Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ALEXANDER TALESNIK

Plaintiff

- and -

MYHERITAGE LTD.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANT:

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

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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim 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.

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 ________________________ Issued by __________________________________
Local registrar

Address of court office: 330 University Avenue, 8th Floor
Toronto, ON M5G 1R7

TO: **MyHeritage Ltd.**
3 Ariel Sharon Blvd.
Or-Yehuda
Central District
6037606
Israel

CLAIM

1. The plaintiff claims on his own behalf and on behalf of the other Class Members:[1]

   (a) $75 million in damages and/or equitable compensation and/or disgorgement, or such other amount as may be provided before trial;

   (b) an order certifying this action as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "*CPA*");

   (c) an order appointing the plaintiff as representative plaintiff on behalf of the Class pursuant to the *CPA*;

   (d) an order defining the Class as set out in paragraph 8;

   (e) costs of providing notice to the Class Members in respect of this action;

   (f) a declaration that the plaintiff and other Class Members' use and obligation to pay for the Services is governed by the laws of the State of Israel;

   (g) a declaration that the defendant has violated the Israeli Consumer Protection Law as set out herein;

   (h) a declaration that the defendant is liable for unjust enrichment;

   (i) costs of distributing the proceeds of any judgment and/or order to the Class Members;

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[1] Capitalized terms not defined in paragraph 1 are defined below.

(j) pre-judgment and post-judgment interest compounded at an elevated rate of interest or, alternatively, at the rate provided under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “*CJA*”);

(k) costs of this action; and

(l) such further and other relief as this Court considers just.

A. The defendant

2. The defendant, MyHeritage Ltd. (“MyHeritage”), is a corporation organized under the laws of the State of Israel.

3. MyHeritage provides online genealogy services (the “Services”) to subscribers in Canada and elsewhere.

4. To access the Services, users must register with MyHeritage and pay an annual subscription fee.

5. At all material times, MyHeritage was carrying on business in Ontario. Among other things, MyHeritage actively engages in e-commerce with subscribers in Ontario and elsewhere in Canada, marketing the Services to them and entering contracts for the provision of the Services. MyHeritage has a GST/HST registration number to collect tax from Canadian subscribers, bills Canadian subscribers in Canadian dollars, and has a Canadian toll-free telephone line.

6. MyHeritage also maintains a global user database comprised of DNA data of over 7.8 million users from countries around the world, including Canada. MyHeritage engages subscribers to the Services to provide MyHeritage with their DNA data.

B. The plaintiff and the Class

7. The plaintiff, Alexander Talesnik, is an individual residing in Toronto, Ontario.

8. The plaintiff brings this action on his own behalf and on behalf of the following class (the "Class" and "Class Members"):

> All individuals resident in Canada who subscribed to MyHeritage prior to the Revision Date.[2]

C. MyHeritage's Terms and Conditions

9. For the plaintiff and the other Class Members, the Services are governed by a set of terms and conditions drafted by MyHeritage (the "Terms and Conditions").

10. The Terms and Conditions are a standard-form consumer contract of adhesion. Subscribers to MyHeritage have no opportunity to negotiate and/or revise the Terms and Conditions.

11. There was a gross inequality of bargaining power between MyHeritage and the plaintiff and other Class Members.

12. In accordance with the Terms and Conditions, subscriptions to the Services renew automatically for all users unless they proactively opt out and stop payment prior to the renewal.

13. The Terms and Conditions do not provide for a pro-rated refund to a subscriber if a pre-paid subscription is cancelled prior to the end of the subscription term.

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[2] Defined below at paragraph 14.

14. Until sometime in 2024 (the “Revision Date”), the Terms and Conditions provided that the laws of the State of Israel applied to the Services, including the obligation to pay for the Services, regardless of where users were located.

15. The plaintiff and the other Class Members’ use and obligation to pay for the Services was governed by the laws of the State of Israel.

D. Israeli Consumer Protection Law

16. Israeli Consumer Protection Law 5741-1981 (the “Israeli Consumer Protection Law”) sets out the applicable laws to protect consumers governed by the laws of the State of Israel.

17. Section 13A(a) of the Israeli Consumer Protection Law defines a “transaction for a fixed period” as each of the following:[3]

> (1) a transaction for a certain period for the acquisition of goods and services;
>
> (2) a transaction in which during a certain period goods and services are acquired at a reduced price or in which some other benefit is given in their respect, whether the transaction itself is for an indefinite period or for a definite period, other than a transaction in the course of which – during a limited period or unconditionally – the dealer reduced the price of the goods and services or offered a different benefit; or
>
> (3) a transaction connected to another transaction, so that – during a certain period – the price for the acquisition of goods or services in one transaction is affected by or has an effect on the price paid in the other transaction.

[3] All quotations from the Israeli Consumer Protection Law herein are as translated from Hebrew.

18. Sections 13A(b) and (c) set out the requirements for the lawful renewal of a "transaction for a fixed period" as follows:

> (b) In a transaction for a fixed period in which a dealer debits payment against the consumer's account, under an authorization to debit an account or under an authorization to debit a credit card, as defined in section 14B(b), <u>the dealer shall inform the consumer during the period of notification when the transaction or undertaking will end</u>; the said date shall be stated in each of the following:
>
> (1) the contract, if there is a written contract, or in the document under section 14C(b);
>
> (2) each invoice, receipt or payment notice sent to the consumer in the period that begins thirty months before the date of the end of the transaction or undertaking, but if any of these is sent to the consumer more than once a month, then this provision shall apply only once a month.
>
> (c) (1) <u>any condition in the contract which provides that the contract between the parties will continue after the date of the end of the transaction or undertaking shall be of no effect</u>, and the contract shall be deemed to provide that it will lapse on that date;
>
> (2) if a dealer proposed to a consumer during the period of notification to extend the contract between them and the consumer informed the dealer that he agrees to the extension, then the effect of the contract between the parties shall be extended as they agreed; if a dealer proposed to a consumer after the period of notification to extend the contract between them and the consumer informed the dealer that he agrees to the extension, then the effect of the contract between the parties shall be extended as they agreed; however, during the first thirty days of the extension period the dealer does not have the right to increase the price of the transaction or to change its conditions to the consumer's disadvantage and the consumer may give notice of the cancellation of his agreement. [Emphasis added.]

19. Section 13A(a) of the Israeli Consumer Protection Law defines the "period of notification" as:

> … the period between sixty days before the expiration of a transaction or undertaking and thirty days before that date.

20. Section 13A(e) of the Israeli Consumer Protection Law provides that:

> For the purposes of this section, the dealer shall bear the onus of proving that the consumer agreed to extend a contract between him and the dealer.

21. Section 13D(c) of the Israeli Consumer Protection Law provides that:

> A contract for an ongoing transaction shall lapse within three business days after the cancellation notice was given under the provisions of subsections (a) and (b), and if the cancellation notice was given by registered mail – within six business days after it was handed in for dispatch, all of the consumer did not state a later date in the cancellation notice (in this paragraph: Cancellation date);on the cancellation date the dealer shall stop supplying the goods or the services, and he shall not charge the consumer for goods and services given after the cancellation date.

22. An "ongoing transaction" is defined in section 13C(a) of the Israeli Consumer Protection Law as:

> a transaction for the acquisition of goods or services in an ongoing manner, including any change in the transaction or addition thereto that does not constitute a new transaction, all irrespective whether the transaction is for a definite period or for an indefinite period, except for a transaction between a gas consumer and a gas supplier for the supply of gas;

23. The laws of the State of Israel prohibit any waiver of the right to participate in a class action.

E. MyHeritage violated the Israeli Consumer Protection Law

1. MyHeritage unlawfully renewed the Services and increased the price for the Services

24. The plaintiff and the other Class Members' subscriptions with MyHeritage were "transactions for a fixed period" under the Israeli Consumer Protection Law.

25. On September 8, 2023, the plaintiff subscribed with MyHeritage for a 14-day free trial and subsequently paid to access the Services for one year.

26. On September 8, 2024, the plaintiff's subscription to the Services was automatically renewed by MyHeritage at the end of the fixed term of one year, and MyHeritage unilaterally, and without notice, increased the price of the plaintiff's subscription to the Services. The plaintiff did not actively agree to extend his subscription to the Services, nor did he agree to any increase in the price of the Services.

27. Notwithstanding that neither the plaintiff nor the other Class Members provided the requisite approvals, MyHeritage automatically renewed the subscriptions of the plaintiff and the other Class Members to the Services at the end of their fixed terms of one year.

28. The plaintiff and the other Class Members were not notified in advance of the automatic renewal, nor were they given an opportunity to consider a renewal.

29. The plaintiff and the other Class Members did not actively agree to the extension of their subscriptions to the Services.

30. Instead, without having received notice or providing their consent, the plaintiff and the other Class Members had their subscriptions to the Services automatically renewed following their first year of subscription and were charged a higher subscription price than what they had agreed to pay.

31. MyHeritage's automatic renewal of the plaintiff and the other Class Members' subscriptions to the Services and unilateral increase in price for the Services violate the Israeli Consumer Protection Law.

2. *MyHeritage unlawfully failed to cancel the Services and to provide refunds*

32. On September 9, 2024, the plaintiff attempted to cancel his subscription to the Services. However, there was no option for the plaintiff to cancel the subscription immediately. Accordingly, the plaintiff selected the option to stop his recurring payment for his subscription. MyHeritage responded by indicating that the subscription would end on September 8, 2025.

33. MyHeritage did not cancel the plaintiff's subscription to the Services immediately and provide the plaintiff with a pro-rated refund in respect of the remainder of the subscription as of the cancellation date. Instead, MyHeritage maintained the Services through the end of the fixed term and failed to provide any refund to the plaintiff.

34. MyHeritage similarly failed to permit the Class Members to cancel their subscriptions upon request and failed to provide pro-rated refunds to the Class Members.

35. MyHeritage's failures to (a) permit cancellations before the end of the fixed term for the Services, and (b) provide pro-rated refunds upon such cancellation, violate the Israeli Consumer Protection Law.

F. MyHeritage is liable to the Class

36. MyHeritage unlawfully charged the plaintiff and other Class Members subscription fees following the automatic renewal of their subscriptions from the date MyHeritage began offering the Services in Canada until the Revision Date.

37. The automatic renewal of Class Members' subscriptions was in violation of the Israeli Consumer Protection Law, which governed the administration of the Services to the Class Members.

38. Further, MyHeritage unlawfully failed to cancel the subscription to the Services of the plaintiff and other Class Members upon request, and to provide pro-rated refunds to the plaintiff or the other Class Members.

39. MyHeritage was unjustly enriched by the subscription fees charged following: (a) the automatic renewal of the Class Members' subscriptions, and (b) the failure by MyHeritage to cancel the subscriptions of the plaintiff and the other Class Members upon request. There is no juristic reason for MyHeritage's enrichment, nor is there a juristic reason for the corresponding deprivation suffered by the plaintiff and the other Class Members.

40. As a result of MyHeritage's breach of the Israeli Consumer Protection Law and/or its unjust enrichment, the Class Members are entitled to disgorgement and/or equitable compensation and/or damages in the amount of (a) all subscription fees they paid to the defendant following the automatic renewal of their subscriptions, (b) the increased subscription fees they paid to the defendant following the automatic renewal of their subscriptions, and/or (c) the portion of their subscription fees paid in respect of the period following the cancellation date.

41. It is necessary and appropriate to award an elevated rate of interest and to compound the disgorgement and/or equitable compensation and/or damages and/or

interest to reflect the time value of the MyHeritage's gains and/or the plaintiff and other Class Members' losses.

42. Alternatively, the plaintiff and the other Class Members plead that the disgorgement and/or equitable compensation and/or damages and/or interest thereon should be calculated at the rate provided in the *CJA*.

G. Legislation and place of trial

43. The plaintiff and the other Class Members plead and rely on the *CPA* and the *CJA*.

44. The plaintiff and the other Class Members plead and rely on the Israeli Consumer Protection Law.

45. The plaintiff and the other Class Members plead and rely on the Israeli Statute of Limitations Law 5718-1958, which provides a limitation period of 7 or 7.5 years in respect of their claims.

46. The substantive laws of the State of Israel apply to this action.

47. Ontario courts have jurisdiction over the claims of the plaintiff and the Class Members in respect of their use of the Services.

48. There is no other forum appropriate to resolve this dispute.

49. There is strong cause not to enforce any clause that would otherwise require the plaintiff and the other Class Members to prosecute their claims in respect of the Services in courts in the State of Israel or in any other jurisdiction.

50. The plaintiff and the Class Members propose that this action be tried in the City of Toronto.

August 19, 2026

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Plaintiff Defendant

Court File No.

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SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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