

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-000806-162

SUPERIOR COURT
(Class Action)

UNION DES CONSOMMATEURS, legal entity, with its head office located at 7000 Park Avenue, Suite 201, in the City and District of Montreal, Province of Quebec, H3N 1X1

Plaintiff

-and-

COREY MENDELSON, domiciled and residing at 6557 Aldrin, in the City of Cote St-Luc, Province of Quebec, H4W 3H9

Designated Person

-vs-

SIRIUS XM CANADA INC., a legal person, duly constituted according to law, with its head office located at 161 Bay Street, Suite 2300, in the City of Toronto, Province of Ontario, M5J 2S1;

Defendant

**ORIGINATING APPLICATION OF A CLASS ACTION LAWSUIT
(Article 583 C.C.P.)**

TO THE HONOURABLE JUSTICE STÉPHANE SANSFAÇON OF THE SUPERIOR COURT OF QUEBEC, BEING THE DESIGNATED JUDGE TO HEAR ALL PROCEEDINGS RELATED TO THE PRESENT CLASS ACTION, SITTING IN AND FOR THE DISTRICT OF MONTREAL, PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:

INTRODUCTION

1. The present class action seeks to recover subscription fees unilaterally imposed and collected by the Defendant in flagrant violation of Section 11.2 of the *Consumer Protection Act*, CQLR c P-40.1 (hereinafter, the “CPA”), and to collect punitive damages in light of the Defendant’s systematic violation of this public order provision of the CPA over the course of numerous years, affecting hundreds of thousands of Quebec consumers;

THE AUTHORIZATION JUDGMENT

2. The Superior Court of Quebec (the Honourable Stéphane Sansfaçon) authorized the Plaintiff to institute the present class action against Sirius XM Canada inc. (hereinafter “**SiriusXM**”), on behalf of the following individuals (hereinafter, the “**Class**”):

“All persons in Quebec who entered into subscription contracts for satellite or internet radio services provided by Sirius XM Canada inc. and whose subscription fees were unilaterally increased by Sirius XM Canada inc. since September 1, 2013 without proper notice.”

3. The following questions are to be dealt with collectively at this stage:
 - 3.1. Is Sirius XM Canada inc. a “Merchant” governed by the CPA?
 - 3.2. Is Sirius XM Canada inc. required to send a notice which clearly and legibly sets out both the amended subscription fees and the current subscription fees in order to be entitled to collect increased subscription fees from the members of the Class?
 - 3.3. Did the notices sent by Sirius XM Canada inc. to its consumers before increasing subscription fees during the Class period comply with the requirements of the CPA?
 - 3.4. If Sirius XM Canada inc. failed to comply with the requirements of the CPA before charging consumers an increase in subscription fees, is the Petitioner entitled to recover the increased fees paid by the members of the Class to Sirius XM Canada inc.?
 - 3.5. How much money did Sirius XM Canada inc. collect from members of the Class during the Class period, collectively, for increased subscription fees over and above the initial subscription fees paid?
 - 3.6. Is Sirius XM Canada inc. responsible to pay punitive damages for its systematic violation of the CPA, under the circumstances, and if so, what

amount of punitive damages should Sirius XM Canada inc. be condemned to pay, collectively?

Question 3.1: Sirius XM Canada inc. is a “Merchant” governed by the CPA

4. SiriusXM is a subscription-based provider of satellite and internet radio services, with approximately 2.8 million subscribers in Canada, the whole as appears from SiriusXM Canada Holdings inc. Management’s Discussion and Analysis, dated April 12, 2017, produced herewith as **Exhibit P-1**;
5. At all relevant times, SiriusXM has been the operating entity, and wholly-owned subsidiary, of SiriusXM Canada Holdings Inc.;
6. At all relevant times since September 1, 2013 (the “**Class period**”), SiriusXM’s primary revenue source has been subscription fees collected from subscribers throughout Canada, including in the Province of Quebec;
7. Subscribers enter into indeterminate term subscription contracts with SiriusXM, pursuant to which the subscriber pays subscription fees in advance of a pay period that is often annual or semi-annual, but may also be one month, one quarter or multiple years;
8. During the Class period, SiriusXM has published “Terms and Conditions” on its website, which SiriusXM imposes on every subscriber who enters into a subscription contract, the whole as appears from the “Terms and Conditions” in effect prior to January 5, 2018, a copy of which is produced herewith as **Exhibit P-2** (the “**Terms and Conditions**”);
9. Pursuant to the Terms and Conditions applicable during the Class period, SiriusXM categorizes its customers as either commercial or non-commercial subscribers. Section 1(l) of the Terms and Conditions defines a commercial subscriber as a customer that uses the “Satellite Radio Service in a commercial establishment.” The remainder of SiriusXM’s subscribers use the Satellite Radio Service for personal, non-commercial enjoyment and, accordingly, are consumers;
10. Based on population, it is likely that more than 500,000 of SiriusXM’s 2.8 million Canadian subscribers are members of the Class. The Plaintiff calls upon SiriusXM to provide sufficiently precise data concerning the number, names and coordinates of the non-commercial subscribers in Quebec during the Class period;
11. Thus, by virtue of the fact that SiriusXM’s business has been to provide products and/or services to individuals in the Province of Quebec for their personal enjoyment throughout the Class period, SiriusXM is and has always been a “Merchant”, pursuant to the CPA;

Questions 3.2 and 3.3: SiriusXM increased subscription fees of Class members without complying with the public order requirements set forth in Section 11.2 of the CPA

12. A merchant is prohibited from amending the terms of an indeterminate term contract, unless the public order requirements of Section 11.2 of the CPA are respected, namely:

11.2. Any stipulation under which a merchant may amend a contract unilaterally is prohibited unless the stipulation also *11.2. Est interdite la stipulation prévoyant que le commerçant peut unilatéralement modifier le contrat à moins que cette stipulation ne prévoie également:*

(a) specifies the elements of the contract that may be amended unilaterally;

a) les éléments du contrat pouvant faire l'objet d'une modification unilatérale;

(b) provides that the merchant must send to the consumer, at least 30 days before the amendment comes into force, a written notice drawn up clearly and legibly, setting out exclusively the new clause, or the amended clause and the clause as it read formerly, the date of the coming into force of the amendment and the rights of the consumer set forth in subparagraph c; and

b) que le commerçant doit, au moins 30 jours avant l'entrée en vigueur de la modification, transmettre au consommateur un avis écrit, rédigé clairement et lisiblement, contenant exclusivement la nouvelle clause ou la clause modifiée ainsi que la version antérieure, la date d'entrée en vigueur de la modification et les droits du consommateur énoncés au paragraphe c;

(c) provides that the consumer may refuse the amendment and rescind or, in the case of a contract involving sequential performance, cancel the contract without cost, penalty or cancellation indemnity by sending the merchant a notice to that effect no later than 30 days after the amendment comes into

c) que le consommateur pourra refuser cette modification et résoudre ou, s'il s'agit d'un contrat à exécution successive, résilier le contrat sans frais, pénalité ou indemnité de résiliation, en transmettant un avis à cet effet au commerçant au plus tard 30 jours suivant l'entrée en vigueur de la modification, si

force, if the amendment entails an increase in the consumer's obligations or a reduction in the merchant's obligations.

la modification entraîne l'augmentation de son obligation ou la réduction de l'obligation du commerçant.

However, except in the case of an indeterminate-term service contract, such a stipulation is prohibited if it applies to an essential element of the contract, particularly the nature of the goods or services that are the object of the contract, the price of the goods or services or, if applicable, the term of the contract.

Toutefois, à moins qu'il ne s'agisse d'un contrat de service à durée indéterminée, une telle stipulation est interdite à l'égard d'un élément essentiel du contrat, notamment la nature du bien ou du service faisant l'objet du contrat, le prix de ce bien ou de ce service et, le cas échéant, la durée du contrat.

Any amendment of a contract in contravention of this section cannot be invoked against the consumer.

La modification d'un contrat faite en contravention des dispositions du présent article est inopposable au consommateur.

13. The unilateral increase of a consumer's subscription fees following a given pay period constitutes an amendment to an indeterminate term contract, triggering the public order requirements of Section 11.2 of the CPA;
14. SiriusXM's Terms and Conditions purport to allow SiriusXM to automatically renew its customers' subscriptions at the end of a pay period, for a pay period of the same duration, in return for increased subscription fees, namely:

Automatic Renewal: Your Subscription will continue for the length of the initial term you select and at the end of your prepaid Subscription term, it will automatically renew, with appropriate notice to you (if applicable), for additional terms of same length at the rate in effect at the time of renewal unless you choose to cancel prior to that renewal, or your Service is cancelled, terminated, or discontinued by you or by us, or you select a different plan.

2. CHANGE IN TERMS

a. Change To Terms

Due to the evolving nature of our business, its competition, and the requirement and costs of programming suppliers, we reserve the right to

unilaterally change the terms on which we offer the Services from time to time, as we believe appropriate, including the rates, fees and charges.

[Emphasis added.]

15. SiriusXM's purported reservation of rights in the Terms and Conditions to unilaterally increase consumers' subscription fees does not respect the public order requirements of Section 11.2 of the CPA in that:
 - a) the Terms and Conditions do not state that the consumer will receive a notice, clearly, legibly and exclusively setting out the current subscription fees and the amended subscription fees; and,
 - b) the Terms and Conditions do not indicate that the notice will inform the consumer of his/her right to cancel the contract without cost, penalty or cancellation indemnity by sending the merchant a notice to that effect no later than 30 days after the amendment comes into force;
16. Furthermore, SiriusXM in fact increased consumers' subscription fees during the Class period without ever sending a notice complying with the public order requirements set forth in Section 11.2 of the CPA;
17. Examples of SiriusXM's failure to send proper notices prior to increasing consumers' subscription fees for pay periods of the same duration as previous pay periods are set forth in letters enclosed herewith *en liasse* as **Exhibit P-3**, namely letters sent to the Designated Person, Corey Mendelsohn ("**Mendelsohn**"), as well as to another member of the Plaintiff and of the Class, Denise Greffe ("**Greffe**");
18. The letters (Exhibit P-3) are misleading in that they do not indicate that the subscription fees applicable for the renewed pay period will be substantially higher than they were, and they do not even indicate the current subscription fees that SiriusXM will be amending (i.e. "the clause as it formerly read", as required by Section 11.2 of the CPA);
19. The title of the letters does not even refer to the fact that SiriusXM will be amending the subscription fees at all;
20. The letters do not deal exclusively with the amendment to the subscription fees, but rather deal with a number of other subjects, such as the promotion of the various radio channels that SiriusXM offers;
21. The letters also fail to inform the consumer of his/her right to cancel the contract without cost or penalty, as well as the delay to do so;
22. For example, in Mendelsohn's case:

- a) At all relevant times, Mendelsohn subscribed to SiriusXM in order to listen to satellite radio for his personal enjoyment;
- b) In October 2013, he paid \$99.62 in advance and in return for SiriusXM's satellite radio services for a pay period of one (1) year, that is from October 2013 until September 2014 (the "**2013-2014 Mendelsohn Pay Period**");
- c) In August 2014, he received a letter by email entitled "You're all set for more great SiriusXM entertainment..." (Exhibit P-3) (the "**2014 SiriusXM Email**");
- d) The title of the 2014 SiriusXM Email is misleading, as it does not indicate that Mendelsohn's subscription fees will be increased upon renewal of the 2013-2014 Mendelsohn Pay Period;
- e) The text of the 2014 SiriusXM Email simply informs Mendelsohn that "your current Annual subscription will automatically renew on October 5, 2014 at \$203.13* billed to the credit card we have on file";
- f) The 2014 SiriusXM Email does not set out the subscription fee in effect at the time (\$99.62), which would be modified on October 5, 2014, nor does it contain the other requirements set forth in Section 11.2 of the CPA;
- g) On or about October 5, 2014, SiriusXM charged Mendelsohn's personal credit card, which it had on file, subscription fees inclusive of taxes in the amount of \$233.55, in return for satellite radio services for the ensuing pay period (the "**2014-2015 Mendelsohn Pay Period**"), representing an increase of 136% above the subscription fees paid for the 2013-2014 Mendelsohn Pay Period;
- h) On or about October 5, 2015, upon expiry of the 2014-2015 Mendelsohn Pay Period, SiriusXM charged Mendelsohn's personal credit card \$251.95 for another renewed pay period (the "**2015-2016 Mendelsohn Pay Period**"), representing an increase of 159% above the subscription fees paid for the 2013-2014 Mendelsohn Pay Period, as appears more fully from Mendelsohn's "My Account" page on SiriusXM's website, a copy of which is produced herewith as **Exhibit P-4**;
- i) For the 2015-2016 Mendelsohn Pay Period, Mendelsohn did not receive any notice from SiriusXM informing him of the increase to his subscription fees;
- j) In November 2015, SiriusXM credited Mendelsohn the sum of \$41.06;

- k) On or about October 3, 2016, Mendelsohn received another letter by email from SiriusXM titled "You're all set for more great SiriusXM entertainment ...", a copy of which is produced herewith as **Exhibit P-5** (the "**2016 SiriusXM Email**");
- l) The 2016 SiriusXM Email simply informs Mendelsohn that "your current annual subscription will automatically renew on November 23, 2016 at \$219.13* billed to the credit card we have on file", thus maintaining the increase of 159% above the subscription fees paid for the 2013-2014 Mendelsohn Pay Period (the "**2016-2017 Mendelsohn Pay Period**");
- m) On or about August 18, 2017, Mendelsohn received another letter by email from SiriusXM, once again entitled "You're all set for more great SiriusXM entertainment", the whole as appears from a copy of the August 18, 2017 email received by Mendelsohn, produced herewith as **Exhibit P-6**, indicating that SiriusXM would charge Mendelsohn's personal credit card, which it had on file, subscription fees of \$219.13 plus taxes (\$251.95) for the ensuing pay period (the "**2017-2018 Mendelsohn Pay Period**");
- n) Prior to the filing of the present class action, Mendelsohn's billing address for his SiriusXM subscription was his home address, the whole as appears from Exhibit P-4;
- o) After the filing of the Application for Authorization to Institute the present class action, SiriusXM unlawfully changed Mendelsohn's billing address, without his consent, from his home address to the address of the corporation of which he is the president, in a blatant attempt to avoid application of the CPA;
- p) Accordingly, after charging Mendelsohn \$99.62 for the 2013-2014 Mendelsohn Pay Period, SiriusXM unilaterally stipulated the following increased subscription fees, inclusive of taxes, notwithstanding that SiriusXM failed to send a notice conforming to the requirements of Section 11.2 of the CPA:
- | | | |
|------|----------------------------------|----------|
| i. | 2014-2015 Mendelsohn Pay Period: | \$233.55 |
| ii. | 2015-2016 Mendelsohn Pay Period: | \$251.95 |
| iii. | 2016-2017 Mendelsohn Pay Period: | \$251.95 |
| iv. | 2017-2018 Mendelsohn Pay Period: | \$251.95 |

23. For example, in Greffe's case:

- a) At all relevant times, Greffe, who is retired, subscribed to SiriusXM in order to listen to satellite radio for her personal enjoyment;
- b) On September 14, 2013, SiriusXM charged Greffe's credit card subscription fees inclusive of taxes of \$197.88 for a one-year pay period, representing an increase of \$106.47 (or 106%) over and above the sum of \$91.41 that Greffe paid for the previous pay period in 2012-2013, the whole as more fully appears from an extract of her credit card statement, a copy of which is produced herewith as **Exhibit P-7** (the "**2013-2014 Greffe Pay Period**");
- c) On July 2, 2014, SiriusXM sent Greffe a letter entitled "*Votre abonnement à SiriusXM se renouvelle le 15 août 2014*" (Exhibit P-3) (the "**2014 SiriusXM Letter**");
- d) The 2014 SiriusXM Letter does not indicate that Greffe's subscription fees will be increased upon renewal of the 2013-2014 Greffe Pay Period, does not mention the current subscription fees, and does not mention the fact that Greffe has the right to terminate her SiriusXM subscription without cost or penalty;
- e) The text of the 2014 SiriusXM Letter simply informs Greffe that "*Votre abonnement de 1 année se renouvellera automatiquement le 15 août 2014 au tarif de 187,53\$* qui sera porté à votre carte de crédit que nous avons en dossier*";
- f) The 2014 SiriusXM Letter does not deal exclusively with the amendment to Greffe's subscription fees, but rather addresses a number of other subjects, such as the promotion of the various radio channels that SiriusXM offers;
- g) On or about August 15, 2014, SiriusXM charged Greffe's personal credit card, which it had on file, the sum of \$215.62, for an additional one-year pay period (the "**2014-2015 Greffe Pay Period**"), the whole as more fully appears from an extract of her credit card statement, a copy of which is produced herewith as **Exhibit P-8**;
- h) On July 1, 2015 and July 6, 2016, SiriusXM sent Greffe letters similar to the 2014 SiriusXM Letter, in virtue of which SiriusXM informed Greffe of the automatic renewal of her subscription, without informing Greffe that her subscription fees were being amended, without indicating the current subscription fees, and without informing Greffe of her right to cancel her contract without cost or penalty, the whole as more fully appears from SiriusXM letters dated July 1, 2015 and July 6, 2016 (Exhibit P-3) (the SiriusXM Email sent to Mendelsohn, the 2014 SiriusXM Letter sent to

Grefe and the letters sent to Grefe in July 2015 and July 2016 are hereinafter referred to collectively as, the “**SiriusXM Letters**”);

- i) For each of the 2015-2016 and 2016-2017 pay periods, SiriusXM further increased Grefe’s subscription fees, and inclusive of taxes, charged Grefe’s credit card, which it had on file, the sum of \$233.55 (2015-2016 Grefe Pay Period), and the sum of \$251.95 (2016-2017 Grefe Pay Period), respectively, the whole as more fully appears from extracts of Grefe’s credit card statements for the period of August 2015 and August 2016, copies of which are produced herewith *en liasse* as **Exhibit P-9**;
- j) Accordingly, after charging Grefe \$91.41 for the 2012-2013 Grefe Pay Period, SiriusXM unilaterally stipulated the following increased subscription fees, inclusive of taxes, notwithstanding that SiriusXM failed to send a notice conforming to the requirements of Section 11.2 of the CPA:

i.	2013-2014 Grefe Pay Period:	\$197.88
ii.	2014-2015 Grefe Pay Period:	\$215.62
iii.	2015-2016 Grefe Pay Period:	\$233.55
iv.	2016-2017 Grefe Pay Period:	\$251.95;

- 24. In 2017, Grefe informed SiriusXM of her decision not to renew her subscription, as she became frustrated with the cost of SiriusXM’s services. In order to keep Grefe as a customer, SiriusXM agreed to charge subscription fees of \$131.35, instead of \$251.95, the whole as more fully appears from an exchange of emails between Grefe and SiriusXM, produced herewith *en liasse* as **Exhibit P-10**;
- 25. Thus, during the Class period, SiriusXM substantially increased Mendelsohn and Grefe’s subscription fees numerous times without ever sending a notice conforming to Section 11.2 of the CPA;
- 26. Throughout the Class period, instead of respecting the public order provisions of the CPA, SiriusXM either sent class members deficient and misleading letters substantially similar to the SiriusXM Letters sent to Mendelsohn and Grefe, or SiriusXM failed to send any notice at all;
- 27. SiriusXM consequently denied hundreds of thousands of consumers information deemed essential by the CPA;

Question 3.4: The consequence of SiriusXM's failure to comply with the requirements of the CPA before charging consumers an increase in subscription fees, is the inability of SiriusXM to invoke the increased subscription fees

28. Section 11.2 of the CPA stipulates that "any amendment of a contract in contravention of this section cannot be invoked against the consumer / *la modification d'un contrat faite en contravention des dispositions du présent article est inopposable au consommateur*";
29. The failure of SiriusXM to comply with the requirements of Section 11.2 of the CPA accordingly entails that SiriusXM may not invoke the amendments (i.e. the increased subscription fees) against its consumers, the whole as has been confirmed by the *Office de la protection du consommateur* in its official position statement entitled "Modification du contrat", produced herewith as **Exhibit P-11**;
30. On behalf of the members of the Class, Plaintiff is accordingly entitled to claim that SiriusXM repay the Class members, collectively, any and all increases in subscription fees that were charged during the Class period over and above the subscription fees that they paid during any initial or previous pay period;

Question 3.5: How much money did Sirius XM Canada inc. unlawfully collect from members of the Class during the Class period, collectively?

31. For the six (6) month period ending February 28, 2017, SiriusXM reported revenue of approximately \$174 million, the whole as appears from the Interim Condensed Consolidated Financial Statements of Sirius XM Canada Holdings inc., a copy of which is produced herewith as **Exhibit P-12**. The foregoing suggests that SiriusXM generates revenues of approximately \$348 million per year;
32. For the years 2013-2016, SiriusXM reported revenues of \$288 million, \$303 million, \$325 million and \$341 million, respectively, for a total in excess of \$1.25 billion, the whole as appears from the Consolidated Financial Statements of Sirius XM Canada Holdings inc. for the periods ending August 31, 2013, 2014, 2015 and 2016, copies of which are produced herewith *en liasse* as **Exhibit P-13**;
33. Based on the population of Quebec and of Canada, it is likely that at least one-quarter (1/4) of SiriusXM's revenues emanate from Quebec consumers. The Plaintiff calls upon SiriusXM to provide sufficiently precise data to enable the determination of the revenue generated from subscription fees collected in Quebec during the Class period;
34. Considering that during the Class period, SiriusXM unlawfully increased Mendelsohn's and Greffe's subscription fees substantially at the end of a given pay period, it is likely that a substantial percentage of the annual revenues collected by

SiriusXM from Quebec consumers emanate from unlawful increases in subscription fees;

35. In fact, throughout the Class period, SiriusXM admitted in its public Management's Discussion and Analysis documents that its subscription revenue grew in part as a result of changes in subscription rates imposed on its consumers;
36. The Plaintiff calls upon SiriusXM to provide data in order to enable the determination of the subscription fees paid for each pay period during the Class period by each and every non-commercial Quebec subscriber, the whole in order to enable a sufficiently precise determination of the total claim amount, in accordance with Article 595 of the *Code of civil procedure*;
37. At this time, Plaintiff estimates that SiriusXM has unlawfully collected \$100 million from the members of the Class during the Class period, *sauf à parfaire*, which the Plaintiff is well-entitled to recover collectively;

Question 3.6: SiriusXM must pay punitive damages for its systematic violation of the CPA, under the circumstances

38. In light of the number of consumers affected, the fact that SiriusXM has breached the CPA for numerous years, and considering the patrimonial situation of SiriusXM as well as the primary purpose of punitive damages to prevent and deter this type of conduct, the Plaintiff is well-founded to seek an order of this Honourable Court condemning SiriusXM to pay punitive damages of \$15 million, to be recovered collectively;
39. The failure to comply with the public order provisions of Section 11.2 CPA for several years entails that SiriusXM failed to inform hundreds of thousands of Quebec consumers that their subscription fees had increased, a serious breach of the CPA;
40. It is manifest that SiriusXM's intention in sending the SiriusXM Letters and/or similarly deficient notices, rather than clearly and exclusively setting out in a proper notice the current subscription fees and the amended / increased subscription fees, has been to prevent consumers from knowing that their subscription fees have been unilaterally increased;
41. By acting in the aforesaid manner, SiriusXM infringes both the letter and the spirit of the CPA, a public order statute;
42. It also appears that SiriusXM sought to collect unlawfully increased subscription fees from less sophisticated and/or less diligent consumers, who did not know to assert their rights or have the time to call SiriusXM to complain, as SiriusXM often agrees to apply a credit if a customer calls SiriusXM to complain about a unilateral increase in subscription fees;

43. The Plaintiff has further learned that in January 2018 – more than a full year after the present proceedings were instituted – SiriusXM substantially modified its Terms and Conditions, the whole as appears from the “Terms and Conditions” effective as of January 5, 2018, a copy of which is produced herewith as **Exhibit P-14** (the “**Modified Terms and Conditions**”);
44. The Modified Terms and Conditions stipulate that the terms set forth in the original Terms and Conditions in respect of the automatic renewal of a subscription and SiriusXM’s right to amend subscription fees, are not applicable to Quebec residents. This represents an admission by SiriusXM that the Terms and Conditions applicable during the Class period were unlawful in Quebec, and should never have been applied to the Class members;
45. Furthermore, the Modified Terms and Conditions now provide the express requirements set forth in Section 11.2 CPA in order for SiriusXM to lawfully increase subscription fees (if notices complying with Section 11.2 of the CPA are in fact sent), thereby constituting a further admission that the Terms and Conditions applicable during the Class period did not comply with Section 11.2 of the CPA;
46. The systematic failure of SiriusXM to respect the CPA, to the detriment of hundreds of thousands of Quebec consumers, requires a truly exemplary award of punitive damages;

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT BY THIS HONOURABLE COURT TO:

GRANT the Class Action against the Defendant;

CONDEMN the Defendant to pay to the Plaintiff, for the benefit of the Class, the total amount of subscription fees that it collected from Class members during the Class period over and above the subscription fees that Class members paid during their initial pay periods, said amount currently estimated to be \$100 million, to be recovered collectively, the whole with interest and the additional indemnity provided by law from the date of service of the *Application for Authorization to Institute a Class Action*, dated September 1, 2016;

CONDEMN the Defendant to pay punitive damages of \$15 million, the whole with interest and the additional indemnity provided by law from the date of service of the *Application for Authorization to Institute a Class Action*, dated September 1, 2016;

ORDER collective recovery of the total amount of the claims herein;

ORDER that the claims of the members of the Class be the object of individual liquidation in accordance with Articles 596 to 598 C.C.P. or, if impractical or inefficient, order the Defendant to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

CONDEMN the Defendant to any further relief as may be just and proper;

THE WHOLE with legal costs, including the costs of all exhibits, reports, expertise and publication of notices.

MONTREAL, July 3, 2018

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

Filing of a judicial application

Take notice that the Plaintiff has filed this originating application in the office of the court of Montreal 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 Notre-Dame Street East, Montreal, 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 Plaintiff's lawyer or, if the Plaintiff is not represented, to the Plaintiff.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgment 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 plaintiff 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 originating application, the Plaintiff intends to use the following exhibits :

- Exhibit P-1:** Sirius XM Canada Holdings inc. Management's Discussion and Analysis, dated April 12, 2017;
- Exhibit P-2:** SiriusXM's "Terms and Conditions" in effect prior to January 5, 2018;
- Exhibit P-3:** Letters sent to Corey Mendelsohn and Denise Greffe;
En liasse
- Exhibit P-4:** Corey Mendelsohn's "My Account" page on SiriusXM's website;
- Exhibit P-5:** October 3, 2016 Letter received by email by Corey Mendelsohn;
- Exhibit P-6:** August 18, 2017 Letter received by email by Corey Mendelsohn;
- Exhibit P-7:** Extract of Denise Greffe's credit card statement (September 2013);
- Exhibit P-8:** Extract of Denise Greffe's credit card statement (August 2014);
- Exhibit P-9:** Extracts of Denise Greffe's credit card statements (August 2015 and 2016);
En liasse

- Exhibit P-10:** Exchange of emails between Denise Greffe and SiriusXM in June 2017;
En liasse
- Exhibit P-11:** Office de la protection du consommateur official position statement entitled "Modification du contrat";
- Exhibit P-12:** Interim Condensed Consolidated Financial Statements of Sirius XM Canada Holdings Inc. - Feb 28, 2017;
- Exhibit P-13:** Consolidated Financial Statements of Sirius XM Canada Holdings inc. for the periods ending August 31, 2013, 2014, 2015 and 2016;
En liasse
- Exhibit P-14:** SiriusXM's "Terms and Conditions" effective as of January 5, 2018.

These exhibits are annexed hereto.

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.

No.: 500-06-000806-162

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

UNION DES CONSOMMATEURS

Plaintiff

-and-

COREY MENDELSON

Designated Person

-vs-

SIRIUS XM CANADA INC.

Defendant

**ORIGINATING APPLICATION
OF A CLASS ACTION LAWSUIT**
(Article 583 C.C.P.),
Summons and Exhibits P-1 to P-14

ORIGINAL

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Me Pierre Boivin
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