

CANADA

SUPERIOR COURT
(Class Action Chambers)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SERGIO LIMA

Applicant

No.: 500-06-000941-183

v.

GOOGLE LLC

Defendant

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION FOR
SETTLEMENT PURPOSES ONLY AND TO APPROVE NOTICE
(ART. 575, 576, 579, 580, 581 and 590 C.C.P.)

TO THE HONOURABLE JUSTICE THOMAS M. DAVIS, J.S.C., SITTING IN AND FOR
THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY SUBMITS THE
FOLLOWING:

History of Proceedings

1. On August 15, 2018, the Applicant filed an Application for Authorization to Institute a Class Action and to Obtain the Status of Representative ("**Application**" or "**Action**"), as appears from the Court record, on behalf of the following class:

"All persons residing in Québec who owned or used a smartphone running the Android operating system in 2017, or any other group to be determined by the Court."

2. The Action alleged that the Defendant, Google LLC ("**Google**"), had been collecting location data from users of the Android mobile operating system ("**Android OS**") in breach of class members' privacy. Specifically, the Applicant alleged that between January and December 2017, Google breached class members' privacy in Quebec by receiving the identification number or code of the cell towers ("**Cell ID**") through which smartphones using the Android OS were connecting to the network.

3. Parallel actions were filed in British Columbia in *Warner v. Google LLC*, VLC-S-S-1711066 (“**BC Action**”) and Ontario in *Emond et al. v. Google LLC*, CV-18-590521-00CP (“**Ontario Action**”). The three actions have been managed cooperatively by the parties.
4. In the BC Action, the plaintiff delivered three expert reports and the certification hearing was ordered for December 2018.
5. On the eve of the certification hearing, a mediation was held in Vancouver. A national settlement was reached and subsequently reduced to a written agreement (“**Settlement Agreement**”), subject to Court approval, a copy of which is communicated hereto as **Exhibit P-1**.
6. The settlement was concluded on behalf of the following Quebec Class:

“All Quebec residents who used a smartphone running the Android operating system in Canada between January 1, 2017 and December 31, 2017, except persons included in the Ontario Class, the BC Class and any person who opts out of any of the Proceedings or are otherwise excluded under the definition of “Class Members or Class”.

7. The parties now seek authorization of the class action for settlement purposes only and notice approval, in accordance with the terms of the Settlement Agreement.

Authorization for settlement purposes only

8. On the basis of the allegations and evidence put forward in the Application and on the basis of the proposed settlement, the parties submit that the criteria for authorization under articles 574 and 575 C.C.P. are met.
9. More particularly, the Applicant submits that the proposed common issue to give effect to the Settlement Agreement, that is “whether between January 1, 2017 and December 31, 2017 Class Members’ Cell ID was transmitted to Google and, as a result, Google breached any right protected under common law or under any federal or provincial”, is a suitable common issue. The Applicant has also plead causes of action which are well established in law. Further, given that the Android OS system is used by approximately half of Canadians, the number of class members is estimated to be in the tens of thousands. Lastly, from the outset of the proceedings, the Applicant has demonstrated that he is ready and willing to lead the class action,

he has the capacity and interest to do so. He has given his approval to the Settlement Agreement and has no conflicts with the class.

Notice Approval

10. In accordance with section 5 of the Settlement Agreement, notice will be published in newspapers across the country and posted online on class counsel's websites and on the Quebec Class Action Register. The proposed notice is attached to the Settlement Agreement at Schedule B and the French copy is communicated hereto as **Exhibit P-2**.

11. The notice proposed is intelligible, informative and tailored to the circumstances of this case. The plan for posting and publication of notice is national and is fair, reasonable and adequately protects the interest of the class members.

12. In light of the above, the class action should be authorized for settlement purposes only and the notice of settlement hearing approved.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

ORDER that, except as otherwise specified in, or as modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement;

AUTHORIZE the bringing of a class action against the Defendant Google LLC for the purposes of settlement approval only, subject to the terms of the Settlement Agreement, Exhibit P-1;

APPOINT, for the purpose of settlement only, the Applicant as the representative plaintiff of the following class:

"All Quebec residents who used a smartphone running the Android operating system in Canada between January 1, 2017 and December 31, 2017, except persons included in the Ontario Class, the BC Class and any person who opts out of any of the Proceedings or are otherwise excluded under the definition of "Class Members or Class".

IDENTIFY, for the purpose of settlement only, the following issue to be dealt with collectively:

Did the Defendant breach any right protected under common law or under any federal or provincial legislation when between January 1, 2017 and December 31, 2017 Class Members' Cell ID was transmitted to Google?

ORDER that the Approval Hearing is to be held on a date at least 30 days after Notice is published in accordance with the Settlement Agreement and is tentatively scheduled on February 12, 2019 at 9:15 am in a room to be determined at the Montreal Courthouse, 1, Notre-Dame Street East (the "**Settlement Approval Hearing**"), at which time this Court will be asked to decide:

- a) whether to approve the Settlement Agreement as fair, reasonable and in the best interest of the Class Members;
- b) whether Class Counsel's application for fees, disbursements and applicable taxes should be granted;
- c) any other matters as the Court may deem appropriate;

APPROVE the form and content of the Notice of the Settlement Approval Hearing in English, substantially in the form as set forth in Schedule B to the Settlement Agreement and in French substantially in the form as set forth in Exhibit P-2;

ORDER that the Notice of the Settlement Approval Hearing shall be published and disseminated substantially in accordance with the terms as set forth in the Settlement Agreement;

DECLARE that the form and manner of Notice of the Settlement Approval Hearing as approved herein represents fair and reasonable notice to all persons entitled to notice of the authorization and Settlement Approval Hearing;

ORDER that the date and time of the Settlement Approval Hearing shall be set forth in the Notice of the Settlement Approval Hearing, but may be subject to adjournment by the Court without further publication notice to the Class Members other than such notice which will be posted on the Settlement Website;

APPROVE the form and content of the Opt-Out Form, substantially in the form as set forth in Schedule C to the Settlement Agreement;

ORDER that persons who would otherwise be Class Members may exclude themselves from this proceeding by sending a fully completed Opt-Out Form, in the manner provided for in the pre-approval notices, no later than 45 days following the dissemination of the Notice of the Settlement Approval Hearing;

SET the deadline for Class Members to object to the Settlement Agreement as no later than 15 days before the Settlement Approval Hearing;

ORDER that a copy of this Judgment shall be posted on the Settlement Website and on the Quebec Class Action Register;

THE WHOLE, without legal costs.

Montréal, October 28, 2019

KLEIN AVOCATS PLAIDEURS S.N.C.

Klein Avocats Plaideurs Inc.

Attorneys for the Applicant

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**SUPERIOR COURT
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SERGIO LIMA

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LIST OF EXHIBITS

EXHIBIT P-1: Copy of the Settlement Agreement and Schedules;

EXHIBIT P- 2: French version of the Notice to members.

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

TO : Me Noah Boudreau
Fasken Martineau DuMoulin
800, rue du Square-Victoria, bureau 3700, Montréal, Québec H4Z 1E9
Attorneys for the Defendant

TAKE NOTICE that the *Application for Authorization to Institute a Class Action for Settlement Purposes Only and to Approve Notice* will be presented before the Honourable Justice Thomas M. Davis of the Superior Court, at a date and time to be determined by this honourable judge.

GOVERN YOURSELF ACCORDINGLY.

Montréal, October 28, 2019

KLEIN AVOCATS PLAIDEURS INC.

Klein Avocats Plaideurs Inc.
Attorneys for the Applicant

