

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
SUPERIOR COURT

NO: 500-06-000798-161

STEPHANIE J. BENABU

Applicant

v.

VIDÉOTRON S.E.N.C.
VIDÉOTRON LTÉE
NETFLIX INC.
BELL CANADA
ROGERS COMMUNICATIONS INC.
APPLE INC.
LINKEDIN IRELAND
GOOGLE INC.
SHOMI PARTNERSHIP
ROGERS MEDIA INC.
SIRIUS XM CANADA INC.
SPOTIFY CANADA INC.
AFFINITAS GMBH
MATCH.COM LLP
AUDIBLE INC.

Defendants

and

**FONDS D'AIDE AUX ACTIONS
COLLECTIVES**

Impleaded Party

**CONSOLIDATED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION FOR SETTLEMENT PURPOSES AND FOR APPROVAL OF NOTICES TO
CLASS MEMBERS OF A SETTLEMENT APPROVAL HEARING**
(Articles 25, 49, 576, 579, 581 and 590 C.C.P.)

**TO THE HONORABLE STÉPHANE SANSFAÇON OF THE SUPERIOR COURT OF
QUÉBEC, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE
APPLICANT SUBMITS THE FOLLOWING:**

I. PROCEDURAL CONTEXT

1. On July 4th, 2016, the Applicant filed an application against 25 Defendants seeking authorization to institute a class proceeding and to be appointed Representative Plaintiff of the following class of persons:

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("CPA"), who since July 4th, 2013 (the "Class Period"), was provided services or goods at a reduced price (the "Reduced Price"), for a fixed period (the "Fixed Period"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "Regular Price");

(hereinafter referred to as the "Class")

Subclass:

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act* ("CPA"), who since July 4th, 2013 (the "Class Period"), was provided services or goods free of charge, for a fixed period (the "Fixed Period"), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the "Regular Price");

(hereinafter referred to as "Subclass")

or any other Class to be determined by the Court;

2. The Applicant alleges that the Defendants acted in violation of paragraph c of section 230 of Quebec's *Consumer Protection Act* by offering services and/or goods free or at a reduced price for a certain period of time, before charging the regular price if the members did not take steps to indicate that they do not wish to obtain the goods or services after the said period;
3. On September 15th, 2016, the Defendant Audible Inc. (hereinafter "**Audible**") filed an Answer to Summons stating its intention to defend against the Application for Authorization;

II. PROPOSED SETTLEMENT

4. The Applicant and Audible have reached an agreement to settle the present matter, as it appears from a copy of the Settlement Agreement filed herewith as **Exhibit AUD-1**;

5. Pursuant to the Settlement Agreement, Audible, without any admission, agrees to provide to all Eligible Accounts of each Settlement Class Member, two (2) Settlement Credits. Each Settlement Credit is valid towards the purchase of one (1) Single-Volume Audiobook on Audible.com, as detailed at paragraph 9 of the Settlement Agreement, Exhibit AUD-1;
6. The Settlement Agreement also provides that Audible will consent to the authorization of the proposed class action for settlement purposes only, on the basis of the following collective issue:

During the Class Period, did Audible's alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Putative Class Members entitled to compensation?

III. OBJECT OF THIS APPLICATION

7. The parties are asking this Court to:
 - a) authorize the proposed class action for settlement purposes only against Audible;
 - b) appoint Stephanie J. Benabu as Representative Plaintiff of the Class for settlement purposes only;
 - c) approve the form and content of the email and pre-approval notice to Class members, including the objection and/or opt-out deadlines;

IV. AUTHORIZATION FOR SETTLEMENT PURPOSES ONLY AGAINST AUDIBLE INC.

8. The parties having agreed to an amended Class description, Applicant requests this Court to authorize the class action for settlement purposes against Audible only on behalf of the following modified Class:

In English:

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act*, who since July 4th, 2013, was provided services by Audible Inc. through an Eligible Account at a reduced price or free of charge, for a fixed period, and who, after the fixed period, was required to send a notice to Audible Inc. indicating that he/she does not wish to obtain the services at the regular price;

Eligible Account means an Audible.com account that meets the following cumulative criteria: a) was opened by a natural person physically residing in the province of Québec during the Class Period further to signing up for a 30-day trial on Audible.com while continuing to physically reside within the

province of Québec; and b) has actually paid membership fees as a result of maintaining their membership for at least thirty (30) days after the date of signing up;

In French:

Tout consommateur, au sens de la *Loi sur la protection du consommateur du Québec*, qui, depuis le 4 juillet 2013 a reçu de la part d’Audible inc., par le biais d’un compte admissible, des services à un prix réduit ou gratuitement, pour une période déterminée, et à qui, au terme de la période déterminée, on a exigé d’envoyer un avis à Audible inc. indiquant qu’il ne souhaite pas obtenir les services au prix courant;

Un Compte admissible signifie un compte qui rencontre les critères cumulatifs suivants : a) a été ouvert par une personne physique résidant dans la province de Québec durant la Période de la classe après s’être inscrite pour un essai gratuit de 30 jours sur Audible.com en continuant de résider dans la province de Québec; et b) a effectivement payé des frais d’adhésion résultant du fait de maintenir son adhésion pour au moins trente (30) jours après la date d’inscription;

V. APPOINTMENT OF REPRESENTATIVE PLAINTIFF

9. The Applicant, Stephanie J. Benabu, will fairly and adequately protect and represent the interests of the Class members;
10. The Applicant does not have any conflicts of interest with the other Class members;

VI. NOTICE TO CLASS MEMBERS

11. The parties intend to file a joint application for the approval of the Settlement Agreement and of Class Counsel Fees;
12. However, before the Court can approve the Settlement Agreement, the members of the Class must be advised that a hearing will take place on the matter;
13. The proposed email and pre-approval notice, filed herewith in its English and French versions as **Exhibit AUD-2**, has a specific purpose to inform the Class members of the following, in conformity with articles 579 and 590 of the *Code of civil procedure* (“**CCP**”):
 - a) the judgment authorizing the class action for the sole purpose of the settlement and the definition of the Class;

- b) the existence of the Settlement Agreement and the fact that it will be submitted to the Court for approval, specifying the date and place of the approval hearing;
 - c) the nature of the settlement, including the compensation offered to Class Members and the payment of the Class counsel fees;
 - d) the contact information of the representative plaintiff's lawyer and the district in which the class action is to proceed;
 - e) the consequences and effects of the approval of the Settlement Agreement by the Court with respect to the release and discharge of Audible from Class Members;
 - f) the possibility for the Class members to make objections or other representations at the hearing for the approval of the Settlement Agreement;
 - g) the right of Class members to opt-out of the class action;
14. The parties have agreed that the pre-approval notices required pursuant to articles 579 and 590 CCP will be sent by email directly to each Class Member, as detailed at paragraph 12 of the Settlement Agreement;
15. The parties therefore request that this Court approve the form and content of the email and pre-approval notice (Exhibit AUD-2), in both its English and French versions, and its proposed mode of distribution;
16. The parties request that this Court set the time limit for Class Members to file objections to Court approval of the Settlement Agreement at thirty (30) days after the date on which the pre-approval notices are notified via email;
17. The parties request that this Court set the time limit for Class members to opt-out of the class action at thirty (30) days after the notification via email of the pre-approval notices to the Class Members;
18. The present application is in the interests of justice and of the Class members;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

1. **AUTHORIZE** Applicant, for the purpose of settlement against Defendant Audible Inc., to amend as follows the Class description in the "*Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*":

In English:

Every consumer, pursuant to the terms of Quebec's *Consumer Protection Act*, who since July 4th, 2013, was provided services by Audible Inc. through an Eligible Account at a reduced price or free of charge, for a fixed period, and

who, after the fixed period, was required to send a notice to Audible Inc. indicating that he/she does not wish to obtain the services at the regular price;

Eligible Account means an Audible.com account that meets the following cumulative criteria: a) was opened by a natural person physically residing in the province of Québec during the Class Period further to signing up for a 30-day trial on Audible.com while continuing to physically reside within the province of Québec; and b) has actually paid membership fees as a result of maintaining their membership for at least thirty (30) days after the date of signing up;

In French:

Tout consommateur, au sens de la *Loi sur la protection du consommateur du Québec*, qui, depuis le 4 juillet 2013 a reçu de la part d'Audible inc., par le biais d'un compte admissible, des services à un prix réduit ou gratuitement, pour une période déterminée, et à qui, au terme de la période déterminée, on a exigé d'envoyer un avis à Audible inc. indiquant qu'il ne souhaite pas obtenir les services au prix courant;

Un Compte admissible signifie un compte qui rencontre les critères cumulatifs suivants : a) a été ouvert par une personne physique résidant dans la province de Québec durant la Période de la classe après s'être inscrite pour un essai gratuit de 30 jours sur Audible.com en continuant de résider dans la province de Québec; et b) a effectivement payé des frais d'adhésion résultant du fait de maintenir son adhésion pour au moins trente (30) jours après la date d'inscription;

2. **AUTHORIZE** the bringing of a class action against Defendant Audible Inc. for settlement purposes;
3. **APPOINT** Applicant Stephanie J. Benabu the status of Representative Plaintiff for settlement purposes;
4. **IDENTIFY** for the purposes of settlement only, the common question to be dealt with collectively as follows:

During the Class Period, did Audible's alleged practice violate paragraph c of section 230 of the *CPA*, and, if so, are Putative Class Members entitled to compensation?

5. **APPROVE** the form and content of the email and pre-approval notice to Class members, in its French and English version (**Exhibit AUD-2**);

6. **ORDER** the Defendant Audible Inc. to notify by email the pre-approval notice (**Exhibit AUD-2**) directly to each Class member, no later than forty (40) days after the judgment on the present application is rendered by the Court;
7. **DECLARE** that Class Members who wish to object to Court approval of the Settlement Agreement must do so in the manner provided for in the pre-approval notice (**Exhibit AUD-2**), on or before the thirtieth (30th) day following the notification by email of said pre-approval notices;
8. **DECLARE** that Class Members who wish to opt-out from the class action and the settlement thereof may do so by delivering a written notice confirming their intention to opt-out of this class action, in the manner provided for in the pre-approval notice (**Exhibit AUD-2**), on or before the thirtieth (30th) day following the notification by email of said pre-approval notices;
9. **DECLARE** that all Class members that have not requested their exclusion be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;
10. **SCHEDULE** the hearing date for the Application for Approval of the Settlement Agreement and of Class Counsel Fees on a date to be determined by the Court;
11. **THE WHOLE** without costs.

Montreal, October 23rd, 2017

(s) Joey Zukran

LPC AVOCAT INC.

Per: Mtre. Joey Zukran

Attorney for Applicant

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PROVINCE OF QUÉBEC
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AUDIBLE INC.

Defendants

and

**FONDS D'AIDE AUX ACTIONS
COLLECTIVES**

Impleaded Party

LIST OF EXHIBITS

- Exhibit AUD-1:** Settlement Agreement executed between the parties;
- Exhibit AUD-2:** Copies of the proposed pre-approval notices in English and French;

Montreal, October 23rd, 2017

(s) Joey Zukran

LPC AVOCAT INC.

Per: Me Joey Zukran
Attorney for Applicant

NOTICE OF PRESENTATION

Me Patrick Ouellet, Woods LLP
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**For Vidéotron SENC and
Vidéotron LTÉE**

Me Martin Sheehan
Fasken Martineau DuMoulin
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For Netflix Inc. & Spotify Canada Inc.

Me Vincent de l'Étoile
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Me Pierre Lefebvre
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**For Rogers Communications Inc.,
Shomi Partnership and Rogers Media Inc.**

Me Kristian Brabander
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For Apple Inc.

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Me Frikia Belogbi
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TAKE NOTICE that the present *Consolidated Application for Authorization to Institute a Class Action for Settlement Purposes and for Approval of Notices to Class Members of a Settlement Approval Hearing* shall be presented for adjudication before the Honourable Stéphane Sansfaçon, J.C.S., at **9:15 a.m.** on **October 27th, 2017**, at the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6, in a room to be determined by the Court.

Montreal, October 23rd, 2017

(s) *Joey Zukran*

LPC AVOCAT INC.
Per: Mtre. Joey Zukran
Attorney for Applicant

N^o : 500-06-000798-161

(Class Action)
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STEPHANIE J. BENABU

Applicant

-VS-

VIDÉOTRON S.E.N.C.

et

AUDIBLE INC. ET ALS.

Defendants

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CLASS MEMBERS OF A SETTLEMENT
APPROVAL HEARING**
(Arts. 25, 49, 576, 579, 581 and 590 C.C.P.)

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