Court File No.: CV-13-495413-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	TUESDAY, THE 17TH DAY
	)	
JUSTICE BELOBABA	)	OF NOVEMBER, 2015

BETWEEN:

SWISSCANTO FONDSLEITUNG AG

Plaintiff

- and -

BLACKBERRY LIMITED,
THORSTEN HEINS and BRIAN BIDULKA

Defendants

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(LEAVE UNDER PART XXIII.1)

THIS MOTION, made by the Plaintiff for an order granting leave to pursue the right of action contained in Part XXIII.1 of the *Securities Act*, RSO 1990, c S.5 (the "*OSA*") and, if necessary, the equivalent provisions of the securities legislation of the other Provinces and Territories of Canada (collectively, "Securities Legislation"), was heard on October 15 and 16, 2015 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed;

AND ON HEARING the submissions of Counsel;

1. **THIS COURT ORDERS** that, with respect to the Amended Amended Statement of Claim attached hereto as **Schedule "A,"** leave is granted under and pursuant to section

138.8 of the *OSA* to the Plaintiff as against the Defendants to pursue the right of action contained in Part XXIII.1 of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation.

2. **THIS COURT ORDERS** that the Plaintiff may file the Amended Amended Statement of Claim attached hereto as **Schedule "A,"** which shall succeed the Amended Statement of Claim filed on November 25, 2015 pursuant to this Court's reasons dated November 17, 2015, reported as *Swisscanto v BlackBerry*, 2015 ONSC 6434, granting leave in this matter.

3. **THIS COURT ORDERS** that, on the Parties' consent, the costs of this motion is hereby fixed in the all-inclusive sum of $269,950.00, payable by the Defendants to the Plaintiff forthwith.

Rm. Ittleman JUL 12 2018

THE HONOURABLE JUSTICE BELOBABA

R. Ittleman, Registrar
Superior Court of Justice

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

JUL 12 2018

PER / PAR:

SCHEDULE "A"

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SWISSCANTO FONDSLEITUNG AG

Plaintiff

- and -

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Defendants

Proceeding under the *Class Proceedings Act, 1992*

<u>AMENDED</u> <u>AMENDED</u> STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the statement of claim served with this notice of action.

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and $5,000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400.00 for costs and have the costs assessed by the court.

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

Date December 20, 2013

Issued by ______________________
Local Registrar

Address of court office 393 University Ave. - 10th Fl.
Toronto ON M5G 1E6

~~TO:~~ ~~BlackBerry Limited~~
~~295 Phillip Street~~
~~Waterloo, ON N2L 3W8~~

~~AND TO:~~ ~~Thorsten Heins~~
~~c/o BlackBerry Limited~~
~~295 Phillip Street~~
~~Waterloo, ON N2L 3W8~~

~~AND TO:~~ ~~Brian Bidulka~~
~~c/o BlackBerry Limited~~
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~~Waterloo, ON N2L 3W8~~

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Lawyers for the Defendants

DEFINED TERMS

1. In this document, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

(a) "**Bidulka**" means the defendant, Brian Bidulka;

(b) "**BlackBerry**" means the defendant, BlackBerry Limited, formerly known as Research in Motion Limited;

(c) "**CEO**" means Chief Executive Officer;

(d) "**CFO**" means Chief Financial Officer;

(e) "***CJA***" means the Ontario *Courts of Justice Act*, RSO 1990, c C-43, as amended;

(f) "**Class**" and "**Class Members**" mean all persons and entities, wherever they may reside or be domiciled, who acquired **BlackBerry's Securities** during the **Class Period** on any Canadian securities trading venue or otherwise in Canada, and all persons and entities who acquired **BlackBerry's Securities** during the **Class Period** outside of Canada who are residents of Canada or were residents of Canada at the time of acquisition and, in each case, continued to hold some or all of those **Securities** as of September 20, 2013, other than the **Excluded Persons**;

~~all persons and entities, wherever they may reside or be domiciled, who acquired **BlackBerry's Securities** during the **Class Period** and continued to hold some or all of those **Securities** as of the close of trading on September 20, 2013, other than the **Excluded Persons**;~~

(g) "**Class Period**" means the period from March 28, 2013 through September 20, 2013, inclusive;

(h) "***CPA***" means the Ontario *Class Proceedings Act, 1992*, SO 1992, c 6, as amended;

(i) "**Defendants**" means, collectively, **BlackBerry**, **Heins** and **Bidulka**;

(j) "**EDGAR**" means the Electronic Data-Gathering, Analysis, and Retrieval system of the **SEC**;

(k) "**Excluded Persons**" means the **Defendants**, their past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns, and any individual who is an immediate member of the family of an **Individual Defendant**;

(l) "**FY 2013**" means the fiscal year ended on March 2, 2013;

(m) "**Heins**" means the defendant, Thorsten Heins;

(n) "**IIROC**" means the Investment Industry Regulatory Organization of Canada;

(o) "**Impugned Documents**" (each being an "**Impugned Document**") means, collectively, the MD&A released and filed on SEDAR by BlackBerry on March 28, 2013 (the "**2013 MD&A**"); the Audited Financial Statements released and filed on SEDAR by BlackBerry on March 28, 2013 (the "**2013 Financial Statements**"); the MD&A released and filed on SEDAR by BlackBerry on June 28, 2013 (the "**Q1 2014 MD&A**"); and the Interim Financial Statements released and filed on SEDAR by BlackBerry on June 28, 2013 (the "**Q1 2014 Financial Statements**");

(p) "**Individual Defendants**" (each being an "**Individual Defendant**") means **Heins** and **Bidulka**, collectively;

(q) "**MD&A**" means Management's Discussion and Analysis;

(r) "**NASDAQ**" means the NASDAQ Stock Market;

(s) "***OBCA***" means the Ontario *Business Corporations Act*, RSO 1990, c B.16, as amended;

(t) "***OSA***" means the Ontario *Securities Act*, RSO 1990 c S 5, as amended;

(u) "**Plaintiff**" means the plaintiff, Swisscanto Fondsleitung AG ~~Asset Management AG~~ ("**Swisscanto**");

(v) "**Q1 2014**" means the three month period ended on June 1, 2013;

(w) "**Q2 2014**" means the three month period ended on August 31, 2013;

(x) "**Q3 2014**" means the three month period ended on November 30, 2013;

(y) "**Q4 2013**" means the three month period ended on March 2, 2013;

(z) "**QNX**" means QNX Software Systems and its proprietary software, which BlackBerry acquired in 2010;

(aa) "**Representation**" means the statement, whether express or implied, that the **Impugned Documents**, or any of them, fairly presented in all material respects the financial condition, results of operations and cash flows of **BlackBerry**;

(bb) "**SEC**" means the United States Securities and Exchange Commission;

(cc) "**Securities**" means **BlackBerry**'s common shares or other securities, as that term is defined in the ***OSA***;

(dd) "**Securities Legislation**" means, collectively, the ***OSA***, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act, 1988*, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;

(ee) "**SEDAR**" means the system for electronic document analysis and retrieval of the Canadian Securities Administrators;

(ff) "**TSX**" means the Toronto Stock Exchange; and

(gg) "**U.S. GAAP**" means the United States Generally Accepted Accounting Principles.

CLAIM

2. The Plaintiff claims:

~~(a) an order granting leave to pursue the right of action for secondary market misrepresentation under section 138.3 of the *OSA* and, if necessary, the equivalent provisions of the other Securities Legislation;~~

~~(b) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff for the Class;~~

(c) a declaration that the Impugned Documents contained the Representation, and that, when made, the Representation was a misrepresentation, both at law and within the meaning of the Securities Legislation;

(d) a declaration that the Impugned Documents contained one or more of the other misrepresentations alleged herein, and that, when made, those other misrepresentations constituted misrepresentations, both at law and within the meaning of the Securities Legislation;

(e) a declaration that BlackBerry is vicariously liable for the acts and/or omissions of the Individual Defendants and of its other officers, directors, partners or employees;

(f) general damages, as against all Defendants, in the sum of $200 million;

(g) an order directing a reference or giving such other directions as may be necessary to determine the issues, if any, not determined at the trial of the common issues;

(h) prejudgment and post judgment interest;

(i) costs of this action plus, pursuant to s 26(9) of the *CPA*, the costs of notice and of administering the plan of distribution of the recovery in this action plus applicable taxes; and

(j) such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. Formerly known as Research in Motion Limited, BlackBerry is a technology company that provides telecommunication solutions under the BlackBerry brand.

4. Over the past few years, BlackBerry struggled with an aging product portfolio that quickly lost market share to competition. BlackBerry's hopes for remaining competitive in an evolving smartphone market were pinned on the success of its series of next generation smartphones known as BlackBerry 10.

5. On January 30, 2013, after a long wait and a series of product launch delays, BlackBerry 10 was launched into the market. The BlackBerry 10 smartphones started shipping into distribution channels in February 2013, while there was significant uncertainty surrounding

the market's reception of Blackberry 10, including the prices consumers would be willing to pay.

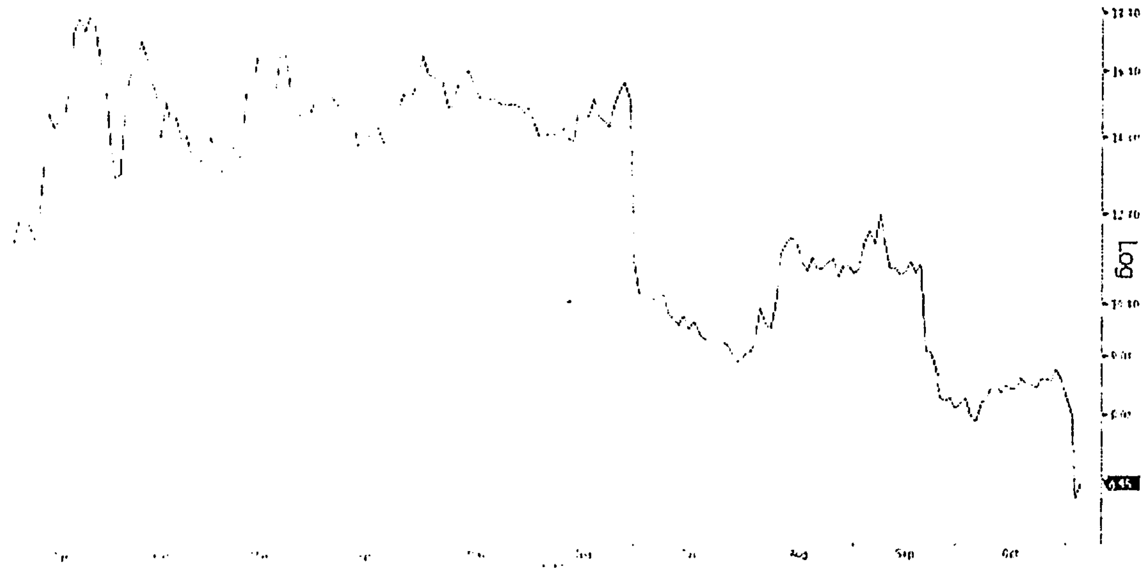
6. BlackBerry 10 was poorly received by end customers. End customer sales of the BlackBerry 10 smartphones were substantially lower than the amounts by which those devices were shipped into distribution channels during relevant periods.

7. Nonetheless, and despite the uncertainty surrounding market acceptance of the product, BlackBerry recognized revenues upon the shipment of BlackBerry 10 into distribution channels in its financial statements for Q4 2013 and Q1 2014. Such revenues were recorded while the BlackBerry 10 smartphones' selling price was not fixed or determinable, in violation of U.S. GAAP and BlackBerry's own revenue recognition policy.

8. As a result, the Class Period revenues that BlackBerry recorded on the BlackBerry 10 smartphones' shipments were materially false and misleading. Additionally, all related financial statement accounts disclosed in the Impugned Documents were also misstated.

9. The truth was revealed on September 20, 2013, when BlackBerry released its preliminary Q2 2014 results, announcing: 1) an approximately $1 billion inventory write-down primarily attributable to certain BlackBerry 10 smartphones; and 2) that BlackBerry's revenue recognition approach pertaining to the BlackBerry 10 smartphones had changed such that BlackBerry would no longer record revenue on the BlackBerry 10 smartphones at the time that they are shipped into distribution channels, rather it would record revenue on those products when sold to end customers.

10. The price of BlackBerry's common shares in the public markets plummeted after BlackBerry made these disclosures, and the Class suffered millions of dollars in damages.



THE PARTIES

The Defendants

11. BlackBerry is a company incorporated under the *OBCA*. On January 30, 2013, BlackBerry changed name from Research in Motion Limited in conjunction with the launch of BlackBerry 10. The company's change of name to BlackBerry Limited was effected by way of a special resolution at the annual and special meeting of the shareholders held on July 9, 2013.

12. Effective February 4, 2013, BlackBerry's ticker symbols changed to "BB" (formerly, "RIM") and "BBRY" (formerly, "RIMM") on the TSX and NASDAQ, respectively.

13. BlackBerry maintains registered and principal business offices in Waterloo, Ontario.

14. BlackBerry's common shares traded on the TSX and other Canadian exchanges under ticker symbol "BB," and on NASDAQ and other exchanges in the United States under ticker symbol "BBRY."

15. By its own election, BlackBerry was a reporting issuer in all provinces of Canada. As a reporting issuer in Ontario, the Securities Legislation required BlackBerry to issue and file with SEDAR:

(a) Within 45 days of the end of each quarter, quarterly interim financial statements prepared in accordance with U.S. GAAP that must include a comparative statement to the end of each of the corresponding periods in the previous financial year;

(b) Within 90 days of the end of the fiscal year, annual financial statements prepared in accordance with U.S. GAAP, including comparative financial statements relating to the period covered by the preceding financial year; and

(c) Contemporaneously with each of the above, an MD&A of each of the above financial statements.

16. MD&As are a narrative explanation of how the company performed during the period covered by the financial statements, and of the company's financial condition and future prospects. The MD&A must discuss important trends and risks that have affected the financial statements, and trends and risks that are reasonably likely to affect them in the future.

17. At all material times, BlackBerry was a registrant with the SEC. As a registrant with the SEC, BlackBerry was required during the Class Period to file on EDGAR certain disclosure documents, including annual and quarterly disclosure documents. The Impugned Documents were filed on EDGAR as reports of a foreign private issuer on Forms 6-K.

18. At all material times since January 2012, Heins was CEO, President and a director of BlackBerry. Prior to that, Heins was BlackBerry's Chief Operating Officer since 2007. Heins was an officer and director of BlackBerry within the meaning of the Securities Legislation. In his capacity as BlackBerry's CEO, Heins certified each of the Impugned Documents, and adopted as his own the misrepresentations contained in those documents. Heins ceased to hold any positions with BlackBerry as of November 4, 2013.

19. At all material times since December 2009, Bidulka was CFO of BlackBerry. Prior to that, Bidulka was BlackBerry's Chief Accounting Officer since 2005. Bidulka was an officer of BlackBerry within the meaning of the Securities Legislation. In his capacity as

BlackBerry's CFO, Bidulka certified each of the Impugned Documents, and adopted as his own the misrepresentation contained in those documents. Bidulka ceased to be BlackBerry's CFO as of November 25, 2013.

20. Bidulka is a Chartered Accountant. He received this designation in 1989.

The Plaintiff

21. The Plaintiff, Swisscanto is an asset manager and fund provider based in Switzerland. ~~Sweisscanto~~ Swisscanto purchased BlackBerry common shares on the TSX during the Class Period.

FACTUAL ALLEGATIONS

BlackBerry's declining business and past experiences with inventory write-downs

22. As a provider of mobile communication solutions, BlackBerry operates in a highly competitive market where other major brands have strong presence. In an attempt to respond to an evolving telecommunication market, BlackBerry acquired QNX in 2010 with the intention to incorporate this software into BlackBerry's future products.

23. QNX represented an entirely new operating system for the BlackBerry enterprise, and necessitated the redesign of the BlackBerry products for this new platform. This process took months.

24. In April 2011, BlackBerry launched its first products operating on QNX – the PlayBook tablet. PlayBook proved a failure. Due to weak demand, BlackBerry rapidly accumulated a high level of PlayBook inventory despite quickly reducing retail selling prices and, in December 2011, it wrote down $485 million on its PlayBook inventory.

25. Meanwhile, BlackBerry continued to develop QNX for its handheld devices. In October 2011, BlackBerry first unveiled its anticipated QNX-powered smartphones, though these products would not be ready for market for many months.

26. Since BlackBerry's QNX-powered smartphones were at an early development stage, BlackBerry continued to rely on the sales of its previous generation smartphones, including the newest in the series, BlackBerry 7. But even BlackBerry 7, which was first launched in May 2011, struggled to compete in the smartphone market. In April 2012, BlackBerry wrote down $267 million on BlackBerry 7 inventory.

27. The failures of the Playbook and BlackBerry 7 damaged BlackBerry's brand and significantly increased the uncertainty surrounding the market's acceptance of future BlackBerry products, including BlackBerry 10.

28. In the MD&A for fiscal year 2012, filed on SEDAR on April 9, 2012, BlackBerry stated that the write-downs of the PlayBook and the BlackBerry 7 inventories were due to the fact that BlackBerry had accumulated excess inventories of those products and represented:

(a) the costs of promotional activities that were required to drive sell-through of those products that had been shipped, but had remained unsold in distribution channels; and

(b) a reduction to the carrying value of the those inventories that, due to weak demand, was unrealizable.

29. Through FY 2013, BlackBerry continued to experience a significant decline in its business. BlackBerry's hardware revenue declined by $2.2 billion (or 56%), $1.3 billion (or 43%) and $2.5 billion (or 60%), respectively, in quarter one through to quarter three of FY 2013 compared with the comparable periods in the prior fiscal year. In FY 2013, BlackBerry's hardware revenue suffered a $7.1 billion (or approximately 52%) decline compared with the previous fiscal year, due to lower shipment volumes as a result of BlackBerry's aging product portfolio and declining customer demand.

30. According to analyses undertaken by research firms, International Data Corporation and Kantar Worldpanel, by December 2012, BlackBerry's market share had declined to 3.2% (representing 43% decline) in the global markets, and 1.1% (representing 82% decline) in the key United States market, compared with December 2011.

BlackBerry 10 launches in a very uncertain environment

31. BlackBerry 10 was released to the market on January 30, 2013, after the product was delayed at least twice due to development challenges. The company stated that BlackBerry 10 represented the "reinvention" of the BlackBerry brand. Its success was critical to BlackBerry.

32. BlackBerry 10 was released in a very challenging environment. In addition to the fierce competition that BlackBerry's products faced and the damage done to the BlackBerry brand by the failure of the Playbook and BlackBerry 7, CEO Heins alluded to some of the challenges facing BlackBerry at an earnings conference call held on March 28, 2013:

(a) BlackBerry had gone through a major transformation over the past year;

(b) BlackBerry had implemented significant managerial and directorial changes;

(c) BlackBerry had implemented major organizational changes;

(d) BlackBerry 10's ecosystem suffered from a limited number of applications compared with other smartphone platforms;

(e) The BlackBerry 10 users were "hungry for applications"; and

(f) BlackBerry's relationship with its carrier partners had deteriorated over the past year.

33. Due in part to those challenges, the market's acceptance of BlackBerry 10 was at best uncertain when BlackBerry 10 was launched and at the date that each of the Impugned Documents was released. BlackBerry was aware of that uncertainty, and said so in its disclosure documents, including the 2013 MD&A, which identified some of the uncertainties relating to BlackBerry's performance that are specific to the BlackBerry 10 as follows:

(a) "the Company's expectations regarding new product initiatives and timing, including the BlackBerry 10 platform and BlackBerry 10 smartphones";

(b) "the Company's ability to establish new, and to build on existing relationships with its network carrier partners and distributors, and its reliance on its network carrier partners to help promote the BlackBerry 10 platform and BlackBerry 10 smartphones"; and

(c) BlackBerry's "reliance on strategic alliances and relationships with third-party network infrastructure developers, software platform vendors and service platform vendors, including the Company's ability to promote and advance the development of an ecosystem of applications and services for the BlackBerry 10 platform."

The BlackBerry 10 smartphones ship to the market

34. During the Class Period, substantially all of BlackBerry's hardware revenues were based on the sales of BlackBerry 7 and BlackBerry 10. Revenues purportedly generated from the sales of the BlackBerry 10 devices were particularly material to BlackBerry, as those products represented a significantly higher average selling price compared with the BlackBerry 7 devices.

35. At relevant times, BlackBerry 10 comprised of two smartphone models:

(a) BlackBerry Z10, which is the BlackBerry 10 smartphone that has a "virtual" keyboard; and

(b) BlackBerry Q10, which is the BlackBerry 10 smartphone that has a physical keyboard.

36. The BlackBerry Z10 smartphones started shipping to the United Kingdom market on January 31, 2013, to the Canadian market on February 5, 2013, and to the United States market in March 2013. The BlackBerry Q10 smartphones started shipping to the international markets in April 2013.

37. Approximately 1 million BlackBerry Z10 smartphones were shipped into distribution channels in February 2013, the last month of Q4 2013. All BlackBerry 10 smartphones that were shipped in Q4 2013 were BlackBerry Z10 devices.

38. In Q4 2013, BlackBerry shipped 6 million BlackBerry smartphones and recorded $1.6 billion in revenues from hardware sales. Notwithstanding the limited time during which the BlackBerry Z10 smartphones were available in FY 2013, the 2013 MD&A stated that revenue recognized on the shipment of the BlackBerry Z10 smartphones had a positive impact on BlackBerry's Q4 and FY 2013 financial results: "The overall decrease in revenue in fiscal 2013 is [...] partially offset by the higher average selling prices of BlackBerry 10 devices."

39. In fact, the revenue recognized on the shipment of the BlackBerry Z10 smartphones during that period purportedly left BlackBerry with a Q4 2013 profit of $98 million, against an expectation of a loss, which surpassed the market's expectations.

40. In Q1 2014, BlackBerry shipped approximately 2.7 million BlackBerry 10 smartphones, representing approximately 40% of the total 6.8 million BlackBerry smartphones shipped during that period. In that quarter, BlackBerry recorded $2.2 billion in revenues from hardware sales, which represented $512 million, or 30.7%, increase compared with the first quarter of fiscal year 2012, "primarily due to the higher average selling prices of BlackBerry 10 devices shipped," according to the Q1 2014 MD&A.

Sell-through of the BlackBerry 10 smartphones was substantially lower than shipment volumes

41. During the Class Period, BlackBerry consistently refused to disclose a breakdown of sell-through data on BlackBerry 10 against its combined BlackBerry smartphones data.

42. However, at all material times, the BlackBerry 10 smartphones' sell-through to end customers was substantially lower than their shipment volumes.

43. According to the Q2 2014 MD&A, BlackBerry sold approximately 1.7 million BlackBerry 10 devices to end customers in Q2 2014. However, BlackBerry did not record revenues on the sale of those BlackBerry 10 smartphones in this quarter. As such, substantially all of those 1.7 million BlackBerry 10 smartphones had been shipped and recognized prior to Q2 2014 – namely, in Q4 2013 and Q1 2014.

44. Indeed, the actual number of the BlackBerry 10 smartphones that were shipped in Q4 2013 and Q1 2014 but were not sold in those quarters is considerably greater than 1.7 million.

45. On December 20, 2013, BlackBerry released its Q3 2014 results, and announced that it had sold approximately 1.1 million BlackBerry 10 smartphones to end customers in Q3 2014. The majority of these devices were shipped and recognized in previous quarters – namely, in Q4 2013 and Q1 2014.

46. Accordingly, of the 3.7 million BlackBerry 10 devices that were shipped and recognized in Q4 2013 and Q1 2014, approximately 1 million were sold in those quarters. Approximately 1.7 million of those BlackBerry 10 devices were sold in Q2 2014 and approximately 1.1 million of them were sold in Q3 2014.

47. As such, approximately 2.7 million (or 73%) of the BlackBerry 10 smartphones that were shipped and recognized in Q4 2013 and Q1 2014 failed to sell to end customers in those quarters and remained in BlackBerry's distribution channel.

U.S. GAAP and BlackBerry's revenue recognition practices

48. Throughout the Class Period, BlackBerry represented that its financial statements were prepared and reported in accordance with U.S. GAAP. U.S. GAAP provides for stringent rules and criteria pertaining to the recognition of revenue.

49. According to U.S. GAAP, revenue from the sale of products can only be recognized when,

(a) persuasive evidence of an arrangement exists;

(b) delivery has occurred;

(c) the sales price is fixed or determinable; and

(d) collection is reasonably assured.

50. Prior to and throughout the Class Period, BlackBerry maintained a revenue recognition policy pertaining to revenues attributable to hardware sales which was identical to U.S. GAAP requirements for the recognition of revenue, including the requirement that revenue only be recorded when the sales price of the hardware was fixed or determinable.

51. Historically, and prior to the release of the Q2 2014 disclosure documents, BlackBerry considered the revenue recognition criteria as having been met "at the time the product is shipped." In fact, until the end of the Class Period, BlackBerry recorded revenues on the BlackBerry 10 smartphones when they were shipped into distribution channels.

52. However, as particularized herein, a substantial portion of the BlackBerry 10 smartphones that were shipped into distribution channels in Q4 2013 and Q1 2014 were not sold to end customers in those quarters. This resulted in an excess level of inventory, and necessitated BlackBerry's introduction of promotional activities and sales incentives to drive sell-through of those products as early as in Q1 2014, according to the Q1 2014 MD&A.

53. Eventually, BlackBerry wrote down approximately $1 billion BlackBerry Z10 inventory, part of which was attributable to the BlackBerry Z10 smartphones that had been shipped but remained unsold in distribution channels.

54. In fact, when BlackBerry began shipping BlackBerry 10 smartphones, the sales price of those smartphones was not fixed or determinable at the time of shipment due to the numerous challenges BlackBerry faced in selling those smartphones from the beginning of the Class Period, including:

(a) the fact that BlackBerry 10 represented an entirely new platform with an entirely new ecosystem;

(b) the lack of historical data specific to the BlackBerry 10 smartphones;

(c) the existence of adverse historical data pertaining to the weak sell-through of the PlayBook tablets, which resulted in the $485 million inventory write-down of those products in December 2011, and the fact that PlayBook represented a substantially similar platform and ecosystem as those of the BlackBerry 10 smartphones;

(d) the existence of adverse historical data pertaining to the declining demand for BlackBerry's other products, including the weak sell-through of the BlackBerry 7 smartphones, which resulted in the $267 million inventory write-down of those devices in April 2012, and necessitated the introduction of aggressive customer incentive programs to improve sales throughout FY 2013;

(e) the weak sell-through of the BlackBerry 10 smartphones at the outset and throughout the Class Period, which necessitated the introduction of increased sale incentives as early as in Q1 2014;

(f) BlackBerry's execution problems, including the delays in the BlackBerry 10 launch;

(g) the fact that BlackBerry operated in the increasingly competitive smartphone market;

(h) the fact that BlackBerry's relationship with its carrier partners had deteriorated, given that the BlackBerry 10 performance actually depended on BlackBerry's carrier partners;

(i) the fact that BlackBerry's carrier partners had a right of return;

(j) the fact that certain of BlackBerry's customers had moved to the sell-through method of revenue recognition in FY 2013, as disclosed in the 2013 MD&A;

(k) the fact that BlackBerry's market share globally and in the key markets had substantially declined by the time BlackBerry 10 was launched; and

(l) as the company admits in the Q2 2014 MD&A, the fact that the BlackBerry 10 performance was "dependent on many facts and circumstances."

55. In these circumstances, BlackBerry was not able to reasonably determine the sales price of the BlackBerry 10 smartphones at the time that they were shipped into distribution channels in Q4 2013 and Q1 2014. Accordingly, the revenue recognition criteria prescribed under both of U.S. GAAP and BlackBerry's own policies had not been and could not be met at the time of shipment, when BlackBerry recorded revenues on those products.

56. It was therefore a violation of U.S. GAAP and BlackBerry's reported revenue recognition policy to recognize revenue on the BlackBerry 10 smartphones at the time of shipment in Q4 2013 and Q1 2014, because the selling price of these product were not at that time fixed or determinable.

57. In Q2 2014, and belatedly, BlackBerry corrected its revenue recognition approach pertaining to the BlackBerry 10 smartphones' sales.

The Defendants' false statements

58. As particularized herein, BlackBerry prematurely recorded revenues in violation of U.S. GAAP and its own policies upon the shipment of the BlackBerry 10 smartphones in Q4 2013 and Q1 2014, while the selling price of those devices was not determinable. As a result, BlackBerry's revenues recognized on those devices were falsely inflated and materially misleading.

59. Accordingly, BlackBerry's statements that its hardware revenues recorded in accordance with U.S. GAAP of

(a) $6.6 billion in FY 2013 and $1.6 billion in Q4 2013, contained in BlackBerry's 2013 Financial Statements and 2013 MD&A; and

(b) $2.2 billion in Q1 2014, contained in BlackBerry's Q1 2014 Financial Statements and Q1 2014 MD&A;

were overstated, in violation of U.S. GAAP and BlackBerry's own accounting principles, and constituted misrepresentations at law and within the meaning of the Securities Legislation.

60. Had BlackBerry properly applied U.S. GAAP and its own accounting policy relating to the BlackBerry 10 revenues, its revenues reported during the Class Period would have been substantially lower. In addition, it would not have been necessary to record all or part of the write-down on BlackBerry Z10 inventories at the end of the Class Period.

61. Each of the Impugned Documents disclosed other financial statement accounts that were related to revenues recognized from the purported sales of the BlackBerry 10 smartphones in Q4 2013 and Q1 2014, including total revenues, gross margins, net

income, accounts receivable and total assets. Those account disclosures were misstated as a result of the false and misleading revenues attributable to the BlackBerry 10 smartphones.

62. Accordingly, in the 2013 Financial Statements and the 2013 MD&A,

(a) total revenues of $11.1 billion for FY 2013 and $2.7 billion for Q4 2013;

(b) gross margins of $3.5 billion for FY 2013 and $1.1 billion for Q4 2013;

(c) net loss of $650 million for FY 2013 and net income of $98 million for Q4 2013;

(d) accounts receivable of $2.4 billion as at the end of FY 2013; and

(e) total assets of $13.2 billion as at the end of FY 2013;

were overstated in violation of U.S. GAAP and BlackBerry's own accounting principles, and constituted misrepresentations at law and within the meaning of the Securities Legislation.

63. In the Q1 2014 Financial Statements and the Q1 2014 MD&A,

(a) total revenue of $3.1 billion for Q1 2014;

(b) gross margin of $1 billion for Q1 2014;

(c) net loss of $84 million for Q1 2014;

(d) accounts receivable of $2.5 billion as at the end of Q1 2014; and

(e) total assets of $13.1 billion as at the end of Q1 2014;

were overstated in violation of U.S. GAAP and BlackBerry's own accounting principles, and constituted misrepresentations at law and within the meaning of the Securities Legislation.

64. Furthermore, each of the Impugned Documents represented that the financial statements of BlackBerry for the relevant periods were prepared in accordance with U.S. GAAP, which was a misrepresentation at law and within the meaning of the Securities Legislation.

65. Additionally, each of the Impugned Documents contained the Representation – the express or implied statement that they presented fairly in all material respects BlackBerry's financial position, results of operations and cash flows. However, those Impugned Documents contained revenues that were recorded in violation of U.S. GAAP and BlackBerry's own policies, as well as other financial data that derived from BlackBerry's false revenues.

66. As a result, the Impugned Documents did not fairly present in all material respects BlackBerry's financial position, results of operations and cash flows. The Representation was false, and constituted a misrepresentation at law and within the meaning of the Securities Legislation.

Heins' and Bidulka's false certifications

67. Pursuant to National Instrument 52-109, Heins, as BlackBerry's CEO, and Bidulka, as BlackBerry's CFO, were required at the material times to certify BlackBerry's financial statements and MD&As.

68. The Class Period certifications filed by Heins and Bidulka contained statements as follows, or substantially similar statements:

> Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.
>
> Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the issuer as of, and for, the periods presented in this report.

69. Due to the misrepresentations particularized herein, the certifications given by Heins and Bidulka during the Class Period were false, and constituted misrepresentations at law and within the meaning of the Securities Legislation.

THE TRUTH IS REVEALED

70. On September 20, 2013, BlackBerry issued a press release announcing preliminary results of its Q2 2014 operations. Among other things, this press release disclosed that:

(a) "Company expects GAAP net operating loss of approximately $950 million to $995 million; loss includes a primarily non-cash, pre-tax inventory charge of approximately $930 million to $960 million resulting from the increasingly competitive business environment impacting BlackBerry smartphone volumes, and a pre-tax restructuring charge of $72 million." "As a consequence of the more intense competition the Company is experiencing in its hardware business, it expects to report a primarily non-cash, pre-tax charge against inventory and supply commitments in the second quarter of approximately $930 million to $960 million, which is primarily attributable to BlackBerry Z10 devices"; and

(b) "Company expects to report revenue for the second quarter of approximately $1.6 billion; recognizes sales of approximately 3.7 million smartphones in the second quarter." "For the second quarter, the Company expects to recognize hardware revenue on approximately 3.7 million BlackBerry smartphones. Most of the units recognized are BlackBerry 7 devices, in part because certain BlackBerry 10 devices that were shipped in the quarter will not be recognized until those devices are sold through to end customers."

71. On October 1, 2013, BlackBerry issued and filed on SEDAR its Q2 2014 MD&A, which shed further light on BlackBerry's results, operations, the BlackBerry Z10 inventory charge and the change in BlackBerry's revenue recognition approach pertaining to the BlackBerry 10 sales. This MD&A includes the following information:

(a) BlackBerry experienced challenges to its hardware business;

(b) BlackBerry did not recognize revenues on the shipment of the BlackBerry 10 smartphones in Q2 2014 as "as they did not meet the revenue recognition criteria that the price be fixed or determinable";

(c) The BlackBerry 10 channel inventory had increased above BlackBerry's expectations. "In order to improve sell-through levels and stimulate global demand for BlackBerry 10 devices, the Company continued to execute on marketing campaigns and reduced the price on new shipments of BlackBerry Z10 smartphones during the second quarter of fiscal 2014";

(d) "Additionally, the Company plans to implement further sales incentives with its carrier and distributor partners to increase sell-through, which could be applicable to all BlackBerry 10 devices shipped in the second quarter of fiscal 2014";

(e) "During the second quarter of fiscal 2014, the Company recorded the Z10 Inventory Charge for approximately $934 million against its inventory and supply commitments as a result of decreased demand for, and sell-through of, the Company's products"; and

(f) During this quarter, BlackBerry sold approximately 1.7 million BlackBerry 10 smartphones, which had been shipped in Q4 2013 and Q1 2014.

72. Implied in BlackBerry's Q2 2014 MD&A was that, similar to the BlackBerry 7 inventory write-down in April 2012, the BlackBerry Z10 inventory write-down included provisions required to drive the sell-through of the BlackBerry Z10 smartphones in distribution channels, which included devices that BlackBerry had shipped in Q4 2013 and Q1 2014.

73. Additionally, BlackBerry's Q2 2014 MD&A stated for the first time that:

> Significant judgment is applied by the Company to determine whether shipments of devices have met the Company's revenue recognition criteria, as the analysis is dependent on many facts and circumstances.

Impact of the corrective disclosure on the value of BlackBerry's Securities and damages to Class Members

74. Due to the misrepresentations particularized herein, BlackBerry's Securities traded at artificially inflated prices at all times during the Class Period.

75. After the issuance of BlackBerry's September 20, 2013 press release, the price of BlackBerry's common shares declined from $10.68 as at the close of trading on September 19, 2013 to $9.08 as at the close of trading on September 20, 2013 on the TSX on heavy trading volume. BlackBerry's shares that traded on NASDAQ suffered corresponding damage upon this disclosure.

76. However, due to two temporary trading halt orders issued by IIROC on September 20 and 23, 2013, the market did not have the opportunity to fully absorb the implications of BlackBerry's September 20, 2013 disclosure before the news about a potential going private transaction of BlackBerry emerged.

77. On September 23, 2013, BlackBerry announced a tentative agreement with a consortium of buyers led by Fairfax Financial in respect of a potential acquisition of BlackBerry. Subject to the completion of due diligence and the satisfaction of other customary requirements, Fairfax Financial proposed to acquire all outstanding shares of BlackBerry at $9 per share.

78. The announcement of this tentative arrangement with Fairfax Financial was material to BlackBerry's share value, and significantly impacted the trading price of those shares. The trading price of BlackBerry's shares would have declined further if not for the September 23, 2013 announcement of this tentative arrangement.

79. On November 4, 2013, when BlackBerry announced that the contemplated transaction with Fairfax Financial had fallen through, the full impact of BlackBerry's September 20, 2013 disclosure materialized.

80. Following the announcement that BlackBerry and Fairfax Financial no longer pursued the proposed acquisition transaction, BlackBerry's share price declined from $8.09 as at the close of trading on November 1, 2013 to $6.75 as at the close of trading on November 4, 2013 on heavy trading volume. BlackBerry's shares that traded on NASDAQ suffered a corresponding value depreciation upon this announcement.

81. The further decline in BlackBerry's share price on November 4, 2013 represents the further loss attributable to those Class Members who held on to their BlackBerry shares through to November 4, 2013.

RIGHTS OF ACTION

Statutory Liability for Misrepresentations in the Secondary Market

82. As against each of the Defendants, and on behalf of itself and all other Class Members, the Plaintiff asserts the right of action found in Part XXIII.1 of the *OSA* and, if required, the equivalent sections of the other Securities Legislation, in respect of each Impugned Document.

83. BlackBerry is a responsible issuer within the meaning of the Securities Legislation.

84. As particularized herein, each of the Impugned Documents contained one or more misrepresentations.

85. BlackBerry released the Impugned Documents.

86. Each Impugned Document is a core document in respect of each of the Defendants within the meaning of the Securities Legislation.

87. At all material times, Heins was BlackBerry's CEO, President and director, and a director and an officer of BlackBerry within the meaning of the Securities Legislation. He certified the accuracy of each of the Impugned Documents, and authorized, permitted or acquiesced in the release of those documents.

88. At all material times, Bidulka was BlackBerry's CFO, and an officer of BlackBerry within the meaning of the Securities Legislation. He certified the accuracy of each of the Impugned Documents, and authorized, permitted or acquiesced in the release of those documents.

89. The Class Members who acquired BlackBerry's Securities did so following the release of the Impugned Documents and before the misrepresentations contained therein were publicly corrected.

~~90. The Plaintiff will seek leave of court to pursue the right of action found in Part XXIII.1 of the *OSA* and, if required, the equivalent provisions of the other Securities Legislation on a *nunc pro tunc* basis if necessary.~~

Negligent Misrepresentation

91. As against each of the Defendants, and on behalf of itself and all other Class Members, the Plaintiff asserts negligent misrepresentation in respect of each Impugned Document.

92. In support of these claims, the sole misrepresentation that the Plaintiff pleads is the Representation.

93. The Impugned Documents contained the Representation. The Representation was false when made and constituted a misrepresentation at law and within the meaning of the Securities Legislation.

94. BlackBerry is, at its own election, a reporting issuer in all Canadian provinces and a registrant with the SEC. As such, at all material times BlackBerry was subject to securities laws in Canada and the United States.

95. In order to maintain BlackBerry's status as a reporting issuer, the Defendants were subject to statutory requirements under applicable securities laws to ensure that the Impugned Documents did not misrepresent BlackBerry's business, financials and affairs. That duty was informed by the Securities Legislation, subsidiary instruments, including National Instrument 51-102 and National Instrument 52-109, as well as applicable United States securities law.

96. The statutory requirements included specific and personal obligations imposed on the Individual Defendants to certify the accuracy of each of the Impugned Documents. Those obligations were imposed to protect the interests of investors relying on the Impugned Documents in making investment decisions.

97. BlackBerry elected to maintain its status as a reporting issuer in order to access the capital markets. The Impugned Documents were thus prepared for the purpose of attracting investment and inducing the Plaintiff and Class Members to purchase BlackBerry's Securities. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would rely reasonably and to their detriment upon the statements contained in those documents in making the decision to purchase BlackBerry's Securities.

98. The Defendants further knew and intended that the information contained in the Impugned Documents would be incorporated into the price of BlackBerry's publicly traded Securities such that the trading price of those Securities would at all times reflect the information contained in the Impugned Documents.

99. Throughout the Class Period, the Defendants had exclusive access to information about BlackBerry's financials and operations. As such, they were the primary source of information related to BlackBerry's financial condition and results of operations, which was relevant to the Class Members' decision to acquire BlackBerry's Securities and the prices at which they would be acquired.

100. The Defendants therefore had a duty at common law to exercise care and diligence to ensure that the Impugned Documents were accurate and complete and presented BlackBerry's financial condition, results of operations and cash flows fairly in all material respects.

101. The Defendants breached their duty owed to the Class Members by

(a) failing to take due care in the preparation of the Impugned Documents to ensure their accuracy;

(b) failing to assess in a timely fashion the risks and uncertainties associated with the sales of BlackBerry 10 and their implications in regard to BlackBerry's Class Period business, operations and financial results;

(c) failing to evaluate BlackBerry's accounting practices on an ongoing basis, especially in light of BlackBerry's changing business, to ensure that BlackBerry's accounting practices remained compliant with U.S. GAAP and its stated accounting policies;

(d) failing to seek, obtain or implement appropriate accounting advice in a timely fashion so as to ensure that BlackBerry's accounting practices remained compliant with U.S. GAAP and its stated accounting policies; and/or

(e) failing to provide BlackBerry's accounting advisors with timely information relevant to the assessment of whether BlackBerry's accounting practices continued to comply with U.S. GAAP and its stated accounting policies.

102. The result of the Defendants' breach of that duty was the making of the Representation, which was false.

103. The Plaintiff and Class Members were entitled to and did reasonably rely on the Representation to their detriment and suffered losses when the falsity of the Representation was revealed.

104. Alternatively, the Class Members relied upon the Representation by the act of purchasing BlackBerry's Securities on the TSX or NASDAQ. TSX and NASDAQ are efficient markets that promptly incorporated into the price of those Securities all publicly available material information regarding BlackBerry's Securities, including the Representation. The publication of the Representation in the Impugned Documents caused BlackBerry's Securities to trade at inflated prices in the marketplace, thus directly resulting in damage to the Class Members.

Damages

105. The Plaintiff and the other Class Members suffered damages as a result of the Defendants' breach of their duties at law by making the misrepresentations particularized herein.

106. The Plaintiff and the other Class Members suffered damages equivalent to the decline in market price or value of the BlackBerry's Securities as the truth about BlackBerry's financial condition and results of operations was disclosed. Had the Defendants not breached their duties and made the misrepresentations described herein, BlackBerry's Securities would not have traded or been sold at artificially high prices, and the Plaintiff

and the other Class Members would not have suffered losses when the truth was revealed on September 20, 2013.

The Relationship between BlackBerry's Disclosures and the Price of Its Securities

107. The issuance of the Impugned Documents directly affected the price of BlackBerry's Securities. The Defendants were aware at all material times of the effect of BlackBerry's disclosure documents on the price of its Securities. The Impugned Documents were filed, among other places, with SEDAR and the TSX, as well as EDGAR, and thereby became immediately available to, and were reproduced for inspection by, the Class Members, other members of the investing public, financial analysts and the financial press.

108. BlackBerry routinely transmitted the documents referred to above to the financial press, financial analysts and certain prospective and actual holders of its Securities. BlackBerry provided either copies of the Impugned Documents or links thereto on its website. BlackBerry maintains a website in part to communicate with the Class and prospective investors.

109. BlackBerry regularly communicated with the public investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including press releases on newswire services in Canada. Each time BlackBerry communicated that new material information about its financial results to the public it directly affected the price of its Securities.

110. BlackBerry was the subject of analysts' reports that incorporated certain of the material information contained in the Impugned Documents, with the effect that any recommendations to purchase BlackBerry's Securities in such reports were based, in whole or in part, upon that information.

111. BlackBerry's Securities were and are traded, among other places, on the TSX and NASDAQ, which are efficient and automated markets. The price at which BlackBerry's Securities traded promptly incorporated material information from BlackBerry's disclosure documents about BlackBerry's financials, business and affairs, including the Representation, which was disseminated to the public through the documents referred to above and distributed by BlackBerry, as well as by other means.

Vicarious Liability

112. In addition to its direct liability, BlackBerry is vicariously liable for the acts and/or omissions of each of the Individual Defendants, and of its other officers, directors, partners and/or employees.

Real and Substantial Connection with Ontario

113. The Plaintiff pleads that this action has a real and substantial connection with Ontario because, among other things:

(a) BlackBerry is a company formed under the *OBCA*;

(b) BlackBerry is a reporting issuer in Ontario;

(c) BlackBerry maintains registered and principal business offices in Ontario;

(d) Blackberry's Securities trade on the TSX and other Canadian exchanges, all of which are located in Ontario;

(e) the Impugned Documents were disseminated in Ontario;

(f) a substantial proportion of the Class Members reside in Ontario; and

(g) a substantial portion of the damages sustained by the Class was sustained in Ontario.

Relevant Legislation

114. The Plaintiff pleads and relies on the *CJA*, the *CPA* and the Securities Legislation, all as amended.

Place of Trial

115. The Plaintiff proposes that this action be tried in the City of Toronto, in the Province of Ontario, as a proceeding under the *CPA*.

116. The Plaintiff will serve a jury notice.

December 20, 2013

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SWISSCANTO FONDSLEITUNG AG
Plaintiff

and

BLACKBERRY LIMITED. *et al*
Defendants

Court File No.: CV-13-49541300CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

AMENDED AMENDED STATEMENT OF CLAIM

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SWISSCANTO FONDSLEITUNG AG and BLACKBERRY LIMITED. *et al*

Plaintiff Defendants

Court File No.: CV-13-49541300CP

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceedings Under the *Class Proceedings Act, 1992*

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ORDER
(LEAVE UNDER PART XXIII.1)

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