

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 August 24th, 2016, the Defendant Netflix Inc. (hereinafter "**Netflix**") filed an Answer to Summons stating its intention to defend against the Application for Authorization;
4. On December 6th, 2016, Netflix filed an *Application for Authorization to Examine the Applicant Stephanie J. Benabu and to Submit Relevant Evidence*;

II. PROPOSED SETTLEMENT

5. The Applicant and Netflix have reached an agreement to settle the present matter, as it appears from a copy of the Settlement Agreement filed herewith as **Exhibit NET-1**;
6. Pursuant to the Settlement Agreement, each Class Member will be entitled to receive a refund of the subscription cost paid during their respective one-month refund period from Netflix, as detailed at paragraphs 12 and 16 of the Settlement Agreement, Exhibit NET-1;
7. The Settlement Agreement also provides that Netflix 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 Netflix's alleged practice violate paragraph c of section 230 of the *CPA*, and, if so, are Class Members entitled to compensation?

III. OBJECT OF THIS APPLICATION

8. The parties are asking this Court to:
 - a) authorize the proposed class action for settlement purposes only against Netflix;
 - b) appoint Stephanie J. Benabu as Representative Plaintiff of the Class for settlement purposes only;
 - c) approve the form and content of the pre-approval notices to Class Members, including the opt-out deadline;

IV. AUTHORIZATION FOR SETTLEMENT PURPOSES ONLY AGAINST NETFLIX

9. The parties having agreed to an amended Class and sub-class descriptions, Applicant requests this Court to authorize the class action for settlement purposes against Netflix only on behalf of the following modified Class and sub-classes:

In English:

Class:

All consumers residing in Québec who (i) started a subscription to the Netflix service during the Class Period, (ii) received a free trial, (iii) were automatically renewed at the regular price following the end of their Free Trial Period and (iv) subsequently cancelled their subscription to the Netflix

service within one month following the end of their Free Trial Period;

(hereinafter the “**Settlement Class Members**”)

Sub-Class A:

Settlement Class Members who cancelled their Netflix service after September 18th, 2016;

Sub-Class B:

Settlement Class Members who cancelled their Netflix service on or before September 18th, 2016;

In French:

Groupe :

Tous les consommateurs résidant au Québec qui (i) ont commencé un abonnement au service Netflix pendant la Période du recours, (II) ont reçu un essai gratuit, (III) ont été automatiquement renouvelés au prix régulier après la fin de leur période d'essai gratuite et (IV) par la suite annulé leur abonnement au service Netflix dans un délai d'un mois suivant la fin de leur période d'essai gratuite;

(les « **Membres du Groupe de Règlement** »)

Sous-Groupe A :

Les membres du Groupe de Règlement qui ont annulé leur service Netflix après le 18 septembre 2016;

Sous-Groupe B :

Les membres du Groupe de Règlement qui ont annulé leur service Netflix avant le 18 septembre 2016;

V. APPOINTMENT OF REPRESENTATIVE PLAINTIFF

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

VI. NOTICE TO CLASS MEMBERS

12. The parties intend to file a joint application for the approval of the Settlement Agreement and of Class Counsel Fees;
13. 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;
14. The proposed pre-approval notice to Class Members, filed herewith in its French and English versions as **Exhibit NET-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 principal issues to be dealt with collectively and the conclusions sought in relation to those issues;
 - c) 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;
 - d) the nature of the settlement, including the compensation offered to Class Members and the payment of the Class counsel fees;
 - e) the contact information of the representative plaintiff's lawyer and of Netflix's lawyer, as well as the district in which the class action is to proceed;
 - f) the consequences and effects of the approval of the Settlement Agreement by the Court with respect to the release and discharge of Netflix from Class Members;
 - g) the possibility for the Class Members to make objections or other representations at the hearing for the approval of the Settlement Agreement;
 - h) the right of Class Members to opt-out of the class action;
15. The parties have agreed that the pre-approval notice required pursuant to articles 579 and 590 CCP will be sent by email directly to each Sub-Class A Member, as detailed at paragraph 7 a) of the Settlement Agreement;
16. The parties have further agreed that the pre-approval notice shall be disseminated online using a paid Facebook Notice Campaign, as detailed at paragraph 7 b) of the Settlement Agreement;

17. The parties therefore request that this Court approve the form and content of the pre-approval notices (Exhibit NET-2), in both its English and French version, and the proposed modes of distribution;
18. 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 and disseminated via the Facebook Notice Campaign;
19. 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 and the dissemination via Facebook of the pre-approval notices to the Class Members;
20. 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 Netflix Inc., to amend as follows the Class and Sub-Class descriptions in the “*Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff*”:

In English:

Class:

All consumers residing in Québec who (i) started a subscription to the Netflix service during the Class Period, (ii) received a free trial, (iii) were automatically renewed at the regular price following the end of their Free Trial Period and (iv) subsequently cancelled their subscription to the Netflix service within one month following the end of their Free Trial Period;

(hereinafter the “**Settlement Class Members**”)

Sub-Class A:

Settlement Class Members who cancelled their Netflix service after September 18th, 2016;

Sub-Class B:

Settlement Class Members who cancelled their Netflix service on or before September 18th, 2016;

In French:

Groupe :

Tous les consommateurs résidant au Québec qui (i) ont commencé un abonnement au service Netflix pendant la Période du recours, (II) ont reçu un essai gratuit, (III) ont été automatiquement renouvelés au prix régulier après la fin de leur période d'essai gratuite et (IV) par la suite annulé leur abonnement au service Netflix dans un délai d'un mois suivant la fin de leur période d'essai gratuite;

(les « **Membres du Groupe de Règlement** »)

Sous-Groupe A :

Les membres du Groupe de Règlement qui ont annulé leur service Netflix après le 18 septembre 2016;

Sous-Groupe B :

Les membres du Groupe de Règlement qui ont annulé leur service Netflix avant le 18 septembre 2016;

2. **AUTHORIZE** the bringing of a class action against Defendant Netflix 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 Netflix's alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Class Members entitled to compensation?

5. **APPROVE** the form and content of the pre-approval notice to Class Members, in its French and English version (**Exhibit NET-2**);
6. **ORDER** the Defendant Netflix Inc. to notify by email the pre-approval notice (**Exhibit NET-2**) directly to each Sub-Class A Member, no later than twenty (20) days after the judgment on the present application is rendered by the Court;
7. **ORDER** the Defendant Netflix Inc. to disseminate the pre-approval notice via the Facebook Notice Campaign in French and English (**Exhibit NET-2**), no later than twenty (20) days after the judgment on the present application is rendered by the Court;

8. **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 NET-2**), on or before the thirtieth (30th) day following the notification by email and dissemination on Facebook of said pre-approval notices;
9. **DECLARE** that Class Members who wish to opt-out from the class action and the settlements 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 NET-2**), on or before the thirtieth (30th) day following the notification by email and of the start-date of the Facebook Notice Campaign;
10. **DECLARE** that all Class Members that have not requested their exclusion be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;
11. **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;
12. **THE WHOLE** without legal costs.

Montreal, October 20th, 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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Defendants

and

**FONDS D'AIDE AUX ACTIONS
COLLECTIVES**

Impleaded Party

LIST OF EXHIBITS

Exhibit NET-1: Settlement Agreement executed between the parties;

Exhibit NET-2: Copies of the proposed pre-approval notices to in English and French;

Montreal, October 20th, 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
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For Netflix Inc. & Spotify Canada Inc.

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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 20th, 2017

(s) Joey Zukran

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

N^o: 500-06-000798-161

**(Class Action)
SUPERIOR COURT
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STEPHANIE J. BENABU

Applicant

-VS-

VIDÉOTRON S.E.N.C.

et

NETFLIX INC. ET ALS.

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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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