

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(class action)

C.S. : 500-06-000575-114

KELLY AMRAM

Plaintiff

v.

ROGERS COMMUNICATIONS INC.

-and-

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

-and-

FIDO SOLUTIONS INC.

Defendants

SETTLEMENT AGREEMENT

1. **WHEREAS** this settlement agreement (the "**Agreement**") is entered into by and among (i) Representative Plaintiff Kelly Amram on behalf of herself and the Class defined below and (ii) Rogers Communications Inc., Rogers S.E.N.C. and Fido Solutions Inc. (referred to collectively as the "**Defendants**").
2. **WHEREAS** the Agreement shall be submitted to the Superior Court of Quebec for approval.

I. **Specifications and definitions:**

3. All amounts of money mentioned in the present Agreement are in Canadian dollars.
4. In this Agreement, in addition to the terms that are defined elsewhere herein, the following terms have the meanings specified below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.
 - (a) “**Agreement**” means the written settlement agreement set out herein, including its Schedules and any written executed amendments thereto;
 - (b) “**Approval Hearing**” means Court hearing held to determine whether the Agreement should be approved;
 - (c) “**Approval Order**” means the Court order approving the Agreement;
 - (d) “**Class**” means the Class as set out more fully below;
 - (e) “**Class Counsel**” the firm of Lex Group Inc.;
 - (f) “**Class Member**” means a Person who resides in Quebec and falls within the definition of the Class set out more fully below;
 - (g) “**Class period**” means the period between August 15, 2011 and August 15, 2014;
 - (h) “**Compensation**” means the credits or payments provided to a Class Member pursuant to the terms of the Agreement;
 - (i) “**Court**” means the Superior Court of Quebec;
 - (j) “**Defence Counsel**” means the firm of Davies Ward Phillips & Vineberg LLP;
 - (k) “**Effective Date**” means 45 days after the Approval Order has been signed, or if any appeals have been taken therefrom, the date upon which such appeals are finally resolved in such manner as to permit the consummation of the settlement in accordance with the terms and conditions of the Agreement;
 - (l) “**Existing Customer(s)**” or “**Existing Customer Class Member(s)**” means Class Members who are currently wireless customers of any of the Defendants as of the date of the Pre-Approval Notice;
 - (m) “**Former Customer(s)**” or “**Former Customer Class Member(s)**” means Class Members who are not currently wireless customers of any of the Defendants as of the date of the Pre-Approval Notice;
 - (n) “**Litigation**” means the Quebec Class Action;

- (o) “**Opt Out Deadline**” means 30 days following the first publication of the Pre-Approval Notice, or such other date as ordered by the Court;
- (p) “**Opt Out Form**” means the form that enables a Class Member to exclude herself/himself (opt out) from the Quebec Class Action;
- (q) “**Pre-Approval Notices**” means the notices that advise Class Members of the upcoming Approval Hearing;
- (r) “**Pre-Approval Order**” means the Court order rendered *inter alia* with respect to the proposed Pre-Approval Notice;
- (s) “**Quebec Class Action**” means the class action commenced against the Defendants by Kelly Amram under court docket number 500-06-000575-114 before the Court;
- (t) “**Released Persons**” means Rogers Communications Inc., Rogers Communications S.E.N.C., Rogers Communications Canada Inc., Fido Solutions Inc. and each of their present or past directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns;
- (u) “**Releasing Persons**” means the Representative Plaintiff, on behalf of herself and the Class Members, as well as Class Counsel and all of their respective heirs, executors, administrators, representatives, agents, partners, successors and assigns;
- (v) “**Representative Plaintiff**” means Kelly Amram;
- (w) “**Schedules**” means the schedules incorporated by reference into the Agreement;
- (x) “**Settling Parties**” means the Representative Plaintiff on behalf of herself and the Releasing Persons, and the Defendants on behalf of themselves and the Released Persons;

II. The Class:

- 5. The Class is composed of all persons residing in Quebec who had a wireless contract with the Defendants with a fixed term in effect as of August 15, 2011 and who received a notice concerning new fees applicable to international video and/or photo messaging sent from Canada to an international destination (“**MMS**”).
- 6. The Approval Order, once issued, shall bind all Class Members.

III. History of the Litigation:

- 7. Representative Plaintiff Kelly Amram filed a Motion to Authorize the Bringing of a

Class Action and to Ascribe the Status of Representative (the “**Motion to Authorize**”) with the Superior Court of Quebec. The *Motion to Authorize* alleged, *inter alia*, that the Defendants illegally amended the wireless services contracts of the Class Members by increasing the amount charged for international MMS. The Representative Plaintiff sought leave to bring an action in damages, and an action in exemplary damages against the Defendants pursuant to the *Civil Code of Quebec*, R.S.Q. 1991, c. 64, and to the *Consumer Protection Act (Quebec)*, R.S.Q., c. P-40.1.

8. By Judgment of the Superior Court of Quebec dated July 7, 2012 and Judgment of the Court of Appeal of Quebec dated January 22, 2015, the Representative Plaintiff was authorized to institute a class action against Defendants on behalf of all Class Members in Quebec.
9. The Defendants have strenuously denied and continue to deny that they committed any fault under any applicable legislation, and the Settling Parties acknowledge and agree that this Agreement is made without any admission whatsoever, and solely to buy peace and to bring the litigation to an end.

IV. Settlement Negotiations:

10. The Settling Parties, Class Counsel and Defence Counsel participated in a Judicial Settlement Conference (“**JSC**”) on January 15, 2018 presided by the Honorable Justice André Prévost. The Settling Parties engaged in good faith, constructive settlement discussions for several months prior to and following said JSC. The Settling Parties knew about, approved and were kept informed of these ongoing discussions and in conformity with the instructions provided by the Settling Parties, Class Counsel and Defence Counsel arrived at this Agreement to settle the Litigation.
11. The Representative Plaintiff and Class Counsel believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. They recognize and acknowledge the expense and length of the complex proceedings that will be required to prosecute the Litigation. The Representative Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks involved in continuing with the Litigation, as well as the difficulties and delays inherent to class action proceedings. Moreover, the Representative Plaintiff and Class Counsel have concluded that the Agreement provides Class Members with benefits and is fair, reasonable, appropriate and in their best interests.
12. The Defendants have denied vigorously, and continue to deny, each and every allegation of liability and wrongdoing, and assert that they have substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, the Defendants have concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, the Defendants accept the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.

V. Consideration:

13. The Defendants shall provide direct compensation to Existing Customer Class Members who are therefore capable of receiving a credit on their monthly invoice in the future without the necessity of making any claim. For Former Customer Class Members who are no longer able to receive a bill credit in the future, no direct compensation will be provided, but these class members will be compensated indirectly through a *cy-près* payment by the Defendants in the amount of \$151,109.50 made to la Fondation UQTR et le Fonds de développement ÉTS, divided equally between them, which represents 100% of the settlement amount attributable to the claims of these members, but from which amount shall be deducted the percentage payable by law to the *Fonds d'aide aux recours collectifs* (Quebec Class Action Assistance Fund) as described more fully at paragraph 14(b) hereinbelow.

VI. Compensation:

14. The Defendants will provide to each Class Member that qualifies Compensation in the following manner:
- a) Existing Customer Class Members shall receive a full reimbursement of all international MMS fees paid during the term of that fixed-term contract directly from the Defendants 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.
 - b) Former Customer Class Members shall not receive direct compensation but shall be compensated indirectly through a *cy-près* payment made by the Defendants in the amount of \$151,109.50 to la Fondation UQTR et le Fonds de développement ÉTS, divided equally between them. It is understood that any such payments will be subject to the Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives, CQLR c. R-2.1, r. 2., meaning that the *Fonds d'aide aux recours collectifs* (Quebec Class Action Assistance Fund) (hereinafter the "**FAAC**") will be entitled to receive the percentage provided by law which will be deducted from any such amounts paid *cy-près* to la Fondation UQTR et le Fonds de développement ÉTS.
15. Should any Existing Customer Class Member cancel their wireless contracts with Defendants and therefore cease being a customer of Defendants after the date 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 within ninety (90) days will proceed to send said Class Members a cheque or electronic transfer in the full amount of the eligible Credit said Class Member was otherwise entitled to.
16. 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 la Fondation UQTR et le Fonds de développement ÉTS, with the amount divided equally between them, minus the percentage payable by law to the *Fonds d'aide aux recours collectifs* (Quebec Class Action Assistance Fund).

(a) Representative Plaintiff Kelly Amram's Personal Claim

17. As part of the Direct Compensation detailed above, the Settling Parties agreed (during the JCS) that the Representative Plaintiff Kelly Amram's personal claim is pre-approved in the amount of \$5,000 without the necessity of having to file a formal Claim Form. For avoidance of doubt, the Settling Parties hereby confirm and agree that Kelly Amram's pre-approved claim of \$5,000 will in no circumstance whatsoever be reduced in any way and that Defendants will remit said amount of \$5,000 (less the required percentage payable to the FAAC pursuant to the Regulation respecting the percentage withheld by the *Fonds d'aide aux actions collectives*, CQLR c. R-2.1, r. 2.) to Defence Counsel in trust for Representative Plaintiff ten (10) days after the Effective Date. The said net amount of \$5,000 (less FAAC deduction) deposited in trust shall be released by Defence Counsel to Class Counsel ten (10) business days after receipt of the funds in trust by way of a certified cheque or bank draft made payable to Kelly Amram, which cheque or draft will be forwarded to Class Counsel.
18. Within 30 days of Defendants having completed all Credits and *cy-près* payments and all related steps required herein, Defendants' representative shall serve on Class Counsel and file into the Court record (with copy to the FAAC) the Defendants' final report regarding its administration of the Credits applied to the Existing Customers' accounts and/or the payments otherwise made in the context of any payments made by cheque to Existing Customers, as well as the *cy-près* payments to la Fondation UQTR et le Fonds de développement ÉTS.

VII. Dispute Resolution:

19. Any dispute involving the right of a Class Member to participate in the Agreement or receive Compensation shall be dealt with by Class Counsel and Defence Counsel, who shall confer and attempt to reach a resolution, and, if unable to resolve the issue, shall submit for decision any issue on which they disagree to the Judge of the Superior Court of Quebec assigned to preside over the Litigation.

VIII. Court Approval of the Agreement:

(a) Pre-Approval Notices

20. Promptly following execution of the Agreement, Class Counsel and Defence Counsel shall seize the Court of a verbal application for approval of the Pre-Approval Notices and shall seek to obtain the Pre-Approval Order.

(b) Application for Approval

21. Class Counsel shall file an application with the Superior Court of Quebec for

approval of the Agreement and shall seek to obtain the Approval Order. Defendants through their Defence counsel shall consent to and support said application according to its conclusions.

22. Objections or comments to the Agreement can be formulated to the Court by Class Members who have not opted out of the Quebec Class Action, as defined below. Objections or comments, including all briefs or other papers or evidence in support thereof, shall be postmarked, served, filed and received by Class Counsel no later than fifteen (15) days prior to the Approval Hearing. Any Class Member (who has not opted out of the Quebec Class Action) who wishes to appear before the Court at the Approval Hearing must postmark, serve and file notice of such intent to be heard no later than fifteen (15) days prior to the Approval Hearing.
23. At the Approval Hearing, Class Counsel and Defence Counsel shall move for final approval of the Agreement and present their arguments in support thereof. In this regard, the Settling Parties, Class Counsel and Defence Counsel hereby confirm that it is their opinion and belief that the present Settlement Agreement, in its entirety, is fair, reasonable, appropriate, and in the best interests of the Class Members;

(c) Failure to Obtain Approval Order

24. If the Agreement is not approved by the Superior Court of Quebec, the Settling Parties shall be restored to their respective positions in the Litigation prior to the JSC.

IX. Notice Requirements and Opting Out:

(a) Pre-Approval Notice

25. The Defendants shall, at their sole expense, notify Class Members of the Class Action authorization and this Agreement by way of the Pre-Approval Notices which state *inter alia*: (i) that the Litigation was authorized as a class action by the courts (ii) that the Agreement will be submitted to the Superior Court of Quebec for approval, specifying the date, place and time of the Approval Hearing; (iii) the nature of the Agreement and the method of its execution; (iv) the procedure to be followed by Class Members to opt out of the Class Action; and (v) that the Class Members who have not opted out have the right to present their comments or objections to the Court as regards the Agreement. Attached as Schedule A is the Abridged Pre-Approval Notice to be published in the newspapers as detailed below.
26. Unless otherwise ordered by the Court the Pre-Approval Notice (Schedule A) shall be published in the following newspapers: *Le Journal de Montréal*, *Le Journal de Québec*, and *The Montreal Gazette*.
27. The Pre-Approval Notice attached as Schedule B shall also be sent directly to all Existing Customer Class Members within ninety (90) days following the date of first publication of the Pre-Approval Order by way of either (i) direct printed copy, included within their monthly paper invoice, or (ii) in the case of Existing Customer Class Members who receive their monthly statement electronically, within the

electronic version of their monthly statement. In both cases the notice shall be in the same language as that selected by the particular Class Member for invoicing purposes.

28. Prior to their dissemination, the Pre-Approval Notices shall be submitted to the Superior Court of Quebec for the Pre-Approval Order, as indicated above.
29. The Defendants shall solely and exclusively be responsible for paying any and all costs and disbursements in relation to notification or publication process, whether or not the Approval Order is issued.
30. A Detailed Pre-Approval Notice in the form attached as Schedule C shall be published on the internet site of Class Counsel together with any appropriate instructions for opting out.
31. Class Counsel will be entitled to post on its firm website the relevant settlement documents, notices, proceedings, judgments, etc., at its discretion and at its costs.

(b) Opting Out of the Agreement

32. Class Members who do not wish to be included in the Quebec Class Action (and therefore who also do not wish to be bound by this Agreement) may opt out of the Quebec Class Action. Class Members who want to opt out must do so by completing the Opt Out Form, attached as Schedule D, and mailing it to the Clerk of the Superior Court of Quebec by the Opt Out Deadline in the manner prescribed by the *Code of Civil Procedure*.

X. Class Counsel fees:

33. As an integral part of this Agreement, Class Counsel fees and expenditures shall be paid by the Defendants pursuant to the terms and conditions specified below.
34. Within the same Application for approval of the Agreement, Class Counsel will ask the Court to approve their global award of attorney fees and for reimbursement of their expenditures of \$150,000 PLUS the Goods and Services Tax ("GST") and the Quebec Sales Tax ("QST") (as calculated at the date of payment) ("**Class Counsel Fees**"). Defendants and Defence Counsel will support said application and hereby confirm that Defendants agree to pay said Class Counsel Fees and believes that same are fair, reasonable and warranted under the circumstances of this case.
35. The Defendants shall remit the Class Counsel Fees to Defence Counsel in trust for Class Counsel ten (10) days after the Effective Date and Defence Counsel shall transmit these funds to class counsel within ten (10) days after receipt of the funds in trust.
36. The Parties confirm that the Compensations payable or due to the Class Members as detailed above will not be reduced by any portion of the Class Counsel Fees which are separately payable by the Defendants to Class Counsel.

XI. Releases:

37. Upon the Effective Date, the Releasing Persons and each of the Class Members, on the one hand, and the Released Persons on the other hand, hereby fully, finally, and forever mutually release, relinquish, and discharge each other from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorney fees, losses, expenses, obligations or demands, of any kind whatsoever that any of them may have or may have had, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged or could have been alleged in the Litigation regarding the 2011 increase by the Defendants of the fees payable for MMSs or for any other claim in any way related to their conduct of the Litigation ("**Released Claims**").
38. Nothing in this Agreement shall constitute or shall be deemed to constitute a waiver by the Defendants of any defence with respect to any Class Member who opts out of the Quebec Class Action, or in the event this Agreement is not approved by the Court.
39. Any Compensation paid or given pursuant to the Agreement is made without admission of liability. The Releasing Parties agree that the Agreement, the Pre-Approval Order and the Approval Order rendered in respect of the Agreement shall not constitute an admission or be used as evidence against the Defendants.
40. Nothing in the Agreement shall be used for any purpose in any legal proceeding unless expressly authorized herein.

XII. Miscellaneous Provisions:

41. The Agreement and its Schedules supersede all prior settlement agreements, whether oral or in writing, pertaining to the subject matter of the Litigation and constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any Settling Party concerning the Agreement or its Schedules other than the representations, warranties, and covenants covered and memorialized herein.
42. The Settling Parties acknowledge that it is their intent to consummate the Agreement, and they agree to co-operate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement.
43. The Settling Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Agreement shall not be deemed an admission by any Settling Party as to the merits of any claim or defence. The Settling Parties agree that the consideration provided to the Class Members and the other terms of the Agreement were negotiated in good faith and reflect a settlement that was reached voluntarily after consultation with competent legal counsel and the assistance of the Honorable Justice Prévost during the JSC.
44. Neither the Agreement, nor any act performed or document executed pursuant to

or in furtherance of the Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of the Defendants, or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of the Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. The Defendants may file this Agreement and/or the Approval Order in any action that may be brought against it in order to support any defence or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.

45. All agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Agreement.
46. All of the Schedules to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.
47. Unless otherwise ordered by the Court, the Settling Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.
48. The captions contained in the Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of the Agreement or the intent of any provision thereof.
49. Except as otherwise provided herein, the Settling Parties shall bear their own respective costs, it being understood that under no circumstances will the Representative Plaintiff or Class Counsel be expected to pay for any publication costs, administration costs, notification costs, or translation costs.
50. Class Counsel, on behalf of the Class Members, are expressly authorized by the Representative Plaintiff to take all appropriate actions required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and are expressly authorized to enter into any modifications or amendments to the Agreement, on behalf of the Class Members, which Class Counsel deems appropriate.
51. Each counsel or other person executing the Agreement or any of its Schedules on behalf of any Settling Party hereby warrants that such person has the full authority to do so.
52. The Agreement may be executed in one or more counterparts, including transmission by way of facsimile or e-mail/PDF attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original counterparts shall be filed with the Superior Court of Quebec.
53. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.
54. The Superior Court of Quebec, District of Montreal, shall retain exclusive jurisdiction with respect to implementation and enforcement of the terms of the

Agreement and all parties hereto submit to the jurisdiction of said Court for purposes of implementing and enforcing the Agreement.

55. None of the Settling Parties, or their respective counsel, shall be deemed the drafter of this Agreement or its Schedules for purposes of construing the provisions thereof. The language in all parts of the Agreement and its Schedules shall be interpreted according to its fair meaning and shall not be interpreted for or against any of the Settling Parties as the drafter thereof.
56. This Agreement and the Schedules hereto shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Quebec.
57. All amounts paid to class members directly or in the form of a *cy-près* payment under this Agreement are inclusive of all taxes, interest and legal costs. No opinion concerning the tax consequences of the Agreement to any Class Member is given or will be given by the Settling Parties, Class Counsel, or Defence Counsel; nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Agreement as to any Class Member. Each Class Member is responsible for his/her tax reporting and other obligations respecting the Agreement, if any.
58. The Parties acknowledge that they have required and consented to this Agreement and all related documents be drafted in English; *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.* Nevertheless, if required by the Court, Defendants and/or Defence Counsel shall prepare an unofficial French translation of the Agreement and related documents, prepared by legal translators, the cost of which shall be paid by the Defendants. In the event of any dispute as to the interpretation or application of this Agreement, the English version shall govern.
59. The Agreement constitutes a transaction pursuant to Articles 2631 and following of the *Civil Code of Quebec* and the Settling Parties are hereby renouncing to any errors of fact, law and/or calculation.
60. Any and all notices, requests, directives or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by e-mail, by postage prepaid mail or by facsimile transmission followed by postage prepaid mail and shall be addressed as follows:

IF TO:

KELLY AMRAM

Care of:

Me David Assor
Lex Group Inc.
4101 Sherbrooke St. West
Westmount (Quebec),
Canada, H3Z 1A7
Phone: 514-451-5500
(extension 321)
Fax: 514-940-1605
davidassor@lexgroup.ca

IF TO: **ROGERS COMMUNICATIONS INC.
FIDO SOLUTIONS INC.**

Care of:

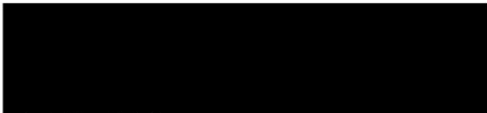
Me Nick Rodrigo
Davies Ward Phillips & Vineberg LLP
Suite 2600
1501 McGill College Avenue
Montreal, Quebec, H3A 3N9
Phone: 514-841-6548
Fax: 514-841-6499
nrodrigo@dwpv.com

SIGNED in Montreal on September 26, 2019



(s) Julie Laurence
Vice-president, Legal – Consumer
Rogers Communications Inc.
On behalf of the Defendants

SIGNED in Montreal on ~~September~~ ^{October} 10, 2019



(s) David Assor
Lex Group Inc.
On behalf of Kelly Amram and the Class Members
