

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF IBERVILLE

(Class Action)  
SUPERIOR COURT

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NO: 755-06-000005-179

VERNA JANE DUMLAO

Applicant

-VS-

FIDO SOLUTIONS INC.  
and  
ROGERS COMMUNICATIONS CANADA INC.  
and  
BELL MOBILITY INC.  
and  
TELUS COMMUNICATIONS COMPANY  
and  
VIDÉOTRON S.E.N.C.

Defendants

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF  
(ARTICLES 571 AND FOLLOWING C.C.P)**

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**TO THE HONOURABLE MARTIN F. SHEEHAN OF THE SUPERIOR COURT,  
DESIGNATED JUDGE IN THIS CASE, YOUR APPLICANT STATES AS FOLLOWS:**

**I. GENERAL PRESENTATION**

1. The Defendants are Wireless Service Providers (hereinafter “**WSPs**”) and have generated hundreds of millions of dollars charging their customers \$50.00 to \$150 each time they requested to unlock their phones during the class period, as it appears from **Exhibit P-12**;
2. On June 15<sup>th</sup>, 2017, the CRTC announced that starting no later than December 1<sup>st</sup> 2017, any devices provided by a WSP to a consumer for the purpose of providing wireless services must be provided unlocked and if a device already provided to the customer is or becomes locked to the network, a WSP must unlock the device, or give the customer the means to unlock the device, upon request, at no charge, Applicant disclosing Telecom Regulatory Policy CRTC 2017-200 as **Exhibit P-1**;

3. The unlocking fees charged by Defendants during the class period are disproportionate, exploitative and abusive, and bear no relation to the underlying cost of providing unlocking services;
4. The CRTC collected data and discovered that the unlocking fees are referred to in the market as a “ransom fee” or “hostage fee”, while CRTC chair Jean-Pierre Blais called the unlocking fee a “goodbye tax squeezed out of departing customers”, Applicant disclosing the February 11<sup>th</sup>, 2017, Toronto Star article titled “Toxic Revenue” as **Exhibit P-2**;
5. This proceeding seeks the full reimbursement (or, alternatively, a reduction) of the price of the unlocking fees as damages to compensate Class members, as well as punitive damages for the exploitation of Quebec consumers;
6. Consequently, Applicant wishes to institute a class action on behalf of the following class of which she is a member, namely:

**Class:**

All consumers residing or having resided in Quebec, [...] who paid to any of the Defendants a fee [...] to unlock their wireless device from August 14<sup>th</sup>, 2014 to December 1<sup>st</sup>, 2017;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

## **II. THE PARTIES**

7. Applicant resides in the judicial district of Iberville and is a consumer within the meaning of the *CPA*;
8. The Defendants are WSPs who contract with Quebec consumers to provide them wireless services on their mobile devices;
9. The Defendants are “merchants” within the meaning of the *CPA* and their activities are governed by this legislation, among others;
10. Fido Solutions Inc. offers consumers wireless services under the name “Fido Solutions” (“**Fido**”) as it appears from the extract of the CIDREQ, **Exhibit P-3**;
11. Rogers Communications Canada Inc. offers consumers wireless services under the names “Rogers Wireless” and “WOW! Boutique Mobile”, as it appears from the extract of the CIDREQ, **Exhibit P-4**. Rogers also offers consumers wireless services under the name “Chatr Wireless”. All of these business names are herein collectively referred to as “**Rogers**”;

12. Bell Mobility Inc. offers consumers wireless services under the names “Bell Mobility”, “Virgin Mobile Canada” and “Solo Mobile”, as it appears from the extract of the CIDREQ and from Virgin Mobile’s Terms and Conditions of Service, disclosed *en liasse* as **Exhibit P-5**. All of these business names are herein collectively referred to as “**Bell**”;
13. Telus Communications Company offers consumers wireless services under the names “Telus Mobility” and “Koodo Mobile”, as it appears from the extract of the CIDREQ, **Exhibit P-6**. All of these business names are herein collectively referred to as “**Telus**”;
14. Vidéotron S.E.N.C. offers consumers wireless services under the name “Vidéotron Mobile” (“**Vidéotron**”), as it appears from the extract of the CIDREQ, **Exhibit P-7**;
15. During the class period, all of the Defendants (including via the different business names they operate) intentionally sold Class members wireless devices/cellular phones that are locked (instead of ordering said wireless devices unlocked) and then charged Class members a minimum of \$50.00 plus taxes to unlock their wireless devices upon request (Exhibit P-12);

**III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT**

**Applicant’s Claim against Fido**

16. Applicant had been subscribed to Fido’s wireless services for approximately 10 years when she filed the original application (she is now with Rogers);
17. On March 21<sup>st</sup>, 2016 (according to Exhibit P-9 at page 4-PDF), Applicant contacted Fido’s customer service to inquire about how she would be able to use her Apple *iPhone 5S* while on vacation in the Philippines. The Applicant believes that her phone call was recorded and consents in advance to Fido filing the recording into evidence so that the Court has the benefit of her entire interaction with the Fido customer service representative (her initial action was filed on August 14, 2017 and Fido had a legal requirement to preserve this evidence);
18. Although she does not remember every detail of that phone call dating back 7 years ago, Applicant was essentially informed by Fido that if she wanted to use her iPhone in the Philippines with a sim card from a local telecom provider in that country, she would have to unlock her phone and that the fee was \$50.00 plus taxes;
19. Indeed, Applicant’s Wireless Service Agreement with Fido does provide for a

\$50.00 Device Unlock Fee (before taxes), applicable only if she unlocks her device, Applicant disclosing her Fido Agreement as **Exhibit P-8**;

20. Given that: **(i)** she did not want to pay the very expensive roaming and long-distance fees charged by Fido while in the Philippines (see *Sibiga c. Fido Solutions inc.*, 2016 QCCA 1299 on the issue of Fido's abusive roaming charges); **(ii)** since her iPhone was locked it would have been impossible for her to use it with the sim card of a local telecom provider [...] in the Philippines without unlocking it; and **(iii)** given that this fee was being imposed by Fido, Applicant agreed to pay the amount of \$57.49 including taxes, as it appears from a copy of her Fido invoice dated April 6<sup>th</sup>, 2016, **Exhibit P-9**;
21. Applicant was unhappy about paying the unlocking fee, but was in no position to argue or negotiate with a giant WSP such as Fido, who includes this abusive clause in their consumer contracts and contracts of adhesion, Exhibit P-8;
- 21.1 In the Philippines, the Applicant was able to use her unlocked iPhone with the sim card of a local telecom provider and therefore paid the local cell phone rates;
22. Applicant alleges that Fido's Device Unlock Fee contravenes section 8 of the CPA and article 1437 of the *Civil Code of Québec* ("**CCQ**"), which provide as follows:

**S. 8 CPA:** The consumer may demand the nullity of a contract or a reduction in his obligations thereunder where the disproportion between the respective obligations of the parties is so great as to amount to exploitation of the consumer or where the obligation of the consumer is excessive, harsh or unconscionable.

**Art. 1437 CCQ:** An abusive clause in a consumer contract or contract of adhesion is null, or the obligation arising from it may be reduced.

An abusive clause is a clause which is excessively and unreasonably detrimental to the consumer or the adhering party and is therefore not in good faith; in particular, a clause which so departs from the fundamental obligations arising from the rules normally governing the contract that it changes the nature of the contract is an abusive clause.
23. The Applicant always felt that the unlocking fee was abusive (as there is no hard cost to the Defendants to unlock a phone), but is now able to make this claim, notably, on the basis of the CRTC's investigation into unlocking fees and its decision to prohibit Defendants from charging unlocking fees and from selling phones that are locked in the future;
24. It appears from the CRTC's investigation that Fido (and the other Defendants)

had the option to order unlocked wireless devices from the various manufacturers (such as Samsung and Apple to name a few), but instead instructed these manufacturers to sell them wireless devices that are locked for their own financial gain but to the detriment of Class members, Exhibit P-1;

25. In sum, Fido charged Applicant \$57.49 because it intentionally chose to order locked phones from Apple and then decided to profit from their customers who requested to unlock their devices during the Class period;
26. Applicant suffered objective lesion by paying \$57.49 to unlock a phone that could have very easily been ordered unlocked by Fido from Apple, or which Fido could have unlocked free of charge as there is no hard cost to it (or the other Defendants) for unlocking a phone;
- 26.1 Applicant alleges that there was no hard cost to the Defendants to unlock the phones because this service is now performed by the Defendants for \$0.00 and the Defendants are not charitable organizations, but rather for-profit corporations with the objective of maximizing revenues for shareholders;
27. The jurisprudence indicates that objective lesion requires a comparison of what the consumer paid for the unlocking service (in this case, \$57.49) and the “wholesale” cost to the merchant of providing this service to a Quebec subscriber requesting to unlock their phone (in this case, very close to zero or zero);
28. Based on the CRTC’s findings, it appears that the “wholesale” cost to Fido and the other Defendants is virtually nothing, as it appears from Exhibit P-1, the relevant passages being reproduced below:

262. Having to pay to unlock a device was a key consumer frustration expressed by individuals on the record of the proceeding. Individuals and consumer groups generally submitted that unlocking fees were too high or should be prohibited, arguing that WSPs should bear the cost of unlocking phones from their networks as a cost of doing business, or they should not lock devices in the first place.

[...]

308. This may prevent WSPs from recovering certain charges provided for in their contracts in some cases. **However, the record demonstrates that WSPs themselves choose to order locked devices, and that this practice does not benefit customers in a significant way**, but serves to reduce the dynamism of the marketplace. These are further indications that **any costs associated with unlocking these devices should be considered a cost of doing business and borne by WSPs**.

309. The Commission also notes that the requirement to provide unlocked devices **will eventually result in the elimination of certain costs to WSPs associated with current locking practices.**

[our emphasis in bold].

29. There is an important disproportion between the \$57.49 charged to Applicant and the unlocking service provided by Fido;
30. The CRTC's decision to eliminate unlocking fees entirely demonstrates that the Defendants have charged and, as of the original date of the filing of this Application, continued to charge Quebec consumers device unlocking fees that are clearly disproportionate, exploitative and abusive;
31. The Applicant believes that further evidentiary support for her allegations will come to light after a reasonable opportunity for discovery;
32. Applicant's damages are a direct and proximate result of Fido's misconduct;
33. As a result of the foregoing, the Applicant and Class members are justified in claiming compensatory damages, as well as punitive damages based on repeated violations of section 8 *CPA* (pursuant to section 272 *CPA*), as well as compensatory damages and a declaratory judgment pursuant to article 1437 *CCQ*;

#### **The Level at which the Disproportion becomes Exploitative**

34. Freedom Mobile is a competitor of the Defendants offering its services to consumers outside of Quebec for the most part;
35. Freedom Mobile charged \$30.00 to unlock the wireless devices it sold, which is 40% less than the abusive fees charged by Defendants to Class members for an identical service;
36. Freedom Mobile was a proponent to eliminate the device unlocking fees charged by WSPs and made the following statement, Applicant disclosing **Exhibit P-10**:

Freedom Mobile currently charges \$30 to unlock phones. We came to that number because there are operational costs — it's a relatively complicated process and the customer generally has to call our call centre twice when they want to unlock their phone. **If phones were unlocked for the entire industry, that operational cost would no longer exist. For us, it's a competitive risk to be the only carrier who unlocks phones for free.** Without an unlock fee we could become the target of other carriers targeting our customers to switch to them, but we wouldn't have that same opportunity to

attract customers to us. **That's why we feel this needs to be an industry initiative. It creates a level playing field, with customers winning.** To us, it seems that industry-wide unlocked phones provide a better solution than having the CRTC regulate the rates and rules for unlocking. **The combination of operational costs and competitive reasons is why we charge the \$30 fee. We continue to be, by far, the carrier with the least expensive unlocking fees.**

36.1 Wind Mobile was another Canadian WSP and competitor of the Defendants who was charging even less than Freedom Mobile for unlocking devices, i.e. only \$10.00, as it appears from the "Politique réglementaire de télécom CRTC 2013-271" filed by Rogers and Fido as Exhibit FR-1 (as well as by all the other Defendants):

159. La plupart des FSSF ont indiqué qu'ils offraient à leurs clients des services de déverrouillage, les frais et les modalités de ces services étant variables. Par exemple, **WIND a expliqué qu'elle facture 10 \$ pour ce service, alors que Bell Canada et autres disent demander 75 \$...**

37. Without recognizing that a rate of \$10.00 or \$30.00 is representative of a fair market value for this service, it nonetheless demonstrates that the Defendants' competitors (with far less market share) in Canada were able to offer the exact same device unlocking service at a substantial profit, for 40% to 80% less than what the Defendants were charging Quebec Class members (the Defendants' exercise – and cost, if any – is the same whether the phone was unlocked in Quebec or another province);

38. As it appears from the foregoing, the available evidence suggests that:

- the Defendants intentionally order their wireless devices locked from their suppliers, when they could easily – and at no additional cost – order the devices unlocked;
- the costs, if any at all, associated to unlocking wireless devices are extremely minimal (and in any event only exist because the Defendants ordered their devices locked);
- as of December 1<sup>st</sup>, 2017, the CRTC prohibits Defendants from charging to unlock wireless devices or from selling wireless devices that are locked;

39. The Applicant therefore submits that although the CRTC did not explicitly prohibit Defendants to charge an unlocking fee prior to the CRTC's June 15<sup>th</sup>, 2017, decision to eliminate unlocking fees, the amount of \$50.00 charged by Defendants is disproportionate, exploitative and abusive, and bears no relation to

the underlying cost of providing unlocking services (and therefore illegal under Quebec law);

- 40. Based on the CRTC's June 15<sup>th</sup>, 2017, decision, it appears that Defendants ought to have never charged unlocking fees to Class members or should have never sold them wireless devices that were locked;
- 41. [...];
- 42. [...];
- 43. Given that Applicant hereby seeks to have the abusive clauses declared null, Applicant is accordingly entitled to claim and does hereby claim from Fido and the other Defendants the aggregate of the sums paid on account of wireless device unlocking fees;

**Applicant's claim for punitive damages**

- 44. Fido's (and the other Defendants') overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;
- 45. In this case, Fido and all the other Defendants breach and continue to breach the CPA (until December 1, 2017), without any explanation, for a significant period;
- 46. This complete disregard for consumers' rights and to their own obligations under the CPA on the part of Fido (as well as the other Defendants) is in and of itself an important reason for this Court to enforce measures that will punish the Defendants, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
- 47. The reality is that Fido and other Defendants generated hundreds of millions of dollars in revenues over the years by charging unlocking fees;
- 48. It is reported that the WSPs generated the following revenues from unlocking fees in the last three years alone, **Exhibit P-11**:

<b>Year</b>	<b>Unlocking Revenue</b>
2016	\$37,700,000.00
2015	\$28,500,000.00
2014	\$21,600,000.00
<b>Total:</b>	<b>\$87,800,000.00</b>

- 49. It is safe to assume that the Defendants account for more than 95% of this amount;



50. It appears that these fees were nothing more than a cash-cow for the Defendants, who were charging Class members to unlock phones which could have easily been ordered unlocked from the outset;
51. The 2013 Wireless Code did not give Defendants *carte blanche* to exploit Quebec consumers and to charge them abusive and disproportionate unlocking fees;
52. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
53. The Defendants' violations were intentional, calculated, malicious and vexatious, as they very well knew they were gouging consumers by charging them \$50 to \$150 for an operation that costs them nothing to perform (and which they perform today at no cost);
54. Fido and the other Defendants demonstrated through their behavior (before, during and after the violation) that it was more concerned about their bottom line than about consumers' rights and their own obligations under the CPA;
55. Applicant is accordingly entitled to claim and does hereby claim from Fido and the other Defendants:
  - a) \$25.00 per Class member on account of punitive damages.
56. Fido's and the other Defendants' patrimonial situations are so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

57. All Class members, regardless of which of the Defendants they contracted with, have a common interest both in proving the violation of section 8 of the CPA and of 1437 CCQ by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
- 57.1 Applicant alleges that all of the Defendants acted in bad faith in gouging consumers by charging them \$50 to \$150 for an operation that costs them nothing to perform (and which they perform today at no cost);
58. The nature of the interest necessary to establish the standing of the Applicant must be viewed from the perspective of the common interest of the proposed Class and not solely from the perspective of the representative plaintiff;
59. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the wireless device unlocking fees charged by Defendants are abusive, disproportionate and constitute objective

lesion under Quebec law;

60. The claims of every member of the Class are founded on very similar facts to the Applicant's claim against Fido;
61. Requiring a separate class action against each Defendant based on very similar questions of fact and identical questions of law would be a waste of resources;
62. Every member of the Class was charged an abusive and disproportionate wireless device unlocking fee;
63. The same legal issues are present in the action of each Class member against each Defendant (each Defendant faces more or less the same issues regarding the interpretation and application of section 8 *CPA* and article 1437 *CCQ*);
64. By reason of Defendants' unlawful conduct, Applicant and every Class member have suffered damages, which they may collectively claim against the Defendants;
65. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class contains enough members with personal causes of action against each Defendant;
66. The facts and legal issues of the present action support a proportional approach to class action standing that economizes judicial resources and enhances access to justice;
67. In taking the foregoing into account, all members of the Class are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 *CPA*;
68. Each Class member is justified in claiming at least one or more of the following as damages:
  - Reimbursement of the whole (or a portion) of the fees charged for unlocking their wireless device; and
  - Punitive damages in the amount of \$25.00 each.
69. All of the damages to the Class members are a direct and proximate result of the Defendants' misconduct;
70. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
71. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**

- a) Does the disproportion between the wireless device unlocking fees charged to the Class members and the value of the service provided by the Defendants constitute exploitation and objective lesion under section 8 of the *CPA*?
- b) Are the Defendants' wireless device unlocking fees excessively and unreasonably detrimental to consumers such that the contractual clauses allowing them to charge such fees are abusive under article 1437 of the *CCQ*?
- c) Is the clause concerning wireless device unlocking fees in the Defendants' various service agreements null, entitling Class members to a full reimbursement of the amounts paid to unlock their wireless devices?
- d) In the alternative, must the Class members' obligations be reduced and if so, by how much?
- e) Are the class members entitled to punitive damages and if so, what amount must the Defendants pay?
- f) Did the Defendants act in bad faith?

### **C) THE COMPOSITION OF THE CLASS**

- 72. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
- 73. According to the CRTC's report, Exhibit P-1 (at its footnote 20), WSPs unlocked approximately 923,000 phones in Canada in 2015;
- 74. The size of the Class is conservatively estimated to include tens of thousands of consumers in Quebec;
- 75. The names and addresses of all persons included in the Class are not known to the Applicant, however, are in the possession of the Defendants (who have the legal obligation to preserve this information);
- 76. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
- 77. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
- 78. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

79. Applicant requests that she be appointed the status of representative plaintiff;
80. Applicant is a member of the Class;
81. Applicant has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
82. Applicant is determined to do her part in order to hold the Defendants accountable [...];
83. Upon learning of the CRTC's decision in the news, Applicant contacted her attorney, who has represented her in another civil file in the past, and mandated him to file the present application so that she and all Class members can be compensated;
84. Applicant cooperates and will continue to fully cooperate with her attorney, who has experience in consumer protection-related class actions;
85. As for identifying other Class members, Applicant draws certain inferences from the situation, notably from the CRTC's report, Exhibit P-1, and all the consumer complaints referred to therein. Applicant realizes that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for her to attempt to identify them given their sheer number;
86. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the Class members;
87. Applicant is in good faith and has instituted this action for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Defendants' abusive fees;
88. Applicant has read this Application prior to its court filing and reviewed the exhibits in support thereof;
89. Applicant understands the nature of the action;
90. Applicant's interests are not antagonistic to those of other members of the Class;
91. Applicant's interest and competence are such that the present class action could proceed fairly;

#### **IV. DAMAGES**

92. During the Class Period, the Defendants have generated close to one hundred million dollars while intentionally choosing to ignore the law in Quebec;
93. All of the Defendants' misconduct is reprehensible and to the detriment of vulnerable Quebec consumers;
94. All of the Defendants must be held accountable for the breach of obligations imposed on them by consumer protection legislation in Quebec, including:
  - a) Quebec's *Consumer Protection Act*, notably sections 8 and 272;
  - b) The *Civil Code of Quebec*, notably articles 6, 7 and 1437;
95. In light of the foregoing, the following damages may be claimed against the Defendants:
  - a) compensatory damages, in an amount to be determined, on account of the damages suffered (i.e. the aggregate of the unlocking fees charged by Defendants to Class members during the Class period); and
  - b) punitive damages, in the amount of \$25.00 per Class member, for the breach of obligations imposed on Defendants pursuant to section 272 *CPA*;

#### **V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

96. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and declaratory judgment;
97. The conclusions that the Applicant wishes to introduce by way of an originating application are:

**GRANT** Plaintiff's action against Defendants on behalf of all the Class members;

**DECLARE** the Defendants liable for the damages suffered by the Applicant and each of the Class members;

**DECLARE** that the wireless device unlocking fees charged by Defendants amount to exploitation under section 8 of the *CPA*;

**DECLARE** that the wireless device unlocking fees charged by the Defendants are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the *CCQ*;

**DECLARE** abusive and null the clauses in the Defendants' service agreements which provide for wireless device unlocking fees [...];

**CONDEMN** the Defendants to pay the Plaintiff and Class members compensatory damages for the aggregate of the amounts charged as wireless device unlocking fees; **SUBSIDIARILY, REDUCE** the obligations of the Plaintiff and Class members to pay the Defendants for the wireless device unlocking fees charged to their fair market value;

**ORDER** the collective recovery of all damages owed to the class members for the amounts overcharged;

**ORDER** Defendant Fido to compensate the Plaintiff for the amount overcharged;

**CONDEMN** the Defendants to pay to each Class member the sum of \$25.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

98. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **VI. JURISDICTION**

99. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Iberville, for the following reason:

- a) The Applicant has her domicile and residence in the judicial district of Iberville;

### **FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating

application in damages and declaratory judgment;

**APPOINT** the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

**Class:**

All consumers residing or having resided in Quebec, [...] who paid to any of the Defendants a fee [...] to unlock their wireless device from August 14<sup>th</sup>, 2014 to December 1<sup>st</sup>, 2017;

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a) Does the disproportion between the wireless device unlocking fees charged to the Class members and the value of the service provided by the Defendants constitute exploitation and objective lesion under section 8 of the *CPA*?
- b) Are the Defendants’ wireless device unlocking fees excessively and unreasonably detrimental to consumers such that the contractual clauses allowing them to charge such fees are abusive under article 1437 of the *CCQ*?
- c) Is the clause concerning wireless device unlocking fees in the Defendants’ various service agreements null, entitling Class members to a full reimbursement of the amounts paid to unlock their wireless devices?
- d) In the alternative, must the Class members’ obligations be reduced and if so, by how much?
- e) Are the class members entitled to punitive damages and if so, what amount must the Defendants pay?
- f) Did the Defendants act in bad faith?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** Plaintiff’s action against Defendants on behalf of all the Class members;

**DECLARE** the Defendants liable for the damages suffered by the Applicant and each of the Class members;

**DECLARE** that the wireless device unlocking fees charged by Defendants amount to exploitation under section 8 of the *CPA*;

**DECLARE** that the wireless device unlocking fees charged by the Defendants are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the *CCQ*;

**DECLARE** abusive and null the clauses in the Defendants' service agreements which provide for wireless device unlocking fees [...];

**CONDEMN** the Defendants to pay the Plaintiff and Class members compensatory damages for the aggregate of the amounts charged as device unlocking fees; **SUBSIDIARILY, REDUCE** the obligations of the Plaintiff and Class members to pay the Defendants for the wireless device unlocking fees charged to their fair market value;

**ORDER** the collective recovery of all damages owed to the class members for the amounts overcharged;

**ORDER** Defendant Fido to compensate the Plaintiff for the amount overcharged;

**CONDEMN** the Defendants to pay to each Class member the sum of \$25.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;



**DECLARE** that all members of the Class 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;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of Le Journal de Montréal and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Quebec Consumers";

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Class member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**ORDER** the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

**RENDER** any other order that this Honourable Court shall determine;

**THE WHOLE** with costs including publication fees.

Montreal, April 18, 2023

Montreal, April 18, 2023

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF IBERVILLE

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**VERNA JANE DUMLAO**

Applicant

v.

**FIDO SOLUTIONS INC.  
ET ALS.**

Defendants

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF**

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**ORIGINAL**

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