

CANADA
 PROVINCE OF QUEBEC
 DISTRICT OF MONTREAL

NO: 500-06-000676-136

(Class Action)
 SUPERIOR COURT

J. DRESNER

Petitioner

-vs.-

WESTERN UNION FINANCIAL SERVICES (CANADA), INC., legal person duly constituted having its head office at 4000-199 ST Bay, City of Toronto, Province of Ontario, M5L 1A9

and

WESTERN UNION FINANCIAL SERVICES, INC., legal person duly constituted having its head office at 6200 South Quebec Street, City of Greenwood Village, State of Colorado, 80112, U.S.A.

and

THE WESTERN UNION COMPANY, legal person duly constituted having its head office at 12500 Mount Belford Avenue, City of Englewood, State of Colorado, 80112, U.S.A.

Respondents

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
 &
 TO ASCRIBE THE STATUS OF REPRESENTATIVE
 (Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
 SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER
 STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:
 - all residents in Canada (a) who sent money using Western Union's Money Transfer Services, whose Western Union transaction was not redeemed within 30 calendar days; and (b) who either (i) have not claimed their Money Transfer Funds (nor had that money claimed on their behalf) from Western Union; or (ii) who sought and received a refund of their money, but did not receive a payment for interest on that money and/or where Western Union charged an administrative fee deducted against the principal amount of the money transfer, or any other group to be determined by the court;

Alternatively (or as a subclass)

- all residents in Quebec (a) who sent money using Western Union's Money Transfer Services, whose Western Union transaction was not redeemed within 30 calendar days; and (b) who either (i) have not claimed their Money Transfer Funds (nor had that money claimed on their behalf) from Western Union; or (ii) who sought and received a refund of their money, but did not receive a payment for interest on that money and/or where Western Union charged an administrative fee deducted against the principal amount of the money transfer, or any other group to be determined by the court;
2. "Western Union Money Transfer Service" or "Money Transfer Service" is a consumer-to-consumer or consumer-to-business money transfer transaction initiated using Western Union's services;
 3. "Money Transfer Funds" is the principal amount of money that the owner/sender sent using Western Union Money Transfer Services;
 4. Petitioner contends that the Respondents have been employing an unconscionable and unfair policy of holding funds for wire transfer provided by members of the class to Western Union when Western Union failed to complete the wire transfer and failed to notify the sender thereby taking advantage of consumers;
 5. By reason of Respondents' acts and omissions, Petitioner and the members of the class suffered damages upon which they wish to claim;

B) The Respondents

6. Respondent Western Union Financial Services (Canada) Inc. (“Western Union Canada”) is a Canadian company with its head office in Toronto. It is a wholly-owned subsidiary of The Western Union Company (“Western Union Co.”) that does business throughout Canada, including within the province of Quebec, the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-1**;
7. Respondent Western Union Financial Services (“Western Union Finance”) is an American company with its head office in Colorado that provides consumer money transfer services. It is a wholly-owned subsidiary of Western Union Co.;
8. Respondent Western Union Co. is an American company with its head office in Colorado that provides financial services and communications. It is the parent company of Western Union Canada and of Western Union Finance;
9. All Respondents have either directly or indirectly failed to notify senders of uncompleted money transfers, retained the resulting funds, including the initial service charge for the transfer (“Uncompleted Transfer Funds”) whilst earning interest on the amount and/or deducted an administrative fee from the principal amount for the retention throughout Canada, including within the Province of Quebec;
10. Given the close ties between the Respondents and considering the preceding, all Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Respondents will be referred to as “Western Union” for the purposes hereof;

C) The Situation

11. Western Union is the industry leader in global money transfers;
12. According to Western Union’s 2012 Annual Report, “Individual money transfers from one consumer to another are the core of our business, representing 81% of our total consolidated revenues for 2012”, and it boasted that it generated “strong cash flow”, but apparently a portion of this “strong cash flow” include the funds that at are issue in this litigation, the whole as appear more fully from a copy of an extract from Western Union’s 2012 Annual Report¹, produced herein as **Exhibit R-2**;
13. This “core” consumer-to-consumer business largely relies on individuals, many of whom are economically disadvantaged and/or financially unsophisticated. Indeed, a risk factor in Western Union’s Forward Looking Statements in Part I of its 2012 Annual Report (Exhibit R-2) is “changes in

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immigration laws, interruptions in immigration patterns and others factors related to migrants.”²;

14. Western Union’s 2012 Annual Report (Exhibit R-2) states that “The Western Union® brand is globally recognized and represents speed, reliability, trust and convenience” and that its “consumer-to-consumer money transfer service enables people to send money around the world, usually in minutes”. The Annual Report goes on to reiterate that the “sending agent enters the transaction information into our money transfer system and the funds are made available for payment, usually within minutes”.³ Western Union thus knows “within minutes” of the funds being provided to it and whether those funds have been successfully transferred;
15. As a general matter, there are two (2) ways that Western Union money transfers are not completed (“Uncompleted Transfers”):
 - a) An “Unredeemed Transfer”: If the Money Transfer Funds are never picked up by the intended recipient; and
 - b) A “Failed Transfer”: If the transfer fails and Money Transfer Funds are not made available to the intended recipient;
16. Despite having contact information for the sender/owner of the funds, Western Union does absolutely nothing when it learns that a money transfer was not completed regardless of the reason for the money transfer failure. Instead, Western Union holds the money in its own accounts and makes use of the funds, and the interest on the funds, for its general cash flow needs;
17. Western Union continues to freely plunder the income earned on these funds, and the interest on these funds and uses the funds for its own purposes;
18. In Quebec, Western Union has been benefitting from an inadvertent circumvention of the application of the *Unclaimed Property Act, RSQ, c B-5.1* (hereinafter, the “Act”) as the Act does not to apply to their Money Transfer Services. This evasion has been enabling them to avoid discovery by Revenue Quebec who would otherwise recover the Uncompleted Transfer Funds and publish their existence in the Register of Unclaimed Property for owner recovery;
19. The object of the Act is to “facilitate the recovery of unclaimed property by right-holders and to ensure that property without an owner or property in respect of which the right-holders remain unknown or untraceable is delivered to the State”, in other words, the spirit of the Act aims to aid owners to retrieve their property where possible, and failing that, Revenue Quebec would

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become the provisional administrator where owners are “unknown or untraceable”. There are two (2) reasons that Western Union has been able to wrongfully retain the Uncompleted Transfer Funds despite the existence of the Act:

- a) Under article 2 of the Act, Revenue Quebec cannot gain jurisdiction to become the provisional administrator of the Uncompleted Transfer Funds because the senders’ coordinates in this case are available and are therefore not “unknown or untraceable”:

“In addition to property otherwise entrusted by law to the administration of the Minister of Revenue, the Minister of Revenue is the provisional administrator of:

...

(10) property situated in Québec, other than property referred to in subparagraphs 1 to 9, **where the owner or other right-holder is unknown or untraceable;**
and

- b) Under article 3 of the Act, the Uncompleted Transfer Funds cannot be considered as “unclaimed property” as Western Union is neither a “financial institution” nor are the money transfers “deposits” or other negotiable instruments;

20. To the detriment of Class Members, the Act presupposes that if the owner of the property is known, ascertainable and/or readily traceable, then the property will simply be returned to its rightful owner. It is in this way that Western Union has been unjustly retaining the Uncompleted Transfer Funds; it does not notify the owner whose coordinates they hold upon entering into the contract of service and it has no legal obligation to report the property to Revenue Quebec as the owner is both known and traceable and the other criteria of “financial institution” or “deposits” are not applicable;

21. To date, Western Union has been wrongfully considering the Uncompleted Transfer Funds as “movables without an owner” leading to a faulty characterization of the property as “abandoned”, when in fact, Western Union never received any communication to the effect that the owner/senders actively abandoned ownership and control over the Money Transfer Funds, which would be impossible in any case as Western Union never informed Class Members of the existence of the Uncompleted Transfer Funds;

22. In order that the Uncompleted Transfer Funds be properly characterized as abandoned property and therefore subject to ownership by appropriation and occupation, there must have been an unilateral and voluntary act by the owner; an unequivocal expression of intent to abandon the property. Given that in this case, the Respondents are not in communication with the

owners/senders after the transfers are uncompleted, these conditions cannot be satisfied and Western Union is therefore misappropriating and occupying the Uncompleted Transfer Funds without any legal right;

23. Western Union had a duty to inform the sender about the status of the Uncompleted Transfer and of the availability to recover the Uncompleted Transfer Funds, which continue to belong to the sender, particularly so given that the sender's information was clearly available. Western Union failed in this duty as no attempts were made to locate the owner and to return the Uncompleted Transfer Funds. More specifically, Western Union had a duty to use the easily accessible coordinates of the sender to inform him or her of the status of the funds or to inform a peace officer if locating the sender were not possible;
24. Western Union has been deliberately withholding relevant information to the sender regarding the status of the transfer as uncompleted and has been actively preventing owners from knowing that their property was being held and from knowing that the purpose of the contract which they entered into has been frustrated;
25. Further, in the rare instances where the owner of the Uncompleted Transfer Funds actually does discover and recover the Funds on their own, Western Union does not return the interest that accumulated on the funds and Western Union charges a non-refundable administration fee, frequently in excess of ten (\$10) dollars, purportedly to compensate Western Union for its "costs" of holding the money, the whole as appears more fully from a copy of Western Union's Terms and Conditions, produced herein as **Exhibit R-3**;
26. The imposition of administration charges and fees is wholly unreasonable as there are no costs to Western Union for retaining the funds, only benefits. And for a large number of Class members, Western Union is still, at present, holding onto their Uncompleted Transfer Funds;
27. What Western Union should be doing is promptly notifying customers, i.e., Class members, who have entrusted Western Union with their funds, and informing them that their transfer was not completed. As outlined above, with respect to failed transfers, Western Union knows "in minutes" that the wire transfer has failed (Exhibit R-2);
28. According to Western Union's 2012 Annual Report (Exhibit R-2), such Uncompleted Transfer Funds, or "unsettled money transfers," are classified as "settlement assets" and "are not used to support [Western Union] operations", but are utilized to "earn income" for the company⁴. Western

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Union reported \$712.5 million of such “settlement assets” on hand in 2011 and \$574.5 million on hand in 2012⁵;

29. Western Union’s business practice of holding unremitted funds without contacting the owner of the funds and of making use of those funds for its own benefit while at the same time seeking a fee from the customer in order to return the funds is civilly fraudulent and deceptive as is clearly laid out below:
- a) Western Union offers Money Transfer Services for an fee at the outset for services which occasionally fail to transfer customers’ money successfully, becoming Uncompleted Transfers;
 - b) Western Union has the contact information for each of its customers, yet when the money the customer paid to have transferred does not go through, Western Union does not return this money to its customers, or even notify them that the transfer has failed and/or their money has not been redeemed despite the ease through which this could be done; and
 - c) Western Union’s failure to return its customers’ money to them or to notify them that their transaction did not complete is particularly egregious in light of their long-time emphasis on speed as being a major benefit of their service (for instance, using the slogan: “The fastest way to send money – worldwide.”);
30. Due to the large volume of money transfers in which Western Union engages, the total value of Uncompleted Transfer Funds in its possession is very large. Although this amount is presently unknown, the publicly available information referenced herein suggests it may be hundreds of millions of dollars. All of this money should rightfully be returned to Western Union’s customers, not used as a source of revenue for Western Union;
31. The Respondents’ acts of civil fraud and deception have enriched themselves through retaining the Funds belonging to the Petitioner and Class, including earning and retaining interest and charging an administrative charge for “holding” those funds. This enrichment is at the expense of depriving Class Members of their rightful property, including any and all fruits derived therefrom without any justification;
32. The acts and practices of the Respondents as set forth herein were, and are, civilly fraudulent and deceptive in that they:
- (a) Failed to return Uncompleted Transfer Funds to their owners;

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- (b) Failed to remit interest thereon upon returning Uncompleted Transfer Funds;
 - (c) Deducted a fee against the principal amount of the Uncompleted Transfer Funds even though they reaped profits from unjustly holding onto the funds; and
 - (d) Failed to disclose the above business practices to consumers.
33. To date, Western Union has been employing these unfair business practices without consequence in Canada, including in the Province of Quebec, and elsewhere;
34. Petitioner and members of the Class were deprived of their possession of Uncompleted Transfer Funds, thereby causing Petitioner and members of the Class to suffer economic damages, including, but not limited to the following:
- a) Where Uncompleted Transfer Funds were never returned to the owner/sender:
 - i. The amount of the Uncompleted Transfer Funds; and
 - ii. Compensation for the period during which they were deprived of possession in the greater amount of:
 - Interest calculated on the amount of money withheld with the Barreau du Quebec legal tax rate and additional indemnity calculator; or alternatively
 - Interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act R.S.C., 1985, c. I-15*; or alternatively
 - Any and all interest earned thereon by the Respondents;
 - b) Where the Uncompleted Transfer Funds were returned to the owner/sender, the greater amount of:
 - i. Interest calculated on the amount of money withheld with the Barreau du Quebec legal tax rate and additional indemnity calculator; or alternatively
 - ii. Interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act R.S.C., 1985, c. I-15*; or alternatively
 - iii. Any and all interest earned thereon by the Respondents; and

- iv. Any administrative fee deducted against the principal amount of the refunded Uncompleted Transfer Funds;
- c) Punitive damages;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

35. On or about April 4, 2013, Petitioner Dresner went to a Western Union agent location to transfer \$40.00 using Western Union's Money Transfer Service, the whole as appears more fully from a copy of Petitioner's Contract of Service and Receipt of Payment, produced herein *en l'iasse* as **Exhibit R-4**;
36. Petitioner had previously discovered, while researching online, that a class action was filed in the United States and subsequently settled against Western Union for these same acts and practices, the whole as appears more fully from a copy of the U.S. Class Action Complaint, a copy of the Amended Class Action Complaint and a copy of the Settlement Agreement, produced herein *en l'iasse* as **Exhibit R-5**;
37. Western Union charged Petitioner \$11.00 to transfer the payment;
38. Western Union did not complete the money transfer and the transfer failed;
39. Western Union kept Petitioner's money and did not return it or otherwise notify him that it was in its possession. In addition to unfairly retaining Petitioner's Money Transfer Funds, Western Union earned interest and other income on those funds, and Western Union kept the \$11.00 it charged him to purportedly transfer the funds;
40. Due to the Respondents' conduct, Petitioner was deprived of his funds, including interest;
41. Petitioner's damages are a direct and proximate result of the Respondents' conduct and the companies' civilly fraudulent and misleading acts and practices;
42. In consequence of the foregoing, Petitioner is justified in claiming as damages:
- a) \$40.00 as the amount of the Uncompleted Transfer Funds retained by the Respondents; and
 - b) Compensation for the period during which he was deprived of possession in the greater amount of:

- i. Interest calculated on the amount of money withheld with the Barreau du Quebec legal tax rate and additional indemnity calculator from April 4, 2013; or alternatively
 - ii. Interest at the rate of 5% on the amount of money withheld since April 4, 2013 in accordance with the *Interest Act R.S.C., 1985, c. I-15*; or alternatively
 - iii. Any and all interest earned thereon by the Respondents; and
- c) Punitive damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

43. Every member of the class has sent money using Western Union's Money Transfer Services which was not redeemed within 30 calendar days and either never claimed their Money Transfer Funds or claimed their funds, but did not receive a payment for interest and/or were charged an administrative fee deducted against the principal amount of the money transfer;
44. The class members were, therefore, deprived of their property by the Respondents' civilly fraudulent and misleading acts and practices;
45. Had the Respondents disclosed the truth that they would not return Uncompleted Transfer Funds, that they would use the Uncompleted Transfer Funds to generate income that they would keep for themselves and/or that they would charge a fee to finally refund Uncompleted Transfer Funds even though they reaped profits from unjustly holding onto the Uncompleted Transfer Funds, reasonable consumers would either not have used Western Union's Money Transfer Services or would have followed-up and redeemed their Money Transfer Funds resulting from uncompleted transfers;
46. Each member of the class is justified in claiming at least one or more of the following as damages:
- a) Where Uncompleted Transfer Funds were never returned to the owner/sender:
 - i. The amount of the Uncompleted Transfer Funds; and
 - ii. Compensation for the period during which they were deprived of possession in the greater amount of:



- Interest calculated on the amount of money withheld with the Barreau du Quebec legal tax rate and additional indemnity calculator; or alternatively
 - Interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act R.S.C., 1985, c. I-15*; or alternatively
 - Any and all interest earned thereon by the Respondents;
- b) Where the Uncompleted Transfer Funds were returned to the owner/sender, the greater amount of:
- i. Interest calculated on the amount of money withheld with the Barreau du Quebec legal tax rate and additional indemnity calculator; or alternatively
 - ii. Interest at the rate of 5% on the amount of money withheld in accordance with the *Interest Act R.S.C., 1985, c. I-15*; or alternatively
 - iii. Any and all interest earned thereon by the Respondents; and
 - iv. Any administrative fee deducted against the principal amount of the refunded Uncompleted Transfer Funds; and
- c) Punitive damages;
47. Respondents engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
48. All of these damages to the class members are a direct and proximate result of the Respondents' conduct;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
49. Petitioner is unaware of the specific number of persons who sent money using Western Union's Money Transfer Services which was not redeemed within 30 calendar days and either never claimed their Money Transfer Funds or claimed their funds, but did not receive a payment for interest and/or were charged an administrative fee deducted against the principal amount of the money transfer; however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands). However, Western Unions

database could easily establish the number of Class Members and the great majority of those Class Members' coordinates, if necessary;

50. Class members are numerous and are scattered across the entire province and country;
 51. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondents would increase delay and expense to all parties and to the court system;
 52. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;
 53. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
 54. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioner wishes to have adjudicated upon by this class action
55. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
 56. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, Respondents' misconduct;
 57. The recourses of the members raise identical, similar or related questions of fact or law, namely:
 - a) Did the Respondents engage in unfair, civilly fraudulent, misleading, and/or deceptive acts or practices in failing to disclose that they would not return Uncompleted Transfer Funds, that they would use the Uncompleted Transfer Funds to generate income that they would keep for themselves and/or that they would charge a fee to finally refund Uncompleted Transfer



Funds even though they reaped profits from unjustly holding onto the Uncompleted Transfer Funds?

- b) Did the Respondents fail to make reasonable efforts to inform Class Members about the uncompleted status of their Money Transfer Funds?
- c) Did the Respondents fail to return Uncompleted Transfer Funds?
- d) Did the Respondents use the Uncompleted Transfer Funds to generate income that they would keep for themselves?
- e) Are the Respondents liable to pay interest at the legal rate or otherwise on the amount of Uncompleted Transfer Funds for the time during which they were withheld from Class Members?
- f) Did the Respondents charge an administrative fee to finally refund Uncompleted Transfer Funds?
- g) Did the Respondents reap profits from unjustly holding onto the Uncompleted Transfer Funds?
- h) Were the Respondents unjustly enriched?
- i) Did the Respondents receive a thing not due?
- j) Do the Respondents owe a fiduciary duty to Class Members?
- k) Did the Respondents breach their fiduciary duty to Class Members?
- l) Must the Respondents notify, within a reasonable amount of time, Class Members whose uncompleted money transfers they possess?
- m) Must Respondents automatically refund all Uncompleted Transfer Funds to Class Members, using reasonable methods available?
- n) Have Class Members been damaged by the Respondents' conduct and, if so, what is the proper measure of such damages?
- o) Are the Respondents liable to the Class Members for reimbursement of the amount of the Uncompleted Transfer Funds, interest thereon and/or the administrative fee deducted against the principal amount of the money transfer that was refunded as a result of the misconduct?
- p) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate the unfair, civilly fraudulent, misleading, and/or deceptive conduct?



q) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?

58. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

59. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages and an injunctive remedy;

60. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;



RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that he be attributed the status of representative of the Class

61. Petitioner is a member of the class;
 62. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that he wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with his attorneys;
 63. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
 64. Petitioner has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
 65. Petitioner, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
 66. Petitioner is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
 67. Petitioner understands the nature of the action;
 68. Petitioner's interests are not antagonistic to those of other members of the class;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
69. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
 70. The Petitioner's attorneys practice their profession in the judicial district of Montreal;



71. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada (a) who sent money using Western Union's Money Transfer Services, whose Western Union transaction was not redeemed within 30 calendar days; and (b) who either (i) have not claimed their Money Transfer Funds (nor had that money claimed on their behalf) from Western Union; or (ii) who sought and received a refund of their money, but did not receive a payment for interest on that money and/or where Western Union charged an administrative fee deducted against the principal amount of the money transfer, or any other group to be determined by the court;

Alternatively (or as a subclass)

- all residents in Quebec (a) who sent money using Western Union's Money Transfer Services, whose Western Union transaction was not redeemed within 30 calendar days; and (b) who either (i) have not claimed their Money Transfer Funds (nor had that money claimed on their behalf) from Western Union; or (ii) who sought and received a refund of their money, but did not receive a payment for interest on that money and/or where Western Union charged an administrative fee deducted against the principal amount of the money transfer, or any other group to be determined by the court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Respondents engage in unfair, civilly fraudulent, misleading, and/or deceptive acts or practices in failing to disclose that they would not return Uncompleted Transfer Funds, that they would use the Uncompleted Transfer Funds to generate income that they would keep for themselves and/or that they would charge a fee to finally refund Uncompleted Transfer Funds even though they reaped profits from unjustly holding onto the Uncompleted Transfer Funds?



- b) Did the Respondents fail to make reasonable efforts to inform Class Members about the uncompleted status of their Money Transfer Funds?
- c) Did the Respondents fail to return Uncompleted Transfer Funds?
- d) Did the Respondents use the Uncompleted Transfer Funds to generate income that they would keep for themselves?
- e) Are the Respondents liable to pay interest at the legal rate or otherwise on the amount of Uncompleted Transfer Funds for the time during which they were withheld from Class Members?
- f) Did the Respondents charge an administrative fee to finally refund Uncompleted Transfer Funds?
- g) Did the Respondents reap profits from unjustly holding onto the Uncompleted Transfer Funds?
- h) Were the Respondents unjustly enriched?
- i) Did the Respondents receive a thing not due?
- j) Do the Respondents owe a fiduciary duty to Class Members?
- k) Did the Respondents breach their fiduciary duty to Class Members?
- l) Must the Respondents notify, within a reasonable amount of time, Class Members whose uncompleted money transfers they possess?
- m) Must Respondents automatically refund all Uncompleted Transfer Funds to Class Members, using reasonable methods available?
- n) Have Class Members been damaged by the Respondents' conduct and, if so, what is the proper measure of such damages?
- o) Are the Respondents liable to the Class Members for reimbursement of the amount of the Uncompleted Transfer Funds, interest thereon and/or the administrative fee deducted against the principal amount of the money transfer that was refunded as a result of the misconduct?
- p) Should an injunctive remedy be ordered to prohibit the Respondents from continuing to perpetrate the unfair, civilly fraudulent, misleading, and/or deceptive conduct?



- q) Are the Respondents responsible to pay compensatory and/or punitive damages to class members and in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendants to cease from continuing their unfair, civilly fraudulent, misleading, and/or deceptive conduct;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE, the MONTREAL GAZETTE and the NATIONAL POST;

ORDER that said notice be available on the Respondents' websites as well as in Western Union agent locations with a link stating "Notice to Persons who have sent money through Western Union Money Transfer Services";

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Montreal, November 15, 2013

(S) Jeff Orenstein

CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner