

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000947-180

SUPERIOR COURT  
(Class Action Chambers)

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PANAGIOTIS LEVENTAKIS, residing  
and domiciled at [REDACTED]

Applicant

v.

**AUDIBLE INC.**, legal person, having its  
head office at One Washington Park,  
Newark, New Jersey, 07101, USA

and

**APPLE, INC.**, legal person, having its  
head office at One Infinite Loop,  
Cupertino, California, 95014, USA

and

**APPLE CANADA INC.**, legal person,  
having its head office at 120 Bremner  
Boulevard, Suite 1600, Toronto, Ontario  
M5J 0A8, Canada

and

**AMAZON.COM, INC.**, legal person,  
having its head office at 410 Terry  
Avenue North, Seattle, Washington,  
98109-5210, USA

and

**AMAZON.COM.CA, INC.**, legal person,  
having an address for service at  
Corporation Service Company, 300  
Deschutes Way SW, Suite 304,  
Tumwater, Washington, 98501, USA

Defendants

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**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO  
OBTAIN THE STATUS OF REPRESENTATIVE  
(ART 574 C.C.P. AND FOLLOWING)**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE CLASS ACTION CHAMBERS IN THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES AS FOLLOWS:**

**I. GENERAL PRESENTATION**

1. The Applicant wishes to institute a class action on behalf of the class hereinafter described, and of which the Applicant is a member, namely:

*“All persons, entities, partnerships or organizations in Québec who purchased digital audiobooks from the Defendants (“**Class Members**”), or any other group to be determined by the Court, between 2003 and 2017 (“**Class Period**”).”*

**A. Overview**

2. The dominance of online platforms is the subject of increasing public attention and controversy. Technology companies including Apple Computer, Inc. and Amazon.com, Inc. dominate the news-cycle and the marketplace. At the same time, consumers take for granted that these mega-corporations will at least compete with one another. In the market for digital audiobooks, however, Apple Computer, Inc. and Amazon.com, Inc. chose not to compete with each other. Instead, they manipulated the market for their mutual benefit, in breach of the *Competition Act*, the *Consumer Protection Act* and the *Civil Code of Quebec*. Through this suit, Québec consumers seek to hold the Defendants accountable for their unlawful conduct.

**B. The Parties**

3. Audible Inc. is a company incorporated under the laws of New Jersey, USA, with a principal place of business at One Washington Park, 16<sup>th</sup> Floor, Newark, New Jersey, USA 07101 (“**Audible**”). Audible is a subsidiary of Amazon.com, Inc. Audible carries on business in Québec and across Canada, as appears from the corporate search results for Audible Inc. disclosed as **Exhibit P-1**.
4. Apple, Inc. is a company incorporated under the laws of California, USA, with a principal place of business at One Infinite Loop, Cupertino, California, USA 95014

("Apple Inc.") and an address for service at C T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017 USA. Apple Inc. carries on business in Québec and across Canada, as appears from the corporate search results for Apple, Inc. disclosed as **Exhibit P-2**.

5. Apple Canada Inc. is a company incorporated under the laws of Ontario, Canada, with a principal place of business at 120 Bremner Boulevard, Suite 1600, Toronto, Ontario M5J 0A8 ("**Apple Canada**"). Apple Canada is a wholly-owned subsidiary of Apple Inc. Apple Canada carries on business in Québec and across Canada, as appears from the corporate search results for Apple Canada Inc. disclosed as **Exhibit P-3**.
6. Apple Inc. and Apple Canada are together "**Apple**". These Defendants functioned as a joint enterprise. Each of these Defendants was an agent of the other for the purposes of developing, marketing, distributing, selling and managing Apple's audiobooks business and each is solidarily liable for the acts and omissions of the other.
7. Amazon.com, Inc. is a company incorporated under the laws of Delaware, USA, with a principal place of business at 410 Terry Avenue North, Seattle, Washington, 98109-5210, USA and an address for service at Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware, USA ("**Amazon.com**"). Amazon.com carries on business in Québec and across Canada, as appears from the corporate search results for Amazon.com, Inc. disclosed as **Exhibit P-4**.
8. Amazon.com.ca, Inc. is a company incorporated under the laws of Delaware, USA, with an address for service at Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, Washington 98501 USA ("**Amazon.ca**"). Amazon.ca is a subsidiary of Amazon.com. Amazon.ca carries on business in Québec and across Canada, as appears from the corporate search results for Amazon.com.ca, Inc. disclosed as **Exhibit P-5**.
9. Amazon.com and Amazon.ca are together "**Amazon**". Each is solidarily liable for the acts and omissions of the other.
10. The Applicant, Panagiotis "Peter" Leventakis, is a resident of [REDACTED] who has purchased audiobooks from the Defendants.

### ***C. Audiobooks***

11. Audiobooks are spoken-word recordings of a text being read.
12. Starting in the 1950s, record companies began releasing recordings of poetry, comedy and stories on LPs. In the 1970s, recordings of books on cassette tapes

became popular. Companies such as “Books on Tape” distributed recordings of novels, in abridged and unabridged forms, as well as non-fiction works. Recordings were increasingly performed by professional actors. In the 1980s and 1990s, the audio publishing business matured into a multi-billion-dollar industry. Up until the 2000s, the most popular formats for audiobooks were cassettes and later, compact discs.

13. A significant proportion of audiobooks are produced based on existing written works. Audiobook producers make arrangements with publishers and authors of those works to obtain the rights to make audiobook versions.
14. In the 1990s, the rise of the internet and technological developments lead to the creation of digital audiobooks. Digital audiobooks allowed listeners freedom from physical media and the internet permitted near-instant downloading of titles from websites. By not later than about 2008, digital audiobooks accounted for more than 50% of all audiobooks sold, the whole as appears from four press releases by the Audio Publishers Association and an article from Good E-Reader entitled Global Audiobook Trends and Statistics for 2018, disclosed, *en liasse*, as **Exhibit P-6**.
15. Today, digital audiobooks (“**Audiobooks**”) are the main format by which spoken-word recordings are produced, distributed and sold.

#### ***D. Audible***

16. Audible was founded in 1995 as a provider of digital audiobooks. In 1998, Audible was the first publisher to maintain a website - [www.audible.com](http://www.audible.com) - from which digital audiobooks could be purchased and downloaded by customers, including customers in Canada.
17. Audible produces, distributes and sells Audiobooks directly as well as through other platforms, including [www.amazon.com](http://www.amazon.com), [www.amazon.ca](http://www.amazon.ca) and the iTunes Store.
18. Today, Audible is the world’s largest producer of Audiobooks and it has the biggest catalog of Audiobooks. Audible’s content includes more than 375,000 Audiobooks from publishers, entertainers, magazine and newspaper publishers and business information providers. Audiobook content includes books of all genres, as well as radio shows (classic and current), speeches, interviews, stand-up comedy and audio versions of periodicals.
19. Audible went public in 1999. In 2008, Audible was acquired by Amazon.com for \$300-million USD. Audible remains a subsidiary of Amazon.com, as appears from a copy of Amazon.com’s Annual Report for 2008 disclosed as **Exhibit P-7**.

20. In September 2017, Audible opened [www.audible.ca](http://www.audible.ca), a dedicated Canadian Audiobook service.

### ***E. Audiobooks on Apple iTunes and Amazon***

21. Apple is a multinational technology company that designs, develops, and sells consumer electronics, software and online services. Apple operates a variety of online marketplaces for the sale and distribution of digital products and services, including the iTunes Store.

22. Apple opened the iTunes Store on April 28, 2003. The iTunes Store is an online platform for the sale and distribution of digital media, including music and movies. The iTunes Store can be accessed on desktop and mobile devices, especially Mac computers and Apple iPods, iPhones and iPads. Apple, through the iTunes Store, is the largest music vendor in the world.

23. Apple began selling Audiobooks through the iTunes Store in about 2003, including in Canada.

24. Amazon is the world's largest online retailer. Amazon.com operates one of the world's largest online marketplaces at [www.amazon.com](http://www.amazon.com). Amazon.com also operates through other websites and geographically-focused marketplaces including [www.amazon.ca](http://www.amazon.ca) for Canada. Amazon sells consumer products through its websites and marketplaces. In addition to selling physical goods, Amazon is an online platform for the sale and distribution of digital media, including music and movies.

25. Amazon began selling Audiobooks on [www.amazon.com](http://www.amazon.com) and [www.amazon.ca](http://www.amazon.ca) in about 2008 after it acquired Audible. Until that time, Amazon would direct customers who wanted to download Audiobooks to [www.audible.com](http://www.audible.com).

26. Amazon and Apple are and were competitors in the market for the sale of Audiobooks.

27. Together, Audible, Amazon and Apple had approximately 60% of the market for audiobooks (of all formats) in Canada, at material times, as appears from a March 2015 and a November 2016 publication by BookNet Canada disclosed, *en liasse*, as **Exhibit P-8**.

28. Audible, Amazon and Apple are and were each sellers and distributors of Audiobooks.

29. Each of Audible, Amazon and Apple operated production facilities for the creation of digital media, including movies, television shows and music, at material times. Each

of Audible, Amazon and Apple either produced or had the ability to produce Audiobooks at all material times.

30. Audible and Amazon are and were actual or potential competitors of Apple for the production, sale and delivery of Audiobooks.

#### ***F. Unlawful Agreement***

31. In 2003, Audible and Apple entered into an exclusive, worldwide agreement for the provision of Audiobooks (the "**Exclusive Agreement**"), as appears from an Apple press release dated October 16, 2003 and disclosed as **Exhibit P-9**. Under the terms of the Exclusive Agreement, Audible became the sole provider of Audiobooks to the iTunes Store. In addition, Audible was forbidden from supplying Audiobooks to any online platform for the sale of digital audiobooks except for the iTunes Store or Audible's own website - [www.audible.com](http://www.audible.com).

32. The Exclusive Agreement continued even after Amazon acquired Audible in 2008. During the term of the Exclusive Agreement, Audible's Audiobooks were available only from Apple (through the iTunes Store), directly from Audible (at [www.audible.com](http://www.audible.com)) and from Amazon (at [www.amazon.com](http://www.amazon.com) and [www.amazon.ca](http://www.amazon.ca)). Concurrently, Audible and Amazon did not supply Audiobooks to any online platform for the sale of Audiobooks except for the iTunes Store, Amazon and [www.audible.com](http://www.audible.com).

33. As a consequence, from 2008 onwards, Apple and Amazon, as the two largest sellers of Audiobooks in the world, had an agreement or arrangement not to compete in the production, distribution and sale of Audiobooks. The Defendants excluded price competition and pressure from other sellers and platforms, enabling the Defendants to charge an unlawful premium for Audiobooks sold through the iTunes Store and Amazon and on [www.audible.com](http://www.audible.com). The Defendants restricted the supply of Audiobooks by excluding Audiobooks produced by third parties from a majority of the market.

34. The Exclusive Agreement had the effect of:

- a. Fixing, maintaining, increasing or controlling the price for the supply of Audiobooks;
- b. Allocating sales, territories, customers or markets for the production or supply of Audiobooks; and
- c. Fixing, maintaining, controlling, preventing or lessening the production or supply of Audiobooks.

35. The Exclusive Agreement between the Defendants was contrary to the *Competition Act*, s 45 (“**Unlawful Agreement**”) or was at minimum an attempt to commit acts contrary to the *Competition Act*, s 45.
36. The effects of the Unlawful Agreement were felt directly by consumers in Québec and Canada.
37. The Defendants committed acts in furtherance of the Unlawful Agreement, including but not limited to:
- a. the exchange of contracts, agreements and communications concerning the implementation of the Unlawful Agreement;
  - b. the listing for sale of Audiobooks in the iTunes Store, on [www.audible.com](http://www.audible.com), and on [www.amazon.com](http://www.amazon.com) and [www.amazon.ca](http://www.amazon.ca), in accordance with the terms of the Unlawful Agreement; and
  - c. the maintenance of digital and physical infrastructure for the production, delivery and sale of Audiobooks in the iTunes Store, on [www.audible.com](http://www.audible.com) and on [www.amazon.ca](http://www.amazon.ca), in accordance with the terms of the Unlawful Agreement.
38. The senior officers and directors of Audible, Amazon and Apple were at all times fully aware of the Unlawful Agreement and took active steps to implement its terms.

### **G. The Overcharge**

39. As a result of the Unlawful Agreement, the Defendants charged supra-competitive prices for all Audiobooks sold through the iTunes Store, [www.amazon.ca](http://www.amazon.ca) and [www.audible.com](http://www.audible.com).
40. In addition, or in the alternative, the Defendants benefitted from control of the market for Audiobooks as a result of the Unlawful Agreement to increase their market share and sales and used their position to make preferential arrangements with publishers or other suppliers of content for Audiobooks, thereby increasing their margins on Audiobooks.
41. The Applicant and Class Members purchased Audiobooks through the iTunes Store, [www.amazon.ca](http://www.amazon.ca) and [www.audible.com](http://www.audible.com). As a result of the Unlawful Agreement, the Applicant and Class Members paid supra-competitive prices for those Audiobooks. The difference between what the Applicant and Class Members paid and what they should have paid in the absence of the Unlawful Agreement was an illegal, anti-competitive overcharge (“**Overcharge**”).

42. The Defendants collected the Overcharge from the Applicant and Class Members.
43. The Defendants are the ultimate recipients or beneficiaries of part, or all of, the Overcharge from the sale of Audiobooks through the iTunes Store, [www.amazon.ca](http://www.amazon.ca) and [www.audible.com](http://www.audible.com). Amazon.ca, Audible and Apple Canada received and benefitted from part or all of the Overcharge.
44. The Applicant and Class Members have an interest in the funds received from them by the Defendants as a result of the Overcharge.
45. The Defendants wilfully concealed the existence of the Overcharge from the Applicant and Class Members.

#### ***H. End of the Exclusive Agreement***

46. In November 2015, the German Bundeskartellamt (Federal Cartel Office) opened proceedings against Audible, Amazon and Apple for anti-competitive conduct in the global market for Audiobooks, as appears from an article on the Bundeskartellamt's website disclosed as **Exhibit P-10**. The European Commission also began inquiries into Audible, Amazon and Apple's activities in the Audiobooks market.
47. As a result of the European competition authorities' investigations, Audible, Amazon and Apple agreed to end the Exclusive Agreement in January 2017, the whole as appears from an article on the Bundeskartellamt's website, a European Commission press release and an article published by The Verge, disclosed, *en liasse*, as **Exhibit P-11**.
48. The effects of the Unlawful Agreement have persisted after the end of the Exclusive Agreement. As a result of the dominant positions obtained by these competing firms through the Unlawful Agreement, Apple and Amazon have continued to extract the Overcharge for sales of Audiobooks through the iTunes Store, [www.amazon.ca](http://www.amazon.ca) and [www.audible.com](http://www.audible.com). In addition, or in the alternative, the market positions obtained by the Defendants as a result of the Unlawful Agreement has permitted them to continue making preferential arrangements with publishers or other suppliers of content for Audiobooks, thereby increasing their margins on Audiobooks, even after the end of the Unlawful Agreement.

#### ***I. The Defendants' Liability***

49. The *Competition Act* applies to business transacted in Canada, including sales made over the internet.
50. The Defendants have breached s 45 of the *Competition Act*, as amended from time to time.



51. Audible and Amazon are and were “competitors” of Apple within the meaning of the *Competition Act*, ss 45(1) and (8).
52. Audiobooks are “products” within the meaning of the *Competition Act*, s 2 and 45(1). The delivery of Audiobooks over the internet is a “service” within the meaning of the *Competition Act*, s 2 and 45(1).
53. The iTunes store, [www.amazon.ca](http://www.amazon.ca), [www.amazon.com](http://www.amazon.com) and [www.audible.com](http://www.audible.com) are “territories” or “markets” in the worldwide market for Audiobooks, within the meaning of the *Competition Act*, s 45(1) (b).
54. As set out above, by means of the Unlawful Agreement, Audible, Amazon and Apple have conspired, agreed and arranged to:
- a. fix, maintain, increase or control the price for the supply of Audiobooks;
  - b. allocate sales, territories, customers or markets for the supply of Audiobooks;  
and
  - c. fix, maintain, control, prevent, lessen or eliminate the supply of Audiobooks.
55. As a result of the Defendants’ breaches of the *Competition Act*, s 45, the Applicant and Class Members have suffered loss and damage in the form of the Overcharge.
56. In addition, or in the alternative, the Defendants Audible, Amazon.ca and Apple Canada implemented directives, instructions, intimations of policy or other communications from their American parent companies, which communication was for the purpose of giving effect to the Unlawful Agreement, in breach of the *Competition Act*, s 46.
57. The Applicant and Class Members are entitled to recover from the Defendants an amount equal to the loss or damage suffered by them in the full amount of the Overcharge, under the *Competition Act*, s 36(1)(a), as well as the costs of investigation.
58. Through their actions as set out above, the Defendants also breached article 219 of the *Consumer Protection Act* by making false or misleading representations with regard to the true price of the Audiobooks.
59. The Defendants’ actions constitute unfair and unconscionable business practices.

60. In addition to the remedies provided for under the *Consumer Protection Act*, said conduct warrants the award of punitive damages under article 272 of the *Consumer Protection Act*.

61. Furthermore, the Defendants breached their obligations under the *Civil Code of Quebec* such as, and without limiting the generality of the foregoing, their good faith obligation and their duty not to cause injury to another.

### **Punitive Damages**

62. The Applicant is justified in requesting punitive damages in light of the Defendants' malicious, calculated and intentional conduct, said conduct departing to a marked degree from ordinary standards of decent behaviour and violating the trust of their customers.

63. The Defendants' actions are part of a pattern of willful disregard for customers' rights by the Defendants and other technology companies. The Defendants' actions also constitute an intentional violation of their obligations. As such, an award of punitive damages should be made against the Defendants.

### **Unjust Enrichment**

64. As set out above, each of the Defendants has been enriched by the collection of the Overcharge from the Applicant and Class Members.

65. The Applicant and Class Members have been deprived through the payment of the Overcharge to the Defendants. As such, there is a correlation between the Defendants' enrichment and the Applicant and Class Members' impoverishment.

66. There is no justification as to why the Defendants should have received or should retain this benefit. The violations of their legal obligations as set out above, as well as of the *Criminal Code*, s 463 (attempt) and s 380(2) (affecting the public market), render void or unenforceable any alleged reason for the Defendants' conduct and

negate any justification as to why they should have received or should retain this benefit, including any contract for the purchase of the Audiobooks. In particular, the contracts by which the Applicant and Class Members purchased Audiobooks are void and unenforceable.

67. As a result of their actions, the Defendants have been unjustly enriched by the benefits they received from the Applicant and Class Members. This warrants an order that the Defendants disgorge all profits that they gained in benefitting from the breaches set out above.

#### **I. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE APPLICANT**

68. The facts on which the Applicant's personal claim against the Defendants is based, are as follows:

- a. The Applicant is a business analyst for a telecommunications company.
- b. The Applicant purchased Audiobooks from the iTunes store in 2005 and 2006.
- c. The Applicant was deprived of transactions in a non-manipulated market as a consequence of the Defendants' actions with regard to the price of the Audiobooks and paid an Overcharge on the Audiobooks purchased;
- d. The Defendants' illegal actions were camouflaged and were not brought to the attention of the Applicant;
- e. The Applicant did not and could not know that the Defendants were taking part in illegal actions and breaching their obligations;
- f. The Applicant was not aware that the prices of the Audiobooks had been illegally fixed, maintained, increase or otherwise controlled by the Defendants;
- g. Had the Applicant been aware of the Unlawful Agreement and/or the Overcharge, he would not have purchased the audiobooks and would not have agreed to pay the Overcharge;

69. The Applicant's damages are a direct result of the Defendants' conduct.

70. In consequence of the foregoing, the Applicant is justified in claiming damages.

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE CLASS**

71. The facts giving rise to personal claims by each of the members of the Class against the Defendants are as follows:

- a. Every member of the Class has purchased Audiobooks from the Defendants on which they paid an Overcharge;
- b. The Class Members were deprived of their money by the Defendants' unlawful, unfair, anti-competitive and/or misleading acts and practices;
- c. The Defendants' illegal actions were not disclosed to the Class Members;
- d. The Class Members did not know and could not have known that the Defendants were involved in unlawful, unfair, anti-competitive and/or misleading acts and practices and they did not know and could not have known that the price paid for the Audiobooks had been illegally fixed, maintained, increased and/or controlled by the Defendants;
- e. The Class Members each suffered damages as a result of the Overcharge;
- f. In consequence of the foregoing, each member of the Class is justified in claiming compensatory, moral and/or punitive damages.

72. All of these damages to the Class Members are a direct result of the Defendants' conduct.

## **III. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

***A. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to sue on behalf of others or for consolidation of proceedings***

73. The Applicant is not privy to the specific number of persons in Québec who purchased Audiobooks from the Defendants and were overcharged. However, given that the Defendants controlled 60% of the market, it is safe to estimate that the Class is at least in the tens of thousands. Further, the Defendants' electronic databases could easily establish the number of Class Members and even all of those Class Members' exact coordinates.

74. Class Members are numerous and are scattered across the entire province.

75. 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, it would place an unjustifiable burden on the courts and, at the very least, is not in the interests of judicial economy. Furthermore, 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.

76. By their very nature, Overcharges affect many individuals and any discrepancies tend to be quite small – if it were not for the class action mechanism which facilitates access to justice, these types of claims would never be heard.

77. While certain Class Members may have suffered a substantial loss, it is expected that the majority have suffered small losses making it economically unfeasible to finance the litigation expenses inherent in any legal proceeding.

78. This class action overcomes the dilemma inherent in an individual action whereby the legal fees alone would deter recovery and thereby in empowering the consumer, it realizes both individual and social justice as well as rectifies the imbalance and restores the parties to parity.

79. Also, a multitude of actions instituted in either the same or different judicial districts, risks having contradictory judgments on questions of fact and law that are similar or related to all members of the Class.

80. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the Class to obtain mandates and to join them together into one action.

81. In these circumstances, a class action is the only appropriate procedure and the only viable means for all of the members of the Class to effectively pursue their respective legal rights and have access to justice.

***B. The claims of the members of the Class raise identical, similar or related issues of law or fact***

82. Individual issues, if any, pale by comparison to the numerous common issues that are significant to the outcome of the litigation.

83. The damages sustained by the Class Members flow, in each instance, from a common nucleus of operative facts, namely, Defendants' misconduct.

84. The claims of the members raise identical, similar or related issues of fact or law, namely:

- a. Did the Defendants enter into an exclusive worldwide agreement for the provision of Audiobooks?
- b. In so doing, did the Defendants unduly restrict competition in the sale of Audiobooks and if so, during what period were the Applicant and Class Members affected?
- c. Did the Defendants take advantage of their dominant position?
- d. Did the Defendants engage in unfair, false and misleading conduct regarding the marketing and sale of Audiobooks?
- e. As a result of the Defendants' actions, did the Applicant and Class Members pay an Overcharge for the purchase of Audiobooks?
- f. Through their actions, did the Defendants breach their obligations towards the Applicant and Class Members and this under the *Competition Act*, the *Consumer Protection Act* and/or the *Civil Code of Quebec*?
- g. Did the Applicant and Class Members suffer damages as a result of the Defendants' actions and/or omissions?
- h. If so, what is the nature of the damages suffered by the Applicant and the Class Members?
- i. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?

- j. Are the Defendants liable to the Applicant and the Class Members for reimbursement of the purchase price of Audiobooks as a result of their misconduct?
- k. What is the amount of damages owing to the Applicant and the Class Members?
- l. Are the Defendants liable to pay punitive damages to the Class Members and if so, in what amount?
- m. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the extrajudicial fees and disbursements of Attorneys for the Applicant?

#### **IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

85. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages.

86. The conclusions that the Applicant wishes to introduce by way of a application to institute proceedings are:

**GRANT** the class action of the Applicant and each of the members of the Class;

**CONDEMN** the Defendants, jointly and severally, to pay to each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;

**CONDEMN** the Defendants, jointly and severally, to pay to each of the members of the Class punitive damages, in an amount to be determined by the court, and **ORDER** collective recovery of those sums;

**CONDEMN** the Defendants, jointly and severally, to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;

**ORDER** the Defendants to deposit in the office of this Court the totality of the sums which form 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 Defendants, jointly and severally, to bear the costs of the present action including expert and notice fees;

**RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

***A. The Applicant requests that he be attributed the status of representative of the Class***

87. The Applicant is a member of the Class.

88. The Applicant is ready and available to manage and direct the present action in the interest of the members of the Class that he wishes to represent and is determined to lead the present action until a final resolution of the matter, the whole for the benefit of the Class, as well as, to dedicate the time necessary for the present action before the Courts and the Fonds d'aide aux actions collectives, as the case may be, and to collaborate with his attorneys.

89. Applicant has the capacity and interest to fairly, properly, and adequately protect and represent the interest of the members of the Class.

90. Applicant has given the mandate to his attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments.

91. Applicant, with the assistance of his attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the Class and to keep them informed.

92. Applicant has given instructions to his attorneys to put information about this class action on their website and to collect the coordinates of those Class Members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the hearing.

93. Applicant is in good faith and has instituted this action for the sole goal of having his rights, as well as the rights of other Class Members, recognized and protected so



that they may be compensated for the damages that they have suffered as a consequence of the Defendants' conduct.

94. Applicant understands the nature of the action.

95. Applicant's interests do not conflict with the interests of other Class Members and further Applicant has no interest that is antagonistic to those of other members of the Class.

96. Applicant is prepared to be examined out-of-court on his allegations (as may be authorized by the Court) and to be present for Court hearings, as may be required and necessary.

97. Applicant has spent time researching this issue on the internet and meeting with his attorneys to prepare this file. In so doing, he is convinced that the problem is widespread.

***B. The Applicant suggests that this class action be exercised before the Superior Court in the district of Montreal***

98. A great number of the members of the Class reside in the judicial district of Montreal.

99. The Applicant's attorneys practice their profession in the judicial district of Montreal.

100. The present application is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an application to institute proceedings in damages;

**DESIGNATE** the Applicant, Panagiotis Leventakis, as representative of the persons included in the Class herein described as:

*“All persons, entities, partnerships or organizations in Québec who purchased digital audiobooks from the Defendants, or any other group to be determined by the Court, between 2003 and 2017.”*

**IDENTIFY** the principle issues of fact and law to be treated collectively as the following:

- a. Did the Defendants enter into an exclusive worldwide agreement for the provision of Audiobooks?
- b. In so doing, did the Defendants unduly restrict competition in the sale of Audiobooks and if so, during what period were the Applicant and Class Members affected?
- c. Did the Defendants take advantage of their dominant position?
- d. Did the Defendants engage in unfair, false and misleading conduct regarding the marketing and sale of Audiobooks?
- e. As a result of the Defendants' actions, did the Applicant and Class Members pay an Overcharge for the purchase of Audiobooks?
- f. Through their actions, did the Defendants breach their obligations towards the Applicant and Class Members and this under the *Competition Act*, the *Consumer Protection Act* and/or the *Civil Code of Quebec*?
- g. Did the Applicant and Class Members suffer damages as a result of the Defendants' actions and/or omissions?
- h. If so, what is the nature of the damages suffered by the Applicant and the Class Members?
- i. Were the Defendants unjustly enriched and if so, should the Defendants disgorge their profits?
- j. Are the Defendants liable to the Applicant and the Class Members for reimbursement of the purchase price of Audiobooks as a result of their misconduct?
- k. What is the amount of damages owing to the Applicant and the Class Members?
- l. Are the Defendants liable to pay punitive damages to the Class Members and if so, in what amount?

- m. Are the Applicant and Class members justified in claiming the reimbursement of the costs incurred in the present matter, namely the costs of investigation, the extrajudicial fees and disbursements of Attorneys for the Applicant?

The interests of justice favour that this application be granted in accordance with its conclusions;

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

- **GRANT** the class action of the Applicant and each of the members of the Class;
- **CONDEMN** the Defendants, jointly and severally, to pay to each of the members of the Class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and severally, to pay to each of the members of the Class punitive damages, in an amount to be determined by the court, and **ORDER** collective recovery of those sums;
- **CONDEMN** the Defendants, jointly and severally, to pay interest and the additional indemnity on the above sums according to the law from the date of service of the application to authorize a class action;
- **ORDER** the Defendants to deposit in the office of this Court the totality of the sums which form 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 Defendants to bear the costs of the present action including expert and notice fees;
- **RENDER** any other order that this Honourable Court shall determine and that is in the interests of the members of the Class.

**DECLARE** that all members of the Class that have not requested their exclusion, within the specified timeframe, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the Class Members, date upon which the members of the Class that have not

exercised their means of exclusion will be bound by any judgment to be rendered herein;


**ORDER** the publication of a notice to the members of the Class in accordance with articles 576 and 579 C.C.P. within sixty (60) days from the judgment to be rendered herein in *La Presse*, the *Montreal Gazette* and *Le Soleil*;

**ORDER** that said notice be sent directly to all Class Members through the use of the Defendants' customer databases, as well as posting the said notice on the Defendants' websites at [www.amazon.ca](http://www.amazon.ca), [www.audible.ca](http://www.audible.ca), [www.apple.ca](http://www.apple.ca) and in the iTunes Store, and on the Defendants' Facebook pages and twitter accounts with a link stating "Notice to persons who have purchased digital audiobooks from Audible, Amazon or Apple";


**RENDER** any other order that this Honourable Court shall determine and that is in the interest of the members of the Class;

**THE WHOLE** with costs, including all publication fees.

Montréal, September 28, 2018

  
**Klein Avocats Plaideurs Inc.**  
500, Place d'Armes, Suite 1800  
Montréal, Québec  
H2Y 2W2  
**Attorneys for the Applicant**

TRUE COPY

  
**Klein Avocats Plaideurs Inc.**

## **SUMMONS**

(articles 145 and following C.C.P.)

### **Filing of a judicial application**

Take notice that the applicant has filed this originating application in the office of the Superior Court in the judicial district of Montreal.

### **Defendant's answer**

You must answer the application in writing, personally or through a lawyer, at the Montréal courthouse situated at 1, Notre-Dame Est, Montréal, Québec, H2Y1B6 within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the applicant's lawyer or, if the applicant is not represented, to the applicant.

### **Failure to answer**

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

### **Content of answer**

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

### **Change of judicial district**

You may ask the court to refer the originating application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and

if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

### **Transfer of application to Small Claims Division**

If you qualify to act as an applicant under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the applicant's legal costs will not exceed those prescribed for the recovery of small claims.

### **Calling to a case management conference**

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

### **Exhibits supporting the application**

In support of the originating application, the Applicant intends to use the following exhibits:

EXHIBIT P-1:	Corporate search results for Audible Inc.
EXHIBIT P-2:	Corporate search results for Apple, Inc.
EXHIBIT P-3:	Corporate search results for Apple Canada Inc.
EXHIBIT P-4:	Corporate search results for Amazon.com, Inc.
EXHIBIT P-5:	Corporate search results for Amazon.com.ca, Inc.
EXHIBIT P-6:	Four press releases by the Audio Publishers Association and an article from Good E-Reader entitled Global Audiobook Trends and Statistics for 2018, <i>en liasse</i>
EXHIBIT P-7:	Amazon.com's Annual Report for 2008
EXHIBIT P-8:	March 2015 and November 2016 publications by BookNet Canada, <i>en liasse</i>
EXHIBIT P-9:	Apple press release dated October 16, 2003
EXHIBIT P-10:	Article on the Bundeskartellamt's website

EXHIBIT P-11:	Article on the Bundeskartellamt's website, European Commission press release and article published by The Verge, <i>en liasse</i>
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These exhibits are available on request.

**Notice of presentation of an application**

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000947-180

**SUPERIOR COURT  
(Class Action Chambers)**

---

**PANAGIOTIS LEVENTAKIS**, residing  
and domiciled at [REDACTED]  
[REDACTED]

Applicant

v.

**AUDIBLE INC.**, legal person, having its  
head office at One Washington Park,  
Newark, New Jersey, 07101, USA

and

**APPLE, INC.**, legal person, having its  
head office at One Infinite Loop,  
Cupertino, California, 95014, USA

and

**APPLE CANADA INC.**, legal person,  
having its head office at 120 Bremner  
Boulevard, Suite 1600, Toronto, Ontario  
M5J 0A8, Canada

and

**AMAZON.COM, INC.**, legal person,  
having its head office at 410 Terry  
Avenue North, Seattle, Washington,  
98109-5210, USA

and

**AMAZON.COM.CA, INC.**, legal person,  
having an address for service at  
Corporation Service Company, 300  
Deschutes Way SW, Suite 304,  
Tumwater, Washington, 98501, USA

Defendants



**NOTICE OF PRESENTATION**  
**(ART 146 and 574 al. 2 C.C.P.)**

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**TO :**           **AUDIBLE INC.**  
having its head office at  
One Washington Park, Newark, New Jersey, 07101, USA

**APPLE, INC.**  
having its head office at  
One, Infinite Loop, Cupertino, California, 95014, USA

**APPLE CANADA INC.**  
having its head office at  
120 Bremner Boulevard, Suite 1600, Toronto, Ontario M5J 0A8, Canada

**AMAZON.COM, INC.**  
having its head office at  
410 Terry Avenue North, Seattle, Washington, 98109-5210, USA

**AMAZON.COM.CA, INC.**  
having an address for service at  
Corporation Service Company, 300 Deschutes Way SW, Suite 304,  
Tumwater, Washington, 98501, USA

**Defendants**

**TAKE NOTICE** that the *Application for authorization to institute a class action and to obtain the status of representative* will be presented before one of the honourable judges of the Superior Court at the Montréal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by the Class Action Chambers coordinator.

**GOVERN YOURSELVES ACCORDINGLY.**

Montréal, September 28, 2018

  
\_\_\_\_\_  
**Klein Avocats Plaideurs Inc.**  
Attorneys for the Applicant

TRUE COPY

  
\_\_\_\_\_  
Klein Avocats Plaideurs Inc.

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Action Chambers)

No.: 500-06-000947-180

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PANAGIOTIS LEVENTAKIS

Applicant

v.

AUDIBLE INC.

and

APPLE, INC.

and

APPLE CANADA INC.

and

AMAZON.COM, INC.

and

AMAZON.COM.CA, INC.

Defendants

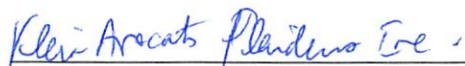
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**ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER**  
(ART 55 of the *Regulation of the Superior Court of Québec in civil matters*)

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The Applicant, through his attorneys, attests that the *Application for authorization to institute a class action and to obtain the status of representative* will be entered into the national class action register.

Montréal, September 28, 2018



**Klein Avocats Plaideurs Inc.**

Attorneys for the Applicant

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Klein Avocats Plaideurs Inc.