

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-000806-162

SUPERIOR COURT
(Class Action)

UNION DES CONSOMMATEURS

Plaintiff

-and-

COREY MENDELSON

Designated Person

-vs-

SIRIUS XM CANADA INC.

Defendant

-and-

ATTORNEY GENERAL OF QUEBEC

Mise en cause

APPLICATION FOR THE COMMUNICATION OF DOCUMENTS
(Articles 169, 251 and 595 C.C.P.)

TO THE HONOURABLE JUSTICE STÉPHANE SANSAÇON 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:

1. Plaintiff seeks an order from this Court compelling the Defendant to communicate the following documents/information (hereinafter referred to as the “**Documents**”):
 - a) Data confirming subscription revenues generated by SiriusXM from all non-commercial subscribers in Quebec during the Class period for each and every pay period, as well as the names and last known coordinates of all such Class members;
 - b) Data confirming the subscription fees paid by each non-commercial subscriber in Quebec for the pay period applicable to September 1, 2013, any initial pay period after September 1, 2013, and any and all subsequent/renewed pay periods;
2. The Documents are relevant to the collective questions of fact and law authorized by the Honourable Justice Sansfaçon in the Judgment authorizing the present class action and, in particular:
 - a) The Documents will enable a demonstration that the Defendant increased the subscription fees charged to Class members during the Class period, which increases are unlawful in the event that the Defendant failed to respect Section 11.2 of the *Consumer Protection Act* (“**CPA**”);
 - b) The Documents will assist in enabling a “sufficiently precise determination” of the total claim amount for purposes of collective recovery, in accordance with Article 595 of the *Code of Civil Procedure*, as claimed in the *Originating Application*;
 - c) The Documents will assist the Court in deciding the Plaintiff’s claim for punitive damages, in that the Documents will demonstrate the number of Class members affected by the allegedly unlawful conduct, the number of times the Defendant breached the CPA, and the extent of the revenues generated by the Defendant further to breaches of the CPA, in accordance with Article 1621 of the *Civil Code of Quebec*;
3. Collective recovery is the preferred mode of recovery in order to avoid what the Courts have characterized as a denial of justice, in that the Defendant should not be entitled to keep “ill-gotten gains” due to Class members’ decision not to come forward to make an individual claim;
4. The consolidated financial statements discussing the Defendant’s revenues expressly acknowledge that revenues are generated from increases in subscription fees charged to customers. Defendant must accordingly provide the Documents supporting said assertion, which Plaintiff does not have at present, and has called upon the Defendant to produce in paragraphs 33 and 36 of the *Originating Application*;

5. In order for an expert to assist the Court in making a sufficiently precise determination of the aggregate amount of the claim, the Documents are certainly relevant, if not essential;
6. Consistent with the jurisprudence of the Supreme Court of Canada, Defendant is required to communicate all evidence available in order to facilitate an order of collective recovery;
7. In virtue of the *Code of Civil Procedure*, a defendant must communicate such Documents as soon as possible in the judicial process, in order to enable the matter to advance to trial expeditiously; such Documents do not and should not depend on an oral pre-trial examination;
8. The communication of the Documents results in no prejudice to the Defendant, and there is no valid reason for the Defendant to refuse communication of same;
9. The present request is well-founded in fact and in law, and proportionate in light of the class action that has been authorized;

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

GRANT the Present Application for Communication of Documents;

ORDER the Defendant to communicate the Requested Documents within the next 30 days, namely:

Data confirming subscription revenues generated by SiriusXM from all non-commercial subscribers in Quebec during the Class period for each and every pay period, as well as the names and last known coordinates of all such Class members;

Data confirming the subscription fees paid by each non-commercial subscriber in Quebec for the pay period applicable to September 1, 2013, any initial pay period after September 1, 2013, and any and all subsequent/renewed pay periods;

THE WHOLE with legal costs.

MONTREAL, November 8, 2018

Kugler Kamdestin LLP

KUGLER KANDESTIN LLP

Attorneys for Plaintiff

Me Robert Kugler
Me Pierre Boivin
Me William Colish
1 Place Ville Marie, Suite 1170
Montreal, Quebec, H3B 2A7
Tel.: 514 878-2861
Fax: 514 875-8424
rkugler@kklex.com
pboivin@kklex.com
wcolish@kklex.com

SOLEMN DECLARATION

I, the undersigned, **PIERRE BOIVIN**, Advocate, of the City and District of Montreal, Province of Quebec, and therein practising at 1 Place Ville-Marie, Suite 1170, having been duly sworn, do hereby solemnly declare:

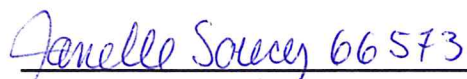
1. **THAT** I am one of the attorneys representing the Plaintiff in the present case;
2. **THAT** all of the facts alleged in the foregoing Application are true and correct.

AND I HAVE SIGNED:



PIERRE BOIVIN

SOLEMNLY DECLARED before me in Montreal,
Quebec, this 8 day of November 2018



Commissioner of Oaths

