

CANADA

SUPERIOR COURT  
(Class Action Chambers)

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

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SERGIO LIMA, residing and domiciled  
at [REDACTED]  
[REDACTED]

No.: 500-06-000940-185

Applicant

v.

GOOGLE LLC, legal person, having its  
head office at 1600 Amphitheatre  
Parkway, Mountain View, California  
94043, USA

Defendant

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO  
OBTAIN THE STATUS OF REPRESENTATIVE  
(ART 574 C.C.P. AND FOLLOWING)

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TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
THE CLASS ACTION CHAMBERS IN THE DISTRICT OF MONTREAL, YOUR  
APPLICANT STATES AS FOLLOWS:

I. GENERAL PRESENTATION

1. The Applicant wishes to institute a class action on behalf of the class hereinafter described and of which the Applicant is a member, namely:

*“All persons residing in Québec who used Google’s services through Google applications on a smartphone running Android or iOS, or any other group to be determined by the Court.”*

A. Overview

2. For an unknown number of years, Google LLC (“Google”) has been collecting location data from users of its services, including Google Maps, Chrome, and

Search. Google collects the data from users of its applications on smartphones running the Android mobile operating system (“**Android**”) and Apple’s iOS. Google collects the data from users even when users have not enabled or have disabled location services or location history. Google deliberately and maliciously manipulated settings and employed “dark patterns” to collect the data without a user’s informed permission or knowledge. Google collects, uses, retains and commercializes the location data it takes from users and profits from it. Google’s wrongful acts violated *An Act Respecting the Protection of Personal Information in the Private Sector*, the *Consumer Protection Act*, the *Civil Code of Québec* and the *Québec Charter of Human Rights and Freedoms* and unjustly enriched it at the expense of users. Through this suit, Québec users seek to hold Google accountable for its unlawful conduct.

### ***B. The Parties***

3. The Defendant Google is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043, USA. Google carries on business worldwide, including in Québec and Canada. Google is a subsidiary of Alphabet Inc., a publicly-traded multi-national, the whole as appears from the corporate search results for Google LLC disclosed as **Exhibit P-1**.
4. The Applicant, Sergio Lima, is a resident of [REDACTED] Québec. At all material times, he has used smartphones that run Android, including a Samsung Galaxy S7 Edge and a Samsung Galaxy Note 5. At all material times, the Applicant used Google’s services and had Google’s applications, including Google Maps, installed on his smartphones.

### ***C. Google’s Services***

5. Google provides a number of services to its users to facilitate the efficient use of information. Essentially, these services are a means of electronically storing, retrieving, analyzing, manipulating and presenting data. These services include internet search (Google Search), map display and route-guidance (Google Maps), email hosting (Gmail), notifications (Google Now), weather (Google Weather), photo

management (Google Photos) and cloud-based file storage, editing and retrieval (Google Drive) (collectively “**Google Services**”), as appears from an excerpt of Google’s website regarding its products disclosed as **Exhibit P-2**. Google Services are used by billions of people worldwide, tens of millions in Canada, and millions in Québec.

6. On Android and iOS, Google offers its Services through applications (apps). These apps include Google Maps, Chrome, Google (this app includes Search) (collectively “**Google Apps**”). Google Apps may be installed on new devices (for most Android smartphones) or installed by users (on iOS smartphones).
7. In addition to manipulating and presenting data to users, Google Services and Google Apps have the ability to collect extensive information about the users themselves, including timing and frequency of use and the place of use.
8. Google makes most of its money from selling advertising to third parties based on its users’ characteristics, including their location.

#### ***D. Smartphones and Location Data***

9. Smartphones play a central role in modern society. Approximately 80% of all Canadians own a smartphone. In addition to making and receiving telephone calls and text messages, smartphones offer internet connectivity, store contact information and run applications. Smartphones are catalysts for personal life in the 21<sup>st</sup> century and are the key means through which intimate and private relationships are mediated.
10. Location is a key element of a person’s privacy. Where a person is, when, and for how long is personal information deserving of protection. While aspects of a person’s physical location are public or accessible to the public – when they walk on a street, take the bus or enter a private business or public facility – the aggregate of all location information is intensely personal. Although a person’s movement can theoretically be tracked through surveillance or stalking, society and the law consider those activities innately intrusive and impose strict limits on them.

11. With many people carrying their smartphones with them at all times, the ability to collect location data about a user presents a tremendous risk for invasion of privacy. If a user's location is tracked in real-time and with the degree of precision afforded by modern technology, a user's entire physical timeline can be recorded. Accordingly, exercising meaningful control over who gets to share what, if any, aspects of a person's physical experience and history, is a choice that is a user's alone to make. Once made, that choice must be respected.

### ***E. Smartphone Operating Systems***

12. Google develops and maintains the Android operating system. Google's Android OS is the mobile platform software employed by most of the major smartphone manufacturers to provide an operating system and user interface. Smartphones made by companies including but not limited to Samsung, LG, Sony, HTC, Blackberry, and Google itself, all run Android. Approximately half of all smartphones in Canada run Android.

13. Google's Apps, including Maps and Search, are installed by default on most Android devices.

14. Apple develops and maintains the iOS operating systems for Apple products. It is a proprietary operating system made by Apple for devices it manufactures. Smartphones made by Apple, namely iPhones, run iOS, as do Apple tablets (iPads). Approximately half of all smartphones in Canada run iOS.

15. Apple controls access for applications on devices running iOS. Applications can only be downloaded and installed from the Apple App Store. At all material times, Google's Apps have been distributed through the Apple App Store. Application developers, including Google, must contractually agree to respect Apple's policies to be distributed through the App Store, through the Apple Developer Agreement and associated policies, as appears from a copy of the Apple Developer Agreement and the App Store Review Guidelines disclosed, *en liasse*, as **Exhibit P-3**. At all material times, Apple's policies have included "App Store Review Guidelines".

16. At all material times, the App Store Review Guidelines have included terms imposing limits on permission and access by apps to user data. In particular:

- a. Apps that collect user or usage data must secure user consent for the collection. Apps must also provide the customer with an easily accessible and understandable way to withdraw consent.
- b. Apps must respect the user's permission settings and not attempt to manipulate, trick or force people to consent to unnecessary data access.

***F. Unauthorized Collection of Location Data by Google***

17. For an unknown number of years and continuing up to the time this application is filed, Google has collected location data without permission from users of Google Services. Specifically, Google has collected data about a user's location, including but not limited to GPS coordinates, latitude and longitude, map location, geographical location, nearby Wi-Fi networks, IP addresses, or other markers of physical orientation ("**Location Data**").

18. Egregiously, Google has collected Location Data even if users employed privacy settings that indicated that they would prevent Google from doing so.

19. Most Google Services that collect location data request at least an initial, express permission to use users' Location Data. For example, Google Maps will request permission to access Location Data to use it for navigation.

20. If a user agrees to let Google record his or her location over time for any Google Services, Google will retain that information. In particular, Google will add the Location Data to a user's "timeline" of daily movements in their "Location History".

21. Google makes numerous pretensions about users' abilities to control their privacy and Location Data including, but not limited to, the following:

- a. "When you use our services, you're trusting us with your information. We understand that this is a big responsibility and we work hard to protect your information and put you in control. This Privacy Policy is meant to help you

understand what information we collect, why we collect it and how you can update, manage, export and delete your information. [...] Across our services, you can adjust your privacy settings to control what we collect and how your information is used”, as appears from a copy of the Google Privacy Policy disclosed as **Exhibit P-4**, *en liasse* with several other Google policies and support pages.

- b. **“Your location information.** We collect information about your location when you use our services ... The types of location data that we collect depend in part on your device and account settings. For example, you can turn your Android devices’ location on or off using the device’s settings app. You can also turn on Location History if you want to save and manage your location information in your account”, as appears from the Google Privacy Policy, **P-4**.

22. Based on its pretensions and public statements about Google’s commitments to users’ privacy and user control over their data, including Location Data, Google has confirmed a positive obligation on itself to transparently disclose, in good faith, to users what information is being collected, how to effectively restrict access to that data and to avoid taking advantage of users to obtain the benefit of that data for its own gain.

23. However, Google exploits users’ vulnerabilities and its own power over the user interface to continue collecting Location Data, even when users are given the impression that they have turned off Google’s access to that information.

24. Google has a control panel that permits users to modify their settings, including privacy settings. The online “Activity Panel” includes settings for, *inter alia*, Location History, Web & App Activity, Device Activity and Voice & Audio Activity. Settings are either “on” or “paused”, as appears from an excerpt of the Google website regarding Activity Controls, disclosed as **Exhibit P-5**.

25. Google says the following with respect to Location History:

- a. **“Location History.** Saves where you go with your devices to give you personalized maps, recommendations based on places that you’ve visited and more”, as appears from **P-5**.
- b. **“Manage or delete your Location History.** Your Location History helps you get better results and recommendations on Google products. ... You control what’s saved in your Location History, and you can delete your history at any time”, as appears from the Google Account Help webpage disclosed as **Exhibit P-6**.
- c. **“Turn Location History on or off.** You can turn off Location History at any time. With Location History off, the places you go are no longer stored”, as appears from **P-6**.

26. Despite these statements by Google, turning off (pausing) Location History does not prevent Google from collecting, storing or exploiting users’ Location Data.

27. Instead, Google continues to collect the same, or substantially the same, Location Data under the heading of “Web & App Activity”, as appears from the Google Search Help webpage disclosed as **Exhibit P-7**. The only meaningful change caused by pausing collection under Location History is that Google does not add it to a user’s timeline. Google still has the benefit of a user’s Location Data for its own purposes.

28. Web & App Activity is on by default. Web & App Activity does not specifically reference Location Data, unless a user navigates into multiple sub menus. Google’s public pages about Location History do not disclose that Web & App Activity also records Location Data and that Google will obtain Location Data even if Location History is off (or paused).

29. Google deliberately chooses to obscure from users when it is seeking to access users’ Location Data. Google does so to avoid asking users for specific, informed permission to access and collect their Location Data. Google achieves this by

means of its application user interface, the manipulation of default settings and by employing so-called “dark patterns” to compel users to give it access to users’ Location Data.

30. Many users engage with Google Services exclusively on their smartphones and not on desktop computers. These users manage their relationship with Google through its Apps and the device control panel. Smartphone users do not have any reason to go into a browser to review or manage settings for their Google Services directly, nor does Google encourage or invite them to do so to control their location privacy.

31. Google did not give users the ability to limit Location Data tracking on iOS. Even though users have the apparent ability to control location access for Google Apps through Apple’s location services settings, any changes would not affect Location Data stored through Web & App Activity. That is, Google continues to collect Location Data even if a user selects “Never Allow Location Access” on the iOS control for the Google App. Users could not fully disable the collection of the Location Data by Google from their iOS devices, even if they had been aware of it, as appears from **P-4**.

32. In particular, Google said the following on its public page about turning off location tracking on iOS:

- a. “iPhone and iPad – Turn your location on or off: 1. On your iPhone or iPad, open the Settings apps. 2. Tap **Privacy > Location Services**. 3. In the top right, tap the switch to turn location on or off”, as appears from **P-4**.

33. This was not true because Google continued to collect Location Data through the Web & App Activity channel even if location services were disabled on a user’s iOS smartphone. The same occurred for Android users who attempted to turn location on or off through their device settings.

34. Google’s conduct towards users on iOS was deceptive behavior, within the meaning of the App Store Review Guidelines. Google thereby breached its agreement with Apple to respect the Apple Developer Agreement and the App Store Review



Guidelines, P-3. Through its actions, Google intended to cause harm to the Plaintiff and Class Members through the collection, retention and use of the Location Data as a necessary means of enriching itself at their expense.

35. Ultimately, it did not matter whether users had “paused” Location History or turned off locations services on their smartphones, because Google was still collecting, using and retaining Location Data through its Web & App Activity workaround.

36. Google’s decision to collect the Location Data was planned and deliberate and was made knowing that users had not consented to, and were not aware of, its collection.

37. Google collected, retained and used the Location Data for its own benefit.

38. Users had no notice that Google was collecting, retaining or using the Location Data.

39. The collection, retention and use of Location Data by Google were unauthorized. Users did not consent to the collection, retention or use of the Location Data by Google.

40. The senior officers and directors of Google were at all times fully aware of the collection, use and retention of the Location Data and took active steps to effect it.

41. As a result of the unauthorized collection, retention and use of the Location Data, Google has been enriched by:

- a. selling advertising to third parties on the basis of the Location Data for display to users of the Google Services;
- b. selling the Location Data to third parties;
- c. selling customer profiles containing the Location Data to third parties; and
- d. advancing its own research and development agenda, turning users into unwitting test subjects, to profit its own commercial interests.

42. Collecting, retaining and using the Location Data was in Google's economic interest and provided it with a competitive advantage in the marketplace.
43. Google's wrongdoing became public on or around August 13, 2018, when the *AP* released a story about it, disclosed as **Exhibit P-8**.
44. On or around August 13, 2018, Google admitted to collecting the Location Data.

#### ***G. The 2011 FTC Consent Decree***

45. Google considers itself subject to the law and jurisdiction of the United States, and purports to operate its business in compliance with American law, including with respect to users in Canada.
46. In 2011, the United States Federal Trade Commission ("**FTC**") initiated a complaint against Google regarding its handling of users' personal information in connection with the now mostly-forgotten "Google Buzz" social network. The FTC alleged that Google had misrepresented the use to which users' personal information would be put. The FTC further alleged that Google had deceptively manipulated settings and permissions to give itself unjustified access to and use of that personal information, even where users had declined to participate. The FTC alleged that Google had violated the *Federal Trade Commission Act*, 15 U.S. Code. c. 2, subchapter I (*FTC Act*), as appears from a copy of the pertinent Complaint and Decision and Order disclosed, *en liasse*, as **Exhibit P-9**.
47. In October 2011, Google entered a consent decree with the FTC to resolve the proceedings ("**Consent Decree**"), **P-9**. The Consent Decree provides, *inter alia*, that Google "shall not misrepresent in any manner, expressly or by implication the extent to which [Google] maintains and protects the privacy and confidentiality of any covered information, including, but not limited, misrepresentations related to: (1) the purposes for which it collects and uses covered information, and (2) the extent to which consumers may exercise control over the collection use, or disclosure of covered information." The Consent Decree will remain in force until at least 2031.

48. Accordingly, from 2011 onwards, Google was required to obtain meaningful, informed and explicit consent and to avoid misrepresentation and duplicity, in the handling of users' personal information, including Location Data (within the definition of "covered information" in the Consent Decree).

49. In 2012, the FTC filed a complaint in United States Federal District Court for the Northern District of California (San Jose Division) alleging that Google had violated the terms of the Consent Decree. Specifically, the FTC alleged that Google had breached the Consent Decree in how it presented to users of the Safari browser Google's "cookie" tracking practices. Google denied liability but paid a US\$22,500,000 civil fine to settle with the FTC, as appears from the Order made following the complaint disclosed as **Exhibit P-10**.

50. Google's unauthorized collection, retention and use of the Location Data was in breach of the Consent Decree, as set out above.

#### ***H. Google's Commitments through the Network Advertising Initiative***

51. At all material times, Google has been a member of the Network Advertising Initiative ("NAI"), as appears from an excerpt from the NAI website disclosed as **Exhibit P-11**. The NAI is an industry trade group founded in 2000 that develops self-regulatory standards for online advertising.

52. The NAI promulgates a Code of Conduct, to which members must conform in their delivery of personalized advertising and ad delivery and reporting activities. Google committed to respecting the NAI Code of Conduct, disclosed as **Exhibit P-12**.

53. In particular, under the NAI Code of Conduct, the use of precise location data for personalized advertising requires a user's opt-in consent. Precise location data is information that describes the precise geographic location of a device derived through any technology that is capable of determining with reasonable specificity the actual physical location of an individual or device, such as GPS-level latitude-longitude coordinates or location-based radio frequency signal triangulation. Opt-in

consent means “affirmative action taken by an individual that manifests the intent to opt in.”

54. Google’s provision of Google Services to users, and especially its sale of advertising to users of Google Services and Google Apps, constitutes the delivery of personalized advertising and ad delivery and reporting activities within the meaning of the NAI Code of Conduct.

55. Google breached the NAI Code of Conduct in its unauthorized collection, retention and use of the Location Data. In particular, Google’s manipulation of default settings and misrepresentations on the nature of Location History and Web & App Activity, and the personal information collected was in breach of the spirit and terms of the NAI Code of Conduct. In addition, Google’s misconduct was in breach of the very public commitment it made by signing on to the NAI and its Code of Conduct.

### ***I. The Defendant’s Liability***

#### ***Breach of obligations stemming from of An Act Respecting the Protection of Personal Information in the Private Sector and the Civil Code of Québec***

56. The Applicant and Class Members’ Location data, collected, retained, used and made available to third parties by the Defendant, is « personal information » as provided for by *An Act Respecting the Protection of Personal Information in the Private Sector*.

57. The Defendant was therefore subject to the obligations provided for in said legislation relative to the collection, retention, use and dissemination of the personal information of its users and had the obligation to protect, and not to misuse, said personal information.

58. The Defendant breached its obligations in omitting to protect the Applicant and Class Members’ personal information and by collecting, retaining, using and providing and selling to third parties the Applicant and Class Members’ personal information, without their consent and without ever disclosing its actions to them.

59. More particularly, the Defendant breached articles 10 and 13, 14 and 17 of *An Act Respecting the Protection of Personal Information in the Private Sector*.

60. Moreover, in making the Applicant and Class Members' personal information available to third parties without their consent and for purposes inconsistent with the purposes for which said information was provided, the Defendant breached its obligations under articles 35 to 37 of the *Civil Code of Québec*.

61. As a result of the aforementioned breaches by Google, the Applicant and Class Members are entitled to damages.

#### **Breach of obligations under the Consumer Protection Act**

62. Through its actions as set out above, Google breached the *Consumer Protection Act*.

63. The Defendant breached article 219 of the *Consumer Protection Act* by making false or misleading representations to the Applicant and Class Members with regard to the collection, retention and use of their personal information as well as regarding the protection which would be given to said information and omitting to divulge important information regarding the safety and use of their personal information.

64. In addition to the remedies provided for under the *Consumer Protection Act*, said conduct warrants the award of punitive damages under article 272 of the *Consumer Protection Act*.

#### **Breach of obligations under the Québec Charter of Rights and Freedoms**

65. The Defendant's conduct, as set out above, also breached the Applicant and Class Members' right to respect for their private lives as guaranteed by article 5 of the *Québec Charter of Rights and Freedoms*.

66. The Defendant made available and sold its users' personal information to third parties without its users' consent and intentionally omitted to divulge its actions to its users.

67. Google chose to put its own interests before the interests of the Applicant and the Class Members. Google showed a blatant disregard of its users' rights.

68. It was not the Defendant but rather a third-party publication that divulged Google's misconduct to the Applicant and the Class Members.

69. This unlawful and intentional interference with its users' rights warrants an award of punitive damages under article 49 of the Québec *Charter of Human Rights and Freedoms*.

#### **Punitive Damages**

70. As stated above, the Applicant is justified in requesting punitive damages in light of the Defendant's malicious, calculated and intentional conduct which departed to a marked degree from ordinary standards of decent behaviour and violated the trust and security of its users.

71. The Defendant's actions constitute a willful disregard of its users' privacy, autonomy and rights and a violation of its obligations and as such, warrant an award of punitive damages under the *Consumer Protection Act* and the Québec *Charter of Human Rights and Freedoms*.

#### **Unjust Enrichment**

72. By its conduct set out above, Google has been enriched by the collection, retention and use of the Location Data from the Applicant and Class Members. Google has profited from the commercialisation and use of the Location Data taken from the Applicant and Class Members, as set out in more detail at paragraph 43 above.

73. In particular, Google has been enriched by advertising sold on the basis of the Location Data, as well as the sale of Location Data to third parties. Google has also

benefitted from the Location Data to advance its own research and development agenda.

74. The Applicant and Class Members have been deprived through the loss of their reasonable expectation of privacy and the taking of private data about them. As such, there is a correlation between the Defendant's enrichment and the Applicant and Class Members' impoverishment.

75. There is no justification as to why Google should have received or should retain this benefit. The unauthorised collection, retention and use by Google of the Location Data were carried out in violation of the applicable legislation as set forth above, as well as the *FTC Act* and the Consent Decree.

76. In particular, Google had and continues to have a positive obligation flowing from its own public statements and policies, the Consent Decree and the NAI Code of Conduct, not to misrepresent or mislead users in seeking to obtain consent to use sensitive personal information, including Location Data.

77. These violations by the Defendant render void or unenforceable any alleged reason for Google's enrichment and thereby negate any justification as to why Google should have received or should retain the benefit of its wrongdoing.

78. As a result, Google has been unjustly enriched by the benefits it received from the Applicant and the Class Members. This warrants an order that the Defendant disgorge all profits that it gained in benefitting from the breaches set out above.

#### **I. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

79. The facts on which the Applicant's personal claim against the Defendant is based, are as follows:

a. The Applicant is Director of Customer Success for an IT company.

- b. At all material times, the Applicant has used smartphones running Android, such as a Samsung Galaxy S7 Edge from May 2016 to early 2018 and a Samsung Galaxy Note 5 thereafter, as appears from an excerpt of the Applicant's subscriber information from the Rogers website, disclosed as **Exhibit P-13**.
- c. The Applicant used Google Services, such as Google Search and Google Maps. The Applicant also had Google Apps, including Google Maps, Chrome and Google, installed on the smartphones he used.
- d. At all material times, while the Applicant has been using Google Services and Google Apps on his smartphones, Google has been collecting his Location Data and disclosing this personal information, and this without his consent.
- e. As Google never disclosed its collection, retention and use of its users' Location Data, the Applicant did not and could not know, and had no reason to believe, that his Location Data would be collected and used by Google without his knowledge and consent.
- f. Had the Applicant known about Google's practices, the Applicant would have used his phone on different terms.
- g. The Applicant was within his rights to believe that Google would protect his personal information according to its legal obligations in this regard.
- h. Although the Applicant never consented to Google collecting, using and selling his Location Data, upon information and belief, Google did so and then monetized the personal information collected from him and other Class Members, *inter alia*, in selling said personal information to third parties.
- i. As a result of Google's conduct, the Applicant suffered damages, including monetary losses, inconvenience and anxiety.

80. The Applicant's damages are a direct result of the Defendant's conduct;



81. In consequence of the foregoing, the Applicant is justified in claiming damages;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

82. The facts giving rise to personal claims by each of the members of the class against the Defendant are as follows:

- a. Every member of the Class has used Google Services through Google Apps on a smartphone running Android or iOS at material times;
- b. Each Class Member's privacy was violated by the Defendant's unlawful, unfair, abusive and/or misleading acts and practices and intentional and malicious conduct;
- c. The Class Members each suffered damages, including monetary losses and inconvenience and anxiety;
- d. In consequence of the foregoing, each member of the Class is justified in claiming compensatory, moral and/or punitive damages;

83. All of these damages to the Class Members are a direct result of the Defendant's conduct.

## **III. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

***A. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings***

84. The Applicant is not privy to the specific number of persons residing in Québec who used Google Services through Google Apps on a smartphone running Android or iOS. However, given that each of the Android and iOS operating systems are used by approximately half of Canadians, respectively, and that Google Services are used by millions of people in Québec, it is reasonable to assume that the class number is in the millions. Further, the Defendant's electronic databases could easily establish the number of Class Members and even all of those Class Members' exact coordinates.

85. Class Members are numerous and are scattered across the entire province.
86. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Defendant. Even if the Class Members themselves could afford such individual litigation, it would place an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, individual litigation of the factual and legal issues raised by the conduct of the Defendant would increase delay and expense to all parties and to the court system.
87. By their very nature, wrongdoing in the smartphone market affects many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard.
88. It is expected that the majority of Class Members have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding.
89. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restore the parties to parity.
90. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class.
91. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together into one action.

92. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective legal rights and have access to justice.

***B. The claims of the members of the Class raise identical, similar or related issues of law or fact***

93. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation.

94. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendant's misconduct.

95. The claims of the members raise identical, similar or related issues of fact or law, namely:

- a. Did the Defendant improperly collect and use the Applicant and Class Members' personal information?
- b. More particularly, did the Defendant make the Applicant and Class Members' personal information available to third parties without their consent?
- c. Was the Defendant unjustly enriched and if so, should the Defendant disgorge its profits?
- d. Did the Defendant breach its obligations towards the Applicant and Class Members and this under the *Consumer Protection Act*, the *Civil Code of Québec*, *An Act Respecting the Protection of Personal Information in the Private Sector* and/or the *Québec Charter of Human Rights and Freedoms*?

- e. Did the Defendant breach its obligations towards the Applicant and Class Members under the *Federal Trade Commission Act* and the Consent Decree?
- f. Did the Defendant breach its obligations towards the Applicant and Class Members under the Network Advertising Initiative's Code of Conduct?
- g. As a result, did the Applicant and Class Members suffer damages and what is the nature of such damages?
- h. Is the Defendant liable to pay damages to the Applicant and Class Members, including monetary losses incurred, inconvenience, anxiety and other moral and/or punitive damages?
- i. In the affirmative, what is the amount of damages to be paid to the Applicant and Class Members?

#### IV. 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.

97. The conclusions that the Applicant wishes to introduce by way of an application to institute proceedings are:

- a. **GRANT** the class action of the Applicant and each of the members of the Class;
- b. **CONDEMN** the Defendant to pay each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- c. **CONDEMN** the Defendant to pay to each of the members of the Class punitive damages, in an amount to be determined by the court, and **ORDER** collective recovery of those sums;

- d. **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;
- e. **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which form part of the collective recovery, with interest and costs;
- f. **ORDER** that the claims of individual Class Members be the object of collective liquidation if the proof permits and, alternately, by individual liquidation;
- g. **CONDEMN** the Defendant to bear the costs of the present action including expert and notice fees;
- h. **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

***A. The Applicant requests that he be attributed the status of representative of the Class***

98. The Applicant is a member of the Class.
99. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present action until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the Fonds d'aide aux actions collectives, as the case may be, and to collaborate with his attorneys.
100. Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class.
101. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments.
102. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed.

103. Applicant has given instructions to his attorneys to put information about this class action on its website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing.
104. Applicant is in good faith and has instituted this action for the sole goal of having his 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 the Defendant's conduct.
105. Applicant understands the nature of the action.
106. Applicant's interests do not conflict with the interests of other Class Members and further Applicant has no interest that is antagonistic to those of other members of the Class.
107. Applicant is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary.
108. Applicant has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread.

***B. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montréal***

109. A great number of the members of the Class reside in the judicial district of Montréal.
110. The Applicant's attorneys practice their profession in the judicial district of Montréal.
111. The present application is well founded in fact and in law.

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

**GRANT** the present application;

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

**DESIGNATE** the Applicant, Sergio Lima, as representative of the persons included in the Class herein described as:

*“All persons residing in Québec who used Google’s services through Google applications on a smartphone running Android or iOS.”*

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

- a. Did the Defendant improperly collect and use the Applicant and Class Members’ personal information?
- b. More particularly, did the Defendant make the Applicant and Class Members’ personal information available to third parties without their consent?
- c. In so doing, was the Defendant unjustly enriched and if so, should the Defendant disgorge its profits?
- d. In so doing, did the Defendant breach its obligations towards the Applicant and Class Members and this under the *Consumer Protection Act*, the *Civil Code of Québec*, *An Act Respecting the Protection of Personal Information in the Private Sector* and/or the *Québec Charter of Human Rights and Freedoms*?
- e. Did the Defendant breach its obligations towards the Applicant and Class Members under the *Federal Trade Commission Act* and the Consent Decree?
- f. Did the Defendant breach its obligations towards the Applicant and Class Members under the Network Advertising Initiative’s Code of Conduct?
- g. As a result, did the Applicant and Class Members suffer damages and what is the nature of such damages?
- h. Is the Defendant liable to pay damages to the Applicant and Class Members, including monetary losses incurred, inconvenience, anxiety and other moral and/or punitive damages?

- i. In the affirmative, what is the amount of damages to be paid to the Applicant and Class Members?

The interests of justice favour that this application be granted in accordance with its conclusions;

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

- **GRANT** the class action of the Applicant and each of the members of the Class;
- **CONDEMN** the Defendant to pay each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendant to pay to each of the members of the Class punitive damages, in an amount to be determined by the court, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendant to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;
- **ORDER** the Defendant to deposit in the office of this Court the totality of the sums which form 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 Defendant to bear the costs of the present action including expert and notice fees;
- **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

**DECLARE** that all members of the Class that have not requested their exclusion, within the specified timeframe, be bound by any judgment 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 Class Members, date upon which the members of the Class that have not



exercised their means of exclusion will be bound by any judgment to be rendered herein;


**ORDER** the publication of a notice to the members of the Class in accordance with articles 576 and 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in *La Presse*, the *Montreal Gazette*, and *Le Soleil*;

**ORDER** that said notice be sent directly to all Class Members through the use of the Defendant's customer database, displaying it with Google apps in the Apple App Store, as well as posting the said notice on the Defendant's website at [www.google.ca](http://www.google.ca) and at [www.android.com](http://www.android.com);

**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

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

Montréal, August 15, 2018



**Klein Avocats Plaideurs Inc.**


500, Place d'Armes, suite 1800

Montréal, Québec

H2Y 2W2

**Attorneys for the Applicant**

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Klein Avocats Plaideurs Inc.

## **SUMMONS**

(articles 145 and following C.C.P.)

### **Filing of a judicial application**

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montréal.

### **Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the Montreal courthouse situated at 1, Notre-Dame Est, Montréal, Québec, 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 applicant.

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 an applicant 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 applicant'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 originating application, the Applicant intends to use the following exhibits:

EXHIBIT P-1:	Corporate search results for Google LLC
EXHIBIT P-2:	Excerpt of Google's website regarding its products
EXHIBIT P-3:	Apple Developer Agreement and App Store Review Guidelines <i>en liasse</i>
EXHIBIT P-4:	Google Privacy Policy <i>en liasse</i> with several other Google policies and support pages
EXHIBIT P-5:	Excerpt of the Google website regarding Activity Controls
EXHIBIT P-6:	Google Account Help webpage
EXHIBIT P-7:	Google Search Help webpage
EXHIBIT P-8:	AP News Article
EXHIBIT P-9:	FTC Complaint and Decision and Order <i>en liasse</i>
EXHIBIT P-10:	FTC Order
EXHIBIT P-11:	Excerpt from the NAI website
EXHIBIT P-12:	NAI Code of Conduct
EXHIBIT P-13:	Excerpt of the Applicant's subscriber information from the Rogers website

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.

CANADA

**SUPERIOR COURT**  
**(Class Action Chambers)**

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

\_\_\_\_\_  
**SERGIO LIMA**

Applicant

No: 500-06-000940-185

v.

**GOOGLE LLC**, legal person, having its  
head office at 1600 Amphitheatre  
Parkway, Mountain View, California  
94043, USA

Defendant

\_\_\_\_\_  
**NOTICE OF PRESENTATION**

\_\_\_\_\_  
**(ART 146 and 574 al. 2 C.C.P.)**

**TO :** **GOOGLE LLC**, legal person  
having its head office at  
1600 Amphitheatre Parkway,  
Mountain View, California 94043, USA  
**Defendant**

**TAKE NOTICE** that the *Application for authorization to institute a class action and to obtain the status of representative* will be presented before one of the honourable judges of the Superior Court at the Montreal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by the Class Action Chambers coordinator.

**GOVERN YOURSELF ACCORDINGLY.**

Montréal, August 15, 2018

  
\_\_\_\_\_  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

TRUE COPY

  
\_\_\_\_\_  
Klein Avocats Plaideurs Inc.

CANADA

**SUPERIOR COURT**  
**(Class Action Chambers)**

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

---

**SERGIO LIMA**

Applicant

No: 500-06-000940-185

v.

**GOOGLE LLC**, legal person, having its  
head office at 1600 Amphitheatre  
Parkway, Mountain View, California  
94043, USA

Defendant


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**ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER**  
**(ART 55 of the *Regulation of the Superior Court of Québec in civil matters*)**

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The Applicant, through his attorneys, attests that the *Application for authorization to institute a class action and to obtain the status of representative* will be entered into the national class action register.

Montréal, August 15, 2018

  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

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Klein Avocats Plaideurs Inc.