

**ONTARIO
SUPERIOR COURT OF JUSTICE**

(PROCEEDING UNDER THE CLASS PROCEEDINGS ACT, 1992)

BEFORE THE HONOURABLE

)

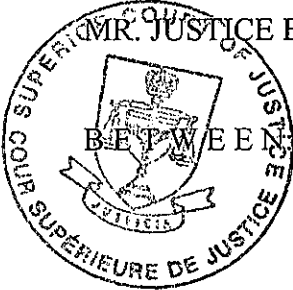
TUESDAY, THE 12th DAY OF

)

MR. JUSTICE BELOBABA

)

JULY, 2016.



RIZWAN JUMA and NASRIN JUMA

Plaintiffs

and

WESTERN UNION FINANCIAL SERVICES (CANADA) INC. O/A
WESTERN UNION

Defendant

ORDER

THIS MOTION made by the Plaintiffs for an order certifying this action pursuant to section 5 of the *Class Proceedings Act, 1992*, S.O. 1992, c.6, (“CPA”) and for an order, *inter alia*, that the following actions have common discoveries and trial together: *Palsetia v. Suleman et al*, Court File No. 07-CV-341491CP (“Palsetia Action”); *Lalani v. Reeves*, Court File No. 07-CV-338183 CP (“Lalani Action”); *Juma et al v. Western Union Financial Services Canada Inc., o/a Western Union*, Court File No. 08-CV-353663CP (“Juma Action”); *Pardhan v. Bank of Montreal*, Court File No. 08-CV-350772CP (“Pardham Action”); *Kherani v. Bank of Montreal*, Court File No. 08-CV-353703CP (“Kherani Action”); and *Mirshahi v. Suleman et al*, Court File No. 08-CV-353823CP (“Mirshani Action”) (collectively the “Class Actions”) was heard this day at 130 Queen Street West, Toronto, Ontario.

ON READING the Motion Record and supplementary motion records, the Factum and Brief of Authorities of the Plaintiff, the Responding Motion Record, Factum and Brief of Authorities of the Defendant and the Factum and Brief of Authorities of Bank of Montreal,

AND ON HEARING the submissions of counsel for: the Plaintiffs, the Defendant, the Bank of Montreal, Musa Suleman, 1501747 Ontario Inc. and 1376563 Ontario Inc., the Attorney General for Canada, Sadruddin Adatia, Olympic Sports Data Services, Limited and Spiros G. Athanas; and Mr. Reeves, personally,

1. **THIS COURT ORDERS** that the Plaintiffs are hereby granted leave pursuant to section 2(3) of the CPA to bring this motion for Certification.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding, pursuant to section 5 of the CPA.
3. **THIS COURT ORDERS** that Rizwan Juma and Nasrin Juma are appointed as the representative Plaintiffs for the Class.
4. **THIS COURT ORDERS** that the Class is defined as:

All persons (i) who reside in Canada, (ii) who gave monies to or for Salim Damji ("Damji") on account of a fraudulent Damji tooth whitening process promotion variously known as STS Instant White and other STS related names, (iii) whose monies were provided by Damji to and transferred by 1096166 Ontario Ltd o/a ("Cash Plus") by way of Western Union money transfer and payment services between January 3, 2000 and January 24, 2002 and (iv) who have not recovered all of their said monies.

5. **THIS COURT ORDERS** that the following issues are certified as common issues:

- (a) Did Western Union's provision of money transfer and payment services through 1096166 Ontario Inc. o/a Cash Plus Services ("Cash Plus"), between January 3, 2000 and January 24, 2002, amount to a knowing assistance of Salim Damji's breach of trust with respect to the Class Members?
- (b) Did Western Union's provision of money transfer and payment services through Cash Plus, between January 3, 2000, and January 24, 2002, amount to knowing receipt of trust monies obtained by Salim Damji from the Class Members?
- (c) Did Western Union owe a duty of care to the Class Members with respect to monies, including trust monies, if any, transferred by way of Western Union money transfer and payment services by Cash Plus for or on behalf of Salim Damji, between January 3, 2000 and January 24, 2002?
- (d) If the answer to issue (c) above is yes, did Western Union breach the said duty of care owed to the Class Members?
- (e) Is Western Union vicariously liable to the Class Members for the liability of Cash Plus to the Class Members with respect to monies, including trust monies, if any, transferred by way of Western Union for or on behalf of Salim Damji, between January 3, 2000 and January 24, 2002?
- (f) Have the Class Members suffered a loss or damages as a result of any of the conduct referred to in issues (a), (b), (d) or (e) or above? If so, what is the amount of that loss?

(g) Does Western Union's conduct in providing money transfer and payment services for or on behalf of Salim Damji through Cash Plus between January 3, 2000 and January 24, 2002 merit an award of punitive damages to the Class? If so, what is the amount of the punitive damages to be paid by Western Union to the Class?

6. **THIS COURT ORDERS** that final form of Notice of Certification is approved by the court in the form annexed hereto as **Schedule "A"**.

7. **THIS COURT ORDERS** that the opt-out deadline shall be 90 days after the first date of publication of the Notice of Certification as approved by the court.

8. **THIS COURT ORDERS** that the methods of publication of the Notice of Certification shall be:

(a) Internet

The Notice of Certification and the Certification Order, along with a summary of the terms of the Order, shall be published on the web pages maintained by Class Counsel in respect of this proposed class proceeding; and

(b) E-mail

To the extent Class Members provide Class Counsel with e-mail addresses, Class Counsel will send the Notice of Certification and the Certification Order via e-mail to Class Members at the e-mail addresses provided.

9. **THIS COURT ORDERS** that any member of the Class may opt-out of this Class Action by mailing or faxing to Landy Marr Kats LLP and/or Solmon Rothbart Goodman LLP a signed

and dated Notice of Opting-Out, which must be postmarked if sent by mail or received if sent by fax by no later than 90 days after the first date of publication. No Class Member may opt-out of the Class Action after the expiration of the opt-out period.

10. **THIS COURT ORDERS** that the Plaintiffs' lawyers shall receive, review, document and record the written elections from Class Members opting-out of the Class Proceeding and, within thirty (30) days after the expiration of the opt-out period, deliver to the Court and to Defendant's counsel an Affidavit listing the names of all persons who have opted-out of this Class Proceeding.

11. **THIS COURT ORDERS THAT** this Action together with the following actions: *Palsetia v. Suleman et al*, Court File No. 07-CV-341491CP; *Lalani v. Reeves*, Court File No. 07-CV-338183 CP; *Pardhan v. Bank of Montreal*, Court File No. 08-CV-350772CP; *Kherani v. Bank of Montreal*, Court File No. 08-CV-353703CP; and *Mirshahi v. Suleman et al*, Court File No. 08-CV-353823CP (the "Class Actions") shall proceed with common documentary and oral discovery and shall be heard one after another as the trial judge directs.

12. **THIS COURT ORDERS THAT** the litigation plan for this Action and the Class Actions shall be as follows:

Phased Litigation Plan

THIRD PARTY ACTIONS, FOURTH PARTY ACTIONS AND DISCOVERY

- a. The third party actions and fourth party actions¹ will be stayed until the completion of the trial of the Phase 1 Common Issues or until further order of the court.

¹ See Attached at Schedule "B"

- b. The plaintiffs and the defendants in the Class Actions² will make full document production.
- c. The plaintiffs and the defendants in the Class Actions will proceed to a first phase of oral discoveries, dealing only with the common issues relating to liability³ and not quantification of damages or apportionment of liability as amongst the defendants.
- d. Within 60 days of the completion of the first phase of discoveries (including answers to undertakings given and refusals ordered answered), the plaintiffs and defendants in the Class Actions will advise all other parties to the Class Actions whether any of them will bring motions for summary judgment on issues of liability.

TRIAL OF THE COMMON ISSUES

- e. The trial together of the Common Issues in the Class Actions will proceed in two separate phased trials:
 - i. Only Common Issues relating to liability⁴ will be decided in Phase 1 of the common issues trial in the Class Actions.
 - ii. Common Issues relating to causation and damages⁵ will be decided in Phase 2 of the common issues trial in the Class Actions, should a second phase be necessary.

CAUSATION AND DAMAGES

- f. Should some or all of the common issues pertaining to liability⁶ be resolved in favour of the class, additional oral discovery, and/or expert reports may be

² Juma Action (Court File No. 08-CV-353663-CP); Pardhan Action (Court File No. 08-CV-350772CP); Kherani Action (Court File No. CV-08-00353703CP); Lalani Action (Court File No. 07-CV-338183CP); Palestia Action (Court File No. 07-CV-341493CP); Mirshahi Action (Court File No. CV-08-0353823CP)

³ In the Juma Action, liability shall include Common Issues (a), (b), (c), (d), (e) and the first part of (g).

In the Pardhan Action, liability shall include Common Issues (1), (2), (3), (4), (5) and the first part of (7)

In the Kherani Action, liability shall include Common Issues (1), (2), (3), (4), (5) and the first part of (7)

In the Lalani Action, liability shall include Common Issues (a), (b), (c), (d), (e), (f), (h) and the first part of (j)

In the Palestia Action, liability shall include Common Issues (a), (b), (c), (d), (e), (f) and the first part of (h)

In the Mirshahi Action, liability shall include Common Issues (a), (b), (c), (d), (e), (f) and the first part of (h)

⁴ See footnote 3 above.

⁵ In the Juma Action, damages shall include Common Issue (f)

In the Pardhan Action, damages shall include Common Issue (6)

In the Kherani Action, damages shall include Common Issue (6)

In the Lalani Action, damages shall include Common Issue (g) and (i)

In the Palestia Action, damages shall include Common Issue (g)

In the Mirshahi Action, damages shall include Common Issue (g)

required to answer the Phase 2 questions. Counsel will meet as quickly as possible following the resolution of the Phase 1 Common Issues in order to determine the scope of any additional oral discovery and expert evidence required and any other steps necessary to resolve any outstanding issues at Phase 2.

QUANTIFICATION OF PUNITIVE DAMAGES

- g. The quantum of punitive damages,⁷ if any, as against each defendant in the Class Actions, will be determined after the determination of compensatory damages.

13. **THIS COURT ORDERS THAT** any document that is not required to be served personally or by an alternative to personal service may be served:

- (a) On a party who has a lawyer of record by e-mailing a copy to the lawyer's office in accordance with subrule 16.05(1)(f) and 16.06.1(1) of the *Rules of Civil Procedure*; and,
- (b) On a party who is acting in person or on a person who is not a party by e-mailing a copy to the party or person at the email address provided by the person or party.

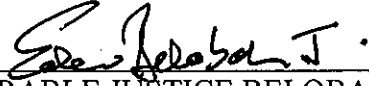
14. **THIS COURT ORDERS THAT** the Class Actions are exempt from Rule 48.14 of the *Rules of Civil Procedure*.

15. **THIS COURT ORDERS THAT** an order in this action or in any of the Class Actions shall be effective in this and all of the Class Actions unless otherwise ordered.

⁶ See footnote 3 above.

⁷ In the Juma Action, the portion of Common Issue (g) dealing with the quantum of any punitive damages award. In the Pardhan Action, the portion of Common Issue 7 dealing with the quantum of any punitive damages award. In the Kherani Action, the portion of Common Issue 7 dealing with the quantum of any punitive damages award. In the Lalani Action, the portion of Common Issue (j) dealing with the quantum of any punitive damages award. In the Palestia Action, the portion of Common Issue (h) dealing with the quantum of any punitive damages award. In the Mirshahi Action, the portion of Common Issue (h) dealing with the quantum of any punitive damages award.

16. **THIS COURT ORDERS THAT** paragraphs 11 to 15 apply to all of the Class Actions.



THE HONOURABLE JUSTICE BELOBABA

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

OCT - 5 2016

PER / PAR:



SCHEDULE "A"

NOTICE

To: All Individuals who were victims of Salim Damji's Tooth Whitening Fraud between January 3, 2000 and January 24, 2002

NOTICE OF CERTIFICATION AS A CLASS ACTION

This Notice may affect your rights. Please read it carefully.

PURPOSE OF THIS NOTICE:	<p>A nation-wide class proceeding has been certified by the Ontario Superior Court of Justice.</p> <p>On July 12, 2016, <i>Juma v. Western Union Financial Service (Canada) Inc. o/a Western Union</i> ("Western Union"), Court File No. 08-CV-353663CP was certified as a class proceeding, and Rizvan Juma and Nasrin Juma were appointed as the representative plaintiffs on behalf of the Class (the "Class Action").</p>
Who this Notice is for:	<p>You are a member of the Class if you fit this description:</p>
THE CLASS	<p>All persons (i) who reside in Canada, (ii) who gave monies to or for Salim Damji ("Damji") on account of a fraudulent Damji tooth whitening process promotion variously known as STS Instant White and other STS related names, (iii) whose monies were provided by Damji to and transferred by 1096166 Ontario Ltd o/a ("Cash Plus") by way of Western Union money transfer and payment services between January 3, 2000 and January 24, 2002 and (iv) who have not recovered all of their said monies.</p>
What the Action is About:	<p>The Class Action alleges, among other things, that Cash Plus, a cheque-cashing facility processed some \$19 million of money given by victims of Damji's fraud and used its BMO bank account to transfer the monies at Damji's direction through the Defendant, Western Union. The claim alleges that Western Union is liable. The claim alleges that Class Members are entitled to damages from Western Union for the total amount of the money related to Damji's fraud that flowed through Cash Plus and then through Western Union to various third parties.</p> <p>Western Union denies all the allegations made against it in the action and that the Class Members are entitled to any compensation. By certifying this action as a class proceeding, the Court has not determined the merits of the Plaintiffs' claims or the</p>

Defendant's defences. The Plaintiffs will be required to prove their allegations at a trial in order to obtain the relief that they seek for the Class.

A copy of the Amended Statement of Claim, the Statement of Defence and the Order certifying this action as a class proceeding can be reviewed on the following websites: www.thetorontolawyers.ca or <http://www.srglegal.com>

The Defendant: The Defendant is Western Union Financial Services (Canada) Inc. o/a Western Union.

HOW THIS CLASS ACTION AFFECTS YOU: If you are a Class member, and you wish to participate in the proceeding, then you do not need to do anything more at this stage. You are automatically included in the Class.

No Cost to You There is no cost to you to participate in the class action. You will have no responsibility to pay any legal fees. Class Counsel will only be paid in the event that the action succeeds at trial or there is a settlement. Class Counsel have entered into a contingency fee agreement with the representative plaintiffs. The agreement provides for a contingency fee of 33% of the amount recovered in the Class Action to be paid to Class Counsel, along with reimbursement of all disbursements and taxes. The court must first approve Class Counsel's legal fees before they will be paid.

You will be Bound by a Judgment or Settlement in the Action Each Class member who does not opt out of the Class Action will be bound by the terms of any judgment or any settlement approved by the Court. Each Class member may be entitled to share in the amount of any judgment awarded or settlement reached in the Class Action.

HOW TO OPT OUT OF THE CLASS ACTION If you DO NOT WANT TO PARTICIPATE in this proceeding, then you must say so in writing by delivering a letter to Class Counsel, including your full name and address on or before [Insert Date] at 5:00 pm EST to the following address:

If you do not want to participate in the Action

Address for Sending Your Notice of Opt Out:

Western Union Class Action
Landy Marr Kats LLP
900 – 2 Sheppard Avenue East
Toronto, ON M2N 5Y7
Fax: 416-221-8928

OR

Solmon Rothbart Goodman LLP
701 – 375 University Avenue
Toronto, Ontario, M5G 2J5
Fax: (416) 947-0079

Opt Out Deadline:

If you decide to opt out, you will not be bound by the terms of any judgment or settlement. However, you also will not be eligible for any of the benefits of any settlement or judgment if the action is successful.

No Class member will be permitted to opt out after [Insert Date].

**ADDITIONAL
INFORMATION**

Any questions about the matters in this notice should be addressed to Class Counsel.

The certification order and other information regarding the Class Action is available on the following websites: www.thetorontolawyers.ca or <http://www.srglegal.com>

or may be obtained by calling: **416-221-9343** or **416-947-1093**

Requests for information or questions for Class Counsel should be directed to:

Western Union Class Action
Landy Marr Kats LLP
900 – 2 Sheppard Avenue East
Toronto, Ontario M2N 5Y7
e-mail: smarr@lmklawyers.com

Or

Western Union Class Action
Solmon Rothbart Goodman LLP
701 – 375 University Avenue
Toronto, Ontario, M5G 2J5
e-mail: ntourgis@srglegal.com

INTERPRETATION

This notice is a summary of the terms of the certification order. If there is a conflict between the provisions of this notice and the terms of the certification order, the certification order prevails. The certification order can be viewed at the web addresses referenced above.

This notice was approved by the Ontario Superior Court of Justice

SCHEDULE "B"

Court File No. 07-CV-341493 CP A1 – Sharukh Palsetia v. Musa Suleman and 1376563 Ontario Inc. v. Farid "Freddie" Ibrahim and Amin Damji

Court File No. 08-CV-350772 CP A1 – Alnasir Pardhan v. Bank of Montreal v. Royal Canadian Mounted Police, Sadru Adadatia, Ali Basaria, Ali Bavania, Amin Damji, Salim Damji, Saffin Damji, Azim Daya, Farid Ibrahim, Alnasir Jadvji, Zahur Jinnah, Kassam Juma, Mansur Juma, Shamsh Kassam, Shamez Ladak, Karim Ladha, Rahim Lavji, Zahra Lavji, Al Karim Manji, Hafiz Sachedina, Shiraz Sachedina, Musa Suleman, Naheel Suleman, Alnoor Vellani, Sadru Virji and 1376563 Ontario Inc.

Court File No. 08-CV-350772 CP B1¹ – Alnasir Pardhan v. Bank of Montreal v. Attorney General of Canada, Sadruddin Adatia, Karim Basaria, Ali Bavania, Amin Damji, Salim Damji, Shaffin Damji, Azim Daya, Farid Ibrahim, Alnasir Jadvji, Zahur Jinnah, Kassam Juma, Mansur Juma Rahemtullah, Shamsh Kassam, Shamez Ladak, Karim Ladha, Rahim Lavji, Zahra Lavji, Al Karim Manji, Hafiz Sachedina, Shiraz Sachedina, Musa Suleman, Naheel Suleman, Alnoor Vellani, Shiraz Virji and 1376563 Ontario Inc. and. Musa Suleman, Naheel Suleman, and 1376563 Ontario Inc. v. Alnasir Pardhan

Court File No. 08-CV-350772 CP C1 – Alnasir Pardhan v. Bank of Montreal v. Maynard Hal Garber also known as Chuck Garber also known as Robert Albert Fox also known as Nigel Roberts also known as Robert Albert Fox also known as Robert Fox, Bank Hapoalim (Switzerland) Ltd. also known as Banque Hapoalim (Suisse) SA also known as Bank Hapoalim (Schweiz) AG, Banco De Costa Rica, Edward Reeves, Western Union Financial Services (Canada) Inc. o/a Western Union, Olympic Sports Data Services, Limited and Spiros G. Athanas

Court File No. 08-CV-353663-CP A1 - Rizwan Juma and Nasrin Juma v. Western Union Financial Services (Canada) Inc. o/a Western Union v. Edward Reeves, Bank of Montreal, Olympic Sports Data Services, Limited, Spiros G. Athanas, ~~Maynard Hal Garber also known as Chuck Garber also known as Robert Albert Fox also known as Nigel Roberts also known as Robert Albert Fox also known as Robert Fox, Bank Hapoalim (Switzerland) Ltd. also known as Banque Hapoalim (Suisse) SA also known as Bank Hapoalim (Schweiz) AG, Banco De Costa Rica~~²

Court File No. 08-CV-353703 CP A1 - Inayet Kherani v. Bank of Montreal v. Attorney General of Canada, Sadruddin Adatia, Karim Basaria, Ali Bavania, Amin Damji, Salim Damji, Shaffin Damji, Azim Daya, Farid Ibrahim, Alnasir Jadvji, Zahur Jinnah, Kassam Juma, Mansur Juma Rahemtullah, Shamsh Kassam, Shamez Ladak, Karim Ladha, Rahim Lavji, Zahra Lavji, Al Karim Manji, Hafiz Sachedina, Shiraz Sachedina, Musa Suleman, Naheel Suleman, Alnoor Vellani, Shiraz Virji, 1376563 Ontario Inc., Maynard Hal Garber also known as Chuck Garber also known

¹ Same as Court File No. 08-CV-340772 CP A1 except amended to reflect change in name party from the Royal Canadian Mounted Police to the Attorney General for Canada.

² Strikethrough indicates that the Third Party Action has been discontinued by Western Union Financial Services (Canada) Inc. as against those Parties.

as Robert Albert Fox also known as Nigel Roberts also known as Robert Albert Fox also known as Robert Fox, Bank Hapoalim (Switzerland) Ltd. also known as Banque Hapoalim (Suisse) SA also known as Bank Hapoalim (Schweiz) AG and Banco De Costa Rica

RIZWAN JUMA AND NASRIN JUMA

WESTERN UNION FINANCIAL SERVICES (CANADA) INC.
Defendant

-and-

Plaintiffs

Court File No. 08-CV-353663-CP

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceeding under the Class
Proceedings Act, 1992)

PROCEEDING COMMENCED AT
TORONTO

ORDER

LANDY MARR KATS LLP
Barristers & Solicitors
2 Sheppard Avenue East – Suite 900
Toronto, Ontario M2N 5Y7

Samuel Marr / Keith M. Landy / David Fogel
Tel: 416-221-9343
Fax: 416-221-8928

AND

SOLMON ROTHBART GOODMAN LLP
Barristers & Solicitors
375 University Avenue – Suite 701
Toronto, Ontario M5G 2J5

Melvyn L. Solman / Nancy Tourgis
Tel: 416-947-1093
Fax: 416-947-0079

Lawyers for the Plaintiffs/Class Counsel