

**SUPERIOR COURT**  
(Class Action)

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N°: 500-06-000575-114

DATE: July 7, 2020

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**PRESENT: THE HONOURABLE JUSTICE BENOÎT EMERY, J.S.C.**

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**KELLY AMRAM**

*Plaintiff*

v.

**ROGERS COMMUNICATIONS INC.**

-and-

**ROGERS COMMUNICATIONS S.E.N.C.**

-and-

**FIDO SOLUTIONS INC.**

*Defendants*

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**JUDGMENT**

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Introduction

[1] On July 18, 2011, Plaintiff Kelly Amram filed a motion to authorize the bringing of a class action and to ascribe the status of representative entitled "*Requête pour obtenir l'autorisation d'exercer un recours collectif et pour obtenir le statut de représentant*" against

Defendants Rogers Communication Inc, Rogers Communication S.E.N.C. and Fido Solutions Inc. (referred to collectively as the "**Defendants**") pursuant to Articles 1002 and following of the former Code of Civil Procedure, now Articles 574 and following of the new Code of Civil Procedure (hereinafter the "**C.C.P.**").

[2] On January 16, 2012 and on May 16, 2012, the Plaintiff amended her application following the development of the case. The three applications are collectively referred as the "**Application for Authorization**".

[3] In her said proceedings, Plaintiff alleged that the Defendants' wireless telephone clients who were in closed-term contracts on and after August 15, 2011, and whose rate for sending video and picture messages (also known as "MMS") from Canada to an international destination was unilaterally increased by the Defendants to \$0.75 per MMS recipient (Plaintiff and many class members were previously not charged at all for such international MMSs, whereas other class members were previously being charged only \$0.50 per MMS). Following this unilateral rate increase by the Defendants, the class members were not given the option to cancel their contract going forward, unless they paid the applicable penalties.

[4] The Court is now seized of the "Application for Approval of a Settlement and for Approval of Class Counsel Fees" (hereinafter the "**Application**").

[5] The Application for Authorization was granted in part by judgment of this Court on July 27, 2012 and by judgment of the Court of Appeal on January 22, 2015 on behalf of:

Tous les clients de téléphonie sans fil de Rogers Communications inc. et Rogers Communications s.e.n.c. ou de Fido résidant au Québec, ayant un contrat à durée déterminée en vigueur au moment où ils ont reçu l'avis concernant les nouveaux tarifs s'appliquant aux messages photo ou vidéo (MMS) envoyés du Canada et aux États-Unis ou vers une autre destination internationale, et qui était toujours en vigueur en date du 15 août 2011.

(the "**Class Action**").

[6] In September and October 2019, the parties and their counsel ultimately executed a settlement agreement (hereinafter the "**Settlement Agreement**" or the "**Transaction**"), subject to Court approval, in full and final settlement of the Class Action. The Settlement Agreement, including its Preamble and Schedules, were filed in support of the Application as Exhibit R-1.

[7] Except as otherwise specified in, or modified by, this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement.

[8] The parties jointly request that this Court approve the Settlement Agreement.

Settlement Agreement

[9] The Plaintiff and the Defendants have agreed to the terms of the Transaction, the whole subject to the approval of this Court, and without any admission of liability whatsoever by the Defendants and for the sole purpose of resolving the dispute between the parties.

[10] The following is a summary of the key terms of the Transaction. In the case of any discrepancy, the language of the Transaction itself prevails.

[11] Pursuant to the Settlement Agreement, Defendants will offer two (2) types of compensation. A direct compensation will be offered to Existing Customers Class Members and an indirect compensation through a *cy-près* payment will be offered to Former Customer Class Members.

[12] Accordingly, Defendants will directly compensate all Existing Customer Class Members by reimbursing all international MMS fees paid during the term of their fixed-term contract in the form of a credit on a future invoice without the necessity of filing any Claim Form or undertaking any other action whatsoever (hereinafter the "**Credit(s)**"). These said Credits will be automatically applied by Defendants to said Existing Customers' invoices within 60 days after the Effective Date.

[13] Should any Existing Customer Class Member cancel their wireless contracts with Defendants and therefore cease being a customer of Rogers or Fido after the date of receipt of the Pre-Approval Notice but before the required Credit can be applied to their invoice, Defendants will confirm the list of said Class Members to Class Counsel and will (within ninety (90) days) proceed to send said Class Members a cheque or electronic transfer in the full amount of the eligible Credit.

[14] If any payment cheque to any Class Member mentioned above is not negotiated within six (6) months from the mailing of the said cheque, the amount of said cheque, will be paid to the Fondation UQTR and the Fonds de développement ÉTS, with the amount divided equally between them, minus any percentage payable in virtue of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1, r. 2., (Quebec Class Action Assistance Fund) (hereinafter the "**FAAC**"), if any.

[15] Furthermore, Former Customer Class Members shall not receive direct compensation but shall be compensated indirectly by Defendants through a *cy-près* payment estimated to be in the amount of \$168,758.75 to the Fondation UQTR and the Fonds de développement ÉTS, divided equally between them. The final amount shall be determined on calculation of the number of Former Customer Class Members

[16] The Parties believe that the Settlement Agreement is fair, equitable, reasonable, in the best interests of the Class Members and amounts to an adequate resolution of the Class Action.

[17] Defendants will also pay all publication costs, internal administration costs, Plaintiff's personal claim, and the Class Counsel Fees, the whole as specified in the

Settlement Agreement and over and above the payments to the Class Members (i.e. excluded from the direct reimbursements of the Existing Customers Class Members and the estimated *cy-près* payment of \$168,758.75).

#### Class Notice

[18] The Pre-Approval Notices, as ordered by this Court, were indeed disseminated by Defendants by way of notices published in French and English newspapers, and by way of direct notices to the Existing Customer Class Members which were included with their recent monthly statement for wireless services.

[19] All of the materials disseminated and made available to Class Members, as well as any and all future information to be disseminated are both in French and in English.

#### Settlement Approval

[20] The Court approves the Transaction as fair, reasonable and in the best interest of the Class Members based on its analysis of the following factors as set out by the relevant case law, namely:

- the probability of success of the recourse;
- the significance and nature of the evidence adduced;
- the terms and conditions of the settlement;
- the recommendations of counsel and their experience;
- the cost of future expenses and duration of the litigation;
- the recommendation of a neutral third-party, as the case may be;
- the number and nature of any objections to the settlement;
- the good faith of the parties;
- the absence of collusion.<sup>1</sup>

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<sup>1</sup> 9085-4886 *Quebec Inc. c. Visa Canada Corporation*, 2015 QCCS 5921; *Vallée c. Hyundai Auto Canada Corp.*, 2014 QCCS 3778; *Option Consommateurs c. Union canadienne (L'), compagnie d'assurances*, 2013 QCCS 5505; *Markus c. Reebok Canada inc.*, 2012 QCCS 3562; *Conseil pour la protection des malades c. CHSLD Manoir Trinité*, 2014 QCCS 2280; *Richard c. Volkswagen Group Canada inc.*, 2012 QCCS 5534; *Bouchard c. Abitibi-Consolidated Inc.*, (C.S.) Chicoutimi, dossier 150-06-000001-966, 15 juin 2004.

[21] These factors ought not be applied in a formulaic manner and not all nine (9) factors need to be satisfied. Instead, the Court should look at the totality of these factors in light of the specific circumstances involved<sup>2</sup>.

[22] In particular, the Court finds that:

- (i) The benefits offered in Transaction are fair and adequate and worthy of approval;
- (ii) The Transaction was reached by experienced, fully informed counsel after arm's length negotiations;
- (iii) It is beyond dispute that continued litigation in this Class Action would be complex, lengthy, and expensive, with no guarantee of recovery by any of the Class Members;
- (iv) A trial on the merits would entail considerable expense, including hundred more hours of attorney time and, given the right to appeal, trial would not necessarily end the litigation. Even if the Class could recover a larger judgment after a trial, the additional delay through the appellate process would introduce yet more risks and would, in light of the time value of money, make future recoveries less valuable than this current recovery;
- (v) Justice is best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action;
- (vi) The settlement provides an immediate benefit to Class Members and avoids unnecessary expense and delay;
- (vii) The lack of objections and the lack of requests for exclusion serve as evidence of the fairness of the Transaction;
- (viii) The parties engaged in sufficient investigation and information exchanged to intelligently negotiate the terms of the Transaction;
- (ix) The promises and commitments of the Parties under the terms of the Transaction constitute fair value and in fact provide significant compensation to the Class Members;
- (x) Class Counsel and the attorneys for Defendants, who have extensive expertise in the area of class actions and who are most closely acquainted with the facts of the underlying litigation, are recommending the Transaction.

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<sup>2</sup> *Zuckerman vs. Target Corporation, 2018 QCCS 2276, par. 21.*

Class Counsel Fees Approval

[23] The Court approves Class Counsel Lex Group Inc.'s fees and disbursements as fair and reasonable based on its analysis of the following factors as set out in sections 7, 101, and 102 of the *Code of Professional Conduct of Lawyers*<sup>3</sup>, particularly with a view to the objectives of class proceedings (i.e. access to justice, judicial economy, behavior modification) and the risks assumed by Class Counsel<sup>4</sup>.

[24] Section 102 of the *Code of Professional Conduct of Lawyers* states:

"102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, extrajudicial costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him".

[25] In particular, the Court finds that the amount of Class Counsel Fees provided for in the Transaction is fair and reasonable based on the following:

- No Class Member has objected to either the Settlement or the Class Counsel Fees;
- The amount of Class Counsel Fees is well below what was reasonably provided for in the Mandate Agreement signed with the Plaintiff (namely the higher of 33% of the total amount recovered or a 3.5 multiplier of the straight docketed time by

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<sup>3</sup> RLRQ, c B-1, r. 3.1.

<sup>4</sup> 9085-4886 *Quebec Inc. c. Visa Canada Corporation*, 2015 QCCS 5921.

Class Counsel, plus disbursements and applicable taxes). This therefore reflects a compromise arrived at by the Parties;

- Class Counsel assumed financial risks associated with initiating, financing, and maintaining the litigation;
- Class Counsel invested a substantial amount of time and money to prosecute this case without any guarantee of compensation;
- The action involves complex legal issues and, in the absence of a settlement, would involve lengthy proceedings with an uncertain resolution and possible appeals;
- Class Counsel, the law firm of Lex Group Inc., has proved the ability to adequately, vigorously, and competently prosecute this action and the successfully negotiated Transaction will provide fair relief to Class Members who suffered direct losses;

[26] This Judgment is based upon the foregoing findings of fact and conclusions of law, which are supported by the evidence presented hereto, coupled with the Defendants' consent to the granting of the Application according to its conclusions, all of which the Court has considered and is in the Record.

**POUR CES MOTIFS, LE TRIBUNAL:      FOR THESE REASONS, THE COURT:**

[28] **ACCUEILLE** la demande pour [28] **GRANTS** the Application for approbation d'une transaction et pour Approval of a Settlement Agreement and approbation des honoraires des for Approval of Class Counsel Fees; procureurs du groupe;

[29] **DÉCLARE** que l'Entente de [29] **DECLARES** that the Settlement règlement à la pièce R-1 signée à Agreement at Exhibit R-1 signed in Montréal les 26 septembre 2019 et Montreal on September 26, 2019 and 10 octobre 2019 (incluant ses annexes) October 10, 2019 (including its (ci-après « l'Entente de règlement ») Schedules) (hereinafter the "Settlement constitue une transaction au sens des Agreement") constitutes a transaction articles 2631 et suivant du *Code civil du* within the meaning of Articles 2631 and *Québec*, obligeant toutes les parties et following of the *Civil Code of Quebec*, tous les Membres de l'action collective qui binding all parties and all Class ne se sont pas exclus en temps opportun; Members who have not excluded themselves in a timely manner;

[30] **DÉCLARE** que l'Entente de [30] **DECLARES** that the Settlement règlement est valide, équitable et Agreement is valid, fair, reasonable and

raisonnable, et qu'elle est dans le meilleur in the best interest of the Class  
 intérêt des Membres du Groupe, de la Members, the Plaintiff, and the  
 demanderesse et des défenderesses; Defendants;

[31] **APPROUVE** l'Entente de règlement [31] **APPROVES** the Settlement  
 et toute pièces jointes s'y rapportant, Agreement and all Exhibits thereto in  
 conformément à l'article 590 du *Code de* accordance with Article 590 of the *Code*  
*procédure civile*; *of Civil Procedure*;

[32] **DÉCLARE** que l'Entente de [32] **DECLARES** that the Settlement  
 règlement fait partie intégrante du Agreement is an integral part of the  
 jugement à intervenir; judgment to be rendered;

[33] **ORDONNE** que pour les fins du [33] **ORDERS** that for the purposes of  
 présent jugement, sauf dans la mesure où this judgment, except to the extent that  
 elles sont modifiées par le présent they are modified by this judgment, the  
 jugement, les définitions énoncées dans definitions contained in the Settlement  
 l'Entente de règlement, s'appliquent et y Agreement, shall apply and are  
 soient incorporées par renvoi; incorporated herein by reference;

[34] **ORDONNE** aux parties et aux [34] **ORDERS** the parties and the Class  
 Membres du Groupe de se conformer aux Members, to abide by the terms and  
 termes et conditions de l'Entente de conditions of the Settlement Agreement;  
 règlement;

[35] **APPROUVE ET ORDONNE** le [35] **APPROVES AND ORDERS** the  
 paiement par les défenderesses aux payment by the Defendants to Class  
 Procureurs du Groupe, Lex Group Inc., Counsel, Lex Group Inc., of the Class  
 des Honoraires des Avocats du Groupe Counsel's Fees as provided for at  
 tel que prévu à la section X de l'Entente Section X of the Settlement Agreement;  
 de règlement;

[36] **ORDONNE** aux défenderesses de [36] **ORDERS** the Defendants to pay for  
 payer tous les frais, coûts et débours all fees, costs and disbursements  
 concernant le Plan de diffusion requis et concerning the Notice Plan as and when  
 conformément aux conditions établies par required in accordance with and subject to  
 l'Entente de règlement; the terms set forth in the Settlement  
 Agreement;

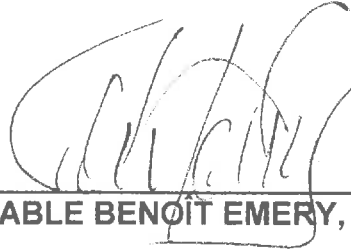
[37] **ORDONNE** l'exécution immédiate [37] **ORDERS** that immediate execution



non nonobstant appel du présent notwithstanding appeal of the present  
jugement; judgment;

[38] **LE TOUT** sans frais de justice.

[38] **THE WHOLE** without legal costs.



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**THE HONOURABLE BENOÎT EMERY, J.S.C.**

Mtre David Assor  
Mtre Joanie Lévesque  
LEX GROUP INC.  
Attorneys for the Plaintiff

Mtre Nick Rodrigo  
Davies Ward Phillips & Vineberg  
Attorneys for Defendants

Mtre Frikia Belogbi  
FONDS D'AIDE AUX ACTIONS COLLECTIVES

Date of hearing: July 7, 2020

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AU DOCUMENT DÉTENU PAR LA COUR

  
Personne désignée par le greffier