

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO.: 500-06-000806-162

S U P E R I O R C O U R T
(Class Action)

UNION DES CONSOMMATEURS

Plaintiff

-and-

COREY MENDELSON

Designated Person

-vs-

SIRIUS XM CANADA INC.

Defendant

SETTLEMENT AGREEMENT, TRANSACTION AND RELEASE

I. PREAMBLE

- A. **WHEREAS** on September 1, 2016, an Application for authorization to institute a class action was filed against Sirius XM Canada Inc. ("**SXM**") in Superior Court, Province of Quebec, under Court File Number 500-06-000806-162, seeking *inter alia* the reimbursement of alleged unilateral increases in subscription fees charged to Quebec consumers since September 1, 2013 (the "**Class Action**").
- B. **WHEREAS** on February 23, 2018, the Superior Court authorized the institution of the Class Action against SXM for the following group (the "**Class**", and the members of the Class being referred to as "**Class Members**"):

All persons in Quebec who entered into subscription contracts for satellite or internet radio services provided by Sirius XM Canada Inc., and whose subscription fees were unilaterally increased by Sirius XM Canada Inc. since September 1, 2013 without proper notice.

- C. **WHEREAS** the Superior Court granted the status of Class Representative to Union des consommateurs.
- D. **WHEREAS** following authorization of the Class Action, no Class Members opted out.
- E. **WHEREAS** on or about July 3, 2018, the Plaintiff served an Originating Application of a Class Action Lawsuit in Court File Number 500-06-000806-162, which was

contested by the Defendant on or about June 14, 2019 by a Statement of Defence, as subsequently amended on or about January 17, 2022 (these proceedings, as well as all their supporting exhibits, being referred to as the "**Lawsuit**").

- F. **WHEREAS** on November 18, 2019, the Superior Court determined that the Class Period would run from September 1, 2013 to September 22, 2018 (the "**Class Period**").
- G. **WHEREAS** the Plaintiff retained the services of Accuracy to analyze data provided by SXM to calculate *inter alia* the total amount of subscription fees charged by SXM to Class Members over and above initial subscription fees that they were charged during the Class Period, accounting for "credits" / reimbursements received by Class Members that could be associated with a previous invoice for subscription fees (the "**Accuracy Quantum**"). The Accuracy Quantum submitted by the Plaintiff, and contested by SXM, totals \$28,116,206.
- H. **WHEREAS** the Class Members are divided between Current Subscribers and Former Subscribers (as these terms are defined hereinafter).
- I. **WHEREAS** the Plaintiff and Defendant have agreed to enter into a binding settlement in order to achieve full and final resolution of the SXM Class Action without any admission of liability, wrongdoing or fault on the part of the Defendant, or any admission of concessions on the part of the Plaintiff, thereby avoiding the delays and risks associated with a trial on the merits and potential appeals ("**Settlement**").
- J. **WHEREAS** the Settlement provides for substantial compensation for Class Members, as well as a simple and efficient process, designed to ensure prompt compensation for each Class Member, and the highest take-up rate possible.

WHEREFORE, SUBJECT TO APPROVAL BY THE COURT OF THIS SETTLEMENT PURSUANT TO ARTICLE 590 OF THE CODE OF CIVIL PROCEDURE (the "C.C.P."), THE PARTIES AGREE AS FOLLOWS:

1. The preamble forms an integral part of the Settlement.

II. PAYMENT OF THE SETTLEMENT FUNDS

2. Conditional upon the Court's approval of the Settlement as stipulated herein, SXM agrees to pay as collective recovery the full and total amount of twenty-two million Canadian dollars (**CAN \$22,000,000.00**) in principal, interest and additional indemnity ("**Gross Settlement Funds**").
3. In addition to the Gross Settlement Funds, SXM agrees to pay / reimburse the costs for publication of notices, expert costs incurred to date and reasonable expert

costs to be incurred going forward, and all costs associated with administering the claims pursuant to the Settlement (hereinafter, "**Costs**").

4. Effective upon the date of payment of (i) the Gross Settlement Funds, (ii) the expert costs incurred to date and (iii) the costs related to the Pre-Approval Notices and Post-Approval Notices (as defined below), SXM and its past and present shareholders, predecessors, successors, assigns, parents, affiliates, subsidiaries, agents, insurers, officers, directors, employees and their respective shareholders, assigns, parents, affiliates, subsidiaries, agents, officers, directors and employees (the "**SXM Released Parties**") shall be fully and finally released of any and all recourses and claims in respect of the facts, circumstances and damages alleged in the Lawsuit and supporting exhibits in Court File Number 500-06-000806-162 including without limitation, the claims alleged, or which could have been alleged, in the Lawsuit.
5. It is understood and agreed that SXM does not owe legal fees or other disbursements incurred by Class Counsel ("**Class Counsel Fees**"). It is also understood that Class Counsel, not SXM, shall be responsible for reimbursing the Fonds d'aide aux actions collectives ("**FAAC**") for any and all financial assistance that was provided, and that any additional amounts payable to the FAAC due to a Reliquat (as defined hereinafter) shall be paid out of the Gross Settlement Funds.
6. Pursuant to Article 590 C.C.P., Class Counsel must prepare an Application for Approval of the Settlement and Class Counsel Fees (the "**Approval Application**"). The Approval Application will ask that the Court *inter alia*:
 - a. Approve the Settlement, to which SXM consents;
 - b. Appoint a claims administrator (the "**Administrator**"), to which SXM consents;
 - c. Approve Class Counsel Fees, in regard to which SXM takes no position. The approval of the Settlement is not conditional upon the approval of Class Counsel Fees; and,
 - d. Approve a release in favour of the SXM Released Parties to be binding on the Class Members (the "**Release**").
7. The Gross Settlement Funds less Class Counsel Fees as approved by the Court constitute the "**Net Settlement Funds**" available for distribution to the Class Members.

III. DISTRIBUTION OF THE NET SETTLEMENT FUNDS AND CLAIMS ADMINISTRATION PROCESS

8. The Administrator shall be selected by SXM with the consent of Plaintiff counsel, which consent shall not be unreasonably withheld.
9. For the purposes of this Settlement, the Parties agree that:
 - a. **“Former Subscribers”** are Class Members who are not party to a subscription contract with SXM as of the date of August 31st, 2023, including, for greater certainty, Class Members who are on a free trial but have not agreed to become party to a subscription contract with SXM pursuant to which they have to pay subscription fees at the expiry of their free trial.
 - b. **“Current Subscribers”** are (i) Class Members who are party to a subscription contract with SXM as of the date of August 31st, 2023, pursuant to which they have paid subscription fees, and (ii) Class Members who are on a free trial and have agreed to become party to a subscription contract with SXM pursuant to which they have to pay subscription fees at the expiry of their free trial.
 - c. Class Members may have had multiple account numbers during the Class Period, and these accounts will be aggregated to the Class Member level. Identification at the Class Member level requires the match of the Class Member’s first and last name along with one or more match of their physical address, email address, or phone number on SXM’s file.
10. Based on the proportion of the Net Settlement Funds to the Accuracy Quantum, Accuracy will calculate on a *pro rata* basis the amount that each Class Member is entitled to receive under the Settlement (**“Class Member’s Net Recovery”**), it being understood that each Class Member’s Net Recovery shall encompass all active and inactive accounts for each Class Member, and Accuracy will deliver to SXM a list of the Class Members and their corresponding Class Member’s Net Recovery, by account number(s) (the **“Accuracy List”**). SXM and the Plaintiff agree that this Settlement Agreement may be amended with approval of the Court in order to exclude potential *de minimis* Class Member’s Net Recovery, in which case such *de minimis* Class Member’s Net Recovery shall form part of the Reliquat.
11. Within fifteen (15) business days of receipt of the Accuracy List, SXM will identify and validate with Accuracy which Class Members are Current Subscribers and which Class Members are Former Subscribers.
12. Based on the data provided by SXM, Accuracy will determine, based on each Class Member’s Net Recovery, the aggregate amount owed to Former Subscribers

(“**Former Subscriber Total**”) and the aggregate amount owed to Current Subscribers (“**Current Subscriber Total**”).

13. Within fifteen (15) business days of the Superior Court Judgment maintaining the Approval Application (“**Approval Judgment**”), SXM will set aside in a separate account or remit to the Administrator in an account in trust the Former Subscriber Total, it being understood that any interest accrued on said amount will be for the benefit of SXM.
14. Within fifteen (15) days of the Approval Judgment, SXM shall also pay, out of the Gross Settlement Funds, the Class Counsel Fees as approved by the Court directly to Class Counsel by way of certified cheque or wire transfer.
15. For Former Subscribers, Class Members’ Net Recovery will be payable in the manner provided for in sections 18 and 19 (“**Former Subscriber Payments**”).
16. For Current Subscribers, Class Members’ Net Recovery will be payable by deposit into their current active SXM account, to be credited towards subscription fees charged upon automatic billing of their subscriptions (“**Current Subscriber Payments**”). Current Subscribers may elect not to continue their SXM subscriptions, in which case the Current Subscriber Payments, or any balance thereof not yet applied towards subscription fees payable, will be refunded to their credit card unless otherwise instructed by the subscriber at time of account closing.
17. For the purposes of the following sections, the Parties agree that:
 - a. an email sent by the Administrator or SXM (with a copy to the Administrator) to the Class Member’s last known email address in SXM’s file that is returned to sender because it cannot be delivered for any reason whatsoever shall be deemed to be a “**Bounce Back**”; and,
 - b. a direct mail sent by the Administrator or SXM (with a copy to the Administrator) to the Class Member’s last known address in SXM’s file that is returned to sender because it cannot be delivered for any reason whatsoever shall be deemed to be “**Undeliverable**”.

Distribution of the Former Subscriber Payments

18. The Administrator, or SXM under the supervision of the Administrator, shall pay Class Members’ Net Recovery out of the Former Subscriber Total to Former Subscribers without the need for such Class Members to submit a claim.
19. Within thirty (30) business days of the Approval Judgment, SXM under the supervision of the Administrator, shall send each Former Subscriber an email (with a copy to the Administrator) at the last known email address in SXM’s file (or by letter at the Class Member’s last known address in SXM’s file, if no known email address or in the event of a Bounce Back), informing them of the following:

- a. The Former Subscriber's Class Member's Net Recovery, as set out in the Accuracy List;
 - b. The Class Member's Net Recovery shall be sent by way of Interac e-Transfer at the last known email address in SXM's file or by cheque, if no known email address or in the event of a Bounce Back, to the Class Member's last known address; and,
 - c. The Former Subscriber's right to contact SXM (or the Administrator, pursuant to SXM's instructions at the time of sending the notice) within sixty (60) business days of the Approval Judgment to advise of a change of address and/or change in their payment method, in which case SXM or the Administrator shall make the Former Subscriber Payment as directed by the Former Subscriber.
20. Within ninety (90) business days of the Approval Judgment, the Administrator, or SXM under the supervision of the Administrator, shall proceed to each Former Subscriber's Payment by sending the Class Member's Net Recovery by way of Interac e-Transfer at the last known email address in SXM's file, or by cheque at the Class Member's last known address in SXM's file (if no known email address or in the event of a Bounce Back), it being understood that no additional step shall be required from the Administrator or SXM should the letter be Undeliverable, or as otherwise instructed by the Former Subscriber.
21. A draft copy of the communication referred to at section 19 hereinabove and to be sent to Former Subscribers is appended to this Settlement as **Appendix A**.
22. All Interac e-Transfer payments, direct deposits or cheques sent to Former Subscribers which are expired, cancelled, or simply not cashed, as the case may be, after six (6) months will constitute residual funds (the "**Reliquat**").

Distribution of the Current Subscriber Payments

23. SXM, under the supervision of the Administrator, shall pay Class Members' Net Recovery to Current Subscribers without the need for such Class Members to submit a claim.
24. Within thirty (30) business days of the Approval Judgment, the Administrator, or SXM under the supervision of the Administrator, will send an email (with a copy to the Administrator) at the last known email address in SXM's file (or by letter at the Class Member's last known address in SXM's file, if no known email address or in the event of a Bounce Back) to each Current Subscriber informing them of the following:
- a. The Current Subscriber's Class Member's Net Recovery, as set out in the Accuracy List;

- b. That the Class Member's Net Recovery will be automatically deposited into their current active SXM account and will be credited towards subscription fees owed by said Class member upon automatic billing(s) of their SXM subscription(s);
 - c. The Current Subscribers' right to contact SXM within sixty (60) business days of the Approval Judgment to advise of a change of address and/or change in their payment method; and,
 - d. That if they elect not to continue their SXM subscription, the Class Member's Net Recovery, or any balance thereof, shall be credited to the Current Subscriber's credit card that SXM has on account within sixty (60) days, unless the subscriber instructs SXM to proceed to a different payment method at the time of account closing.
25. Within ninety (90) business days of the Approval Judgment, SXM will proceed to the Current Subscribers Payment by automatically depositing into the Class Member's current active SXM account the Class Member's Net Recovery.
26. A draft copy of the communication referred to at section 24 hereinabove and to be sent to the Current Subscribers is appended to this Settlement as **Appendix B**.
27. In the event that Current Subscribers elect not to continue their subscriptions with SXM when they have not applied the entirety of their Class Member's Net Recovery to subscription payments, and in the event that, despite commercially reasonable efforts, SXM is unable to issue a refund, either directly to their credit card, by Interac e-Transfer, direct deposit, or by cheque sent to the Current Subscribers which are expired, cancelled or simply not cashed, as the case may be, after six (6) months, the remainder of said Class Member's Net Recovery, shall be added to the Reliquat. For greater certainty, any credit balance on the Current Subscribers account other than the Class Member's Net Recovery shall not be added to the Reliquat.

Reliquat

28. In accordance with the *Act respecting the Fonds d'aide aux actions collectives*, in the event of a Reliquat, the FAAC shall be paid the percentage fixed by government regulation. The remainder of the Reliquat, less the percentage paid to the FAAC, will be donated to one or more charitable organization(s) working in Quebec to be agreed upon by the Parties, depending on the amount of the Reliquat if any, as agreed upon by the Parties at the time that the Reliquat is determined.

Miscellaneous

29. Within thirty (30) business days of the full completion of the Current Subscriber Payments and of the Former Subscriber Payments, including in the latter case the establishment of the Reliquat in the manner provided at section 22 hereinabove,

the Administrator shall file with the Court a closing report detailing the manner in which the Net Settlement Funds have been distributed, including information as to the number of Class Members who have been compensated, and the amount of any Reliquat.

30. The Parties may agree to minor modifications to the distribution process without prior authorization by the Court, provided such modifications remain consistent with the spirit of the Settlement.

IV. NOTICES TO CLASS MEMBERS

31. SXM will be responsible for the publication of notices to Class Members in accordance with Article 590 C.C.P., namely:
- a. A notice informing them of the date and place of the hearing of the Approval Application and of their right to assert claims (the “**Pre-Approval Notices**”), a copy of which is set forth in **Appendix C**; and
 - b. A notice informing them of the Approval Judgment (the “**Post-Approval Notices**”), which shall be the communications referred to at paragraphs 21 and 26 above.
32. Pre-Approval Notices to Class Members will be published on the class action registry, on Class Counsel’s website, as well as one time in each of the following newspapers:
- a. LaPresse+ and Le Soleil, in French; and,
 - b. The Montreal Gazette, in English.
33. The Administrator, or SXM under the supervision of the Administrator, will send Post-Approval Notices to Class Members by email at the last known email address in SXM’s file or by letter at the Class Member’s last known address in SXM’s file, if no known email address or in the event of a Bounce Back, it being understood that no additional step shall be required from the Administrator should the letter be Undeliverable. The Administrator will send a copy of the list of the mode of the Notice provided to Class Members to SXM, for their records.

V. LANGUAGE

34. SXM shall be responsible for preparing a French translation of this Settlement, which shall be equally binding on the Parties. The French translation must be prepared at the time of the publication of the Pre-Approval Notices. In the event of any inconsistency between the English and French versions of the Settlement, the English version shall govern.

VI. RELEASE

35. Upon SXM's payment of (i) the Gross Settlement Funds, (ii) the expert costs incurred to date and (iii) the costs related to the Pre-Approval Notices and Post-Approval Notices, the Approval Judgment shall declare that the Plaintiff, on behalf of all Class Members, has granted a full, final, binding and complete release to the SXM Released Parties from any and all recourses and claims they had, have or may have in respect of the facts, circumstances and damages alleged in the Lawsuit and supporting exhibits in Court File Number 500-06-000806-162 including without limitation, the claims alleged, or which could have been alleged, in the Lawsuit.

VII. ADMISSIBILITY AS EVIDENCE

36. Neither the Settlement, nor anything contained herein, nor any of the negotiations or proceedings connected to it, nor any related document, nor any other action taken to carry out the Settlement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, regulatory or administrative action or proceeding against the SXM Released Parties.
37. Notwithstanding the above, the Settlement may be referred to or offered as evidence in a proceeding to approve or enforce the Settlement and as otherwise required by law.

VIII. MEDIA

38. Except for the notices required to be sent pursuant to this Settlement or as may be required by law, the Parties do not believe it is necessary to issue a press release concerning this Settlement.
39. The Parties agree that they will not make disparaging comments about, or that would damage the reputation of, the other and any comments made to the media, if any, in relation to the Settlement, including by way of written or verbal communications to journalists, reporters or commentators, will be solely to outline the virtues of this Settlement.

IX. BINDING AND ENFORCEABLE EFFECT OF THE SETTLEMENT

40. The Settlement is enforceable and binding from the time of the Approval Judgment.
41. The Settlement is indivisible and has the same effect as a transaction within the meaning of articles 2631 et seq. of the *Civil Code of Québec*.
42. The Settlement supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements and

agreements in principle in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement, unless expressly incorporated herein.

43. The Parties agree that the Honourable Sylvain Lussier, j.s.c., or, in the event of his inability to act, any other judge of the Superior Court designated by the Chief Justice, shall remain seized of the file for all matters that may arise during the execution of the Settlement, until the filing of the Administrator's closing report.
44. If the Court refuses to approve the Settlement, it shall be null and void, such that the Parties shall be placed in the same legal position as that which prevailed prior to its conclusion, and they may not invoke the Settlement in any way in the pursuit of the litigation which will then continue to oppose them in file 500-06-000806-162.
45. The Settlement will be governed by and construed in accordance with the laws in force in the Province of Quebec, Canada, and the Parties submit to the exclusive jurisdiction of the Superior Court of Quebec, in the Judicial District of Montreal, in this regard.
46. The Settlement may be executed in one or more copies, each of which shall be deemed to be valid and binding, and all of which together shall be deemed to be the same transaction, and a facsimile or digitized signature shall be deemed to be an original signature for the purposes of the performance hereof.
47. The Parties hereto acknowledge **(i)** that all of the provisions of this document were negotiated by the Parties hereto and were neither pre-determined, imposed nor drawn up by, on behalf of or on instructions of one of the Parties hereto, and **(ii)** that they have required that this document and all related documents be drawn up and executed solely in English. / *Les parties aux présentes reconnaissent (i) que toutes les dispositions du présent document ont été librement négociées par les parties et n'ont pas été prédéterminées, imposées ni rédigées par l'une des parties aux présentes, pour son compte ou suivant ses instructions, et (ii) qu'elles ont exigé que le présent document et tous les documents qui s'y rattachent soient rédigés et signés uniquement en anglais.*

[Signatures on the following page]

WHEREFORE, the Parties have executed this Settlement on the dates provided below.

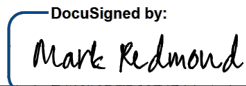
In Montreal, September 28 2023,



PLAINTIFF, Union des consommateurs

By: Geneviève Morand

In Toronto, September 27 2023,

DocuSigned by:


DEFENDANT, Sirius XM Canada Inc.

By: Mark Redmond