled to share in the amount of any award or settlement recovered. A Class Member who opts out will not be entitled to participate in the Class

Action and will not be entitled to share in the amount of any award or settlement.

A minor or a mentally incapable Class Member cannot be opted out of the Class without permission of the Court. The Children's Lawyer and/or the Public Guardian and Trustee, as applicable, must receive notice of such an opt-out request.

NO DIRECT COST TO YOU

The Representative Plaintiffs have entered into a contingency fee retainer agreement with law firm Investigation Counsel P.C. which provides that counsel will be paid only if the Class Action is successful or costs are recovered from the Defendant. If the action is successful, either through judgment on the common issues or by way of an approved settlement, the legal fees will be set by the Court, and the Court may order that these fees be paid out of the settlement proceeds or by the Defendant.

If the class action is not successful, you will NOT be responsible for any legal costs of the Class Action and will NOT have any other financial obligations because of the Class Action.

ADDITIONAL INFORMATION

For further information, Class Members can contact Class Counsel as follows:

Investigation Counsel P.C.
Attn: John Archibald
350 Bay Street, Suite 300
Toronto ON M5H 2S6
(416) 637-3152
nortonclassaction@investigationcounsel.com

Publication of this notice has been authorized by the Ontario Superior Court of Justice.

Court File No.: CV-16-562278-00CP

RYAN LAWRENCE and FLORENCE FAZARI

v.

SYMANTEC CORPORATION

Plaintiffs

Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings Under the *Class Proceedings Act, 1992*
Proceeding Commenced at Toronto

ORDER

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