

CANADA

(Class Action Division)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

No: 500-06-001144-217

K [REDACTED] A [REDACTED], [REDACTED]
[REDACTED]

Plaintiff

v.

ROGERS COMMUNICATIONS INC., legal person having an establishment at 4000-800 De La Gauchetière West, in the city and District of Montréal, Province of Québec, H5A 1K3

-and-

ROGERS COMMUNICATIONS CANADA INC., legal person having an establishment at 4000-800 De La Gauchetière West, in the city and District of Montréal, Province of Québec, H5A 1K3

-and-

FIDO SOLUTIONS INC., legal person having an establishment at 4000-800 De La Gauchetière West, in the city and District of Montréal, Province of Québec, H5A 1K3

Defendants

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
(Art. 574 C.C.P. and following)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT OF QUEBEC,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PLAINTIFF STATES THE
FOLLOWING:**

INTRODUCTION

1. Plaintiff wishes to institute a class action on behalf of the following group, of which Plaintiff is a member, namely:

All persons in Québec who had an existing “Rogers”, “Rogers for Business”, “Fido” and/or “Chatr” contract and who had their services interrupted on or about April 19, 2021, or any other Group(s) or Sub-Group(s) to be determined by the Court;

(hereinafter collectively referred to as “**Class Member(s)**”, “**Group Member(s)**”, the “**Group**”, the “**Class**”, “**Consumers**” or “**Customers**”).

2. Defendants Rogers Communications Inc., Rogers Communications Canada Inc. and Fido solutions Inc. (collectively “**Rogers**”) are related corporations having their headquarters in the city of Toronto, Canada, with establishments and places of business in Quebec, the whole as more fully appears from the SEDAR report and Registraire des entreprises du Québec report (“**CDREQ**”) regarding the three Defendants, communicated herewith as **Exhibit R-1**, *en liasse*.
3. Defendants are well-known as being among the largest telecommunication providers in Canada, utilizing multiple brands including without limitation the “Rogers”, “Rogers for Business”, “Fido” and “Chatr” brands. Defendants’ services range from wireless to cable and media.
4. Plaintiff has a wireless contract with Rogers. The Defendants have approximately 10.9 million other Canadian consumers and business subscribers for their wireless services.
5. On or about April 19, 2021, Plaintiff experienced problem using her mobile telephone, namely Plaintiff could not make calls and could not send or receive text messages or otherwise use her data or cellular plan. Her phone was only operational for data while on wifi.
6. The outage lasted all of the morning and most of the day of April 19, 2021 for Plaintiff, whereas it continued for many other Class Members until the late night of April 19, 2021 (if not early morning of April 20, 2021). Plaintiff is not aware of the exact time when the outage occurred, namely whether it occurred during the night of April 18, 2021 or early morning of April 19, 2021, but she (like many Class Members) woke up to a telephone which was no longer connected to the Rogers network.
7. This entire issue was reported on by various news outlets, the whole as more fully appears

from the multiple news articles, communicated herewith, as though recited at length herein, as **Exhibit R-2**, *en liasse*.

8. As appear from the Exhibit R-2 articles, Class Members and other Canadian customers suffered various damages as a result of the Defendants' service outage. For example, the Peel Regional Police in Ontario "issued a warning saying if people call 911 they should not hang up because their communicators cannot call back". Other Class Members were not able to schedule a COVID-19 vaccine appointment because the drugstore required a SMS PIN to confirm the appointment. Exhibit R-2 also reports that Business-to-business transactions were also impacted by the outage, representing significant damages for the affected business clients (Class Members).
9. Jorge Fernandes, Chief Technology Officer at Rogers, explained, acknowledged, admitted, and apologized for the outage, as follows:

"Update: April 20, 2021 7 a.m. ET

To our valued customers – late yesterday afternoon and through the evening our wireless services were restored.

The root cause of the intermittent wireless service issue impacting our customers was a recent Ericsson software update. Our team at Rogers worked tirelessly with Ericsson to restore wireless voice calls, SMS, and data services and bring all customers back online as quickly as possible.

Connecting Canadians is at the heart of what we do, every day. Yesterday's events did not meet the level of service we strive to provide to our customers. We know that there is a lot of uncertainty in your daily life right now. One of the things we don't want you to have to worry about is staying connected.

We know how much you rely on us and yesterday, we let you down. On behalf of all of us at Rogers, we sincerely apologize.

You have the commitment of our entire team, and our network partner Ericsson, that we will learn from what happened yesterday, to help ensure that this never happens again.

Sincerely,

Jorge

Jorge Fernandes
Chief Technology Officer
Rogers Communications

April 19, 2021

A message from Jorge Fernandes, Chief Technology Officer at Rogers

To our valued customers,

Especially during these times, we know how important it is to stay connected and how much you rely on our services for work, school and staying in touch.

The intermittent wireless service issues that started earlier this morning are unacceptable. On behalf of all of us here at Rogers, Rogers for Business, Fido, and chatr, I want to sincerely apologize for the significant impact and frustration that this has caused.

Our team of network experts, alongside our network partner Ericsson, are working hard to restore full service and have identified the root cause of the issue to help ensure it doesn't happen again.

This situation is continuing to evolve, and I wanted to share what we know so far:

When did this start?

Early this morning, our network operations centre started to see that some wireless customers were experiencing intermittent issues with voice calls, SMS and data services. Our TV, home and business wireline Internet, and home phone services were not impacted.

What happened?

We have identified the root cause of the service issues and pinpointed a recent Ericsson software update that affected a piece of equipment in the central part of our wireless network. That led to intermittent congestion and service impacts for many customers across the country.

What are you doing about it?

We have addressed the software issue and our engineering and technical teams will continue to work around the clock with the Ericsson team to restore full services for our customers.

When will services be restored?

We do not have an exact time yet as it may take us several hours to get everything back up and running normally. It's important that we bring wireless services back up gradually as we return to full service. You have our full commitment that we will not rest until all services are restored.

How can I be updated?

We will continue to provide updates every few hours. Please visit Rogers.com or any of our social media channels for the most up to date information.

Sincerely,

Jorge Fernandes
Chief Technology Officer
Rogers Communications.”;

the whole as more fully appears from the messages published on Defendants’ websites, communicated herewith as **Exhibit R-3**, in English and in French, *en liasse*.

10. Defendants however have not undertaken to reimburse or indemnify the Class Members for the damages suffered as a result of this outage, namely the damages which include without limitation the relevant portion of their monthly plan price paid, business interruption damages, disbursements and costs incurred, lost profits, lost time, etc.
11. Defendants clearly failed to implement the proper steps and required IT measures in order to safeguard and protect the Class Members from service failure and outages, knowing very well that the Class Members depend on their wireless access for their personal and/or business activities, especially more so during the COVID-19 pandemic when more people are operating remotely in their personal and professional matters.
12. Defendants’ Customers have suffered some of the following damages:
 - a) Not being able to make or receive calls during the outage period, including 911 calls or booking COVID-19 vaccine appointments (see Exhibit R-2);
 - b) Not being able to send or receive text messages (SMS) (which is important for confirming appointments, confirming identity while using certain apps - such as banking apps, etc.;
 - c) Not being able to use their data plan, including using navigation applications, and not being able to use their mobile device as a tether in order work remotely on their other devices;
 - d) Not being able to use many important applications such as uber (for rides or food ordering), etc., forcing them to incur additional costs.
13. Class Members experienced stress, anxiety, inconvenience and/or loss of time due to the interruption of service, including the significant lost time trying to contact the Defendants in order to remedy the situation.
14. Certain Class Members have suffered loss of business and/or profits, including additional fees, costs or wages paid or incurred in order to remedy the situation and/or mitigate the damages, all of which were directly caused by the Rogers’ service outage.
15. Plaintiff invokes *inter alia* the following legal provisions which makes the Defendants liable

to indemnify the Class Members:

- a) Articles 1384, 1432, 1457, 1458, 1463, 1525, 1590, 1604, 2098, 2100 of the *Civil Code of Quebec*, LRQ, c C-1991;
- b) Sections 1, 2, 34, 37, 40, 219, 272 of the *Consumer Protection Act*, CQLR c P-40.1

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFF

16. Plaintiff reiterates the above allegations in the present section, as though recited at length.
17. Plaintiff has a Rogers wireless contract which was already in place on and before April 19, 2021. Indeed, Plaintiff had already pre-paid for the wireless cellular and data service on her plan for the period including the time of the service outage which began on or about April 19, 2021.
18. As mentioned above, Plaintiff experienced service interruption during the entire morning and most of the afternoon of April 19, 2021. Plaintiff could not make or receive calls, send or receives text messages, and could not otherwise use her cellular or data plan while not on wifi.
19. Plaintiff relies on her mobile telephone and data plan in order to complete her job functions as director of a medical complex. She was unable to properly complete said functions and was unable to properly communicate with clients, patients, co-workers, etc. during the outage. The outage continued for some of Defendants' customers even after Plaintiff's service was established, the whole continuing to inconvenience the Plaintiff.
20. Of course, a device connected to wifi no longer uses the Defendants' services or network for data, although receiving and making calls continues to depend on the proper operation of the Defendants' network.
21. The Plaintiff and the Class Members, in good faith, were reasonably justified in assuming that Defendants would properly safeguard and have the required technological protocols and redundancies in place in order to ensure that such a service interruption would not occur. Defendants clearly failed in this regard.
22. As a result of the service interruption, Plaintiff and the Class Members are justified in claiming a prorated refund of the monthly plan price paid, taking into account the time of the service outage.

23. Defendants are clearly responsible to indemnify and hold the Class Members harmless of and for all other damages, expenses and losses suffered or incurred as a result of the said outage.

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE CLASS MEMBERS

24. Plaintiff reiterates the above allegations in the present section, as though recited at length.
25. Every Class Member had his, her or its wireless service interrupted during the outage in question.
26. Every Class Member has or will experience inconvenience and/or loss of time due to the service interruption.
27. Every Class Member is entitled to receive compensation due the Defendants' negligence and failure to perform their obligations under the mobile service contracts in place.
28. The Class Members suffered various damages as a result of the service outage, as more fully detailed above.

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

29. The composition of the Group makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings (Article 575 (3) C.C.P.) for the following reasons.
30. As mentioned above, it appears that Class Members all suffered damages as a result of the Defendants' interruption of service.
31. Class Members are numerous and are scattered across the entire province and Defendants' customers suffered the same outage across the country as well.
32. 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, the Court system could not as it would be overloaded. Further, 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.

33. Moreover, a multitude of actions instituted risks leading to contradictory judgments on issues of fact and law that are similar or related to all Class Members.
34. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action.
35. In these circumstances, a class action is the only appropriate procedure for all of the Class Members to effectively pursue their respective rights and have access to justice.
36. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely Defendants' negligence, and fault.
37. The claims of the Class Members raise identical, similar or related issues of law and fact (Article 575 (1) C.C.P.), namely:
 - a) Did Defendants fail to provide its users with adequate voice, data and text message services during the outage that occurred on and about April 19, 2021?
 - b) Are Defendants liable to the class members for reimbursement of the prorated amount of their monthly mobile plan for the time period that they were deprived of proper services?
 - c) Are Defendants liable to the class members for other damages suffered, including compensatory, moral and/or punitive damages, and if so, what is the measure of such damages?
38. The interests of justice favour that this application be granted in accordance with its conclusions.

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

39. The action that Plaintiff wishes to institute for the benefit of the Class Members is an action in damages and in reimbursement of fees paid.
40. The facts alleged herein appear to justify the conclusions sought by the Plaintiff (Article 575 (2) C.C.P.), namely the following conclusions that Plaintiff wishes to introduce by way of an originating application:

GRANT the Class Action of Plaintiff on behalf of all the Class Members against Defendants;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, including compensatory, moral and punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize the bringing of a authorize a class action;

ORDER the Defendant to deposit in the office of this Court, the totality of the sums which forms 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 Honorable Court shall determine that is in the interest of the members of the class;

41. Plaintiff suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:
- a) Plaintiff resides in the District of Montreal;
 - b) A great number of Class Members reside in the judicial District of Montreal;
 - c) Defendants have an establishment and carry on business in the District of Montreal;
 - d) The undersigned attorneys representing the Plaintiff and the proposed Class practice in the District of Montreal.
42. Plaintiff, who is requesting to be appointed as Representative Plaintiff, is in a position to properly represent the Class Members (Article 575 (4) C.C.P.), since:

- a) Her mobile telephone service was interrupted during the outage;
- b) She suffered damages as a result of the service interruption, including without limitation the prorated amount of her service plan which she had pre-paid, as more fully detailed above;
- c) She understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interest of the Class Members;
- d) She is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard and Plaintiff is ready and available to manage and direct the present action in the interest of the Class Members that Plaintiff wishes to represent;
- e) Plaintiff has already been attributed the status of representative and authorized to represent class members against the same Defendants, in the case of Amram vs. Rogers Communications inc., 500-06-000575-114, which file was ultimately settled;
- f) Plaintiff is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
- g) Her interests are not antagonistic to those of other Class Members;
- h) She has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- i) She has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members;
- j) She, with the assistance of the undersigned attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed.

43. The present application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the bringing of a class action in the form of an Application to institute proceedings in the District of Montreal;

APPOINT the Plaintiff as the Representative Plaintiff representing all persons included in the Class herein described as:

All persons in Québec who had an existing “Rogers”, “Rogers for Business”, “Fido” and/or “Chatr” contract and who had their services interrupted on or about April 19, 2021, or any other Group(s) or Sub-Group(s) to be determined by the Court;

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

- a) Did Defendants fail to provide its users with adequate voice, data and text message services during the outage that occurred on and about April 19, 2021?
- b) Are Defendants liable to the class members for reimbursement of the prorated amount of their monthly mobile plan for the time period that they were deprived of proper services?
- d) Are Defendants liable to the class members for other damages suffered, including compensatory, moral and/or punitive damages, and if so, what is the measure of such damages?

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

GRANT the Class Action of Plaintiff on behalf of all the Class Members against Defendants;

DECLARE the Defendant liable for the damages suffered by the Plaintiff and each of the members of the class;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, including compensatory, moral and punitive damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the application to authorize the bringing of a authorize a class action;

ORDER the Defendant to deposit in the office of this Court, the totality of the sums which forms 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 Honorable Court shall determine that is in the interest of the members of the class;

DECLARE that all Class Members who have not requested their exclusion from the Class in the prescribed delay to be bound by any Judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Class Members;

ORDER the publication or notification of a notice to the Class Members in accordance with Article 579 C.C.P., within sixty (60) days from the Judgment to be rendered herein in digital edition of the LaPresse, the Journal de Montreal, the Journal de Quebec, and the Montreal Gazette, and **ORDER** Defendant to pay for all said publication/notification costs;

ORDER that said notice be posted and available on the home page of Defendants' various websites, Facebook pages, LinkedIn accounts, and Twitter accounts, and **ORDER** Defendants to send the notice by email with proof of receipt to all Class Members, failing which by regular mail;

THE WHOLE with costs including without limitation the Court filing fees herein and all costs related to preparation and publication of the notices to Class Members.

MONTREAL, April 20, 2021

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Class Counsel / Attorneys for Plaintiff

4101 Sherbrooke St. West

Westmount, (Québec), H3Z 1A7

Telephone: 514.451.5500 ext. 321

Fax: 514.940.1605

SUMMONS

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

Filing of a judicial application

Take notice that the Plaintiff(s) has filed this application in the office of the Superior Court of Quebec 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 Est, Montréal, Québec 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 application, the Plaintiff intends to use the following exhibits:

Exhibit R-1: SEDAR report and CIDREQ reports regarding Defendants, *en liasse*.

Exhibit R-2: Various news articles, *en liasse*.

Exhibit R-3: Message from Defendants' Chief Technology officer, posted on Defendants' websites, dated April 19 and 20, 2021.

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.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, April 20, 2021

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Class Counsel / Attorneys for Plaintiff

NOTICE OF PRESENTATION

(Article 223 of the Superior Court's Directives for the Montreal District)

TO: ROGERS COMMUNICATIONS INC.,
legal person having an establishment at
4000-800 De La Gauchetière West, in
the city and District of Montréal, in the
province of Québec, H5A1K3

- and -

**ROGERS COMMUNICATIONS
CANADA INC.**, legal person having an
establishment at 4000-800 De La
Gauchetière West, in the city and District
of Montréal, in the province of Québec,
H5A1K3

- and -

FIDO SOLUTIONS INC., legal person
having an establishment at 4000-800 De
La Gauchetière West, in the city and
District of Montréal, in the province of
Québec, H5A1K3

Defendants

TAKE NOTICE that the present Application for Authorization to Institute a Class Action will be presented before the Superior Court, at the Montreal Courthouse located at 1 Notre-Dame Street East, in the city and district of Montreal, at a date to be determined by the coordinating Judge of the class action division.

MONTREAL, April 20, 2021

(s) Lex Group Inc.

Lex Group Inc.
Per: David Assor
Class Counsel / Attorneys for Plaintiff

(Class Action Division)
SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

KELLY AMRAM

Plaintiff

v.

ROGERS COMMUNICATIONS INC.

-and-

**ROGERS COMMUNICATIONS CANADA
INC.**

-and-

FIDO SOLUTIONS INC.

Defendants

**APPLICATION FOR AUTHORIZATION TO
INSTITUTE A CLASS ACTION**

ORIGINAL

Me David Assor



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