

**C A N A D A**

**PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL  
LOCALITY OF MONTREAL**

No: 500-06-000798-161

**(Class Action)  
SUPERIOR COURT**

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**STEPHANIE J. BENABOU**

Applicant

v.

**VIDÉOTRON S.E.N.C.**

**VIDÉOTRON LTÉE**

**NETFLIX, INC.**

**BELL CANADA**

(...)

(...)

**ROGERS COMMUNICATIONS INC.**

(...)

(...)

(...)

**AUDIBLE, INC.**

**APPLE INC.**

**LINKEDIN IRELAND**

**GOOGLE INC.**

**SHOMI PARTNERSHIP**

**ROGERS MEDIA INC.**

(...)

**SIRIUS XM CANADA INC.**

**SPOTIFY CANADA INC.**

**AFFINITAS GMBH**

-and-

**MATCH.COM LLP**

Defendants

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**SETTLEMENT AGREEMENT**

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**WHEREAS** on July 4<sup>th</sup>, 2016, the Applicant filed an Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff (the “**Application to Authorize the Bringing of a Class Action**”) against Netflix and twenty-four (24) other defendants (collectively referred to hereinafter as the “**Defendants**”) on behalf of the following proposed class and subclass:

“Class:

Every consumer, pursuant to the terms of Quebec’s Consumer Protection Act (“CPA”), who since July 4<sup>th</sup>, 2013 (the “Class Period”), was provided services or goods at a reduced price (the “Reduced Price”), for a fixed period (the “Fixed Period”), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the “Regular Price”);

(hereinafter referred to as the “Class”)

Subclass:

Every consumer, pursuant to the terms of Quebec’s Consumer Protection Act (“CPA”), who since July 4<sup>th</sup>, 2013 (the “Class Period”), was provided services or goods free of charge, for a fixed period (the “Fixed Period”), by any of the Defendants, and who, after the Fixed Period, was required to send a notice to any of the Defendants indicating that he/she does not wish to obtain the services or goods at the regular price (the “Regular Price”);

(hereinafter referred to as “Subclass”)

or any other Class to be determined by the Court;”

**WHEREAS** in the Application to Authorize the Bringing of a Class Action, the Applicant claims that the Defendants, including Netflix, are carrying on their business in violation of paragraph c of section 230 of the *Consumer Protection Act*, CQLR, c. P-40.1 (the “**CPA**”) and that Class and Subclass members are justified in claiming compensatory and punitive damages pursuant to section 272 of the CPA.

**WHEREAS** Netflix denies that its business practices contravene the CPA or that Class and Subclass members are entitled to compensatory or punitive damages.

**WHEREAS** on August 24<sup>th</sup>, 2016, Netflix filed an Answer stating its intention to contest the Application to Authorize the Bringing of a Class Action.

**WHEREAS** on December 6<sup>th</sup>, 2016, Netflix filed an Application for authorization to examine the Applicant Stephanie J. Benabou and to submit relevant evidence.

**WHEREAS** the Applicant and Netflix (the “**Parties**”) wish to settle the Litigation without prejudice or admission of liability whatsoever, by way of mutual concessions, pursuant to the terms and conditions hereof;

**WHEREFORE** the parties hereto have agreed as follows:

1. Preamble. The preamble forms an integral part of this Settlement Agreement;
2. Definitions. The following terms and expressions are defined for the purposes of the preamble and this Settlement Agreement as follows:
  - a) “**Applicant**” means Stephanie J. Benabou;
  - b) “**Application to Authorize the Bringing of a Class Action**” means the Application to Authorize the Bringing of a Class Action and to Appoint the Status of Representative Plaintiff filed by the Applicant on July 4<sup>th</sup>, 2016;
  - c) “**Approval Hearing**” means the hearing before the Court for the purpose of determining whether to issue an Approval Judgment;
  - d) “**Approval Notice**” means the notice that will be approved by the Court as part of the Approval Judgment and that will include a link to the settlement website established for the purposes of this Settlement Agreement and which will be, subject to approval by the Court, substantially in the form of Schedule B;
  - e) “**Approval Judgment**” means the judgment of the Court approving this Settlement Agreement;
  - f) “**Claim Administrator**” means the third-party claims management administrator that will be hired and paid by Netflix to manage the settlement;

- g) “**Class**” means consumers residing in Québec who (i) started a subscription to the Netflix service during the Class Period, (ii) received a free or discounted trial, and (iii) were automatically renewed at the regular price following the end of their free or discounted trial;
- h) “**Class Counsel**” means the law firm LPC Avocat Inc.;
- i) “**Class Member**” means a member of the Class who did not exclude himself or herself in accordance with the provisions of article 580 of the *Code of Civil Procedure*;
- j) “**Class Period**” means July 4<sup>th</sup>, 2013 until July 17<sup>th</sup>, 2017;
- k) “**Court**” means the Superior Court of Quebec;
- l) “**Netflix**” means Netflix, Inc.
- m) “**Final**” means, when used in relation to a judgment or order, the time at which said judgment or order has been entered and all rights of appeal therefrom have been exhausted, such that the judgment or order has acquired the status of *res judicata*;
- n) “**Free Trial**” means the offer to eligible consumers that they may use the Netflix service free of charge for a limited period of time and then automatically be charged thereafter unless they advise Netflix that they wish to cancel the service;
- o) “**Free Trial Period**” means, for each individual consumer, the period starting from the beginning of their respective Free Trial to the end of their respective Free Trial;
- p) “**Litigation**” means the legal proceedings in Court file 500-06-000798-161 against Netflix, amongst others, pending in the Superior Court of Quebec, district of Montreal;
- q) “**Parties**” means, collectively, the Applicant and Netflix;
- r) “**Pre-Approval Hearing**” means the hearing before the Court for the purpose of determining whether to issue a Pre-Approval Judgment;
- s) “**Pre-Approval Notice**” means the notice that will be, subject to approval by the Court, substantially in the form of Schedule A;
- t) “**Pre-Approval Judgment**” means the judgment of the Court authorizing the class action proposed in the Application to Authorize the Bringing of a Class Action for the sole purpose of settlement that shall be prepared jointly by the Parties for the Pre-Approval Hearing and for approving the Pre-Approval Notice and the Pre-Approval Facebook Notice Campaign;

- u) “**Refund**” means, for each Settlement Class Members, the Subscription Cost paid during their respective Refund Period that each Settlement Class Member is entitled to claim from Netflix subject to the terms and conditions of this Settlement Agreement;
- v) “**Refund Period**” means the one-month period following the end of the Free Trial Period for each Settlement Class Member during which they were charged the Subscription Cost;
- w) “**Released Claims**” means any and all claims, demands, rights, liabilities, and causes of action of any nature whatsoever, known or unknown, matured or not, at law, whether extracontractual, contractual, or under any other right at law, existing under federal or provincial law, that either of the Applicant, or any Class Member or Settlement Class Member, has or may have against the Released Persons arising out of, or related to, a violation of the CPA alleged in the Litigation;
- x) “**Released Persons**” means Netflix, Inc. and its past and present partners, affiliates and predecessors, successors, assigns, parents, subsidiaries, insurers, officers, directors and employees;
- y) “**Settling Parties**” means, collectively, the Released Persons, the Applicant, all Class Members and all Settlement Class Members;
- z) “**Settlement Class**” means Class Members residing in Québec who (i) started a subscription to the Netflix service during the Class Period, (ii) received a Free trial, (iii) were renewed automatically at the regular price following the end of their Free Trial Period and (iv) subsequently cancelled their subscription to the Netflix service within two months following the end of their Free Trial Period;
- aa) “**Settlement Class Member**” means a member of the Settlement Class;
- bb) “**Sub-Class A**” means Settlement Class Members who cancelled their Netflix service after September 18<sup>th</sup>, 2016;
- cc) “**Sub-Class B**” means Settlement Class Members who cancelled their Netflix service on or before September 18<sup>th</sup>, 2016;
- dd) “**Subscription Cost**” means the cost paid respectively by each Settlement Class Member for their subscription to the Netflix service during the Refund Period.

3. Recitals and Definitions Included. The Recitals and Definitions form an integral part of this Settlement Agreement.

4. Nullity if not Approved. If this Settlement Agreement is not approved by the Court, the Settlement Agreement is terminated, and it will become null and void, with the exception of sections 5, 26 and 27; it will not generate any other rights or obligations either for the Parties, the Class Members or the Settlement Class Members. In such case, the Settling Parties will be restored to their respective positions in the Litigation before the Settlement Agreement was executed.
5. No Admission of Liability. Netflix denies the factual allegations and legal claims asserted in the Application to Authorize the Bringing of a Class Action, including any and all charges of wrongdoing or liability arising out of any of the conduct, business practice, statements, acts or omissions alleged in the Application to Authorize the Bringing of a Class Action. Neither the Settlement Agreement, nor anything contained herein, shall be interpreted as a concession or admission of wrongdoing or liability on the part of Netflix.
6. Application for Pre-Approval Judgment. Within five (5) days of the execution of this Settlement Agreement, Netflix and the Applicant will apply to the Court for the Pre-Approval Judgment.
7. Communication of the Pre-Approval Notice and Pre-Approval Facebook Campaign. Within fifty (50) days after the Pre-Approval Judgment is entered, Netflix will:
  - a) **Email to Sub-Class A Members:** email a copy of the Pre-Approval Notice to each Sub-Class A Members at their last known email address; and
  - b) **Pre-Approval Facebook Notice Campaign:** establish and pay for a Facebook notice campaign targeting consumers residing in Quebec (the "**Pre-Approval Facebook Notice Campaign**"), that will include a plain text message and a link to the Pre-Approval Notice in PDF format. The Pre-Approval Facebook Notice Campaign shall run for a period of 20 days between the Pre-Approval Judgement and the Approval Hearing.
8. Application for Approval Judgment. Following the entry of the Pre-Approval Judgment and within thirty (30) days after communication of the Pre-Approval Notices to Sub-Class A Members and the beginning of the Pre-Approval Facebook Campaign, Netflix and the Applicant will apply to the Court for the Approval Judgment and request that the Court;
  - a) declare that this Settlement Agreement is fair, reasonable, and in the best interests of all Class Members;
  - b) approve this Settlement Agreement and order the Parties and the Class Members to comply with it;
  - c) order that the Approval Notice be communicated by email to Sub-Class A Members by the Claim Administrator to their last know email address;

- d) declaration that the Litigation is settled out of Court.
9. Communication of the Approval Notice and Settlement Facebook Notice Campaign. As part of this Settlement Agreement and with the goal of providing notice of the Approval Judgment to all Class Members and within fifteen (15) days after the Approval Judgment is entered, Netflix shall:
- a) **Email to Sub-Class A Members:** email a copy of the Approval Notice to each Sub-Class A Members at their last known email address; and
  - b) **Settlement Facebook Notice Campaign:** establish and pay for a Facebook notice campaign targeting consumers residing in Quebec (the "**Settlement Facebook Notice Campaign**"), that will include a plain text message and a link to the Approval Notice. The Settlement Facebook Notice Campaign shall run for thirty (30) days.
10. Consequences of a failure to opt out in a timely and proper manner. All Class Members who do not timely and properly opt out of the Class respectively within the delay that will be provided in the Approval Judgment will irrevocably be bound by all the terms and conditions of this Settlement Agreement.
11. Releases. Upon the Approval Judgment becoming Final, the Applicant and each of the Class Members will be deemed to have, and by operation of the Approval Judgment will have, fully, finally, and forever released, relinquished and discharged the Released Persons from all Released Claims.
12. Compensation to Settlement Class Members. As full and final compensation for the Released Claims, each Settlement Class Member shall be entitled to receive a Refund for the Subscription Cost paid during their respective one-month Refund Period from Netflix.
13. One Refund Only. Each Settlement Class Member shall only be entitled to a maximum of one Refund, regardless of the number of times that they have subscribed to the Netflix service during the Class Period or of the number of times that they have cancelled their subscription to the Netflix service within one month of the end of a Free Trial Period.
14. Identification of the Sub-Class A Members. Netflix will identify Sub-Class A Members based on retained subscriber data and will provide email contact information of such members to the Claim Administrator who shall pre-approve them for a Refund.
15. Proof of Eligibility for the Sub-Class B Members. Sub-Class B Members shall be required to provide the Claim Administrator with proof that they are part of the Settlement Class ("**Proof of Eligibility**"). The Proof of Eligibility that must be provided by each Sub-Class B Members to claim their respective Refund is the following:

- a) The email sent by Netflix confirming their subscription to the Netflix service;
- b) The email sent by Netflix confirming their cancellation to the Netflix service within one month following the end of their Free Trial Period;
- c) An attestation that they were a Quebec resident at the time of their subscription to the Netflix service which may be provided by way of a sworn statement included with the Online Claim Form; and
- d) Subscription Cost paid during their respective Refund Period.

16. Individual Recovery and Claim for the Refund. The Parties agree that this Settlement Agreement provides for the individual recovery of the alleged claims of the Settlement Class Members.

Each Settlement Class Member will have to file a claim with the Claim Administrator to claim their respective Refund except for Sub-Class A Members who will be automatically issued a refund.

17. Deadline for the Claim of the Refund. Settlement Class Members will have thirty (30) days from the date of beginning of the Settlement Facebook Notice Campaign to file a claim with the Claim Administrator, after which this Settlement Agreement will be deemed to be satisfied and final and no other claim for any Refund will be admissible.

18. Method of Payment of the Refund. Upon receiving a valid claim for a Refund, the Claim Administrator shall pay the Refund to eligible Settlement Class Members by way of cheque or email transfer.

19. Discontinuance of Free Trials in Quebec. Netflix has discontinued the practice in Quebec of offering Free Trials combined with an automatic renewal at the end of the trial effective as of July 17, 2017.

No admission of liability can be inferred from this discontinuance and Class Counsel shall not, in any manner or any time, assert that the discontinuance of Free Trials in Quebec amounts to an admission of liability on the part of Netflix.

Furthermore, this agreement does not prevent Netflix from, at any point in the future, introducing or re-introducing any business model or technical solution that it deems compliant with the Quebec legislation.

20. Honorarium to the Applicant. Netflix shall pay a compensation of \$2,000 to the Applicant as part of this Settlement Agreement for the time, effort and disbursements incurred for this Litigation and for any compensation that she may be entitled to pursuant to this Settlement Agreement. Payment of this compensation shall be remitted to Class Counsel within thirty (30) days after the Approval Judgment becomes Final.



21. Class Counsel Fees. Netflix shall pay fees of \$275,000 to the Class Counsel plus the applicable taxes in full and final compensation of its judicial and extrajudicial fees, disbursements or costs (including court stamp and bailiff fees), except for the costs of the Claim Administrator, the Pre-Approval Facebook Notice Campaign and Settlement Facebook Notice Campaign. Netflix shall pay such fees to Class Counsel within thirty (30) days after Class Counsel has obtained the approval of the Court with regards to the payment of such fees.

Class Counsel shall be responsible for filing and presenting an application before the Court requesting approval of the payment of its fees.

This Settlement Agreement is in no way conditional upon the approval of Class Counsel's fees by the Court. Any order or proceeding relating to Class Counsel's fees, or any appeal from any order relating thereto or reversal or amendment thereof, shall not operate to terminate or cancel the Settlement Agreement.

22. Consent to Authorization and Identical, Similar or Related Question of Law and Fact. Netflix consents to the authorization of the class action proposed in the Application to Authorize the Bringing of a Class Action for the sole purpose of this Settlement Agreement. The Parties agree that the authorized class action, subject to the Court's approval, will be based solely on the following identical, similar or related question of law or fact:

During the Class Period, did Netflix's alleged practice violate paragraph c of section 230 of the CPA, and, if so, are Class Members entitled to compensation?

23. Other Costs. Netflix will not be liable to pay any other costs or fees to the Applicant, to Settlement Class Members, or to Class Counsel, other than the compensation as provided by sections 12 and 13 (for Settlement Class Members), 20 (for the Applicant) and 21 (for Class Counsel) and the fees provided at section 7 b) (Pre-Approval Facebook Notice Campaign), 9 b) (Settlement Facebook Notice Campaign) and section 2 a) (Claim Administrator) herein.
24. Cooperation and Best Efforts. The Parties agree to cooperate to the extent reasonably necessary to give effect to and implement all terms and conditions of this Settlement Agreement and to exercise best efforts to fulfill the terms and conditions of this Settlement Agreement.
25. Negotiated Agreement. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them. The Parties agree that the consideration provided to the Class Members and the other terms and conditions of this Settlement Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.

26. Not Admissible as Evidence. Neither this Settlement Agreement, nor anything contained herein, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out this Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, regulatory or administrative action or proceeding against the Released Persons.

Notwithstanding the above, this Settlement Agreement may be referred to or offered as evidence in a proceeding to approve or enforce this Settlement Agreement, to defend against the assertion of Released Claims, and as otherwise required by law.

27. No Press Release. The Parties agree that they will not issue any press release, whether joint or individual, concerning this Settlement Agreement or anything related thereto. The Parties further agree that they will not otherwise seek to obtain media coverage in relation to the Settlement Agreement, with the exception that Class Counsel will post this Settlement Agreement on his website and, subject to Class Counsel's obligations under section 19 of this Settlement Agreement, both Parties will have the right to comment on the settlement if solicited by the press.
28. Notices. Any notification, request, introduction or other document to be given by one Party to the other (other than class-wide notification) shall be in writing (including email) and transmitted to:

**If to Netflix:**

c/o Me Martin F. Sheehan  
Fasken Martineau DuMoulin LLP  
Stock Exchange Tower  
800 rue du Square-Victoria, Suite 3700  
Montreal, Quebec, H4Z 1E9  
msheehan@fasken.com

**If to the Applicant:**

c/o Me Joey Zukran  
LPC Avocat Inc.  
5800 Cavendish Blvd., Suite 411  
Montreal, Quebec, H4W 2T5  
jzukran@lpclex.com

29. Jurisdiction of the Superior Court of Quebec. The Court will retain jurisdiction with respect to the implementation and enforcement of the terms and conditions of this Settlement Agreement and all Parties hereto submit to jurisdiction of the Court for purposes of implementation and enforcement of this Settlement Agreement.
30. Transaction and Governing Law. This Settlement Agreement is a transaction pursuant to articles 2631 and following of the *Civil Code of Quebec* and shall be

governed, construed and enforced in accordance with the laws of the Province of Quebec.

31. Miscellaneous Provisions.

- a) All time periods in this Settlement Agreement shall be computed in calendar days unless expressly provided otherwise. Also, unless otherwise provided in this Settlement Agreement, in computing any period of time in this Settlement Agreement, the day of the act or event shall not be included, and the last day of the period shall be included, unless it is a Saturday, a Sunday or a statutory holiday, or, when the act to be done is a Court filing, in which case the period shall run until the end of the next day that is not one of the aforementioned days.
- b) The plural of any defined term in this Settlement Agreement includes the singular and the singular of any defined term in this Settlement Agreement includes the plural, as the case may be.
- c) All of the Schedules to this Settlement Agreement are material and integral parts hereof and are fully incorporated by this reference.
- d) This Settlement Agreement may be amended or modified only by a written instrument signed by or on behalf of all Parties.
- e) This Settlement Agreement and the Schedules attached hereto constitute the entire agreement among the Parties, and supersedes prior exchanges, oral or in writing, between Netflix's counsel and Class Counsel.
- f) Each counsel or other person executing this Settlement Agreement or any of its Schedules on behalf of any Party hereby warrants that such person has the full authority to do so.
- g) This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. A complete set of original counterparts will be filed with the Court.
- h) The Parties hereby acknowledge that they have requested that this Settlement Agreement be drafted in English. *Les Parties reconnaissent avoir exigé que la présente transaction soit rédigée en anglais.*

**[the signature page follows]**

**AND THE PARTIES HAVE SIGNED:**

In Montreal, this 27 day of October 2017



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**Mtre Joey Zukran, Class Counsel  
LPC Avocat Inc.**

In \_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_ 2017

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**Name:  
Title:**

**Duly authorized representative of Netflix, Inc.**

AND THE PARTIES HAVE SIGNED:

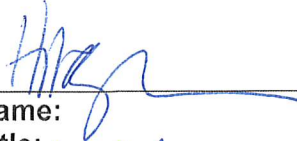
In Montreal, this 27 day of October 2017



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Mtre Joey Zukran, Class Counsel  
LPC Avocat Inc.

In San Francisco, this 30<sup>th</sup> day of October 2017



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Name:  
Title: VP & Associate General Counsel  
Duly authorized representative of Netflix, Inc.