

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

BRIAN BOOG

PLAINTIFF

and

CAPCOM CO. LTD., and CAPCOM (U.S.A.) INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE } THE HONOURABLE JUSTICE STEPHENS } _____ / _____ / _____

ON THE APPLICATION OF the Plaintiff coming on for hearing before the Honourable Mr. Justice Stephens at the Courthouse at 800 Smithe Street, Vancouver, British Columbia on October 31, 2022; and on hearing Saro Turner and Ryan Matheuszik for the plaintiff and Andrew Borrell and Alexandra Mitretodis for the defendants;

ON READING all materials filed and on hearing the submissions of counsel for the parties;

AND ON BEING ADVISED that all parties consent to the Order;

1. THIS COURT ORDERS that the terms of the settlement agreement reached between the parties as set out in the Settlement Agreement attached as **Schedule "A"** to this Order are hereby approved and that all capitalized terms in this Order have the same meaning as defined in such Settlement Agreement;

2. THIS COURT ORDERS AND DECLARES that the Settlement Agreement is fair, reasonable and in the best interest of the Class Members.

3. THIS COURT ORDERS AND DECLARES that, the Settlement Agreement is approved pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms;

4. THIS COURT ORDERS AND DECLARES that the Releasors, other than those who opt-out of the Settlement, have fully and finally released the Released Parties from the Released Claims pursuant to the following terms:

- a. In exchange for the settlement benefits hereunder and for other valuable consideration set forth in the Settlement Agreement, the Plaintiff and each Class Member, including their heirs, successors and assigns, on behalf of themselves and any other legal or natural persons who may claim by, through or under them, expressly and irrevocably waives and fully, finally and forever settles, releases and discharges all claims, demands, actions, suits and causes of action against the Defendants and/or their directors, officers, employees, lawyers, insurers or agents, whether known or unknown, asserted or unasserted, that any Class Member ever had, could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged in the Action which arise from, in connection with, or relate to the Data Breach.
- b. The Plaintiff and Class Members expressly agree that this Release and the Second Order is, will be, and may be raised as a complete defense to, and will preclude any action or proceeding encompassed by this Release.
- c. The Plaintiff and Class Members shall not now or hereafter institute, maintain, prosecute, assert and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, cause of action and/or any other matters released through this Settlement.
- d. In connection with the Settlement Agreement, the Plaintiff and Class Members acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the subject matter of the Action and/or the Release herein. Nevertheless, it is the intention of the Plaintiff and Class Members in executing this Settlement Agreement fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or may have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the subject matter

of the Action, even if such matters and claims if known would have materially affected the Settlement, except as otherwise stated in this Settlement Agreement.

- e. Releasors represent and warrant that they are the sole and exclusive owners of all claims that they personally are releasing under this Settlement Agreement. Releasors further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that Releasors are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds or values under the Action.
- f. Without in any way limiting its scope, and except to the extent otherwise specified in this Settlement Agreement, this release under this Section 4 covers without limitation, any and all claims for legal fees, taxes, costs, expert fees or consultant fees, interest, or litigation fees, costs or any other fees, costs and/or disbursements incurred by Class Counsel, any other legal counsel, the Plaintiff, Class Members or any other person who claim to have assisted in conferring the benefits under this Settlement upon the Class.
- g. The Plaintiff, Class Counsel and/or any other legal counsel who receives legal fees and disbursements from this Settlement acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.
- h. Nothing in this Release shall preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.
- i. Releasors hereby agree and acknowledge that the provisions of this Release together constitute an essential and material term of the Settlement Agreement and shall be included in the Second Order.
- j. The Parties agree that each Class Member who does not opt-out will be forever barred and enjoined from continuing, commencing, instituting, or prosecuting any action, litigation, investigation or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any

other forum, directly, representatively, or derivatively, asserting against any of the Defendants, the Released Parties, and/or third-party any claims that relate to or constitute any Released Claims covered by the Settlement Agreement.

5. THIS COURT ORDERS AND DECLARES that the form of notice as attach at Schedule "B" to the Settlement Agreement is approved.

6. THIS COURT ORDERS AND DECLARES that the Distribution Protocol as attached at Schedule "E" to the Settlement Agreement is approved.

7. THIS COURT ORDERS AND DECLARES that Class Counsel shall administer the Settlement.

8. THIS COURT ORDERS AND DECLARES that that this Court retains continuing exclusive jurisdiction over the Class to administer, supervise, construe and enforce this Settlement Agreement;

9. THIS COURT ORDERS AND DECLARES that the parties may bring such motions to this Court for directions as may be required until the Effective Date;

10. THIS COURT ORDERS that the Action will be dismissed without costs following the full implementation of the terms established by the Settlement Agreement.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER:

Signature of Lawyer for the Plaintiff
Saro J. Turner

Signature of Lawyer for the Defendants
Andrew Borrell

BY THE COURT

REGISTRAR

**SCHEDULE “B”
COVER EMAIL TO CLASS MEMBERS**

Dear Class Member

Re: *Capcom Class Action*

You are receiving this email because you are a former Canadian employee of Capcom whose personal information was accessed in or as a result of a security incident discovered by Capcom on November 1, 2020 where a third party obtained access to the Capcom’s computer network and exfiltrated certain data. A settlement has been reached that may affect your legal rights. The settlement has been approved by the Supreme Court of British Columbia. Please see the Court-approved Notice of Settlement Approval and Claims Procedures by clicking [here](https://www.slatervechio.com/class-action/capcom-privacy-breach-class-action/) [<https://www.slatervechio.com/class-action/capcom-privacy-breach-class-action/>], also attached for more information.

More Information

The notice contains only a summary of the Settlement and Class Members are encouraged to review the complete Settlement Agreement [here](https://www.slatervechio.com/wp-content/uploads/2022/09/Capcom-Final-Settlement-Agreement.pdf) [<https://www.slatervechio.com/wp-content/uploads/2022/09/Capcom-Final-Settlement-Agreement.pdf>]. If you have questions that are not answered online, please contact the appropriate Class Counsel identified below. The law firms Good Barrister and Slater Vecchio represent Class Members in the Action. They can be reached at:

Slater Vecchio

PO Box 10445 Pacific Center North
18th Floor, Dunsmuir Street
Vancouver, BC V7Y 1K4

Steven Nguyen

Phone: 604-648-3571

Email: snguyen@slatervecchio.com

**CAPCOM CLASS ACTION
NOTICE OF SETTLEMENT APPROVAL AND CLAIMS PROCEDURES**

Read this notice carefully as it may affect your rights.

THIS NOTICE IS DIRECTED TO:

All Canadian residents whose Personal Information was accessed in or as a result of a security incident discovered by Capcom on November 1, 2020 where a third party obtained access to the Capcom’s computer network and exfiltrated certain data (“Data Breach”), or who received a notification that their Personal Information may have been accessed as a result of the Data Breach who have not previously opted-out of this proceeding (“Class Members”).

I. Nature of the Class Action

On July 13, 2021, a proposed class action was commenced against Capcom Co. Ltd., Capcom (U.S.A.) Inc., and Capcom Game Studio Vancouver Inc. (collectively referred to as “**Capcom**”) in the Supreme Court of British Columbia, *Brian Boog v. Capcom Co. Ltd., Capcom (U.S.A.) Inc., and Capcom Game Studio Vancouver, Inc.* (Action No. S-216405, Vancouver Registry) (the “**Action**”) on behalf of Class Members whose Personal Information was accessed as a result of the Data Breach or who received notification that their Personal Information may have been accessed as a result of the Data Breach.

“**Personal Information**” means information about an identifiable individual. Examples include name, home address and phone number, social insurance number, and medical information. Personal information does not include business contact information. Examples that are not considered personal information include information to enable an individual at a place of business to be contacted, such as name, position/title, business telephone number, business address, business email or business fax number.

Capcom denies these allegations. Despite Capcom’s belief that the allegations advanced in the Action are unfounded and that they have good and reasonable defenses, Capcom has agreed to settle the Action in order to achieve final resolution of all claims.

II. Settlement

The parties have reached a settlement of the Action, without an admission of liability on the part of Capcom which has been approved by the Supreme Court of British Columbia (“**Settlement**” or “**Settlement Agreement**”).

Pursuant to the Settlement, Capcom will pay CAD \$125,000 to effectuate the Settlement, inclusive of any distributed amounts to Class Members, class counsel fees, taxes and disbursements, any honouraria for the representative plaintiffs, any charitable donations paid for the benefit of Class Members to the Law Foundation, and administration expenses (the “**Settlement Amount**”). The balance of the Settlement Amount after the payment of class counsel fees, taxes and disbursements,

administration expenses and any honoraria for the representative plaintiffs is available for distribution to Class Members (the “Distribution Amount”).

This Settlement resolves the Action for all Class Members as against Capcom. A full release of all claims in the Action has been granted to Capcom. This Settlement represents a resolution of disputed claims and Capcom does not admit any wrongdoing or liability.

On **November 4, 2022**, the Honourable Justice Stephens of the Supreme Court of British Columbia approved the Settlement as being fair, reasonable and in the best interests of class members. He also approved Class Counsel fees of \$29,472.29 plus applicable taxes, disbursements of \$5,610.86, and honoraria to the representative plaintiff of \$1500.00.

III. Claims Process

A. Submitting a Claim

The Settlement Funds will be distributed to Class Members in two stages.

Stage 1: Class Members can submit claims with supporting evidence for direct losses caused by the Data Breach and will be eligible for reimbursement of such losses. The evidence of loss must be objective, reliable and credible, such as credit card statements, invoices, fraud reports, and receipts of out-of-pocket expenses incurred. Class Members are entitled to submit a claim for the following loss types:

- unauthorised charges on a class members’ bank account or credit card;
- unauthorised lending;
- credit monitoring, credit insurance, identity theft protection;
- credit reports; and
- other costs, losses and/or reimbursed expenses.

Class Members who submit an approved substantiated claim will also be entitled to receive reimbursement for two hours of lost time, calculated at a rate of CAD \$20.00 per hour, for each category of approved substantiated loss.

If the available Distribution Amount is insufficient to pay all approved substantiated claims, each claim will be proportionally reduced. No additional contributions will be made by the Capcom.

Stage 2: Following the distribution, if there is any Distribution Amount remaining, class counsel will disburse such amount on a pro rata basis to all Class Members.

You can submit a claim form to class counsel online at:

<https://www.slatervechio.com/class-action/capcom-privacy-breach-class-action/>

The right to make a is not assignable or transferable and cannot be claimed by anyone other than the claimant.

Your online claim’s form must be submitted by ♦. [60 days after dissemination of notice]

Class counsel shall review the claims forms by ♦ [30 days after claims period deadline] to either approve or reject claims.

Class counsel's decision concerning the validity of any particular claim shall be final and binding. There shall be no right of appeal.

B. Issuing Cash Payments

Class Counsel will send an email with an Interact e-transfer for the amount of any cash payments to each claimant whose claim is approved to the email address provided by each claimant within thirty (30) days following the claims deadline.

C. Questions about the Settlement

This notice contains only a summary of the Settlement and Class Members are encouraged to review the complete Settlement Agreement. If you have questions that are not answered online, please contact the appropriate Class Counsel identified below. The law firms Good Barrister and Slater Vecchio represent Class Members in the Action. They can be reached at:

Slater Vecchio

PO Box 10445 Pacific Center North
18th Floor, Dunsmuir Street
Vancouver, BC V7Y 1K4

Steven Nguyen
Phone: 604-648-3571
Email: snguyen@slatervecchio.com

D. Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement including the Schedules to the Settlement Agreement, the terms of the Settlement Agreement and/or the Court orders shall prevail.

IV. Additional Information

This notice is given to you on the basis that you may be a Class Member whose rights could be affected by the Action. This notice should not be understood as an expression of any opinion of the Courts as to the merits of any claim or defences asserted in the Action. Its sole purpose is to inform you of the Action so that you may decide what steps to take in relation to it.

INQUIRIES SHOULD NOT BE DIRECTED TO THE COURTS.

<p>THIS NOTICE HAS BEEN APPROVED BY THE SUPREME COURT OF BRITISH COLUMBIA</p>
