

**CANADA**

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO.: 500-06-000806-162

**SUPERIOR COURT**  
(Class Action)

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**UNION DES CONSOMMATEURS**  
Plaintiff

-and-

**COREY MENDELSON**

Designated Person

-vs-

**SIRIUS XM CANADA INC.**

Defendant

-and-

**ATTORNEY GENERAL OF QUEBEC**

Mise en cause

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**APPLICATION RELATING TO THE PRE-TRIAL EXAMINATION OF  
REPRESENTATIVES OF THE DEFENDANT  
(Articles 221 ff. 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:**

1. Defendant seeks to unlawfully deprive and delay Plaintiff's ability to carry out pre-trial examinations;
2. In light of the nature of the class action authorized by the Court, considering that the class action alleges that the Defendant has breached the *Consumer Protection Act* ("CPA") in respect of thousands of Quebec consumers, and considering that the Defendant now contends that it is not bound by Section 11.2 of the CPA, the Plaintiff has elected to examine the Chief Executive Officer (hereinafter "CEO") of the Defendant, which is its absolute right;
3. In accordance with the *Code of Civil Procedure*, the Plaintiff has the right to examine the CEO of the Defendant forthwith, yet the Defendant seeks to further delay the advancement of the present matter by suspending said examination until after the Defendant examines the Plaintiff's designated representative, after it receives communication of undertakings, which may well entail objections to be adjudicated by the Court, and until after the Defendant seeks permission to examine other individuals, which is contested by the Plaintiff;
4. The Defendant has already attempted to appeal the Authorization Judgment, which the Honourable Justice Bich stated would be dilatory;
5. The Defendant should not be permitted to delay advancement of the present case, and there is no valid reason for the examination of the CEO not to take place at the present time;
6. Plaintiff also seeks permission from this Court to question a second representative of the Defendant in order to properly and adequately conduct its pre-trial discovery for the benefit of Class members;
7. In addition to the Defendant's CEO, it is essential that Plaintiff question the Defendant's Chief Financial Officer (hereinafter "CFO") for the following reasons:
  - 7.1. The CFO is uniquely positioned to answer all questions pertaining to the Defendant's accounting of subscription revenues, profits, and billing model as they pertain to members of the Class;
  - 7.2. The CFO is uniquely positioned to answer questions about the documents that Plaintiff has requested from the Defendant in order to prove the allegations that Defendant in fact increased subscription fees charged to Class members unlawfully, and can account for a sufficiently precise determination of the total amount of the claim, for purposes of collective recovery;

8. It is efficient and proportionate to examine the Defendant's CEO and CFO on the same day, or on back-to-back days, in order to avoid the scenario of questioning only one representative who is incapable of answering questions of central relevance and importance to the present litigation and having to wait (and have to ask permission from the Court) to conduct an additional pre-trial examination;
9. Plaintiff has absolutely no intention of asking the same questions to both the CEO and CFO, since the information required from each representative is different;
10. In order to ensure an efficient and proportionate case management of this file, Plaintiff requests that the examination of both representatives be held the same day or on back-to-back days;
11. The present application is well-founded in fact and in law.

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

**GRANT** the Present Application;

**ORDER** the Defendant to make available its Chief Executive Officer and Chief Financial Officer for an examination on discovery to be held on a date agreed upon by the parties which should not exceed 30 days after the date of the present judgment;

**THE WHOLE** with legal costs.

MONTREAL, November 8, 2018

*Kugler Kandestin LLP*

**KUGLER KANDESTIN LLP**  
Attorneys for Plaintiff

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Me Pierre Boivin  
Me William Colish  
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**SOLEMN DECLARATION**

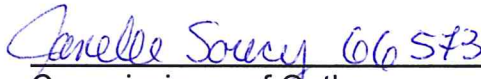
I, the undersigned, **PIERRE BOIVIN**, Advocate, of the City and District of Montreal, Province of Quebec, and therein practising at 1 Place Ville-Marie, Suite 1170, having been duly sworn, do hereby solemnly declare:

- 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

  
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 Commissioner of Oaths



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**ORIGINAL**

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Me Robert Kugler / Me Pierre Boivin / Me William Colish

**KuglerKandestin**


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