

CANADA

(Class Action)

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

No: 500-06-001144-217

K [REDACTED] A [REDACTED]

- and -

J [REDACTED] A [REDACTED]

- and -

J [REDACTED] R [REDACTED]

Plaintiffs

v.

ROGERS COMMUNICATIONS INC.

-and-

**ROGERS COMMUNICATIONS CANADA
INC.,**

-and-

FIDO SOLUTIONS INC.,

Defendants

**RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS
ACTION (DATED JULY 29, 2022)**
(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 PLAINTIFFS STATE THE
FOLLOWING:**

INTRODUCTION

1. Plaintiffs wish to institute a class action on behalf of the following group, of which Plaintiffs are members, namely:

All persons in Canada (...) who had and/or were using an existing “Rogers”, “Rogers for Business”, “Fido” and/or “Chatr” account, wireless line (cellular phone number) or 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 (“**CIDREQ**”) 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. Plaintiffs A [REDACTED] and A [REDACTED] are married and share a wireless contract/account with Rogers, with multiple cellular phone numbers associated to the same account, used by themselves and their children. The Defendants have approximately 10.9 million other Canadian consumers and business subscribers for their wireless services.

The 2021 Outrage

5. On or about April 19, 2021, Plaintiffs all experienced problems properly using their mobile telephones, namely Plaintiffs could not properly and consistently make and/or receive calls and could not properly and consistently send or receive text messages or otherwise use their data or cellular plan. Their phones were only properly and consistently operational for data while on wifi.
- 5.1. Defendants’ April 19, 2021 wireless outage affected Defendants’ clients in Quebec and the rest of Canada and has been referred to by the Defendants as a so-called “intermittent

service interruption for wireless voice and data services”, an “intermittent wireless service issues impacting customers”, “intermittent issues with voice calls, SMS and data services”, “wireless interruptions”, and/or “intermittent congestion and service impacts for many customers across the country”) (hereinafter collectively referred herein as the “**2021 outage**”).

6. The 2021 outage lasted all of the morning and most of the day of April 19, 2021 for Plaintiffs, whereas it continued for many other Class Members until the late night of April 19, 2021 (if not early morning of April 20, 2021 or longer). Plaintiffs are 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 they (like many Class Members) woke up to a telephone which was no longer connected to the Rogers network. In this regard, it was only at approximately 8 PM on April 19, 2021 that Defendants tweeted that their “wireless calls, SMS & data services are starting to return to normal for our customers” and that “It will take several more hours for all customers and regions to return to full service”. By approximately midnight on April 19, 2021, Defendants tweeted that a majority but not the totality of its wireless calls, SMS and data services had been restored. (Class Members experiencing the outage were likely not able to access Twitter in any case).
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 of April 2021. 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*.

9.1. As appears from the above citation from the Exhibit R-3 message published by the Defendants, Defendants’ own representative and Chief Technology Officer specifically admitted *inter alia* that:

- a) the “intermittent wireless service issues” were “unacceptable”;
- b) this outage had caused “significant impact and frustration” to the Class Members;
- c) the “root cause of the service issues” was apparently a “recent Ericsson software update that affected a piece of equipment in the central part of our wireless network”; (...)
- d) “That led to intermittent congestion and service impacts for many customers across the country”; and

- e) That Rogers “will learn from what happened yesterday, to help ensure that this never happens again”;

Plaintiffs intend to rely upon these extra-judicial admissions made publicly by the Defendants’ representative.

10. As at the time of the institution of the original class action proceedings herein, Defendants had however not undertaken to reimburse or indemnify the Class Members for the damages suffered as a result of this 2021 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. After these class action proceedings had been instituted, Defendants argue that they undertook to only credit their clients a “credit equivalent to yesterday’s wireless service fee” (which likely represents only a few dollars to each telephone line and may not include extra charges for roaming and/or international travel “Roam Like Home” type services which charge clients approximately \$10 to \$15 extra per day of use while travelling and using the wireless service in another country). Plaintiffs does not know whether this credit was actually applied to every Class Member’s line/account. That being said, Defendants still refuse to otherwise indemnify the Class Members for the other more significant damages suffered as a result of the outage, notwithstanding Defendants’ admissions in Exhibit R-3 to the effect that the outage was “unacceptable” and that the outage had caused “significant impact and frustration” to the Class Members, namely the damages being claimed herein.

The 2022 Outage (in further support of the claim for punitive damages herein)

- 10.1. Approximately only fifteen (15) months after the 2021 Outage, namely on or about July 8 and 9, 2022, Plaintiffs all experienced problems properly using their mobile telephones again, namely Plaintiffs could not properly and consistently make and/or receive calls and could not properly and consistently send or receive text messages or otherwise use their data or cellular plan. Their phones were only partially operational for data while on wifi. At that time, all the Plaintiffs were travelling abroad and therefore being charged by Rogers extra daily roaming charges for international usage of their wireless lines, as detailed more fully below).
- 10.2. Just like the 2021 outage, Defendants’ July 8 to at least 11, 2021 wireless outage affected Defendants’ clients in Quebec and the rest of Canada. It represented “a network outage across both wireless and wireline service” that also affected *interac* and other payment processing services linked to the Defendants’ networks, therefore preventing thousands

of Class Members from being able to charge and collect money for goods and services, send money transfers, access funds at automated tellers, make debit payments, access certain governmental agencies and programs, access 911 services, etc. (hereinafter the "2022 outage"). Although having occurred after the institution of the present proceedings, Plaintiffs will refer and rely upon the 2022 outage in order to further support their pre-existing claim for punitive damages herein, as more fully detailed below. Plaintiffs note that their (and the Class Members') separate claims for damages stemming directly from the 2022 outage are included in separate class action proceedings being prosecuted.

- 10.3. The 2022 outage lasted most of July 8 and 9, 2022, with full services not even fully re-established by July 11, 2022. Plaintiffs are presently not precisely aware of the exact time when the 2022 outage began. Plaintiffs communicate herewith as **Exhibit R-6**, *en liasse*, various extracts from Defendants' various homepages, at different dates and times.
- 10.4. 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-7**, *en liasse*.
- 10.5. As appear from the Exhibit R-7 articles, as a result of the Defendants' 2022 outage, certain Class Members and other Canadians were not able to access 911 emergency and medical services, not able to access *interac* and other payment processing services, not able to make debit payments and therefore not able to purchase necessities such as food without access to actual cash, not able to access cash at automated tellers, etc..

10.6. Tony Staffieri, President and CEO, Rogers Communications, explained, acknowledged, admitted, and apologized for the 2022 outage on July 8 and 9 2022, as follows:

A message from Tony Staffieri, President and CEO at Rogers:

July 8, 2022



Dear Canadians,

We know you count on Rogers to connect you to emergency services, make payments, serve your customers, connect with work and keep in touch with friends and family. We take that responsibility very seriously and today we let you down. We can and will do better.

As you know, we experienced a network outage across both wireless and wireline service that began early this morning.

We have made meaningful progress towards bringing our networks back online and many of our wireless customers are starting to see services return. We don't yet have an ETA on when our networks will be fully restored but we will continue to share information with our customers as we restore full service.

We know going a full day without connectivity has real impacts on our customers, and all Canadians. On behalf of all of us here at Rogers, Rogers for Business, Fido, chatr and cityfone, I want to sincerely apologize for this service interruption and the impact it is having on people from coast to coast to coast.

As our teams continue working to resolve the situation, I want to make two commitments to you:

1. First, we are working to fully understand the root cause of this outage and we will make all the changes necessary to ensure that in the future we meet and exceed your expectations for our networks.
2. Second, we will make this right for our valued customers. We will proactively apply a credit to all our customers impacted by the outage and will share more details shortly.

I take full responsibility for ensuring we at Rogers earn back your full trust, and are once again there to connect you to what matters.

Sincerely,

Tony Staffieri
President and CEO

A Message from Rogers President and CEO:

July 9, 2022

To our valued customers and all Canadians,

I am reaching out to share that our services have been restored, and our networks and systems are close to fully operational. Our technical teams are continuing to monitor for any remaining intermittent issues. I also want to outline an action plan we are putting in place to address what happened.

I also want to share what we know about what happened yesterday. We now believe we've narrowed the cause to a network system failure following a maintenance update in our core network, which caused some of our routers to malfunction early Friday morning. We disconnected the specific equipment and redirected traffic, which allowed our network and services to come back online over time as we managed traffic volumes returning to normal levels.

We know how much our customers rely on our networks and I sincerely apologize. We're particularly troubled that some customers could not reach emergency services and we are addressing the issue as an urgent priority.

We will proactively credit all customers automatically for yesterday's outage. This credit will be automatically applied to your account and no action is required from you.

As CEO, I take full responsibility for ensuring we at Rogers earn back your full trust, and am focused on the following action plan to further strengthen the resiliency of our network:

1. **Fully restore all services:** While this has been nearly done, we are continuing to monitor closely to ensure stability across our network as traffic returns to normal.
2. **Complete root cause analysis and testing:** Our leading technical experts and global vendors are continuing to dig deep into the root cause and identify steps to increase redundancy in our networks and systems.
3. **Make any necessary changes:** We will take every step necessary, and continue to make significant investments in our networks to strengthen our technology systems, increase network stability for our customers, and enhance our testing.

We let you down yesterday. You have my personal commitment that we can, and will, do better.

Tony Staffieri
President and CEO, Rogers Communications

the whole as more fully appears from the messages published on Defendants' websites, communicated herewith as **Exhibit R-8**, in English and in French, *en liasse*. Plaintiffs intend to rely upon these extra-judicial admissions made publicly by the Defendants' President and CEO.

10.7. On an episode of CBC's Power & Politics, Kye Prigg, Rogers' senior vice-president of access networks and operations admitted that millions of clients across Canada were impacted by the 2022 outage and specifically admitted the following:

"We don't understand how the different levels of redundancy that we build across the network coast to coast have not worked"

the whole as reported by the CBC News article entitled "Rogers says services mostly restored after daylong outage left millions offline", published on July 8, 2022, a copy of which is communicated herewith as **Exhibit R-9**;

10.8. Said R-9 CBC article also confirmed the following :

- "Rogers-owned flanker brands like Fido and Chatr also went offline, as did services not directly controlled by Rogers, such as emergency services, travel and financial networks."

- "A nationwide telecommunications outage with a network provider ... is impacting the availability of some Interac services," a spokesperson for Interac confirmed to CBC News."
- "Debit is currently unavailable online and at checkout. Interac e-transfer is also widely unavailable, impacting the ability to send and receive payments."
- "CBC's radio station in Kitchener, Ont., went offline and off the air as a result of the outage."
- "Emergency services across the country reported issues, in some cases at the dispatching centres themselves, but mostly just with an inability for Rogers customers to contact them."
- "Government services including already bottlenecked passport offices, Service Canada, Public Services and Procurement Canada and the Canada Revenue Agency are also affected."
- "The Canada Border Services Agency says the ArriveCan app is disabled because of the outage, so anyone arriving in Canada must have a paper copy of their vaccination status."

10.9. In another CBC News article entitled "Rogers customers grow increasingly frustrated on 3rd day without cell, internet service", first published on July 10, 2022, a copy of which is communicated herewith as **Exhibit R-10**, it was confirmed that the 2022 outage started on Friday, July 8, 2022 and that the services had still not been fully restored 3 days later, the article also confirming the following:

- "We are aware that some customers continue to experience intermittent challenges with their services," Rogers said."
- "Jen Dieleman, a DoorDash driver in London, Ont., said she was unable to work on Friday or Saturday because her Rogers cellphone couldn't connect to the app that drivers use to pick up and deliver orders. Her service was still spotty on Sunday, she said. "I'm out trying to work right now, and it's still glitching and having issues," Dieleman said, adding that she had missed out on picking up orders due to issues with her cellphone data."
- "Rogers' issues were also affecting other companies that rely on its network, including internet provider TekSavvy, which was advising its customers in Ontario and Quebec of ongoing issues on Sunday afternoon. In a statement, TekSavvy vice-president Andy Kaplan-Myrth said thousands of customers were still reporting slow or intermittent internet speeds, or were having difficulty connecting to the

internet at all.”

10.10. By late on Monday, July 11, 2022, the Defendants’ websites were still confirming that most but not all of their services had been restored, as appears from Exhibit R-6.

10.11. On July 13, 2022, Rogers President and CEO Tony Staffieri sent an email to Plaintiff A [REDACTED], stating and admitting the following:

From: Rogers <rogers@e.rogers.com>

Sent: Wednesday, July 13, 2022 8:12 PM

To: J [REDACTED] A [REDACTED] (...)

Subject: Message du président et chef de la direction de Rogers



Message du président et chef de la direction de Rogers

À notre précieuse clientèle,

Notre panne de réseau de vendredi dernier était inacceptable. En termes simples, nous n’avons pas tenu notre promesse d’offrir le réseau le plus fiable au pays.

Cette panne a occasionné de réels inconvénients et a été une source de grandes frustrations pour tout le monde. Des gens n’ont pas été en mesure de joindre leur famille. Des entreprises n’ont pas pu effectuer des transactions. De plus, des appels d’urgence ainsi que des appels aux services essentiels n’ont pu être acheminés, ce qui est très sérieux.

Tout le monde en convient, nos clients et clientes, nos gouvernements ainsi que notre équipe. Ce qui s’est produit est loin d’être acceptable. Maintenant, nous devons corriger la situation.

Notre réseau est entièrement fonctionnel selon les normes auxquelles vous vous attendez. Nos spécialistes du service à la clientèle travaillent sans relâche et ont rattrapé le retard accumulé dans les derniers jours. Nous avons également révisé à la hausse le montant du dédommagement que nous allons verser à notre clientèle, étant donné que plusieurs personnes ont malheureusement dû attendre plus longtemps avant le rétablissement complet de leurs services.

Après avoir parlé à bon nombre d'entre vous, il est évident que notre priorité, tout comme votre principale préoccupation, est de veiller à ce que cette situation ne se reproduise plus.

Je m'engage personnellement à ce que Rogers fasse tous les changements et investissements nécessaires pour que ce soit bien le cas.

De plus, en collaborant avec les gouvernements et notre industrie, nous mettrons en œuvre les mesures requises afin que les services essentiels et le service d'urgence 911 puissent fonctionner sans interruption, peu importe s'il y a des pannes.

Je comprends qu'il nous faudra du temps pour regagner votre entière confiance au travers les mesures que nous prendrons. Nous pouvons faire mieux et nous le ferons.

Cordialement,

A handwritten signature in black ink, appearing to read "Tony", written over a horizontal line.

Tony Staffieri

Président et chef de la direction, Rogers Communications

the whole as more fully appears from the email sent to Plaintiff A [REDACTED] on July 13, 2022, communicated herewith as **Exhibit R-11**. Plaintiffs intend to rely upon these extra-judicial admissions made the Defendants' President and CEO.

10.12. On July 14, 2022, Rogers President and CEO Tony Staffieri sent an email to Plaintiff R [REDACTED], stating and admitting the following:

From: Rogers <rogers@e.rogers.com>

Date: July 14, 2022 at 3:51:52 AM GMT+2

To: j [REDACTED].r [REDACTED] (...)

Subject: A Message from Rogers President and CEO

Reply-To: Rogers <reply-fec3107873650575-1517_HTML-95107307-520000484-5546@e.rogers.com>



A Message from Rogers President and CEO

Dear Valued Customers,

Our network outage last Friday was unacceptable. Simply put, we failed on our promise to be Canada's most reliable network.

This outage caused real pain and significant frustration for everyone. Canadians were not able to reach their families. Businesses were unable to complete transactions. And critically, emergency and essential calls could not be completed.

No one – not our customers, our governments, and not us – is anywhere

close to finding what happened acceptable.

Now we have to make things right.

Our network is fully operational to the standards you have come to expect. Our customer service representatives are working around the clock and have caught up on the backlog of issues. We have also increased the credit on all our customers' bills, as some of you experienced longer delays in resuming services.

In speaking to many of you, it is clear that what matters most is that we ensure this doesn't happen again.

You have my personal commitment that Rogers will make every change and investment needed to help ensure that it will not happen again.

As well, working with governments and our industry, we will implement what is needed to ensure that 911 and essential services can continue, no matter what outage may occur.

I understand that it is only through our actions, and with time, that we can restore your confidence in us. We can and will do better.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony", with a long horizontal line extending from the end of the signature.

Tony Staffieri
President and CEO, Rogers Communications

the whole as more fully appears from the email sent to Plaintiff R [REDACTED] on July 14, 2022, communicated herewith as **Exhibit R-12**. Plaintiffs intend to rely upon these extra-judicial admissions made the Defendants' President and CEO.

10.13. On or about July 21, 2022, namely less than two (2) weeks after the 2022 outage, Rogers replaced its Chief Technology Officer, Jorge Fernandes, "effective immediately". As already alleged hereinabove, Jorge Fernandes was the person issuing the Defendants' multiple statements and promises to the Class Members following the 2021 outage.

10.14. On July 24, 2022, Defendants' President and CEO Tony Staffieri issued a further statement on the Rogers' website, admitting and promising *inter alia* the following:

Our Enhanced Reliability Plan

First, emergency calls to 911 simply have to work. Every time. We have made meaningful progress on a formal agreement between carriers to switch 911 calls to each other's networks automatically – even in the event of an outage on any carrier's network. I believe this is the only responsible way forward and I am personally committed to making it possible for all Canadians.

the whole as more fully appears from the message published on Defendants' website, communicated herewith as **Exhibit R-13**, in English and in French, *en liasse*. Plaintiffs intend to rely upon these extra-judicial admissions made publicly by the Defendants' President and CEO.

10.15. On July 25, 2022, Defendants' President and CEO Tony Staffieri testified in front of the House of Commons' Standing Committee on Industry and Technology, as part of the government's investigation into the 2022 outage. His opening statement was indeed published on the Rogers website, a copy of which is communicated herewith as **Exhibit R-14**, in which Defendants' President and CEO admits *inter alia* the following:

"On that day, we failed to deliver on our promise to be Canada's most reliable network.

More than a marketing slogan, we know just how critical the wireless phone and internet services Rogers provides are.

Canadians need to be able to reach their families.

Businesses need to be able to accept payments.

And, most importantly, emergency calls to 911 simply have to work, every time.

To those who were impacted by our outage, I am sorry.

(...)

And I understand the frustration our customers felt, not knowing when our networks would be back online.

(...)

Working with government and our competitors, we are making significant progress on a formal agreement to ensure that 911 calls can always be made — even in the event of an outage on any carrier's network."

Plaintiffs intend to rely upon these extra-judicial admissions made the Defendants' President and CEO.

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. Indeed, the Defendants specifically admitted the following on April 20, 2021:

"We know you depend on us and yesterday we let you down – for this we are truly sorry.

[...]

Again, we offer our sincere apologies and will work hard to earn back your trust"

and admitted the following on July 9, 2022 as already cited above (R-9):

"We know how much our customers rely on our networks and I sincerely apologize. We're particularly troubled that some customers could not reach emergency services and we are addressing the issue as an urgent priority.

[...]

We let you down yesterday. You have my personal commitment that we can, and will, do better."

12. Defendants' Customers and other Class Members have suffered some of the following damages as a result of Defendants' repeated faults and negligence detailed above:

- a) Not being able to make or receive calls during the outage period, including 911 calls, booking COVID-19 vaccine appointments (see Exhibit R-2), not being reachable by clients, cancelling meetings or missing meetings altogether by not being reachable, not being reachable by their children's school or caregivers, not being able to work at all (example uber drivers, taxi drivers, other delivery jobs, on-call work, etc), not being able to run their businesses (example shops or other businesses only using a wireless telephone line), etc.;
- 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, including not being able to use internet hotspot connexion for iPads in some schools (see Exhibit R-2);
- d) Not being able to use many important applications such as uber (for rides, car-sharing, or food ordering), etc., forcing them to incur additional costs.
- e) Not being able to access *interac* and/or other payment processing services in order to charge and collect money for goods or services, therefore preventing them from being able to make necessary purchases such as food.
- f) Not being able to access the Internet, sometimes at all from either home or wireless network for an extended period of time.
- g) Not being able to access the ArriveCan application, Passport services and/or other necessary governmental services.

12.1. In this regard, the Plaintiffs though their undersigned attorneys are communicating herewith, *en liasse*, as **Exhibit R-4, confidentially, under seal and without waiving professional secrecy**, the online submissions received from multiple Class Members and customers across the country, as though recited at length herein. Plaintiffs rely on these online submissions for the purposes of further fulfilling their burden to demonstrate an arguable case at the authorization hearing herein;

13. Class Members experienced stress, anxiety, inconvenience and/or loss of time due to the interruptions of service, including the significant lost time trying to contact the Defendants in order to remedy the situation. As mentioned above, Defendants have already admitted in Exhibit R-3 that the 2021 outage was “unacceptable” and that the outage had caused “significant impact and frustration” to the Class Members. Defendants then negligently permitted another country-wide outage to occur again approximately 15 months later, notwithstanding Defendants’ specific promise to “ensure that this never happens again” (Exhibit R-3), and the whole considering the fact that the 2021 outage had also impact the

certain 911 emergency services, an issue Defendants now promise once again to remedy and prevent in the future, following the 2022 outage which also prevent access to 911 emergency services.

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, the whole being exacerbated by the fact that the Class Members were already living within restrictions due to the Covid-19 pandemic, forcing Class Members to rely even more on their wireless devices and cellular networks in order to function on a daily basis and to purchase essential goods. For instance, some Class Members only had their cellular line as the only business line and/or depend on the Defendants' systems in order to conduct business and work, and were therefore forced to close their business during the outage. Indeed, Defendants were well aware of this since during the 2021 outage itself, Defendants admitted the following on Twitter at 11:27 AM on April 19, 2021 (Class Members were likely not able to even access Twitter during the outage in any case):

"Especially during these times, we know how important it is to stay connected. For those experiencing outages, we are working hard to get your services back up and running ASAP. We appreciate your patience and apologize for the inconvenience."

15. Plaintiffs invoke *inter alia* the following legal (and regulatory) provisions which makes the Defendants liable to indemnify the Class Members and to pay punitive damages:
- 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, 16, 34, 37, 40 and following, 219, 272 of the *Consumer Protection Act*, CQLR c P-40.1
 - c) Telecom Regulatory Policy CRTC 2017-182 (June 1, 2017)

Punitive Damages:

- 15.1. Since the original institution of the present class action proceedings, Plaintiffs have been claiming punitive damages from Defendants herein. For all of the reasons more fully detailed above, which are reiterated as though recited at length in the present section, Plaintiffs respectfully submits that Defendants were grossly and/or intentionally negligent and are liable to pay punitive damages to the Class Members.

15.2. In fact, without limiting the generality of the forgoing, Defendants were repeatedly grossly negligent and/or intentionally negligent when they:

- a. clearly failed to implement the proper steps and required IT measures in order to safeguard and protect the Class Members from 2021 service failure and outage detailed above;
- b. clearly failed to implement the proper steps and required IT measures following the 2021 outage in order to safeguard and protect the Class Members from the even more massive and disruptive 2022 service failure and outage detailed above;
- c. tried to downplay the magnitude of the 2021 outage and specifically promised to Class Members and the public at large that “we will learn from what happened yesterday, to help ensure that this never happens again” and that Defendants “have identified the root cause of the issue to help ensure it doesn’t happen again.” (The April 19 and 20, 2021 public statements issued by Jorge Fernandes, Chief Technology Officer at Rogers, Exhibit R-3). However, Defendants did not learn from their 2021 faults and mistakes, did not secure its systems/networks and therefore enabled and permitted the 2022 outage to occur merely fifteen (15) months later, which in and of itself is abusive and egregious, justifying an award for such punitive damages;
- d. as confirmed and admitted by Kye Prigg, Rogers' senior vice-president of access networks and operations, Defendants were clearly grossly negligent in the context of the 2022 outage since, as Mr. Prigg admitted (Exhibit R-8): “We don’t understand how the different levels of redundancy that we build across the network coast to coast have not worked”, the whole confirming Defendants utter failure to prevent the repeated massive outages which caused havoc on the Class Members;
- e. failed to maintain the Class Members’ full access to critical 911 emergency services, which Defendants are obliged to do (which reoccurred on a wider scale during the 2022 outage as well);
- f. caused non-clients significant damages by preventing them from being able to access essential governmental services, *interac* and other payment processing services, money transferring and debit payment services, automated tellers, etc.

- 15.3. As confirmed by the Court of Appeal in *Levy c. Nissan Canada inc.*, 2021, QCCA 682, (par. 34-38), Defendants conduct before and after the 2021 outage is relevant to the determination on punitive damages herein. Defendants' faults and negligence detailed above clearly demonstrate their full knowledge of the immediate and natural or at least extremely probable consequences of their failures, especially when considering the repetition of such faults and Defendants' failure and negligence causing and enabling the similar yet even more massive 2022 outage to occur merely 15 months after the first outage had occurred, while the present legal proceedings were still pending.
- 15.4. Considering the above and considering the fact that Defendants have the violated various laws and regulatory policies detailed above, which have been enacted in order to protect the Class Members and the public at large, Defendants are liable to pay punitive damages to all of the Class Members herein, aside from any other compensatory and moral damages suffered by the Class Members.
- 15.5. Defendants' above detailed actions qualify its fault as intentional which is a result of wild and foolhardy recklessness in disregard for the rights of the Class Members, with full knowledge of the immediate and natural or at least extremely probable consequences that their actions would cause to the Class Members.
- 15.6. Defendants' negligence has shown a malicious, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency. In that event, punitive damages should be awarded to Class Members.
- 15.7. Indeed, in the emails Defendants' President and CEO sent to Plaintiff A [REDACTED] on July 13, 2022 and to Plaintiff R [REDACTED] on July 14, 2022, Exhibits R-11 and R-12 respectively, Defendants specifically admitted that their repeated faults and failures leading to the outages were "unacceptable" and that they had failed to respect their promise, undertaking and representation to provide a reliable network to the Class Members, the whole further justifying the award of punitive damages herein:
- " Notre panne de réseau de vendredi dernier était inacceptable. En termes simples, nous n'avons pas tenu notre promesse d'offrir le réseau le plus fiable au pays.
(...)
Tout le monde en convient, nos clients et clientes, nos gouvernements ainsi que notre équipe. Ce qui s'est produit est loin d'être acceptable."
- "Our network outage last Friday was unacceptable. Simply put, we failed on our promise to be Canada's most reliable network.

(...)

No one – not our customers, our governments, and not us – is anywhere close to finding what happened acceptable.”

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PLAINTIFFS

16. Plaintiffs reiterate the above allegations in the present section, as though recited at length.

Plaintiffs A [REDACTED] and A [REDACTED]

- 16.1. Plaintiffs A [REDACTED] and A [REDACTED] are married and share the same Rogers mobile contract/account for their and their children's mobile lines.
17. Plaintiffs have a Rogers wireless contract/account which was already in place on and before April 19, 2021. Indeed, Plaintiffs had already pre-paid for the wireless cellular and data service on their plan for the period including the time of the service outage which began on or about April 19, 2021.
18. As mentioned above, Plaintiffs experienced intermittent service interruptions during the entire morning and most of the afternoon of April 19, 2021. Plaintiffs could not properly and consistently make or receive calls, send or receives text messages, experience dropped calls, and could not otherwise use their cellular or data plan while not on wifi.
19. Plaintiff A [REDACTED] 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 (many of which were also experiencing the outage and therefore unable to contact Plaintiff A [REDACTED]). The outage continued for some of Defendants' customers even after Plaintiff's service was established, the whole continuing to inconvenience the Plaintiff.
- 19.1. Plaintiff A [REDACTED] relies on his mobile telephone and data plan in order to complete job function in the automotive sales industry. During the outage, he and his office colleagues all experienced intermittent or lack of wireless services and/or dropped calls, making it very difficult for them to properly conduct business on the day of the outage.
- 19.1.1. During the 2022 outage, Plaintiffs A [REDACTED] and A [REDACTED] were travelling abroad in Florida, USA. They were unable to make and receive calls or use data during the 2022 outage, which was even more disruptive and damaging while away from their home in Quebec.

19.1.2. Plaintiff A [REDACTED] had a very important work conference call scheduled with multiple people, which was cancelled on July 8, 2022 as a result of the 2022 outage affecting the Defendants' networks.

19.1.3. At the time of the 2022 outage, Plaintiffs A [REDACTED] and A [REDACTED]'s children were away from home as well, some of whom were attending summer camp and the oldest daughter participating in a group trip in Israel. All the children had their own cellular phones on Plaintiff A [REDACTED]'s Rogers contract, and were therefore all affected by the outages as well. Plaintiffs A [REDACTED] and A [REDACTED] were therefore unable to reach or track their children during the outage since they had no access to the Defendants' network while travelling and this continued until the second day of the outage (July 9, 2021). This caused severe amounts of stress and fear for said Plaintiffs since they were unable to check on the wellbeing and safety of their children who were also travelling away from their home, or check on the wellbeing of their older parents.

19.1.4. In addition, Plaintiffs A [REDACTED] and A [REDACTED] experienced trouble getting around while travelling since they could no longer use navigation applications, since Defendants' networks were down. They therefore got lost and lost time, increasing their inconvenience, stress, and damages.

19.1.5. Moreover, Plaintiffs A [REDACTED] and A [REDACTED] were unable to transfer money due to the 2022 outage, had difficulty accessing menus at restaurants (since many restaurants now offer QR codes to scan instead of paper menus), and were not able to access 911 emergency services, all of which causing them further significant inconvenience, fear, loss of time and stress, while travelling away from Quebec.

19.1.6. Finally, the outage forced them to seek out public or other wifi networks in order to deal with important work issues, all of which hindered and reduced their time to enjoy their travels abroad.

Plaintiff R [REDACTED]

19.2. Plaintiff R [REDACTED] has a mobile phone contract with Defendant Rogers. She relies heavily on her mobile phone for her work as a real estate broker, namely to communicate with clients and other brokers, attend meetings (virtual and in person), review contracts and relevant real estate documents, etc. R [REDACTED] also relies on her mobile phone and Rogers network as a GPS in order to be able to get to her multiple appointments and meetings.

19.3. The real estate market is highly competitive and real estate brokers are required to be immediately reachable and accessible while travelling, failing which transactions and opportunities are lost. R [REDACTED]'s reputation and success are based on her quick response times and availability.

19.4. On the day of April 19, 2021, Plaintiff R [REDACTED] experienced severely intermittent and lower mobile service and coverage, which greatly prevented her from being able to properly

complete her work and service her clients. Plaintiff communicates herewith a copy of her Rogers invoice for the relevant months, as **Exhibit R-5**, *en liasse*.

19.5. More specifically, the April 19, 2021 outage caused Plaintiff R[REDACTED] the following damages, embarrassment, stress, loss of time, loss of potential profits, and inconveniences:

a) She arrived late to multiple meetings with other real estate brokers because she could not use her mobile phone as GPS and she was unable to call the brokers in order to inform them that she would be late;

b) She missed a scheduled virtual meeting with the director of her office since she could not access the mobile network;

c) She was scheduled to have a call with a colleague who was referring to her a new client wishing to purchase a building (with a \$5,000,000 budget). Since she was not able to complete the call due to the outage, the client signed with another real estate broker who was able to receive calls that day; this would have represented a potential commission of approximately \$100,000;

d) She cancelled a virtual visit scheduled with an investor client from Abitibi due to the outage. The client was interested in a \$500,000 condo and missed the opportunity to submit a timely offer, which condo was eventually and quickly sold to a different buyer who was not represented by R[REDACTED]; this transaction would have represented a commission of approximately \$10,000;

e) Finally, on April 18, 2021, R[REDACTED] showed a St. Lambert property to one of her clients (approximate value of \$900,000). The client was very much interested in the property. Since R[REDACTED] was not able to receive many emails on her mobile phone while travelling on April 19, 2021 (due to the outage), Plaintiff R[REDACTED] was delayed in receiving very important emails regarding said property from the listing broker. R[REDACTED] only received these emails in the evening when finally back at her desk. R[REDACTED] was therefore only able to submit an offer on the property the next day (April 20, 2021), which was too late since the property had already been sold to someone else in the meantime; this transaction would have represented a commission of approximately \$18,000, aside from the fact that the client in question was also willing to mandate R[REDACTED] to sell his own house as well, representing even more lost commissions.

19.6. During the 2022 outage, Plaintiff R[REDACTED] was travelling abroad in Italy. She was unable to make and receive calls or use data during the 2022 outage, which was even more disruptive and damaging while away from her home in Quebec.

19.7. While travelling abroad, her day-to-day work-related calls were being answered and handled by two (2) of her colleagues while she was obviously still working remotely while on vacation, handling important and urgent matters. Unfortunately, those two (2)

colleagues were also experiencing the same Rogers network outage and were therefore unable to receive and handle Plaintiff R■■■■'s important calls, causing stress and inconvenience and adding to the negative effect on Plaintiff R■■■■'s professional reputation caused by Defendants' negligence and faults.

19.8. The July 8-9, 2022 outage caused Plaintiff R■■■■ the following:

- a) She had already left her hotel when the 2022 outage began (Italy time). She then realized that she no longer had access to a cellular network connection and had to rush back to the hotel in order to connect to a wifi network and continue negotiating a very time-sensitive transaction valued at \$2,000,000, with a \$40,000 commission for Plaintiff R■■■■. The wifi connection was very poor and it was difficult to communicate with the listing agent. The 2022 outage therefore caused her stress, inconvenience and loss of precious vacation time.
- b) She was unable to communicate at all with many clients involved in time-sensitive negotiations to purchase or sell properties and time-sensitive issues regarding property management, all of which adding to Plaintiff R■■■■'s embarrassment, stress, inconvenience, and damages.
- c) She was scheduled to have a call with a new potential client wishing to make an offer to purchase a specific building immediately (the proposed client having been referred to Plaintiff R■■■■ by an existing satisfied client). Since Plaintiff R■■■■ was not able to complete the call due to this 2022 outage, the proposed client mandated another real estate broker who was able to receive calls that day, and who proceeded to make the offer to purchase; this would have represented a potential commission of approximately \$15,000 and has further affected Plaintiff's reputation.

19.9. In addition, Plaintiff R■■■■ experienced trouble getting around while travelling in Italy since she could no longer use navigation applications, since Defendants' network was down. She therefore got lost and lost time, increasing her inconvenience, stress, and damages.

- 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 Plaintiffs 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 (...) service interruptions would not occur. Defendants clearly failed in this regard and have (...) repeatedly admitted in their (...) communications that they (...) had failed to live up to their (...) Customers' expectations, namely at Exhibit R-3:

“Connecting Canadians is at 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.”.

22. As a result of the service interruption and outage of April 2021, Plaintiffs and the Class Members are justified in claiming a prorated refund of the monthly plan price paid, plus additional charges for international roaming, taking into account the time of the service outage (if not already credited or refunded to the Class Members).
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. Defendants have to date refused to indemnify the Class Members in this regard.

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

24. Plaintiffs 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 2021 outage in question and/or suffered other damages caused by the outage, such as not being able to access governmental services, 911 emergency services, etc.
26. Every Class Member has experienced 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 and as appears *inter alia* in the Exhibit R-4 online submissions received from Defendants’ customers and Class Members.

28.1. As mentioned above, and appears from the Exhibit R-3 message published by the Defendants following the 2021 outage, Defendants' own representative and Chief Technology Officer specifically admitted *inter alia* that:

- a) the "intermittent wireless service issues" were "unacceptable"; and
- b) this outage had caused "significant impact and frustration" to the Class Members;

28.2. Similarly, and after Defendants specifically promised the Class Members "to ensure that this never happens again" (Exhibit R-3), the 2022 outage occurred approximately 15 months later and Defendants' President and CEO sent emails to Plaintiffs A [REDACTED] and R [REDACTED], Exhibits R-11 and R-12, specifically admitted that (which is relevant to the claim for punitive damages herein):

- a) the 2022 outage was also "unacceptable";
- b) Defendants had "failed on our promise to be Canada's most reliable network";
- c) "No one – not our customers, our governments, and not us – is anywhere close to finding what happened acceptable.";

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 and other Class Members suffered damages as a result of the same outage across the country as well. Plaintiffs have filed the R-4 online submissions received by certain customers to date.
- 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 Defendants. 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 Defendants 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 and clients with adequate wireless, voice, data, 911, 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, including without limitation other fees charged such as roaming charges for international travel?
 - 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 Plaintiffs wish 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 Plaintiffs (Article 575 (2) C.C.P.), namely the following conclusions that Plaintiffs wish to introduce by way

of an originating application:

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

DECLARE the Defendant liable for the damages suffered by the Plaintiffs 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. Plaintiffs suggest that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a) Plaintiffs reside 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 Plaintiffs and the proposed Class practice in the District of Montreal.

41.1. We respectfully submit that this Honorable Court has jurisdiction over a national class action herein since:

- a) Defendant Rogers Communications Inc. has elected domicile and has an establishment in the Province of Quebec (Exhibit R-1);
- b) Defendant Rogers Communications Canada Inc. has an establishment in the Province of Quebec (Exhibit R-1);
- c) Defendant Fido Solutions Inc. has elected domicile and has an establishment in the Province of Quebec (Exhibit R-1);
- d) Defendants offer their telecommunication services to the Class Members across the country in the same way, and this case has to do with Defendants failure to properly do so;
- e) the 2021 outage represented a national outage which affected and caused damages to Class Members across the country, as admitted by the Defendants and as more fully alleged and detailed hereinabove (which was also the case for the 2022 outage);
- f) Defendants have admitted and confirmed that the “root cause of the intermittent wireless service issue impacting our customers was a recent Ericsson software update” (Exhibit R-3);
- g) Defendants have also admitted and confirmed that “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.” (Exhibit R-3);
- h) Defendants therefore attempted to blame the national 2021 outage on Ericsson and confirmed having worked with Ericsson in order to restore the services to the Class Members across Canada following the start of the 2021 outage;
- i) Defendant have admitted that Ericsson is their so-called “network partner Ericsson” (Exhibit R-3);
- j) Ericsson’s actions (or inactions) in the context of the so-called software update are therefore at the heart of the 2021 outage;

- k) Defendants may ultimately wish to ask to call their so-called “network partner Ericsson” into warranty at the merits stage herein;
- l) Defendants’ so-called “network partner Ericsson” is none other than Ericsson Canada Inc., which is domiciled at 8275 rte Transcanadienne, in the District of Montreal, Province of Quebec, the whole as more fully appears from the Registraire des entreprises du Québec report (“CIDREQ”) regarding Ericsson Canada Inc., communicated herewith as **Exhibit R-15**;
- m) Accordingly, Article 3148 C.C.Q. is fulfilled for many reasons, namely: Defendants have elected domiciles and establishments in Quebec, the dispute relates to their activities in Quebec, the national outage was apparently partially or wholly caused by Defendants’ so-called “network partner” Ericsson Canada Inc. from the Province of Quebec and therefore, faults and/or injurious acts and/or omissions were committed in Quebec which affected the entire national class (namely the root cause of the 2021 outage and the steps taken by Defendants together with Ericsson in order to restore the network services), and obligations arising from the contract were therefore to be performed in Quebec including the software updates carried out by Defendants’ “network partner Ericsson” from Quebec which affected the Class Members and Defendants’ networks across the country.

42. Plaintiffs, who are requesting to be appointed as Representative Plaintiffs, are in a position to properly represent the Class Members (Article 575 (4) C.C.P.), since:

- a) Their mobile telephone service was interrupted and affected during the outages;
- b) They suffered damages as a result of the service interruptions, as detailed above, including without limitation the prorated amount of their service plan which they had pre-paid (Defendants having later credited this amount to Plaintiffs after the institution of the present proceedings), and any roaming charges for international travel as more fully detailed above, as well as other damages caused by the outage such as loss of time, inconvenience, stress, fear, business losses and/or lost opportunity costs, etc.;
- c) They understand the nature of the action and have the capacity and interest to fairly and adequately protect and represent the interest of the Class Members;
- d) They are 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

Plaintiffs are ready and available to manage and direct the present action in the interest of the Class Members that Plaintiffs wish to represent;

- e) Plaintiff A [REDACTED] has already been attributed the status of representative and authorized to represent class members against the same Defendants, in the case of A [REDACTED] vs. Rogers Communications inc., 500-06-000575-114, which file was ultimately settled;
- f) Plaintiffs are determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
- g) Their interests are not antagonistic to those of other Class Members;
- h) They have given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intend to keep informed of all developments;
- i) They have 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. In this regard, Plaintiffs were able to collect and have filed Exhibit R-4, **under seal**;
- j) They, with the assistance of the undersigned attorneys, are 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 Plaintiffs as the Representative Plaintiffs representing all persons included in the Class herein described as:

All persons in Canada (...) who had and/or were using an existing "Rogers", "Rogers for Business", "Fido" and/or "Chatr" account, wireless line (cellular

phone number) or 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 and clients with adequate wireless, voice, data, 911, 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, including without limitation other fees charged such as roaming charges for international travel?
- 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?

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

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

DECLARE the Defendant liable for the damages suffered by the Plaintiffs 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** Defendants 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, Instagram 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, (...) July 29, 2022

(s) Lex Group Inc.

Lex Group Inc.

Per: David Assor

Class Counsel / Attorneys for Plaintiffs

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(Class Action Division)
SUPERIOR COURT

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

K [REDACTED] A [REDACTED]

-and-

J [REDACTED] A [REDACTED]

-and-

J [REDACTED] R [REDACTED]

v.

Plaintiffs

ROGERS COMMUNICATIONS INC.

-and-

ROGERS COMMUNICATIONS CANADA INC.

-and-

FIDO SOLUTIONS INC.

Defendants

**RE-AMENDED APPLICATION FOR
AUTHORIZATION TO INSTITUTE A CLASS
ACTION (DATED JULY 29, 2022)**

ORIGINAL

Me David Assor

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