Court File No. T-

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

E. SABBAG and **D. ROSSNER**

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, if the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: February 16, 2024

Issued by: _____
(Registry Officer)

Address of local office: Federal Court of Canada
30 McGill Street
Montréal, Quebec
H2Y 3Z7

TO: Attorney General of Canada
Department of Justice Canada
Guy-Favreau Complex
East Tower, 9th Floor
200 René-Levesque Boulevard West
Montreal, Quebec H2Z 1X4

CLAIM

I. DEFINED TERMS

1. In this Statement of Claim, the following capitalized terms have the following meanings (including both singular or plural as the context requires):

(a) "**ArriveCAN app**" or "**ArriveCAN application**" means the mobile application and web application that was developed, sold, and operated by Canada Border Services Agency for an advance **CBSA** Declaration to answer customs and immigration questions up to 72 hours in advance of entering Canada;

(b) "**CBSA**" means the Canada Border Services Agency;

(c) "**Quarantine Exempt**" or "**Exempted Persons**" means those persons were exempt from the obligation to quarantine upon arrival in Canada by virtue of having met the requirements as dictated by the Minister of Health, including, where applicable, having in their possession the prescribed information, including, evidence of being fully vaccinated against COVID-19;

(d) "***Quarantine Act***" means the *Quarantine Act*, SC 2005, c 20, as amended;

(e) "***Federal Courts Act***" means the *Federal Courts Act*, R.S.C., 1985, c. F-7, as amended;

(f) "***Federal Court Rules***" means the *Federal Court Rules*, SOR/98-106, as amended;

(g) "***Canadian Charter of Rights and Freedoms***" means the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to

the *Canada Act 1982* (UK), 1982, c.11, as amended;

(h) "***Crown Liability and Proceedings Act***" means the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, as amended;

(i) "**Class**" and "**Class Members**", means all persons in Canada that travelled to Canada during the **Class Period** and either used or attempted to use the **ArriveCAN application** and that were wrongly instructed to isolate themselves and monitor for signs and symptoms of COVID-19 despite being otherwise quarantine exempt where they submitted or attempted to submit the required documentation to Canada Border Services Agency;

(j) "**Class Period**" means the period of time during which the use of the **ArriveCAN app** was mandatory, beginning on November 21, 2020 and ending on October 1, 2022;

II. RELIEF SOUGHT

2. The Plaintiffs, on behalf of the Class, claim:

(a) An order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the *Federal Court Rules*;

(b) An order pursuant to Rules 334.12, 334.16 and 334.17 of the *Federal Court Rules* appointing the Plaintiffs, or, alternatively, one of the Plaintiffs, as the representative Plaintiff(s) for the Class;

(c) A declaration that the Government of Canada breached its common law, civil

law, and fiduciary duties to the Plaintiffs and the Class;

(d) A declaration that the Government of Canada infringed on the right to liberty and security of the person, as protected by s. 7 of the *Canadian Charter of Rights and Freedoms* and that the infringement of such rights is contrary to the principles of fundamental justice;

(e) A declaration that the Government of Canada infringed on the right to freedom from arbitrary detention or imprisonment, as protected by s. 9 of the *Canadian Charter of Rights and Freedoms*;

(f) Such just and appropriate remedy as may be ordered pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*, including damages for breach of ss. 7 and 9;

(g) General damages in an amount to be determined in the aggregate for the Class Members for, *inter alia*, pain, suffering, stress, trouble, inconvenience, anxiety, and loss of enjoyment of life;

(h) Special damages in an amount to be determined to compensate Class Members for, *inter alia*, loss of income/lost wages/lost earnings, medical expenses (diagnostic and evaluations to prove being negative for COVID-19), out-of-pocket expenses, and the cost of cancellation of trips/reservations/plans;

(i) Punitive (exemplary) and aggravated damages in the aggregate;

(j) Costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to rule 334.38 of the *Federal Courts*

Rules;

(k) Costs of the action on a substantial indemnity basis or in an amount that provides full indemnity; and

(l) Pre-judgment and post-judgment interest pursuant to the *Federal Courts Act*;

(m) Such further and other relief as this Honourable Court may deem just and appropriate in the circumstances.

III. THE PARTIES

A. The Representative Plaintiffs

3. The Plaintiff, E. Sabbag, is a Quebec resident.

4. The Plaintiff, D. Rossner, is a Quebec resident.

5. On May 17, 2022 the Plaintiffs drove to Lake Placid, New York. They slept there overnight at a hotel.

6. In the evening of May 18, 2022, the Plaintiffs both attempted to access the ArriveCAN app on their respective smartphones prior to returning to Canada by land; Mr. Sabbag having an Android phone, Google Pixel 4a 5g and Mr. Rossner, an iPhone 12.

7. Both Plaintiffs were unable to access the ArriveCAN app that they had downloaded prior to arriving at the port of entry of Saint-Bernard-de-Lacolle, Quebec and having no other choice, decided to head to the border to explain the issue to the border agent.

8. When they arrived at the Canadian border, they explained the situation to the border

agent; however, because they were not able to submit the requirement documentation by electronic means, they were instructed to quarantine. The Plaintiffs attempted to show the border agent their proof of vaccination to no avail.

9. The Plaintiffs called the border and spoke to a "manager" who informed them that there's nothing they can do as they have been instructed to send all persons that fail to show their ArriveCAN information directly into quarantine without exception.

10. The Plaintiffs then called the Public Health Agency of Canada and they were able to reach a "Quarantine Officer", Mr. Anatolie Duca, who informed them that in order to allow them out of the Mandatory Quarantine, they would have to wait for the results of the first required COVID-19 tests.

11. Both Plaintiffs then self-administered the COVID-19 tests and they were dropped off at a Purolator drop-off point at 3333 Côte-Vertu in Saint Laurent, Quebec.

12. For Mr. Sabbag, the results of his COVID-19 test took a week to arrive; for Mr. Rossner, his results arrived in 3-4 days' time.

13. As a result of the Mandatory Quarantine that had been imposed on the Plaintiffs, they both suffered damages in the following respects:

    (a) Specifically, Mr. Sabbag:

        - Had to cancel a long-weekend trip with his domestic partner for her birthday;

        - Had to cancel a trip to Winnipeg for a time-sensitive work matter;

- Had to give his guest lecture at Collège Notre-Dame-de-Lourdes in Longueuil on Zoom instead of in-person;

- Could not see his then two-year-old daughter for the quarantine period, to which he normally spends time with her every day;

- Had to rely on his domestic partner to take care of their daughter at times when it would normally be the caregiver (mornings and afternoons);

- Could not go to the gym to maintain his physical health routine.

(b) Specifically, Mr. Rossner:

- Had to cancel his trip to the Fairmont in Mont-Tremblant that he had been planning with his wife for their fiftieth wedding anniversary at a cost of $460.11;

- Had to cancel his sports activities;

- Could not go to the gym to maintain his physical health routine.

14. Both Plaintiffs had to reorganize their lives as they would have seen friends and family, gone outdoors, gone grocery shopping, and generally had a life outside of their quarantine residence during the period during which they were subjected to a wrongful quarantine.

15. In addition, they have suffered pain and suffering, stress, trouble and inconvenience, anxiety, lost hours making phone calls and dealing with the issues relating to the alleviation of the wrongful quarantine, and loss of enjoyment of life.

B. The Defendant

16. The Defendant, the Attorney General of Canada, is the Minister of Her Majesty the Queen in Right of Canada (the "Crown"), and is named in these proceedings by virtue of s. 23 of the *Crown Liability and Proceedings Act* and pursuant to the provisions of s. 17 of the *Federal Courts Act*.

17. The Attorney General of Canada is liable and vicariously liable for the acts and omissions of its servants/agents – including Canada Border Services Agency, the Public Health Agency of Canada, and Public Services and Procurement Canada – which were responsible for the contracting, development, and implementation of the ArriveCAN application, in accordance with ss. 3 and 10 of the *Crown Liability and Proceedings Act*.

IV. OVERVIEW

18. In response to the COVID-19 pandemic, from February 3, 2020 to September 30, 2022, 80 Canadian emergency orders were in effect pursuant to s. 58 of the *Quarantine Act*.

19. On March 11, 2020, the World Health Organization declared a global pandemic due to coronavirus disease (COVID-19);

20. Following the declaration, the Government of Canada implemented the following travel requirements for persons entering Canada:

    (a) On March 25, 2020, a mandatory quarantine required most people who entered Canada to isolate for 14 days and self-monitor themselves for COVID-19 symptoms. During this time, the Canada Border Services Agency manually collected contact and health information from most people entering Canada;

(b) On January 6, 2021, a pre-departure COVID-19 testing requirement applicable to air travel was implemented;

(c) On February 15, 2021, a pre-arrival COVID-19 testing requirement applicable to land/water travel was implemented;

(d) On February 21, 2021, a post-arrival COVID-19 testing requirement was implemented;

(e) Also on February 21, 2021, a mandatory hotel quarantine requirement for air travellers was implemented (this requirement ended on August 9, 2021, for all travellers, regardless of vaccination status);

V. THE ARRIVECAN APPLICATION

21. On April 29, 2020, the Canada Border Services Agency launched the digital application ArriveCAN – available through the web, iOS, and Android mobile apps – to collect contact and health information from people entering Canada.

22. On November 21, 2020, the use of the ArriveCAN app became a mandatory requirement for travellers entering Canada.

23. Following the introduction of the COVID-19 vaccines, the Government of Canada somewhat relaxed its COVID-19 travel requirements for “fully-vaccinated” travellers. These fully-vaccinated travellers were exempt from almost all COVID-19 travel requirements imposed by the Order-in-Council at the time, including being Quarantine Exempt, being subject only to the following mandatory travel requirements:

(a) The first post-arrival COVID-19 testing requirement, performed at the time of entry, if randomly selected for this purpose; and

(b) The requirement to complete the ArriveCAN app requirements.

24. The last emergency order, which was effect during the dates in question provided:

"Suitable quarantine plan – requirement

19(4)

Electronic means

(4) A person who enters Canada must provide their suitable quarantine plan or their contact information by electronic means specified by the Minister of Health, unless they are a member of a class of persons who, as determined by the Minister of Health, are unable to provide their plan by those electronic means for a reason such as a disability, inadequate infrastructure, a service disruption or a natural disaster, in which case the plan must be provided in the form and manner and at the time specified by the Minister of Health."

"Information – countries

20(8)

Electronic means

(8) A person who enters Canada must provide the information referred to in subsection (1) and paragraph (2)(a) and the evidence of COVID-19 vaccination referred to in paragraph (2)(b) that they are required to provide by electronic means specified by the Minister of Health, unless they are a member of a class of persons who, as determined by the Minister of Health, are unable to provide their information by those electronic means for a reason such as a disability, inadequate infrastructure, a service disruption or a natural disaster, in which case the information must be provided in the form and manner and at the time specified by the Minister of Health."

"23 A person who is required to quarantine under this Part must (a) report their arrival at, and the civic address of, their place of quarantine within 48 hours after entering Canada, in the case of a person referred to in section 22, or after their arrival at the place of quarantine, in the case of a person referred to in subsection 32(4), to the Minister of Health, screening officer or quarantine officer, by electronic means specified by the Minister of Health or by telephone using a number specified by the Minister of Health, unless they are a member of a class of persons who, as determined by the Minister of Health, are unable to report that information by those means for a reason such as a disability, inadequate infrastructure, a service disruption or a natural disaster, in which

case the reporting must be done in the form and manner and at the time specified by the Minister of Health; and

(b) while they remain in quarantine,

(i) monitor for signs and symptoms of COVID-19, and

(ii) report daily on their health status relating to signs and symptoms of COVID-19 to the Minister of Health, screening officer or quarantine officer, by electronic means specified by the Minister of Health or by telephone using a number specified by the Minister of Health, unless they are a member of a class of persons who, as determined by the Minister of Health, are unable to report that information by those means for a reason such as a disability, inadequate infrastructure, a service disruption or a natural disaster, in which case the reporting must be done in the form and manner and at the time specified by the Minister of Health."

25. Based on the information they submitted, ArriveCAN would determine whether incoming travellers were exempt from the obligation to quarantine. This determination relied on information provided directly from users (e.g., date of birth), as well as information generated automatically by ArriveCAN (e.g., validity of the proof of vaccination credential. If ArriveCAN: (i) determined that a traveller arriving by air was required to quarantine, or (ii) was unsure whether they were exempt (e.g, if the authenticity of the proof of vaccination credential could not be verified), then the traveller's ArriveCAN submission would be reviewed by a CBSA officer upon their arrival at the port of entry (e.g. an international airport). At land ports of entry (e.g., highway crossing along the Canada-US border), all ArriveCAN submissions were reviewed by a CBSA officer.

26. On June 28, 2022, version 3.0 of ArriveCAN was released. In this iteration of the application, travellers using the iOS version of ArriveCAN (i.e., the version of ArriveCAN for Apple mobile devices) who had saved their submission form after selecting the travellers for the trip and who later returned to the form to complete the submission would incorrectly have their "quarantine_exempted" value set as 'false' by

ArriveCAN. We note that this value was determined by the ArriveCAN application and was thus not a data field submitted directly by the user.

27. After entering into Canada, ArriveCAN would send automated notifications and emails to users whose "quarantine_exempted" value was set as false (i.e., all travellers affected by the error), instructing them to quarantine and to report on their health status, or else risk receiving fines of up to $5,000. Individuals who did not respond to these notifications could then receive compliance verification calls from PHAC representatives. These representatives would have believed that the affected individuals were required to quarantine, as the data transferred to PHAC included the erroneous "quarantine_exempted" value.

28. From June 28 to July 20, 2022, approximately 10,200 Apple device users received erroneous quarantine instructions directly from ArriveCAN (via an application notification) and from an email generated by ArriveCAN.

29. By way of example, upon returning from a trip to Chicago, Illinois, Don and Karin Bennett of Burlington, Ontario, both of whom were fully vaccinated and both of whom filed out the ArriveCAN app, and both of whom were therefore quarantine exempt, had received quarantine instructions from ArriveCAN. Fearful of the consequences, including the threats of fines of $5,000, Karin began to quarantine.

30. The Canada Border Services Agency "identified a technical glitch with the app that ... can produce an erroneous notification instructing people to quarantine" Audrey Champoux, press secretary to Public Safety Minister Marco Mendicino, said in an email.

31. This is but one example of the consequences of the fault with ArriveCAN app's

functionality.

32. Complaints about ArriveCAN include technical glitches, harsh penalties for non-compliers, and not being user-friendly for seniors. “When I say ArriveCAN, what words come to mind? ‘Unreliable’, ‘frustrating,’ ‘ageist,’ ‘broken,’ ... these are some of the words constituents of mine have used,” said Conservative public safety critic Raquel Dancho last month during question period in the House of Commons.

33. Upon returning from a trip to New York, vaccinated Ontario couple, Eric and Kerri Langer, were unable to load the ArriveCAN app before crossing the border to return home. They were ordered to quarantine as a result and instead, they drove back into the United States and returned to Canada to another port of entry to re-show their proof of vaccination papers to a border agent. The second time around, their papers were accepted and they were not ordered to quarantine.

34. Many people have had many issues with the ArriveCAN app, including inability to load, inability to submit the required information, submission failure codes, or wrongly receiving robocalls to quarantine.

VI. THE PERFORMANCE AUDIT AND THE INVESTIGATION

35. On November 2, 2022, the House of Commons passed a motion that called on the Office of the Auditor General of Canada to conduct a performance audit of the government’s management of the ArriveCAN application.

36. The 2024 Report of the Auditor General of Canada to the Parliament of Canada (the “Report”) concluded the following:

(a) The Canada Border Services Agency, the Public Health Agency of Canada, and Public Services and Procurement Canada repeatedly failed to follow good management practices in the contracting, development, and implementation of the ArriveCAN application;

(b) "Practices to manage ArriveCAN were missing at the most basic levels", which affected "sound project design, implementation, oversight, and accountability";

(c) There were deficiencies in how Canada Border Services Agency and the Public Health Agency of Canada managed the experience and qualification requirements of its professional services contracts in outsourcing the ArriveCAN app leading to improper resources with inadequate IT experience;

(d) There was a "Lack of clear deliverables and task descriptions"; and

(e) "There were deficiencies in the testing of the ArriveCAN application" and "Poor documentation of application testing"

> "1.77 We found that between April 2020 and February 2022, there were no documented approvals ensuring that all business requirements were fulfilled prior to the releases of new versions of the ArriveCAN application. The Canada Border Services Agency told us that it understood the risks of emphasizing quick delivery, which meant fewer controls and less documentation around new versions of the application.
>
> 1.78 From the time ArriveCAN was launched in April 2020 until the health requirements were lifted in October 2022, the agency released a total of 177 versions of the application (Exhibit 1.4). A release is when 1 or more changes made to a software are deployed after the application has become available to the people who use the service. Of these 177 releases, 25 were considered major—that is, they included substantial changes."

37. Ultimately the Auditor General found that there had been a glaring disregard for basic management and contracting practices surrounding the ArriveCAN application.

38. Between April 2020 and October 2022, the Canada Border Services Agency released 177 versions of ArriveCAN with often little to no documentation of testing. In one update, beginning on June 28, 2022, approximately 10,200 travellers received erroneous notifications from the ArriveCAN application, instructing them to quarantine under emergency measures imposed during the COVID-19 pandemic.

39. The Office of the Privacy Commissioner of Canada conducted an investigation into the ArriveCAN app and recommended that Canada Border Services Agency correct the inaccurate information in its database. It found that Canada Border Services Agency did not meet the requirements of the *Privacy Act*, R.S.C., 1985, c. P-21 as it did not take all reasonable steps to ensure the accuracy of the information that it used for an administrative decision-making process.

40. The ArriveCAN app ceased being mandatory as of October 1, 2022.

VII. THE PROPOSED CLASS

41. This action is brought as a proposed class action pursuant to Rule 334.12 of the *Federal Court Rules* on behalf of the following proposed class:

> "All persons that travelled to Canada between November 21, 2020 and October 1, 2022 and either used or attempted to use the ArriveCAN application and that were wrongly instructed to isolate themselves and monitor for signs and symptoms of COVID-19 despite being otherwise quarantine exempt where they submitted or attempted to submit the required documentation to Canada Border Services Agency."

42. There are questions of law and fact common to the proposed class. The claims of the Plaintiff are typical of the claims of the proposed class members and the Plaintiff herein will adequately represent and protect the interests of the said proposed class.

43. Separate actions by individual members of the proposed class would create a risk of inconsistent adjudications with respect to Individual members of the class.

VIII. LEGAL BASIS

A. The Defendant breached its common law, civil law, and fiduciary duties to the Plaintiffs and to the Class

44. The Government of Canada's conduct during the Class Period, including the following particulars, constituted a systematic breach of its duties and obligations to the Class including in the following ways:

(a) It negligently designed the ArriveCAN app;

(b) It failed to initially design the ArriveCAN app to be able to function reliably;

(c) It failed to complete user testing for at least 12 of the 25 major releases of the application, and 10 releases were plagued by incomplete user results;

(d) It subjected travellers to Canada to a mandatory requirement that they were unable to fulfill at times, leading to penalties and threat or penalties;

(e) It breached its fiduciary duty to Class Members;

(f) It failed to ensure that appropriate measures were put into place to allow travellers to Canada to fulfill requirements to have their Quarantine Exemption status recognized;

(g) It failed to maintain an adequate supervisory jurisdiction over the ArriveCAN

app;

45. To directly quote the Auditor General's Report: "Without having the assurance that testing was completed, the agencies were at risk of launching an application that might not work as intended."

46. The Defendant expressly recognized that the ArriveCAN app was negligently designed. In its response to the Auditor General's recommendation for the Defendants to carry out and document testing and document results and any outstanding issues, the Canada Border Services Agency, one of the Defendants, stated that it "recognize[s] that, given the constantly evolving pandemic environment and the requirement for 177 releases in 36 months, testing documentation was insufficient during ArriveCAN development." The Agency also admitted that "[i]t was not feasible to complete all testing documentation as per existing procedures in this emergency environment."

B. The Defendant's actions infringe the Plaintiffs' and Class Members' rights as protected under s. 7 of the *Canadian Charter of Rights and Freedoms*

47. Section 7 of the *Canadian Charter of Rights and Freedoms* states as follows:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

48. The Defendant's decision to order that the Plaintiffs and Class Members quarantine themselves for 14 days on the basis of the arbitrary, inaccurate, incorrect and unreliable results generated by the ArriveCAN application interfered with or deprived their right to liberty under section 7 of the *Canadian Charter of Rights and Freedoms*.

49. The Plaintiff and Class Members' right to liberty was infringed because the quarantine orders issued by the Defendants required them to remain at home or otherwise restricted their physical movement to specific locations designated in the quarantine orders.

50. The Plaintiffs and Class Members were deprived of the right to life, liberty and security of the person because they were wrongfully instructed to quarantine, on pain of penalty. Their freedom of movement and right to personal autonomy were interfered with.

51. The deprivation of the Plaintiffs' and Class Members' right to liberty was not in accordance with the principles of fundamental justice. An essential principle of fundamental justice is that laws and other state action not be arbitrary. The protection against arbitrariness is a cornerstone of the rule of law.

52. The quarantine orders issued by the Defendants against the Plaintiff and Class Members by were inescapably arbitrary. As reported in the Auditor General's Report on the ArriveCAN application, the "more than 10,000 iOS users who entered Canada between 28 June and 20 July 2022" were required to quarantine "even though they had submitted the required information, including their proofs of vaccination." This is only a sample of the individuals comprising the entire Class of persons against whom quarantine orders were issued in reliance of the incorrect and arbitrary ArriveCAN app.

53. The quarantine orders also infringed the Plaintiffs' and Class Members' right to liberty in a manner inconsistent with the principle that laws and state action not be overbroad. Even if it can be contended that at least some quarantine orders issued on the basis of the ArriveCAN app captured persons who would have been required to quarantine based on reliable and accurate results, the fact remains that the Plaintiffs and Class Members were

vaccinated and provided other documentation establishing that quarantine orders should not have been issued against them. The quarantine orders issued against the Plaintiffs and Class Members are therefore overbroad.

54. Overall, the quarantine orders issued against the Plaintiffs and Class Members infringed their right to liberty under section 7 of the *Canadian Charter of Rights and Freedoms* in a manner that was arbitrary and overbroad.

55. The Defendant's violation of this fundamental right cannot be saved by section 1 of the *Canadian Charter of Rights and Freedoms,* as it does not constitute a reasonable limit prescribed by law that is demonstrably justified in a free and democratic society.

C. The Defendant's actions infringed the Plaintiffs' and Class Members' rights as protected under s. 9 of the *Canadian Charter of Rights and Freedoms*

56. Section 9 of the *Canadian Charter of Rights and Freedoms* states as follows:

> Everyone has the right not to be arbitrarily detained or imprisoned.

57. The Defendant's decision to order that the Plaintiffs and Class Members quarantine themselves for 14 days on the basis of the arbitrary, inaccurate, incorrect and unreliable results generated by the ArriveCAN application infringed their right not to be arbitrarily detained under section 9 of the *Canadian Charter of Rights and Freedoms*.

58. The quarantine orders required Class Members to remain in their quarantine residence for a period of time, typically, 14 days, under threat of legal sanction. A reasonable person in the Plaintiff and Class Members' situation would have understood that they were not free to go.

59. The fact that the Plaintiff and Class Members were confined to their own home does not displace this conclusion as their physical liberty was restrained in the same or similar manner as if an agent of state had been placed on their doorstep in order to ensure compliance with the quarantine order.

60. The detention was arbitrary for the same reasons that the deprivation of the Plaintiff and Class Members' s. 7 right to liberty is contrary to the principle of fundamental justice against arbitrary laws and state action.

61. The Crown's violation of this fundamental right cannot be saved by section 1 of the *Canadian Charter of Rights and Freedoms*, as it does not constitute a reasonable limit prescribed by law that is demonstrably justified in a free and democratic society.

IX. DAMAGES

62. As a result of the Government of Canada's breach of its common law, civil law, statutory, and fiduciary duties, including breaches by its servants/agents, the Plaintiffs and other Class members suffered injuries and damages, including, but not limited to, the relief sought above, and for the following:

(a) The Government of Canada's conduct in introducing and maintaining a faulty add, being the ArriveCAN app, caused Class Members to be denied their civil liberties and forcibly confined to their quarantine residences for no legitimate reason;

(b) Class Members suffered out-of-pocket cancellation fines for trips, restaurants, hotels, and more due to being forcibly confined to their quarantine residences;

(c) Class Members missed out on special occasions and on all occasions for which they had intended to be present in society;

(d) Class Members suffered a deprivation of their regular life activities, pain and suffering, stress, trouble and inconvenience, anxiety, lost hours dealing with the issues relating to the alleviation of the forced quarantine, and loss of enjoyment of life.

63. As for damages under the *Canadian Charter of Rights and Freedoms*, the Plaintiffs and Class Members suffered loss as a result of the breach of ss. 7 and 9. An award of damages under section 24(1) is appropriate in this case because it would compensate the Class members for the loss they have suffered. It would also vindicate the Class Members' rights under the *Canadian Charter of Rights and Freedoms* and deter future impugned conduct by the Government of Canada.

64. The high-handed way that the Government of Canada conducted its affairs warrants the condemnation of this Honourable Court in the form of punitive damages. The Government of Canada, including its agents, had complete knowledge of the fact and effect of its negligent and discriminatory conduct with respect to the mandatory usage of the oftentimes defunct ArriveCAN app. It proceeded in callous indifference to the foreseeable injuries that the Class Members would, and did suffer.

65. The Plaintiffs propose that this action be tried at the Federal Court in Montreal, Quebec.

February 16, 2024

CONSUMER LAW GROUP
Per: Andrea Grass
1030 rue Berri, Suite 102
Montreal, QC H2L 4C3

150 Elgin Street, 10th Floor
Ottawa, ON K2P 1L4

Jeff Orenstein / Andrea Grass
jorenstein@clg.org
agrass@clg.org

Tel: 514-266-7863
Fax: 514-868-9690

Lawyers for the Plaintiffs

Court File No. T- 319-24

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

E. SABBAG and **D. ROSSNER**

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

STATEMENT OF CLAIM

CONSUMER LAW GROUP
Jeff Orenstein (Ext. 2)
Andrea Grass (Ext. 3)
1030 rue Berri, Suite 102
Montreal, Quebec, H2L 4C3

150 Elgin Street, 10th Floor
Ottawa, ON K2P 1L4

Telephone: (514) 266-7863
Telecopier: (514) 868-9690
jorenstein@clg.org
agrass@clg.org

Consumer Law Group