

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-000798-161

(Class Action)
SUPERIOR COURT

STEPHANIE J. BENABU

Applicant

-vs-

VIDÉOTRON S.E.N.C., general partnership, having its head office at 612 Saint-Jacques Street, Montreal, district of Montreal, Province of Quebec, H3C 4M8

and

VIDÉOTRON LTÉE., legal person, having its head office at 612 Saint-Jacques Street, 18th Floor, Montreal, district of Montreal, Province of Quebec, H3C 4M8

and

NETFLIX, INC., legal person, having its head office at 100 Winchester Circle, Los Gatos, California, 95052, United States of America

and

BELL CANADA, legal person having its head office at 1050 Côte du Beaver Hall, Montreal, district of Montreal, Province of Quebec, H2Z 1S4

and

TELUS COMMUNICATIONS COMPANY, general partnership, having its principal establishment

at 300 Saint-Paul Street, Québec, district of Quebec, Province of Québec, G1K 7R1

and

TELUS COMMUNICATIONS INC., legal person having its head office at 1155 Metcalfe Street Montreal, district of Montreal, Province of Quebec, H3B 2V6

and

ROGERS COMMUNICATIONS INC., legal person having its principal establishment at 800 De La Gauchetière Street West, Suite 4000, Montreal, district of Montreal, Province of Quebec, H5A 1K3

and

AMEX BANK OF CANADA, legal person having its principal establishment at 800 René-Lévesque boulevard West, Montreal, district of Montreal, Province of Quebec, H3B 1X9

and

BANQUE DE MONTRÉAL, legal person having its principal establishment at 119 Saint-Jacques Street, Montreal, district of Montreal, Province of Quebec, H2Y 1L6

and

THE TORONTO-DOMINION BANK, legal person having its principal establishment at 1350 René-Levesque boulevard West, 6th Floor, Montreal, district of Montreal, Province of Quebec, H3G 1T4

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, legal person having its principal establishment at 1501 McGill College avenue, Montreal, district of Montreal, Province of Quebec, H3A 3M8

and

ROYAL BANK OF CANADA, legal person having its head office at 1 Place Ville Marie, Montreal, district of Montreal, Province of Quebec, H3B 3A9

and

CANADIAN IMPERIAL BANK OF COMMERCE, legal person having its principal establishment at 1155 René-Lévesque blvd. West, Montreal, district of Montreal, Province of Quebec, H3C 3B2

and

AMAZON.COM LLC, legal person having its head office at 410 Terry Avenue North Seattle, Washington, 98109, United States of America

and

AUDIBLE, INC., legal person having its head office at 1 Washington Park, 16th Floor, Newark, New Jersey, 07102, United States of America

and

APPLE INC., legal person having its head office at 1 Infinite Loop, Cupertino, California, 95014, United States of America

and

LINKEDIN IRELAND, legal person having its head office at 70 Sir John Rogerson's Quay, Dublin 2, Ireland

and

GOOGLE INC., legal person having a place of establishment at 1253 McGill College avenue, #150, Montreal, district of Montreal, Province of Québec H3B 2Y5

and

SHOMI PARTNERSHIP, general partnership having its principal establishment at 800 De La Gauchetière Street West, Suite 4000, Montreal, district of Montreal, Province of Quebec, H5A 1K3

and

ROGERS MEDIA INC., legal person having its principal establishment at 800 De La Gauchetière Street West, Suite 4000, Montreal, district of Montreal, Province of Quebec, H5A 1K3

and

SHAW MEDIA INC., legal person having its head office at 630 3rd avenue South West, Suite 900, Calgary, Alberta, T2P 4L4

and

SIRIUS XM CANADA INC., legal person having its head office at 161 Bay Street, Suite 2300 Brookfield Place, Toronto, Ontario, M5J 2S1

and

SPOTIFY AB, legal person having its head office at Birger Jarlsgatan 61, SE-113 56 Stockholm, Sweden

and

AFFINITAS GMBH., legal person having its head office at Kohlfurther Strasse 41/43, 10999, Berlin, Germany

and

MATCH.COM LLP, a Delaware limited liability company having its head office at 8300 Douglas avenue, Dallas, Texas 75225, United States of America

Defendants

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

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) THE ACTION

1. Applicant wishes to institute a class action on behalf of the following class and subclass, of which she is a member, namely:

Class:

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. Bill 60, *An Act to amend the Consumer Protection Act and other legislative provisions*, First Session, Thirty-ninth Legislature, Quebec, S.Q. 2009, chapter 51, came into force on June 30th, 2010, after being assented to on December 4th, 2009 (hereinafter “**Bill 60**”);
3. One of the amendments provided for in Bill 60 was the addition of paragraph c to article 230 CPA, which now stipulates the following:

230. No merchant, manufacturer or advertiser may, by any means whatever, [...]

*(c) **require** that a consumer to whom he has provided services or goods free of charge or at a reduced price for a fixed period send a notice at the end of that period indicating that the consumer does not wish to obtain the services or goods at the regular price.*

4. On November 10, 2009, Kathleen Weil, Quebec’s Minister of Justice at the time, said the following prior to adopting paragraph c of section 230 CPA:

*La modification proposée a **pour objet d'interdire la pratique visant à obliger un consommateur à faire une démarche pour éviter d'être lié par contrat** avec un commerçant relativement à un bien ou un service que ce dernier lui a fourni gratuitement ou à prix réduit pendant une période de promotion. [our emphasis underlined in bold].*

5. During the Class Period, all of the Defendants carry on their business in **flagrant** violation of paragraph c of section 230 *CPA*;
6. All of the Defendants enticed Class and Subclass members to contract with them by providing their goods/services at a Reduced Price (or even free as a trial) for a Fixed Period, but then charged Class members the Regular Price (or automatically started charging any price after the Fixed Period in the case of free trials for Subclass members) if the members didn't take steps to either renegotiate or cancel;
7. Defendants' online presence enables them to enter into distance contracts with Class and Subclass members and thus carry on business in the province of Quebec;
8. Consumers can also contract with some of the Defendants by other means, such as by telephone, in their retail stores or at their kiosks;
9. In the course of their respective businesses, all Defendants enter into contracts for goods or services with Class and Subclass members and said contracts are governed by the *CPA*;
10. Although Defendants operate in a variety of different industries, the legal and factual backgrounds at issue in the case at bar are common to all Defendants;
11. Defendants unlawfully derogate from paragraph c of section 230 of the *CPA* by private agreement;
12. Quebec consumer law is a matter of protective public order;
13. As a result the foregoing, Class and Subclass members are justified in claiming compensatory damages, as well as punitive damages based on paragraph c of section 230 and section 272 *CPA*;

II. 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 Vidéotron

14. On **October 1st, 2015**, Applicant moved into her new apartment;
15. Towards the end of September and in early October 2015, Applicant had been shopping for an internet and television provider (she was comparing pricing and packages offered by Bell Canada and Vidéotron);

16. One of the advertisements seen (and ultimately chosen) by Applicant appeared on the website of Defendant Vidéotron S.E.N.C (hereinafter “**Vidéotron**”), Applicant disclosing an extract of Vidéotron’s website¹ from September 26th, 2015, as **Exhibit P-1**:

UNLIMITED SUPER DUO
TV AND INTERNET

- TV: Custom 20 package + Club Illico
- Internet: Unlimited Hybrid Fibre 30

Included: Multi-Room HD PVR and New Generation Wi-Fi Router rental

VIDEOTRON SAVINGS

This combination of services saves you \$15 per month (already included in the listed price).

The price shown also includes the following special offers, which are on now:

- Promotional discount of \$53/month for 6 months
- Promotional discount of \$5/month for 24 months
- A discount of \$10.85/month for 24 months on a Multi-Room HD PVR rental

\$69.90 /month **
for 6 months
Price from the 7th to the 24th month: \$127.90/month

CONTINUE

1 877 512-0911

More contact options

- ▶ Chat with a representative
- ▶ Find a store
- ▶ Make an appointment with a representative

17. After visiting and seeing the advertisement on Vidéotron’s website, as well as seeing a publicity in the *Montreal Gazette* on October 2nd, 2015, disclosed as Applicant’s **Exhibit P-2**, Applicant decided to subscribe to Vidéotron’s *Unlimited Super Duo* (TV and Internet), being strongly marketed by Vidéotron in Montreal;
18. What appears from the image above, Exhibit P-1, as well as the ad in the *Montreal Gazette*, Exhibit P-2, is that the Regular Price for Vidéotron’s *Unlimited Super Duo* (TV and Internet) is **\$127.90 per month** plus taxes, but new subscribers to the service will be provided with a Reduced Price for the first 6 months, in the amount **\$69.90 per month** plus taxes;
19. Applicant contacted Vidéotron by phone around the first week of October 2015 and ordered the *Unlimited Super Duo* (TV and Internet);
20. On October 7th, 2015, Vidéotron installed its services at the Applicant’s residence and began providing her with said services on that date;
21. Applicant chose this package from Vidéotron because she needed TV and Internet in her apartment, and because it was less expensive than a similar promotion being

¹ <http://www.videotron.com/residential/packages/duo-trio-quattro/packages/unlimited-duo;>

provided by Defendant Bell Canada at the time, Applicant disclosing Bell Canada's "bundle" publicity in the *Montreal Gazette* on September 24th, 2015, as **Exhibit P-3**;

22. Applicant was also delighted to benefit from the Reduced Price of \$69.90 per month;
23. For the first 6 months, Vidéotron provided Applicant with the *Unlimited Super Duo* (TV and Internet) and charged her \$69.90 per month, after which Fixed Period the **amount was increased automatically to \$127.90 per month**, as indicated in the chart below, and as it appears *en liasse* from copies of the Applicant's first 9 Vidéotron invoices,² Applicant disclosing **Exhibit P-4**;

#	Period	Monthly Rate	Taxes	Adjustment	Monthly Total
1	Oct 07 - Nov 06, 2015	\$67.97 ³	\$10.18		\$78.15
2	Nov 07 - Dec 06, 2015	\$74.90 ⁴	\$11.22		\$86.12
3	Dec 07 - Jan 06, 2016	\$69.90	\$9.72	\$(5.00)	\$74.62
4	Jan 07 - Feb 06, 2016	\$69.90	\$10.47		\$80.37
5	Feb 07 - Mar 06, 2016	\$69.90	\$10.47	\$5.84	\$86.21
6	Mar 07 - Apr 06, 2016	\$69.90	\$10.47		\$80.37
7	Apr 07 - May 07, 2016	\$127.90	\$19.16		\$147.06
8	May 07 - Jun 06, 2016	\$97.91	\$10.39 ⁵	\$(28.51)	\$79.79
9	Jun 07 - Jul 06, 2016	\$97.91	\$14.67		\$112.58
10	Jul 07 - Aug 06, 2016	\$97.91	\$14.67		\$112.58

24. The amount of \$69.90 per month is the Reduced Price (or promotional price) for the first 6 months for the *Unlimited Super Duo* package chosen by the Applicant;
25. The Regular Price for the first 6 months is indeed \$127.90 per month for the *Unlimited Super Duo* chosen by the Applicant;
26. The Regular Price for the *Unlimited Super Duo* package is \$127.90, as it appears from a comparison of Applicant's invoices dated December 18th, 2015 and March 18th, 2016 (forming part of Exhibit P-4) reproduced below for clarity:

² The first invoice covers two months, which is why there are 10 periods covered by 9 invoices.

³ The Monthly Rate is in fact **\$69.90**. The discount of \$1.93 for the first month is on account of a credit from October 07 to October 13, concerning a Club Illico free trial withdrawal (\$9.99 - \$8.06 = \$1.93).

⁴ The Monthly Rate is in fact **\$69.90** because an amount of \$5.00 is credited as an adjustment the following month.

⁵ The taxes on \$97.91 should in fact be \$14.67, but are impacted by the credit of \$28.51.

January 07 to February 06, 2016

April 07 to May 06, 2016

Current services		Current services	
Cable TV		Cable TV	
HD Basic Service	28.97	HD Basic Service (PS)	28.97
Rented Multi-Room HD PVR	10.85	Rented Multi-Room HD PVR	10.85
Custom Package - 20 channels	25.00	Custom Package - 20 channels (PS)	27.00
(SLICE/FOX44/ENCOR/SHOWC/HSTO/ABC22/ PBS57/TLC/TOON/HGTV/W/FOOD/EI/WMOV/ MTIME/ZESTE/COSMO/MAGIO/RDS2/RDS)		(SLICE/FOX44/ENCOR/SHOWC/HSTO/ABC22/ PBS57/TLC/TOON/HGTV/W/FOOD/EI/WMOV/ MTIME/ZESTE/COSMO/MAGIO/RDS2/RDS)	
Rebate: Bundle services	3.00-	Rebate: Bundle services	3.00-
Free Rental 24 Months	10.85-	Free Rental 24 Months	10.85-
Subtotal Cable TV	50.97	Subtotal Cable TV	52.97
Internet		Internet	
Ultimate speed modem		Ultimate speed modem	
Internet Hybrid Fibre 30	63.95	Internet Hybrid Fibre 30	63.95
Maximum Security Services		Maximum Security Services	
New gen. Wi-Fi Router - rented	4.99	New gen. Wi-Fi Router - rented	4.99
Unlimited Internet add-on	30.00	Unlimited Internet add-on	33.00
Rebate: Internet Hybrid Fibre	10.00-	Rebate: Internet Hybrid Fibre	10.00-
Rebate: FOR TV SUBSCRIBER OR DUO OFFER	20.00-	Rebate: FOR TV SUBSCRIBER OR DUO OFFER	20.00-
Rebate: Router Multiservice	2.00-	Rebate: Router Multiservice	2.00-
Super Unlimited Duo Rebate	53.00-	Multiservices Rebate	5.00-
Multiservices Rebate	5.00-	Subtotal Internet	64.94
Subtotal Internet	8.94		
illico.tv		illico.tv	
Club illico	9.99	Club illico	9.99
Subtotal illico.tv	9.99	Subtotal illico.tv	9.99
Total current services	69.90	Total current services	127.90

27. Once the Applicant's 6-month Fixed Period came to end, Vidéotron simply removed the **\$53.00** "Super Unlimited Duo Rebate" and added **\$2.00** on to the "Custom Package – 20 channels" and **\$3.00** on to the "Unlimited Internet add-on", for a total of **\$58.00** per month;
28. The Regular Price of \$127.90 minus the Reduced Price of \$69.90 (for the Fixed Period) is equal to the **\$58.00** difference mentioned in the preceding paragraph;
29. Consequently, Vidéotron provided Applicant its internet and television services at a Reduced Price (**\$69.90 per month**), not at the Regular Price (**\$127.90 per month**) for a Fixed Period (**6 months**);
30. Applicant **did not send a notice** to Vidéotron at the end of the 6-month period indicating that she does not wish to obtain Vidéotron's services at the Regular Price (\$127.90 per month plus taxes);
31. And yet, when Applicant received her invoice for the 7th month, she noticed that her monthly charges had nearly doubled from the Reduced Price of \$69.90 per month plus taxes to the Regular Price of \$127.90 plus taxes per month;
32. After the Fixed Period, Vidéotron stopped charging Applicant the Reduced Price and began charging Applicant the Regular Price;
33. Upon realizing the increase in the 7th month, Applicant immediately contacted Vidéotron's customer service by telephone to voice her discontent about being

- charged almost double the price she had been charged during the first six months;
34. The Vidéotron customer service agent informed the Applicant that, in order for her to have avoided being charged the Regular Price of \$127.90 in the 7th month (after having been provided with services at the Reduced Price of \$69.90 for the fixed 6-month period), she was **required to advise** Vidéotron at the end of the 6th month period that she no longer wished to obtain the services at the Regular Price;
 35. Vidéotron's requirement that the Applicant take steps on her own after the fixed 6-month period, to avoid being charged the Regular Price thereafter, violates paragraph c of section 230 CPA;
 36. Applicant asked the Vidéotron customer service agent to credit her account on the 7th month, for the difference between the Regular Price and the Reduced Price;
 37. Vidéotron refused the Applicant's request to refund the difference between \$127.90 and \$69.90;
 38. Instead, Vidéotron offered the Applicant a credit for the 7th month in the amount of \$28.51 plus taxes (\$32.78 after taxes), but refused to credit her any further amounts which could have reduced her invoice for the 7th month to reflect the \$69.90 Reduced Price;
 39. During that same conversation, Videotron agreed to reduce the Regular Price paid by the Applicant (\$127.90) to \$97.91 per month plus taxes (for the identical services less Club illico which had a \$9.99 value), so that Applicant would pay **\$112.58** after taxes every month, as it appears from Applicant's Vidéotron invoices, forming part of Exhibit P-4;
 40. With regards to the 8th month of services and subsequent months thereafter, Applicant acquiesced to her new contract with Vidéotron based on the new monthly charges of \$97.91 plus taxes per month because she needs internet and television at her apartment, and, didn't feel like shopping for a new provider all over again (both Bell Canada and Vidéotron continue to use this prohibited practice for new clients);
 41. As for the 7th month of services, Applicant accepted the \$28.51 credit offered by Vidéotron (to be discounted from the Regular Price of \$127.90 which Vidéotron charged her for the 7th month) because, at the time, she was unfamiliar with the protection offered to her by paragraph c of section 230 CPA (which is of public order and cannot be derogated from);
 42. In reality, Vidéotron deliberately violated the law by requiring the Applicant to advise them that she no longer wishes to have the services at the Regular Price in order to avoid being automatically charged said Regular Price in the 7th month;

(i) Applicant's claim for compensatory damages (arts. 230 c) and 272 c) CPA)

43. Applicant has suffered ascertainable loss as a result of Vidéotron's misconduct and failure to comply with paragraph c of section 230 CPA, including, but not limited to: (i) overpayment in the amount of **\$33.91**⁶ for the 7th month of service; and (ii) trouble and inconvenience;
44. Applicant benefits from an absolute presumption of prejudice because:
- a) Applicant is a consumer within the meaning of the CPA;
 - b) Vidéotron is a merchant within the meaning of the CPA;
 - c) Vidéotron required Applicant to advise them after the Fixed 6-month Period that she didn't wish to receive their services at the Regular Price;
 - d) Applicant saw Vidéotron's representations concerning the *Unlimited Super Duo* on Vidéotron's website and in the Montreal Gazette;
 - e) After seeing Vidéotron's representations, Applicant called Vidéotron and entered into a consumer contract;
 - f) There existed a sufficient nexus between the content of Vidéotron's representation and the services covered by the contract (Vidéotron's practice influenced the Applicant's behavior with respect to the formation of the contract);
45. Applicant's damages are a direct and proximate result of Vidéotron's misconduct;

(ii) Applicant's claim for punitive damages (arts. 228 and 272 CPA)

46. Applicant gave Vidéotron, albeit unknowingly, the opportunity to remedy the situation **after** its violation of paragraph c of section 230 CPA, during her phone call to them in 7th month;
47. Vidéotron should have reimbursed Applicant the full difference between \$127.90 and \$69.90 when she unconsciously informed them of their violation in the 7th month;
48. Vidéotron's overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;

⁶ \$147.06\$ (which is \$127.90 after taxes) - \$80.37 (which is \$69.90 after taxes) - \$32.78 rebate (which is \$28.51 after taxes) = **\$33.91**

49. In this case, Vidéotron breached and continues to breach the *CPA*, without any explanation, for a significant period, Applicant disclosing an extract of Vidéotron's website showing the current, similar promotion as **Exhibit P-5**;
50. This complete disregard for consumers' rights and to their own obligations under the *CPA* on the part of Vidéotron - **a Quebec-based company who should lead by example** - is in and of itself an important reason for this Court enforce measures that will punish Vidéotron, as well as deter and dissuade other entities – both local and foreign - from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
51. The reality is that Videotron's revenues – which is in likely in the **billions of dollars** during the Class Period (based on Quebecor Inc.'s Fourth Quarter and Full Year Consolidated Results for the 2015 financial year, disclosed as Applicant's **Exhibit P-6**) – would be substantially and adversely effected if they charged the Reduced Price instead of the Regular Price to consumers who never advised them that they do not wish to obtain the services at the Regular Price;
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. Vidéotron's violations were intentional, calculated, malicious and vexatious;
54. Vidéotron demonstrated through its behavior (before, during and after the violation) that it was more concerned about its bottom line than about consumers' rights and their own obligations under the *CPA*;
55. In these circumstances, Applicant's claim for both compensatory and punitive damages against Vidéotron is justified;

Applicant's Claim against Netflix, Inc.

56. Defendant Netflix, Inc. (hereinafter "**Netflix**"), is a company that provides consumers with a service that enables them to watch unlimited movie and television shows instantly from any computer or Internet-connected device that offers the Netflix application (such as a smart TV, game console, streaming player, smartphone or tablet);
57. Netflix attracts its customers by offering to provide its service free for a one (1) month Fixed Period. When the 30-day free trial period comes to end, a consumer who does nothing to cancel the services will have their membership automatically renewed by Netflix on a month-to-month subscription. Consumers can cancel anytime, online, 24 hours a day. The caveat is that the consumer will be charged the

Regular Price if he/she forgets or omits to take affirmative steps to cancel the service, a practice which is prohibited under the *CPA* and wherein lies the Applicant's cause of action against Netflix;

58. Applicant heard about Netflix from her relatives and had seen the publicity concerning the free trial on Netflix's website;
59. On **February 15th, 2016**, Applicant subscribed to 1-month free trial with Netflix, Applicant disclosing her subscription to Netflix evidenced by an "iTunes" receipt as **Exhibit P-7**:



Subscription Confirmation

Dear Stephanie,

This email confirms your order of the following subscription with a free trial of 1 month. You are not charged for the free trial period, but when your 1 month subscription automatically renews on 03/15/16 you will be billed \$7.99 for the period.

Name of **Netflix 1 Screen - Unlimited**
Subscription: **Streaming_200_30**
Name of Application: **Netflix**
Content Provider: **Netflix, Inc.**
Date of purchase: **02/15/16**
Subscription Period: **1 month**
Length of Trial: **1 month**
Price: **\$7.99**
Payment Method: **iTunes account**

The subscription period will automatically renew unless you turn it off no later than 24 hours before the end of the current period. To cancel auto-renewal or manage your subscriptions, click below and sign in.

Developer's Support Page or Terms of Use: <http://www.apple.com/ca/support/>

[View Account Information](#)

Regards,
Apple

60. The Subscription Confirmation received by Applicant on February 15th, 2016, Exhibit P-7, states that:

This email confirms your order of the following subscription with a **free trial of 1 month**. You are **not charged for the free trial period**, but when your **1 month subscription automatically renews on 03/15/16 you will be billed \$7.99 for the period**.

[Our emphasis underlined in bold].

61. The services provided to her by Netflix during the free trial period enabled her to watch and stream movies and television shows from her laptop computer;
62. From February 15th to March 15th, Netflix provided services to the Applicant free of charge for a Fixed Period (one month);
63. At the end of the 1 month free trial period, Applicant forgot to call Netflix to inform them that she did not wish to receive the services at the Regular Price;
64. On **March 15th, 2016**, Applicant received a confirmation order from Netflix confirming her “purchase” of a “subscription” from Netflix (via her iTunes account), Applicant disclosing **Exhibit P-8**;
65. That same day, Applicant’s bank account was **automatically** debited **\$11.49** Canadian for the services provided by Netflix, as it appears from a screenshot of her bank statement below:

15 mars 2016	ACHAT VISA DT -7136 -APL* ITUNES.COM	-11,49 \$
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66. On **April 15th, 2016**, Applicant received another email from Netflix, this time there was the mention of an “Automatic Renewal” on the invoice, Applicant disclosing **Exhibit P-9**;
67. That same day, Applicant’s bank account was once again automatically debited by Netflix in the amount of \$11.49 Canadian, as it appears below from a screenshot of her bank statement:

15 avr. 2016	ACHAT VISA DT -2366 -APL* ITUNES.COM	-11,49 \$
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68. Applicant realized that Netflix was charging her automatically **after** the Fixed Period, but since she forgot to take action and cancel the free trial in March, she figured she would simply continue using the service. The same scenario repeated itself in April, so Applicant figured she would just bear the cost of \$11.49 for the month of April and enjoy watching some movies and television shows during that time;
69. The facts are that Netflix required that the Applicant send them a notice at the end of the Fixed Period, indicating that she did not wish to be provided with Netflix’s services at the Regular Price, a policy which Netflix is transparent about in its Terms and Conditions, Applicant disclosing **Exhibit P-10**, which provides as follows:

2. Free Trials

1. Your Netflix membership may start with a free trial. **The free trial period of your membership lasts for one month**, or as otherwise specified during signup. For combinations with other offers, restrictions may apply. Free trials are for new and certain former members only. Netflix reserves the right, in its absolute discretion, to determine your free trial eligibility.

2. **We will begin billing your Payment Method for monthly membership fees at the end of the free trial period of your membership unless you cancel prior to the end of the free trial period.** To view the specific details of your membership, including monthly membership price and end date of your free trial period, visit our website and click the "View billing details" link on the "Your Account" page. We may authorize your Payment Method through various methods, including authorizing it up to approximately one month of service as soon as you register. In some instances, your available balance or credit limit may be reduced to reflect the authorization during your free trial period.

3. **You will not receive a notice from us that your free trial period has ended or that the paying portion of your membership has begun.** CLICK THE "YOUR ACCOUNT" LINK AT THE TOP OF ANY NETFLIX WEB PAGE (www.netflix.com) TO FIND CANCELLATION INSTRUCTIONS. **We will continue to bill your Payment Method on a monthly basis for your membership fee until you cancel.**

3. Billing

1. **Recurring Billing.** By starting your Netflix membership and providing or designating a Payment Method, **you authorize us to charge you a monthly membership fee at the then current rate**, and any other charges you may incur in connection with your use of the Netflix service to your Payment Method...

[Our emphasis underlined in bold].

70. As a result of her omission to advise Netflix the end of the Fixed Term, Applicant incurred a loss of **\$22.98**;
71. Applicant also benefits from an absolute presumption of prejudice because:
- a) Applicant is a consumer within the meaning of the *CPA*;
 - b) Netflix is a merchant within the meaning of the *CPA*;

- c) Netflix required Applicant to advise them after the fixed 1-month free trial period that she didn't wish to receive the services at the Regular Price;
 - d) Applicant saw Netflix's representations concerning the free trial period on Netflix's website;
 - e) After seeing Netflix's representations, Applicant entered into a consumer contract with Netflix;
 - f) There existed a sufficient nexus between the content of Netflix's representation and the services covered by the contract (Netflix's practice influenced the Applicant's behavior with respect to the formation of the contract);
72. Applicant's damages are a direct and proximate result of Netflix's misconduct;
73. In these circumstances, Applicant's claim for both compensatory and punitive damages against Netflix is justified;

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

74. All Class and Subclass members, regardless of which of the Defendants they contracted with, have a common interest both in proving the commission of a prohibited businesses practice (the violation of paragraph c of section 230 CPA in the present case) by all of the Defendants and in maximizing the aggregate of the amounts unlawfully charged to them by Defendants;
75. 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 Subclass, and not solely from the perspective of the Applicant / representative plaintiff;
76. In this case, the legal and factual backgrounds at issue are common to all the members of the **Class**, namely whether Defendants violate paragraph c of section 230 CPA, by charging a Reduced Price for a Fixed Period and then requiring the Class members to advise them should they not wish to continue paying the Regular Price after the Fixed Period;
77. The legal and factual backgrounds at issue are common to all the members of **Subclass** members, namely whether Defendants who provide free trials for a Fixed Period violate paragraph c of section 230 CPA by requiring Subclass members to advise them that they do not wish to pay the Regular Price after the Fixed Period;

78. The claims of every member of the Class and Subclass are founded on very similar facts to the Applicant's claims, both against Vidéotron and against Netflix;
79. 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;
80. Every member of the **Class** subscribed with one of the Defendants for a promotion for goods or services for a Fixed Period, at a Reduced Price, and was required to advise one of the Defendants at the end of the Fixed Period, that they did not wish to pay the Regular Price (they were automatically charged the Regular Price by Defendants if they failed to advise them of such);
81. Every member of **Subclass** subscribed to a free trial for goods or services from one of the Defendants for a Fixed Period, and was required to advise one of the Defendants at the end of the Fixed Period that they did not wish to pay the Regular Price (they were automatically charged the Regular Price by Defendants if they failed to advise them of such);
82. The same legal issues are present in the action of each Class and Subclass member against each Defendant (each Defendant faces more or less the same issues regarding the interpretation and application of paragraph c of section 230 CPA);
83. By reason of Defendants' unlawful conduct, Applicant and members of the Class and Subclass have suffered damages, which they may collectively claim against the Defendants;
84. Although the Applicant herself does not have a personal cause of action against, or a legal relationship with, each of the Defendants, the Class and Subclass contain enough members with personal causes of action against each Defendant;
85. 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;
86. Every member of the **Class** has suffered damages equivalent to the difference between the Regular Price charged by Defendants and the Reduced Price, which should have remained in effect pursuant to paragraph c of section 230 CPA;
87. Every member of the **Subclass** has suffered damages equivalent to the difference between the Regular Price charged by Defendants and the amount charged during the free trial period (which is \$0.00), because it is unlawful for Defendants to automatically charge Subclass members after the Fixed Period, and this pursuant to paragraph c of section 230 CPA;

88. The questions of fact and law raised and the recourse sought by this Application are identical with respect to each member of the Class and Subclass;
89. In taking the foregoing into account, all members of the Class and Subclass are justified in claiming the sums which they unlawfully overpaid to Defendants, as well as punitive damages pursuant to section 272 *CPA*;
90. Each member of the Class and Subclass is justified in claiming at least one or more of the following as damages:
 - Overpayment of their monthly payments between the Regular Price and the Reduced Price (or the entire amount in the case of free trials automatically renewed by Defendants at the Regular Price);
 - Trouble and inconvenience (because Defendants imposed a burden on Class and Subclass members, to take steps to avoid being charged the Regular Price, which is strictly prohibited according to the *CPA*); and
 - Punitive damages;
91. All of the damages to the Class and Subclass members are a direct and proximate result of the Defendants' misconduct;
92. Individual questions, if any, pale by comparison to the numerous common questions that are significant to the outcome of the present Application;
93. The damages sustained by the Class and Subclass members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' requirement that Class and Subclass members advise them that they do not wish to pay the Regular Price (instead of the inverse), and if consumers do not advise, Defendants automatically and unlawfully charge them at the Regular Price after the Fixed Period;
94. The recourses of the Class and Subclass members raise identical, similar or related questions of fact or law, namely:
 - a) Do Defendants provide Class members services or goods at a Reduced Price for a Fixed Period?
 - b) Do Defendants provide Subclass members services or goods free of charge for a Fixed Period?
 - c) Do Defendants, in fact, require that Class members advise them at the end of the Fixed Period indicating that they do not wish to obtain the services or the goods at the Regular Price?

- d) Do Defendants violate paragraph c of section 230 CPA?
- e) In the affirmative, what is the appropriate remedy for a violation of paragraph c of section 230 CPA?
- f) Are Class members entitled to demand that their obligations be reduced pursuant to paragraph c of section 272 CPA?
- g) Are Defendants responsible for all related damages, including, but not limited to the trouble and inconvenience to Class and Subclass members as a result of forcing them to take steps to cancel their services (or be forced to pay the Regular Price), and in what amount?
- h) Are the Class members, Subclass members and the Applicant entitled to a declaratory judgment stating that the Defendants are liable for the damages suffered by the Applicant and by each of the members of the Class and Subclass?
- i) Should an injunctive remedy be ordered to force Defendants to immediately cease the practice of requiring Class and Subclass members to advise them after the Fixed Period that they do not wish to pay the Regular Price?
- j) Are Defendants responsible to pay punitive damages to Class and Subclass members and, if so, in what amount?

C) THE COMPOSITION OF THE CLASS

- 95. 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;
- 96. According to Quebecor Inc.'s Fourth Quarter and Full Year Consolidated Results for the 2015 financial year, Exhibit P-6, **Vidéotron** enjoyed a net increase of **79,800 customers** for its over-the-top video service, and **30,700 customers** for the cable Internet access service. As for **Bell Canada**, Vidéotron's main rival in the province of Quebec, it reported an increase of approximately **200,000 subscribers** to its high-speed Internet and television services nationwide in its 2015 Annual Report. It is safe for Applicant to presume that Bell Canada's subscriber growth is similar to Vidéotron's numbers in the province of Quebec for 2015;
- 97. In its 2015 Annual Report, Applicant disclosing a summary of the Report as **Exhibit P-11**, Netflix (a publicly traded company on the NASDAQ trading under the symbol NFLX), stated the following:

In the International streaming segment, **we derive revenues from monthly membership fees** for services consisting solely of streaming content to our members outside the United States. **We launched our streaming service in Canada in September 2010** and have continuously expanded our services internationally as shown below.

98. According to Netflix's Annual Report, Exhibit P-11, its total memberships for its international streaming segment by the end of 2015, including Canadian customers, was **30,024,000**. It is likely that Netflix has tens if not hundreds of thousands of customers in the province of Quebec alone;
99. The number of persons included in the Class and Subclass is likely in the **millions** in the province of Quebec (many members have claims against multiple Defendants, just as the Applicant does);
100. The names and addresses of all persons included in the Class and Subclass are not known to the Applicant, however, are in the possession of the Defendants;
101. Class and Subclass members are very numerous and are dispersed across the province, across Canada and elsewhere;
102. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class and Subclass member to obtain mandates and to join them in one action;
103. 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

104. Applicant requests that she be appointed the status of representative plaintiff;
105. Applicant is a member of the Class and of the Subclass;
106. Applicant is a real estate agent and is a broker in good standing with the *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ);
107. Applicant was very upset when she was charged \$127.90 plus taxes by Vidéotron after the Fixed Period, and was further disappointed that Vidéotron refused to refund her the difference between the Regular Price and the Reduced Price, despite her expressly asking them to do so, after receiving her invoice for the 7th month;

108. Applicant felt that Vidéotron took advantage of her as a consumer, but realizing that she was helpless on the other end of the phone against a corporate giant, she just gave up;
109. After speaking to several friends, colleagues and relatives, Applicant realized that almost everyone she knew has encountered a similar experience with a merchant in one form or another (i.e. free trial or Reduced Price for Fixed Period). They, too, felt helpless;
110. For example, some people told Applicant that they have encountered this experience with: (i) other telecom providers, mostly Bell Canada; (ii) credit card companies that waive annual fees for this first year but then automatically charge consumers \$120 or so each year thereafter; (iii) credit card companies who offer balance protection insurance for consumers' credit free for the first 30-days and then automatically charge a percentage of the balance every month thereafter; (iv) major online retailers such as www.amazon.com with its *Amazon Prime* free trial (Amazon charges \$99.00 or so after the Fixed Period) and LinkedIn for its premium services; and (v) Apple Canada who automatically charges \$9.99 for its Apple Music Membership after a free trial for a 3-month Fixed Period;
111. Applicant concluded that this is how companies do business and that there was no remedy or protection for consumers in these situations;
112. But then, a few months later, Applicant read an article published in the *Journal de Montréal* on June 23, 2016, titled "**300\$ pour une crème «gratuite»**" (<http://www.journaldemontreal.com/2016/06/23/300-pour-une-creme-gratuite>), Applicant disclosing **Exhibit P-12**;
113. Although the facts concerning the victim's situation in the article were different than hers, the Applicant took time to think about her experiences with Vidéotron and Netflix after reading the following passage:

Ce que dit la loi

L'article 230c de la Loi sur la protection du consommateur stipule qu'il est interdit pour un commerçant «d'exiger du consommateur à qui il a fourni, gratuitement ou à un prix réduit, un service ou un bien pendant une période déterminée, un avis au terme de cette période indiquant qu'il ne souhaite pas obtenir ce service ou ce bien au prix courant».

114. It was at this point that Applicant contacted her attorneys, who have experience in class actions and who work on several consumer protection related files, to explain to them her findings based on conversations with several other Class members and

to give them the mandate to take the present action on her behalf and for the interest of the Class and Subclass members;

115. As for identifying other Class members, Applicant draws certain inferences from the situation, and this based on the information flashing all around her (both Bell Canada and Vidéotron have similar “Fixed Period” promotions ongoing and the free trial periods are generally displayed on the first page of almost every Defendant’s website). 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;
116. Applicant was flabbergasted to realize that likely millions of Quebecers per year are duped by both local and foreign companies, engaging in this prohibited practice in one form or another – and even worse is that is was nothing an individual consumer on his/her own could do to put this practice to an end, despite it being expressly prohibited by law;
117. Applicant feels that Defendants should be held accountable for their misconduct and is taking this action so that she and the Class members can recover sums overpaid above the Reduced Price after the Fixed Period;
118. Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that she wishes to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the Class and Subclass, as well as to dedicate the time necessary for the present action and to collaborate with her attorneys;
119. Applicant has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
120. Applicant has the capacity and interest to fairly and adequately protect and represent the interest of the members of the Class and Subclass;
121. Applicant, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class/Subclass and to keep them informed;
122. Applicant is active on social media and is available to inform and to respond to Class/Subclass members on platforms such as Facebook;
123. 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' misconduct;

124. Applicant understands the nature of the action;
125. Applicant's interests are not antagonistic to those of other members of the Class;
126. Applicant's interest and competence are such that the present class action could proceed fairly;

III. THE DEFENDANTS AND THEIR VIOLATIONS OF S. 230 (c) CPA;

127. All of the Defendants are "merchants" within the meaning of the CPA and their activities are governed by this legislation, among others;

A) Defendants who advertise and provide services at Reduced Price for a Fixed Period and who, after the Fixed Period, require Class members to inform them that they do not wish to pay the Regular Price

Telecom Defendants:

128. Defendant **VIDÉOTRON S.E.N.C.** is general partnership, having its head office in Montreal, exercising its activities in the telecommunications industry in Quebec. Defendant **VIDÉOTRON LTÉE** is one of the partners of the general partnership (along with 9227-2590 QUÉBEC INC.), as it appears from an extract from the enterprise's information statement from the Quebec enterprise register ("**CIDREQ**"), disclosed herein as Applicant's **Exhibit P-13**;
129. Defendant **BELL CANADA** is legal person having its head in Montreal and carries on in the business of diverse telecommunications services, as it appears from an extract of the CIDREQ, disclosed as Applicant's **Exhibit P-14**;
130. For at least two years, Bell Canada has been providing its "*bundle*" services to Class members in violation of paragraph c of section 230 CPA, Applicant disclosing Bell Canada's publicity appearing in the *Journal de Montreal* on **January 22nd, 2015**, targeting a mass market (these "discounted" bundles are also available online at www.bell.ca) as **Exhibit P-15**;
131. Defendant **TELUS COMMUNICATIONS COMPANY** ("**Telus**") is general partnership with a principal establishment in Quebec City. The partners of the general partnership are Defendant Telus Communications Inc. and Société Telus-Mobile, as it appears from an extract of the CIDREQ, disclosed as Applicant's **Exhibit P-16**;
132. During the Class Period, Telus has violated paragraph c of section 230 CPA, as it

appears, for instance, from publicity currently appearing on Telus' website,⁷ Applicant disclosing **Exhibit P-17**, which includes the following:

This Google Play Music **6 month trial promotional** offer is only open to residents in Canada who activate a device or renew a contract with Telus between May 2, 2016 and June 30, 2016. Offer not available to current Google Play Music subscribers or anyone who has received a free trial in the past 12 months. Offer must be redeemed by midnight on July 31, 2016. Valid form of payment required at sign-up but will not be charged until the trial period expires. **At the end of the trial period, you will be automatically charged the standard subscription price, currently \$9.99 per month.** You can cancel your trial at no charge at any time before the trial is over. Offer requires a Google account. Full terms here. Promoter: TELUS Communications Inc.

133. Defendant **ROGERS Communications Inc.** ("**Rogers**"), a legal person having its principal establishment in Montreal, carries on in the business of wireless telephone networks and communications, as it appears from an extract of the CIDREQ, disclosed as Applicant's **Exhibit P-18**;
134. During the Class Period, Rogers has provided its services in violation of paragraph c of section 230 *CPA*, as it appears, for instance, from the wireless services it is currently advertising in Quebec, Applicant disclosing **Exhibit P-19**:

New and existing Rogers customers in Quebec.

Get Wireless Home Phone with a **Share Everything™** plan and get 4GB of data for your smartphone for as low as \$60/month for the first 12 months*.

Price increases by \$13/month after the first 12 months.

135. As it appears from the very small fine print barely noticeable just above, Rogers **increases the price by \$13/month** after the first 12 months (a consumer who does nothing after this period is charged);

⁷ http://www.telus.com/en/qc/deals/?INTCMP=LNK_frmCTA_TopNavigationAll_toDeals

B) Defendants who advertise and provide services free of charge for a Fixed Period and who, after the Fixed Period, require Subclass members to inform them that they do not wish to pay the Regular Price

Credit Card Issuer Defendants:

136. Defendants **AMEX BANK OF CANADA** (“Amex”), **BANQUE DE MONTRÉAL** (“BMO”), **THE TORONTO-DOMINION BANK** (“TD”), **JPMorgan Chase Bank National Association** (“Chase”), **ROYAL BANK OF CANADA** (“RBC”) and **CANADIAN IMPERIAL BANK OF COMMERCE** (“CIBC”) carry on in the financial services industry as credit card issuers, among the other services they provide. All have a principal establishment in Montreal, as it appears *en liasse* from extracts of the CIDREQ, disclosed as Applicant’s **Exhibit P-20**;
137. At some point during the Class Period, Amex, BMO, TD, Chase, RBC and CIBC have issued credit cards to Subclass members with an introductory offer in which they waived the credit card’s annual fee for the first year, but **automatically charged** Subclass members annual fees ranging from \$65 and up for each subsequent year (unless the Subclass member called in to cancel);
138. For Amex, these cards include the *Amex Express Gold Rewards Card* (\$150 value), the *American Express AeroPlus Gold* (\$150 value) and the *American Express AIR MILES Platinum Credit Card* (\$65 value), Applicant disclosing **Exhibit P-21**;
139. For the BMO, it includes the *BMO Wolrd Elite Mastercard* (\$150 value), Applicant disclosing **Exhibit P-22**;
140. For TD, it includes the *TD Aeroplan Visa Infinite Card* with annual fee rebate in the first year (\$120 value), Applicant disclosing **Exhibit P-23**;
141. For RBC, it was the *RBC Visa Infinite Avion Card*, Applicant disclosing **Exhibit P-24**;
142. For the CIBC, it included the *CIBC Aerogold Visa Infinite* and for Chase, it includes the *Marriott Rewards Premier Visa*, Applicant disclosing **Exhibit P-25**, an excerpt of which appears below:



**THE ANNUAL FEE OF \$120 IS WAIVED FOR THE FIRST YEAR^{†*}
IT WILL BE CHARGED ANNUALLY THEREAFTER (WHETHER
ACTIVATED OR NOT) ON YOUR STATEMENT ANNIVERSARY**

Annual Interest rate is 19.99%. Annual fee of \$120 waived for the first year.
For more information on rates and fees see below.^{†*}

143. Shockingly, in its publicity for the *Marriott Rewards Premier Visa*, Exhibit P-25, Chase expressly publicizes that the card will be charged annually thereafter, whether activated or not!
144. Furthermore, during the Class Period, Defendant TD has also provided Subclass members its ***TD Balance Protection*** insurance free of charge for a Fixed Term, and Subclass members were then required to advise TD if they did not wish to pay the Regular Price for the insurance after the Fixed Period (if not they were charged a percentage of their credit card balance by TD every month thereafter for said *Balance Protection* insurance;

The “Free Trial” Defendants:

145. The rest of the Defendants engage in what at first glance appears to be a seemingly harmless practice (free trial offers for a limited amount of time, followed by automatic renewal unless the consumer takes steps to cancel), but is in fact illegal under paragraph c of section 230 *CPA*;
146. When consumers sign up for these “free trials” they must provide a credit card, debit card, PayPal or other form payment information so that the merchant can automatically charge them once the Fixed Period comes to an end and the consumer has not informed them of their desire not to pay the Regular Price (which is precisely what is prohibited by the *CPA*);
147. The most telling publicity comes from the website of Defendant Amazon.com LLC (“**Amazon**”).⁸ Although Amazon did violate paragraph c of section 230 *CPA* during the Class Period when offering its “Amazon Prime” free trial, at some point around **2014-2015** it ceased providing free trial offers to Quebec residents, presumably after benefiting from sound legal advice concerning 230 (c) *CPA*, Applicant disclosing **Exhibit P-26:**

⁸ <https://www.amazon.ca/gp/help/customer/display.html?nodeId=201025470>

Sign Up for the Amazon Prime Free Trial (Non-Quebec Residents)

Amazon Prime Free Trial members enjoy all the same benefits as paid members.

If you haven't been an Amazon Prime member in the last 12 months, you can sign up for a free trial.

To sign up for the Amazon Prime free trial, your account must have a current, valid credit card.

To sign up for the Amazon Prime free trial:

1. Go to [Amazon Prime Free Trial](#).
2. Click **Start my free trial**.
3. Follow the on-screen instructions if prompted.

You are enrolled in the free trial of Amazon Prime and have access to the benefits of FREE two-day shipping. For more information about Amazon Prime, go to [Amazon Prime Terms & Conditions](#).

Note: While you won't be charged for your free trial, you will be automatically upgraded to a paid membership plan at the end of the trial period. For help turning off your Amazon Prime membership renewal, go to [End Your Amazon Prime Membership](#).

148. Instead of offering Quebec consumers with a free trial for a Fixed Period up front, Amazon now adheres to the *CPA* by offering the free month as a bonus of sorts, at the end of a paid one year subscription as follows:

Sign Up for Amazon Prime (Quebec Residents)

Residents of Quebec aren't eligible for a free trial of Amazon Prime. However, those who sign up for a 13-month membership will receive the first 30 days at no charge. This offer is only available to new Amazon Prime members with residency in Quebec. Customers who have had a 12-month membership in the past will receive the regular annual membership. Residency is determined by your billing address at the time you sign up.

You will enjoy the same benefits in your free 30 days as in your annual membership. Visit the [Manage Prime Membership](#) page to change your automatic upgrade setting and change 1-Click ordering settings.

You'll need a current, valid card to sign up. Your credit card will not be charged until your free 30 days has completed, and you may cancel at any time. Your membership will end after the initial term unless you choose to renew it.

149. The above constitutes, it is suggested, an admission on behalf of Amazon as to its heretofore improper behaviour in Quebec and establishes the fundamental facts underpinning the present application;
150. As for the rest of the “free trial” Defendants, **none** have followed Amazon’s initiative (even despite the fact that Defendant **Audible, Inc.** is a subsidiary of Amazon – consumers even use their Amazon login ID and password to login into www.Audible.com);
151. All of the Defendants unlawfully derogate from paragraph c of section 230 CPA, when, in fact, Amazon is proof that compliance is easily achieved;
152. In its section titled “**How does the Free Trial work**”,⁹ Netflix does not conceal the fact the it is violating the CPA, Applicant disclosing **Exhibit P-27**, which provides as follows:

Try us free for 1 month! You'll be able to instantly watch unlimited movies and TV shows from your smart TV, game console, streaming player, phone or tablet. You can also watch instantly on your computer!

If you enjoy your Netflix trial, do nothing and your membership will automatically continue for as long as you choose to remain a member. Netflix membership is a month-to-month subscription that begins at sign up. You can easily cancel anytime, online, 24 hours a day. There are no long-term contracts or cancellation fees. Just sign up to get started!

[Our emphasis underlined in bold]

153. As for the rest of the free trial offers, the Applicant provides the following chart to assist this Honorable Court in identifying the violations of paragraph c of section 230 CPA, for each of the following “free trial” Defendants:

Defendant	Free Trial Service:	Exhibit #
AUDIBLE, INC.	Read E-books	Exhibit P-28;
APPLE INC.	Apple's all access music pass	Exhibit P-29;
LINKEDIN IRELAND	LinkedIn Premium account	Exhibit P-30;
GOOGLE INC.	Google Play Music	Exhibit P-31;
SHOMI PARTNERSHIP ¹⁰	Watch movies and TV shows	Exhibit P-32;

⁹ <https://help.netflix.com/en/node/412>

¹⁰ Defendants Rogers Media Inc. and Shaw Media Inc. are the partners forming Shomi Partnership.

SIRIUS XM CANADA INC.	Listen to satellite radio	Exhibit P-33;
SPOTIFY AB	Music, podcasts and videos	Exhibit P-34;
AFFINITAS GMBH	Dating website: www. elitesingles.ca	Exhibit P-35;
MATCH.COM LLP	Dating website	Exhibit P-36;

IV. DAMAGES

154. During the Class Period the Defendants have generated aggregate amounts in the **billions of dollars** while intentionally choosing to ignore the law in Quebec;
155. All of the Defendants' misconduct (except for Amazon who only recently ceased the prohibited practice) is reprehensible and to the detriment of vulnerable Quebec consumers;
156. 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 section 215, paragraph c of section 230 and sections 261, 262 and 272;
157. 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; and
 - b) punitive damages, in an amount to be determined, for the breach of obligations imposed on Defendants pursuant to section 272 *CPA*;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

158. The action that the Applicant wishes to institute on behalf of the members of the Class and Subclass is an action in damages, injunctive relief and declaratory judgment;
159. The conclusions that the Applicant wishes to introduce by way of an Application to institute proceedings are:

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

DECLARE the Defendants liable for the damages suffered by the Applicant and each

of the members of the Class and Subclass;

ORDER the Defendants to cease requiring Quebec-based consumers to inform them that they do not wish to be charged the Regular Price after the Fixed Term;

CONDEMN the Defendants to pay to each member of the Class and Subclass a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class and Subclass punitive damages, in an amount to be determined, 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 and Subclass 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 including the cost of 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;

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

VI. JURISDICTION

161. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, for the following reasons:
- a) There exists a real and substantial connection between the province of Quebec and the damages suffered by Applicant, Class and Subclass members;
 - b) Vidéotron and Bell Canada have their head offices in the province Quebec (while most of the Defendants have a principal establishment in Quebec);

- c) The contracts between the Class/Subclass members and the Defendants are deemed to have been entered into in the province of Quebec;
- d) A great number of the members of the Class, including the Applicant, reside in the district of Montreal;
- e) The Applicant's attorneys practice their profession in the district of Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present application;

AUTHORIZE the bringing of a class action in the form of an Application to institute proceedings in damages;

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

Class:

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;

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

- a) Do Defendants provide Class members services or goods at a Reduced Priced for a Fixed Period?
- b) Do Defendants provide Subclass members services or goods free of charge for a Fixed Period?
- c) Do Defendants, in fact, require that Class members advise them at the end of the Fixed Period indicating that they do not wish to obtain the services or the goods at the Regular Price?
- d) Do Defendants violate paragraph c of section 230 CPA?
- e) In the affirmative, what is the appropriate remedy for a violation of paragraph c of section 230 CPA?
- f) Are Class members entitled to demand that their obligations be reduced pursuant to paragraph c of section 272 CPA?
- g) Are Defendants responsible for all related damages, including, but not limited to the trouble and inconvenience to Class and Subclass members as a result of forcing them to take steps to cancel their services (or be forced to pay the Regular Price), and in what amount?
- h) Are the Class members, Subclass members and the Applicant entitled to a declaratory judgment stating that the Defendants are liable for the damages suffered by the Applicant and by each of the members of the Class and Subclass?
- i) Should an injunctive remedy be ordered to force Defendants to immediately cease the practice of requiring Class and Subclass members to advise them after the Fixed Period that they do not wish to pay the Regular Price?
- j) Are Defendants responsible to pay punitive damages to Class and Subclass members and, if so, in what amount?

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 members of the Class and Subclass;

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

ORDER the Defendants to cease requiring Quebec-based consumers to inform them that they do not wish to be charged the Regular Price after the Fixed Term;

CONDEMN the Defendants to pay to each member of the Class and Subclass a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the Class and Subclass punitive damages, in an amount to be determined, 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 including the cost of 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 and Subclass 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 and Subclass 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 LA PRESSE 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 and Subclass member, to their last known e-mail address, with the subject line "Notice of a Class Action";

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publications fees.

Montreal, July 4th, 2016


SIMON & ASSOCIÉS
Attorneys for Applicant

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SIMON & ASSOCIÉS

SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the Superior Court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Extract of Vidéotron's website from September 26th, 2015, showing the promotional price of \$69.90 for 6 months for *Unlimited Super Duo*;
- Exhibit P-2:** Copy of the Vidéotron publicity for the *Unlimited Super Duo* appearing in the *Montreal Gazette* on October 2nd, 2015;
- Exhibit P-3:** Copy of the Bell Canada "bundle" publicity in the *Montreal Gazette* appearing on September 24th, 2015;
- Exhibit P-4:** *En liasse* Copy of Applicant's first 9 Vidéotron invoices beginning October 2015;
- Exhibit P-5:** Extract of Vidéotron's website showing their summer 2016 (June/July) promotion with a Reduced Price for a Fixed Period;
- Exhibit P-6:** Copy of Quebecor Inc.'s Fourth Quarter and Full Year Consolidated Results for the 2015 financial year;

- Exhibit P-7:** Copy of the email iTunes receipt sent to Applicant on February 15th, 2016, evidencing her 1-month free trial with Netflix;
- Exhibit P-8:** Copy of the email dated March 15th, 2016, received by Applicant, confirming her “purchase” of a “subscription” from Netflix (via her iTunes account);
- Exhibit P-9:** Copy of the email dated April 15th, 2016, which Applicant received from Netflix, with mention of an “Automatic Renewal”;
- Exhibit P-10:** Copy of the Netflix Terms and Conditions,
- Exhibit P-11:** Copy of Netflix’s 2015 Annual Report;
- Exhibit P-12:** Copy of the *Journal de Montréal* article published on June 23, 2016, titled “300\$ pour une crème «gratuite»”
- Exhibit P-13:** Extract of the CIDREQ for Vidéotron S.E.N.C;
- Exhibit P-14:** Extract of the CIDREQ for Bell Canada;
- Exhibit P-15:** Copy of the Bell Canada Bundle ad appearing in the *Journal de Montreal* on January 22nd, 2015;
- Exhibit P-16:** Extract of the CIDREQ for Telus Communications Company;
- Exhibit P-17:** Print screen of Telus’ website on July 3rd, 2016: http://www.telus.com/en/qc/deals/?INTCMP=LNK_frmCTA_TopNavigationAll_to_Deals
- Exhibit P-18:** Extract of the CIDREQ for Rogers Communications Inc.;
- Exhibit P-19:** Print screen from July 3rd, 2016, of the Rogers wireless website showing products being advertised by Rogers in Quebec;
- Exhibit P-20:** *En liasse* extract of the CIDREQ for Amex Bank of Canada, Banque de Montréal, The Toronto-Dominion Bank, JPMorgan Chase Bank National Association, Royal Bank of Canada and Canadian Imperial Bank of Commerce;
- Exhibit P-21:** Copy of the publicity for the Amex credit cards showing that fees are waived only for the first year;
- Exhibit P-22:** Copy of the publicity for the BMO MasterCard credit card showing that fees are waived only for the first year;

- Exhibit P-23:** Copy of the publicity for the TD Visa credit card showing that fees are waived only for the first year;
- Exhibit P-24:** Copy of the publicity for the RBC Visa credit card showing that fees are waived only for the first year;
- Exhibit P-25:** Copy of the publicity for the Chase *Marriott Rewards Premier Visa* credit card showing that fees are waived only for the first year;
- Exhibit P-26:** Publicity on Amazon’s website concerning Quebec consumers and its free trial: <https://www.amazon.ca/gp/help/customer/display.html?nodeId=201025470>
- Exhibit P-27:** Screen capture of section from Netflix’s website titled: *“How does the Free Trial work”*;
- Exhibit P-28:** Copy of the free trial offer from www.audible.ca;
- Exhibit P-29:** Copy of the free trial offer from Apple for its Apple Music service: <http://www.apple.com/ca/music/membership/>
- Exhibit P-30:** Copy of the free trial offer for a LinkedIn Premium account;
- Exhibit P-31:** Copy of the free trial offer from Google for its Google play service;
- Exhibit P-32:** Copy of the free trial offer for Shomi’s music services;
- Exhibit P-33:** Copy of the free trial offer from Sirius XM radio;
- Exhibit P-34:** Copy of the free trial offer from Spotify;
- Exhibit P-35:** Copy of the free trial offer the dating website www.elitesingles.ca;
- Exhibit P-36:** Copy of the free trial offer from www.match.com;

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, July 4th, 2016


SIMON & ASSOCIÉS
Attorneys for Applicant

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SIMON & ASSOCIÉS

NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO:

VIDÉOTRON S.E.N.C.,
612 Saint-Jacques Street,
Montreal Quebec, H3C 4M8

Defendant

VIDÉOTRON LTÉE.,
612 Saint-Jacques St. 18th floor
Montreal, Quebec, H3C 4M8

Defendant

NETFLIX, INC.
100 Winchester Circle
Los Gatos, CA, 95052, USA

Defendant

BELL CANADA
1050 Côte du Beaver Hall,
Montreal, Quebec, H2Z 1S4

Defendant

TELUS COMMUNICATIONS CO.,
300 Saint-Paul Street,
Québec, Quebec, G1K 7R1

Defendant

TELUS COMMUNICATIONS INC.,
1155 Metcalfe Street Montreal
Montreal, Quebec, H3B 2V6

Defendant

**ROGERS COMMUNICATIONS
INC.,** 800 De La Gauchetière St. W,
#4000, Montreal, QC, H5A 1K3

Defendant

AMEX BANK OF CANADA,
800 René-Lévesque blvd. West,
Montreal, Quebec, H3B 1X9

Defendant

BANQUE DE MONTRÉAL,
119 Saint-Jacques Street,
Montreal, Quebec, H2Y 1L6

Defendant

**THE TORONTO-DOMINION
BANK,** 1350 René-Levesque. West,
6th, Montreal, Quebec, H3G 1T4

Defendant

JPMorgan Chase Bank, NA
1501 McGill College Avenue
Montreal, Quebec, H3A 3M8

Defendant

ROYAL BANK OF CANADA
1 Place Ville Marie,
Montreal, Quebec, H3B 3A9

Defendant

CIBC
1155 René-Lévesque blvd. West
Montreal, Quebec, H3C 3B2

Defendant

AMAZON.COM LLC,
10 Terry Avenue North
Seattle, Washington, 98109, USA

Defendant

AUDIBLE, INC.,
1 Washington Park, 16th Floor,
Newark, New Jersey, 07102, USA

Defendant

APPLE INC.,
1 Infinite Loop
Cupertino, California, 95014, USA

Defendant

LINKEDIN IRELAND
70 Sir John Rogerson's Quay
Dublin 2, Ireland

Defendant

GOOGLE INC.
1253 McGill College avenue, #150,
Montreal, Québec, H3B 2Y5

Defendant

SHOMI Partnership
800 De La Gauchetière St. W.,
#4000 Montreal, QC, H5A 1K3

Defendant

ROGERS MEDIA INC.,
800 De La Gauchetière St. W. #4000
Montreal, QC, H5A 1K3

Defendant

SHAW MEDIA INC.
630 3rd avenue South West, #900
Calgary, Alberta, T2P 4L4

Defendant

SIRIUS XM CANADA INC.
161 Bay Street, Suite 2300
Brookfield Pl., Toronto, ON, M5J 2S1

Defendant

SPOTIFY AB
Birger Jarlsgatan 61, SE-113 56
Stockholm, Sweden

Defendant

AFFINITAS GMBH
Kohlurther Strasse 41/43
Berlin, Germany, 10999

Defendant

MATCH.COM LLP
8300 Douglas avenue,
Dallas, Texas 75225, USA

Defendant

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, July 4th, 2016



SIMON & ASSOCIÉS
Attorneys for Applicant

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SIMON & ASSOCIÉS

(Class Action)
**SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

STEPHANIE J. BENABU

Applicant

VIDÉOTRON S.E.N.C., general partnership, having its head office at 612 Saint-Jacques Street, Montreal, district of Montreal, Province of Quebec, H3C 4M8

and

NETFLIX, INC., legal person, having its head office at 100 Winchester Circle, Los Gatos, California, 95052, United States of America

and

BELL CANADA, legal person having its head office at 1050 Côte du Beaver Hall, Montreal, district of Montreal, Province of Quebec, H2Z 1S4

ET ALS.

Defendants

**APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION AND TO APPOINT
THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLE 571 AND FOLLOWING C.C.P)**

COPY

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ME HENRI SIMON
CODE: BS 1168

N/D: S-3732