Court File No. VLC-S-S-248082

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

[redacted]

PLAINTIFF

AND:

META PLATFORMS, INC., (formerly known as Facebook, Inc.)
FACEBOOK CANADA LTD.
NETFLIX, INC. and
NETFLIX SERVICES CANADA ULC

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

A. Nature of Action - Overview

1. The within proposed multi-jurisdictional class proceeding arises out of an alleged conspiracy and/or *per se* unlawful agreement by and among the Defendants to allocate and unreasonably restrain trade and competition in the Canadian market for video-streaming services ("**Video-Streaming Services**") between August 9, 2017, to the present. In particular, the Defendants entered into an unlawful agreement, conspiracy and/or scheme to allocate markets by not competing with one another in the market for Video-Streaming Services.

2. In 2017 the Defendant, Meta Platform Inc. ("Meta"), was the dominant social-media platform in North America and had more than two billion users worldwide. The Defendant, Meta, was formerly known as Facebook, Inc. ("**Facebook**") up until October 28, 2021, when it changed its name. Throughout this Notice of Civil Claim the Defendant, Meta, is referred to as the Defendant, Facebook, as that was the company's name during most of the alleged conduct relevant to the action herein.

3. At the time, the Defendants, Netflix Inc., and its wholly owned Canadian subsidiary and/or affiliate, Netflix Services Canada ULC, (collectively referred to herein as the "**Defendant Netflix" or "Netflix**") were the dominant over-the-top ("OTT") video service or video-streaming platform service in North America. This service provides a viewer with access to movies or television shows by sending the media directly through the internet. The Defendant, Netflix, has been a participant in the market for Video-Streaming Services since it began offering its subscribers access to streaming video in 2007. Of those North American households that use or subscribe at least one OTT video

service, over 75% subscribe to the Defendant, Netflix. The Defendant, Netflix, had at least twice as many subscribers as its nearest competitor.

4. On August 9, 2017, the Defendant, Facebook, began competing with the Defendant, Netflix, in the market for Video-Streaming Services by launching "Watch", its own video-streaming platform.

5. As a result of the Defendant, Facebook's, deep pockets, advertising acumen, and unique access to its two billion users, Watch presented a serious competitive threat to the Defendant, Netflix's, market share.

6. The Defendant, Facebook's, investments in Watch were substantial and the platform amassed significant viewers in the year and a half after its debut.

7. By early 2019, however, the Defendants, Facebook and Netflix, had agreed that the Defendant, Facebook, would desist from competing with the Defendant, Netflix, through its Watch streaming platform. To affect this unlawful agreement, conspiracy and/or scheme the Defendant, Facebook, cut the vast majority of Watch funding, canceled most Watch programming, and minimized advertising for its streaming platform.

8. In exchange for the Defendant, Facebook, shutting down Watch, the Defendant, Netflix, agreed to purchase additional targeted advertising on the social-media platform and to share with the Defendant, Facebook, data regarding the behavior of the Defendant, Netflix, users, which the Defendant, Facebook, used to improve its targeted-advertising algorithms.

9. Given the roles of the Defendants, Facebook and Netflix, in the social-network and video-streaming markets, respectively, this anti-competitive agreement had substantial effects on trade and competition.

10. The Defendants' anti-competitive agreement also harmed the Plaintiff and putative class members because: (1) they had fewer choices in Video-Streaming Services and (2) paid more for their Defendant, Netflix, subscriptions than they would have been but for the Defendant, Facebook's, relinquishing the Video-Streaming Services market to the Defendant, Netflix.

11. The effect on consumers is evidenced by, among other things, the Defendant, Netflix, raising prices in January 2019, shortly after the Defendants, Facebook and Netflix, cemented their unlawful agreement, conspiracy and/or scheme not to compete in the Video-Streaming Services market. This was the first time that the Defendant, Netflix, raised prices for *all* Netflix subscriptions. At the time, the fee hikes were the largest in the Defendant, Netflix's, history, ranging from 12.5 to 18% depending on the type of subscription.

12. The unlawful agreement, conspiracy or scheme between the Defendants, Facebook and Netflix, to allocate markets by not competing in the market for Video-Streaming Services violates section 45(1) of Part VI of the *Competition Act,* R.S.C. 1985, c.C-34 ("*Competition Act*").

13. Specifically, the Defendants' unlawful agreement, conspiracy and/or scheme had an adverse impact on competition in the Canadian market for Video-Streaming Services and the submarket for original programming delivered via Video-Streaming Services.

14. When the Defendants finalized their anti-competitive agreement in 2018, 89% of consumers who subscribed to a Video-Streaming Service subscribed to the Defendant, Netflix.

15. The Defendant, Netflix's, success at the time was ascribed to its hyper-customized content and suggestions, which helps to increase engagement and reduce abandonment, and a significant investment in original content.

16. These features of Netflix-hyper-customized content and suggestions, and original video content-are precisely the features that made Watch a competitive danger to the Defendant, Netflix, in the Video-Streaming Services market.

17. No company or entity had more data about its users than the Defendant, Facebook, and its ability to track and target ads was largely accurate, broad and overreaching.

18. And before the Defendants entered their anti-competitive agreement, the Defendant, Facebook, had decided to make a significant investment of $1 billion USD in original content for the Watch platform.

19. All of this-plus the fact that Watch would offer its video content to consumers for *free*-meant that Watch was poised to be a significant competitor to the Defendant, Netflix, in the market for Video-Streaming Services.

20. But the competitive threat that Watch posed to the Defendant, Netflix, never fully materialized because of the Defendants' unlawful agreement, conspiracy and/or scheme whereby the Defendant, Facebook, would dismantle Watch in return for the Defendant, Netflix, providing consumer data to and purchasing even more social-media advertising from the Defendant, Facebook.

21. As a result, the Plaintiff and putative class members had fewer choices in Video-Streaming Services and paid more for their Netflix subscriptions than they would have paid but for Defendants' anti-competitive agreement.

B. The Parties

i. The Representative Plaintiff

22. [redacted]

23. During the class period, as defined below, the Plaintiff currently subscribes to Netflix for a general subscription plan at a monthly cost of $23.51 CDN.

24. The Plaintiff was harmed by the Defendants anti-competitive conduct, as alleged herein, because as a result of the unlawful agreement, conspiracy and/or scheme of the Defendants, he had fewer choices in video-streaming and paid more for his Netflix subscriptions than he would have but for the Defendant, Facebook's, agreement to relinquish the Video-Streaming Services market to the Defendant, Netflix.

ii. The Class and Class Period

25. The Plaintiff seeks to represent the following Class and Class Period:

> All resident persons or entities in Canada who purchased and/or paid for Netflix video-streaming services at any time between August 9, 2017, until the effect of the conspiracy or such other class definition or class period as the court may ultimately decide on the application for certification (the **"Class"**, **"Class Members"** and **Class Period"**).

Excluded from the Class are the Defendants, their parent companies, subsidiaries, and affiliates and any judge assigned to the within proposed class proceeding.

iii. The Defendants

Meta

26. The Defendant, Meta, formerly known as Facebook, Inc., is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, Corporation Service Company, at 251 Little Falls Drive, Wilmington, Delaware, 19808, United States of America.

27. The Defendant, Facebook Canada Ltd., is, a company duly incorporated pursuant to the laws of Canada, registered within the Province of British Columbia, and has a registered address for service at 1055 Dunsmuir Street, Suite 3000, Vancouver, British Columbia V7X 1K8, Canada.

28. At all material times to the action herein, the Defendant, Facebook Canada Ltd., is, and was, a wholly owned subsidiary and/or affiliate under the ownership and/or control of the Defendant, Meta.

29. The Defendant, Facebook Canada Ltd., is the Defendant, Meta's, agent in Canada. The Defendant, Facebook Canada Ltd., implemented the Defendant, Meta's, unlawful market allocation agreement and/or scheme with the Defendant, Netflix, not to compete in the Video-Streaming Services market in Canada, including the Province of British Columbia.

30. The Defendants, Meta and Facebook Canada Ltd., are collectively referred to herein as "Facebook", unless otherwise referred to individually.

Netflix

31. The Defendant, Netflix, is a company duly incorporated pursuant to the laws of the State of Delaware, one of the United States of America, and has a registered agent, The Corporation Trust Company, at Corporation Trust Center 1209 Orange Street, Wilmington, Delaware, 19801, United States of America.

32. The Defendant, Netflix Services Canada ULC, is a company duly incorporated pursuant to the laws of the Province of British Columbia and has a registered address for service at 1200 Waterfront Centre 200 Burrard Street, P.O. Box 48600, Vancouver, British Columbia, V7X 1T2, Canada.

33. At all material times to the action herein, the Defendant, Netflix Services Canada ULC, is, and was, a wholly owned subsidiary and/or affiliate under the ownership and/or control of the Defendant, Netflix.

34. The Defendant, Netflix Services Canada ULC, is the Defendant, Netflix's agent in Canada. The Defendant, Netflix Services Canada ULC, implemented the Defendant, Netflix's, unlawful market allocation agreement or scheme with the Defendant, Meta, whereby the Defendant, Meta, would not compete in the Video-Streaming Services market in Canada, including the Province of British Columbia.

Agents an Unnamed Co-Conspirators

35. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as defendants in this action, the identities of which are not presently known, may have participated as co-conspirators with the Defendants in the unlawful conduct alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the unlawful conduct, as alleged herein.

C. Factual Allegations

i. The Defendant, Facebook, launches Watch, a direct competitor to the Defendant, Netflix's, video-streaming platform

36. The Defendant, Facebook, has long been using social data from its users to inform and power the advertisements on its platform. Streaming video was a potential rich source of user social data that the Defendant, Facebook, could mine for targeted advertisements. By 2016, the Defendant, Facebook, included a video tab in its mobile product, but it had not yet introduced the type of longform or episodic videos that were becoming prevalent in the market by video-streaming services like the Defendant, Netflix.

37. In August 2017, however, the Defendant, Facebook, burst onto the market for Video-Streaming Services by launching Watch, a new platform for viewing video content on the

Defendant, Facebook's, website, including original programming funded by the company under the heading of "Watch Originals".

38. Watch was the Defendant, Facebook's, bid to compete against the then-dominant video-streaming service providers like the Defendant, Netflix, and Hulu. The original promise of Watch was that it would provide consumers with television-like shows made by media companies and that those shows would compete with what was available live on television and bingeable on the Defendant, Netflix, and Hulu.

39. Consistent with that promise, upon its launch Watch was set to debut original shows made by media partners exclusively for the social network, marking the Defendant, Facebook's, official entry into the high-end online video world that already includes rivals such as, Amazon, Google, Apple and the Defendant, Netflix.

40. It was predicted that Watch and Watch Original programming would be extremely lucrative for the Defendant, Facebook, in part, because of its massive user base of more than two billion people which provided it with an unprecedented opportunity to monetize its video content. This massive user base also provided the Defendant, Facebook, with a rich data source from which it could determine the content its users would engage with on Watch. It was forecast by investment analysts that Watch could generate annual revenues that were comparable to the Defendant, Netflix's, revenue within a very short period.

41. In addition, Watch provided the Defendant, Facebook, with a source of video interaction data for its artificial intelligence and machine learning models, which were used to inform, grow, and protect the Defendant, Facebook's, social advertising business. Users were spending significant amounts of time-consuming video streaming content, including algorithmically recommended videos, which generate tremendously valuable insight into users' interest and purchasing patterns. Watch thus provided the Defendant, Facebook, with the opportunity to substantially grow (or further entrench its dominant position) in two different lines of business.

42. In fact, in the year and a half following its premiere, Watch was a success. By January 2019, the platform had evolved from an imagined concept to a full, content-packed service with tens of millions of viewers, with the Defendant, Facebook, reporting that on average 75 million daily visitors spend more than 20 minutes in Watch.

43. The Defendant, Facebook's, foray into the market for original streaming-video content was not a sudden idea or whim; the company had been preparing to launch the video platform for years and had made substantial investments in video content before the platform was announced.

44. As the Defendant, Facebook's, Chief Executive Officer, Mark Zuckerberg, said during an earnings call in February 2017, six months before launching Watch:

> [W]e're looking for ways to grow the ecosystem of video content on Facebook. We want people to think of Facebook as a place for interesting and relevant video content from professional creators as well as their friends. Last year we started to invest in more original video content to help seed the ecosystem, and we're planning to do more in 2017.

45. A year before Watch was announced, the Defendant, Facebook, formed a team of experienced television show creators and strategists which immediately began meeting with media outlets and Hollywood studios and inked deals for exclusive television shows. Watch became the biggest opportunity for the Defendant, Facebook, in video. Content creators were lining up to provide original programming for Watch.

46. From the start, the Defendant, Facebook, made clear that it intended to make substantial investments in video content for the platform, with plans to spend $1 billion USD on original video content, and become an exclusive television hub by 2018.

47. During an earnings call in November 2017, the Defendant, Facebook's, Chief Financial Officer, David Wehner, stated, "we are investing aggressively in video content for the Watch tab," and Mr. Zuckerberg confirmed that "we're going to continue investing heavily in video content for Watch."

48. In January 2018, Mr. Wehner again emphasized that the Defendant, Facebook, was "continuing to invest to support this video strategy on Watch so we expect that content investment to continue and ramp."

49. Although Watch was promoted mainly for its Watch Original content, the Defendant, Facebook, invested significantly in acquired content for the platform by, among other things, purchasing the rights to all episodes of popular television such as *Buffy the Vampire Slayer, Angel,* and *Firefly* from 21st Century Fox. The Defendant, Facebook,

also identified shows like *House of Cards,* a popular Defendant, Netflix, series, and *Scandal,* and award-winning television series, as examples of premium programming that it would be interested in purchasing for Watch.

ii. The Defendant, Facebook, inexplicably defunds Watch despite the platform's success

50. Despite the early successes and seemingly boundless promise of Watch, by early 2019-less than a year and a half after launch-the Defendant, Facebook, had reversed course and abandoned its ambitious long-term plans for the platform.

51. Emblematic of this reversal was the Defendant, Facebook's, abrupt decision in May 2018 to cut nearly $1 billion USD from Watch's budget for original content and sports for the following year.

52. Then, in February 2019, the Defendant, Facebook, reported that it would not be renewing most of the 21 news shows that it had only recently premiered as Watch Originals.

53. The cuts continued. By early January 2020, the Defendant, Facebook, had announced that it would not be renewing a majority of its original programming, including popular and critically acclaimed content like the series *Sorry for Your Loss:* "Facebook is changing strategies for its video service, Facebook Watch, by pulling back on original scripted content. "

54. In short order, Watch stopped providing users with ambitious original content in favor of investing in original talk shows and licensing clips from network television and major sports leagues.

55. Watch Originals limped on for a few more years with its content limited to a small slate of original talk shows, until the platform was finally shuttered by the Defendant, Facebook, in 2023.

56. The Defendant, Facebook, has never offered a persuasive-or even coherent-explanation for Watch's demise.

57. For the reasons averred to below, the Defendant, Facebook, did not use its unmatched targeted advertising to more effectively promote Watch to its two billion users and effectively abandoned its high-quality video-streaming platform after investing over $1 billion USD with great initial success.

iii. The Defendant, Facebook, agrees to refrain from direct competition in the Video-Streaming Services market in exchange for the Defendant, Netflix's, subscriber data

58. The Defendant, Facebook's, decision to mothball the Watch platform was a *quid pro quo*: In exchange for the Defendant, Facebook, eliminating Watch as a serious competitor in the Video-Streaming Services market, the Defendant, Netflix, would continue to funnel its subscribers' data to the Defendant, Facebook and, of course, to purchase hundreds of millions of dollars in targeted advertising on the social-media platform. In other words, the two Defendants agreed to not compete by allocating markets to one another – video-streaming to the Defendant, Netflix, and data to the Defendant, Facebook.

59. At the time of the unlawful agreement, conspiracy and/or scheme at issue in this action, and to the present, the Defendant, Netflix, was, and is, a powerful source of valuable user data. Netflix content - including its movies and television series - provide a glimpse into user interests and likely purchasing decisions. The Defendant, Netflix's, service maintains strong recommendation algorithms that tailor its content to certain users. Analytics is deeply embedded in the Defendant, Netflix's, business structure or DNA. The company mines reams of data on its subscribers' tastes to help determine which shows to bet on and how to promote them. The importance of the Defendant, Netflix's, analytical acumen to the Defendant, Facebook's, advertising business is clear.

60. The unlawful agreement, conspiracy and/or scheme between the Defendant, Facebook, and the Defendant, Netflix, not to compete was a direct result of a "special relationship" between them-a relationship that began in 2011, when the Defendant, Netflix's, Chief Executive Officer, Reed Hastings, joined the Defendant, Facebook's, board of directors.

61. Mr. Hastings was more than just an observer on the board of directors of the Defendant, Facebook: until 2019, he was the Chair of the Defendant, Facebook's, special Compensation and Governance Committee, which was charged with monitoring and

approving executive compensation, evaluating conflicts of interest, and evaluating proposed changes to the Defendant, Facebook's, "Compliant with Laws - Competition" update to the company's Code of Conduct.

62. The companies' special relationship was based upon various data-sharing agreements. The Defendant, Netflix, was one of three companies to whom the Defendant, Facebook, granted access to its users' private messages, including the ability to read, write and delete users' private messages, and to see all participants on a thread-privileges that appeared to go beyond what the companies needed to integrate the Defendant, Facebook, into their systems. In return, the Defendant, Netflix, would send detailed reports to the Defendant, Facebook, about which videos its users were recommending to their friends, showing daily counts of recommendation sends and recipient clicks by interface, initiation surface, and/or implementation variant (e.g., Facebook vs. non-Facebook recommendation recipients).

63. A vice president at the Defendant, Facebook, summarized the companies' special relationship in an email to Mr. Zuckerberg:

> We have historically gone out of our way to give Netflix the very best level of service and access-they are one of two partners . . . we allowed to build a custom GDP [Good Distribution Practice] experience. We've given them access to our messaging APis .... We've given them a special version of the Coefficient API after a meeting between you+ Reed. We gave thousands of dollars in free ad impressions to support their UK roll out .... We lobbied for them in DC to get the VPPA act updated .... [W]e've tried to prioritize things ... important to them.

64. The Defendants' unlawful agreement, conspiracy and/or scheme not to compete in the market for Video-Streaming Services was shepherded by Mr. Hastings, who communicated directly with Mr. Zuckerberg and other Defendant, Facebook, executives-including its Chief Operating Officer, Vice President, Chief Technology Officer-to negotiate and cement the anticompetitive agreement.

65. Discussions between the Defendants regarding the companies' allocation of markets started as early as August 2017 (when Watch debuted) and was finalized by April 2018-shortly before the Defendant, Facebook, defunded Watch and nine months before the company publicly abandoned most of its Watch content.

66. The unlawful agreement, conspiracy and/or scheme between the companies not only allowed the Defendant, Netflix, to continue dominating the market for Video-Streaming Services, and to benefit from the higher prices it could charge consumers because of that dominance, but it was also a financial windfall for the Defendant, Facebook's, advertising business.

67. Following the Defendant, Facebook's, decision to defund Watch, the Defendant, Netflix, agreed to increase its advertising spend on the Defendant, Facebook. The Defendant, Netflix, paid the Defendant, Facebook, approximately $40 million USD per year to run advertisements for its series and movies in the year before the Defendant, Facebook, announced Watch, but that number increased to approximately $150 million to $200 million USD per year after the Defendant, Facebook, voluntarily neutralized Watch as a competitive threat.

68. In addition to the financial windfall, the Defendant, Facebook, also obtained the Defendant, Netflix's, agreement to limit its advertising on social media platforms that compete with the Defendant, Facebook, like Snapchat. The Defendant, Facebook, thus received more advertising revenue from the Defendant, Netflix, *and* kept money away from upstart social media platforms like Snapchat, which in tum further benefitted the Defendant, Facebook, by solidifying its financial position in relation to its competitors.

69. Finally, the value of the Defendant, Netflix's, customer data to the Defendant, Facebook, cannot be overstated. In 2015, the Defendant, Facebook, severely restricted the access that third-party apps had to its platform, perceiving such apps as competitors. But by doing this, the Defendant, Facebook, lost access to the vast amount of consumer data that it was harvesting through those third-party apps.

70. As such, the Defendant, Facebook, was desperately seeking new sources of data about consumers' online behavior-data that it could use to train the machine-learning and artificial intelligence systems that powered its profitable targeted-advertising business.

71. In exchange for the Defendant, Facebook, disbanding Watch, the Defendant, Netflix, permitted the Defendant, Facebook, to use some of its most powerful data signals in the Defendant, Facebook's, advertising systems and models, which provided unmatched insight into user preferences and likely purchasing decisions. In fact, if the Defendant, Netflix, were to share its valuable user data with a competing advertiser, that competitor

could start to chip away at, and potentially overcome, the Defendant, Facebook's, dominant position in advertising.

72. That is because personal user data, like the kind that the Defendant, Netflix, provided to the Defendant, Facebook, is a highly valuable commodity, which is becoming an asset that is more valuable than land, industry, or capital.

73. The value of and demand for user data has only increased in recent years alongside the rise of large language learning models. For example, after ChatGPT launched in 2022, companies including the Defendant, Meta [formerly Facebook, Inc.], Google, Amazon and Apple all struck agreements with stock image provider Shutterstock to use hundreds of millions of images, videos and music files in its library for training, that ranged from $25 million to $50 million USD for each agreement.

74. Still, personal user data is even more valuable for advertising, with offsite or third-party data *(i.e.,* data generated outside the platform) holding special importance. This is especially true for the Defendant, Facebook. Offsite data is viewed as highly valuable for digital advertisers because it may help target ads better. Advertisement effectiveness on the Defendant, Facebook, would be substantially hampered by the loss of offsite data where the cost to acquire each new customer with advertising would increase considerably.

75. When looking at the Defendant, Facebook's, 2023 worldwide advertising revenue ($113.64 billion USD), conservative estimates indicate that the Defendant, Facebook, received almost $3 billion USD in extra revenue from the Defendant, Netflix, data transfers.

76. The Defendant, Facebook's, advertising algorithm has two stages, both of which rely on personal user data. First, an advertiser selects a target audience based on user demographics and usage information, often engaging in "micro-targeting"-changing the ad content either across users, across targeting attributes or across time.

77. Second, to determine which ads are shown to a Defendant, Facebook, user, the algorithm gathers ads that include that person in the advertiser's chosen audience, pulling from a list of over 200,000 attributes provided by the Defendant, Facebook. At

this stage, the Defendant, Facebook, uses machine learning to calculate an estimated action rate, where models predict a particular person's likelihood of taking the advertiser's desired action, like increasing visits to their website or driving purchases. To do this, the Defendant, Facebook's, models consider that person's behavior on and off the Defendant, Facebook, as well as other factors, such as the content of the ad, the time of day, and interactions between people and ads.

78. By the Defendant, Facebook's, own admission, personal user data from both it and third parties like the Defendant, Netflix, makes the Defendant, Facebook's, targeted advertising more effective.

79. For these reasons, the Defendant, Facebook, was willing to kneecap its Watch video service in exchange for extremely valuable consumer data from the Defendant, Netflix, as well as the Defendant, Netflix's, dramatic increase in its spending on Defendant, Facebook, advertising.

80. Importantly, the Defendants, Facebook and Netflix, also entered into an agreement to build a dynamic advertising model that would target users with Netflix content specifically. This model was precisely the kind of targeting that the Defendant, Facebook, would have needed to do in order to promote its own Watch product, but instead it was undertaking the effort to promote the Defendant, Netflix's, streaming product in exchange for user data to supercharge and train its advertising systems.

Part 2: RELIEF SOUGHT

81. The Plaintiff, on his own behalf and on behalf of Class Members, claims against each of the Defendants, jointly or severally, as follows:

    (a) an order certifying this action as a multi-jurisdictional class proceeding and appointing the Plaintiff as the named representative;

    (b) a declaration that the Defendants conduct constituted an unlawful restraint of trade and/or competition in violation of section 45 (1) of Part VI of the *Competition Act;*

(c) a declaration that the Defendants are liable for the conduct or damage caused by any other non-party co-conspirator;

(d) damages for conspiracy and conduct that is contrary to Part VI of the *Competition Act* pursuant to section 36(1) of the *Competition Act*;

(e) damages for the tort of civil conspiracy;

(f) an injunction against Defendants, their affiliates, subsidiaries, successors, transferees, assignees, and other officers, directors, partners, agents and employees thereof and all other persons acting or claiming to act on their behalf or in concert with them, from in any manner continuing, maintaining or renewing the conduct, agreement, contract, conspiracy or combination alleged herein, or from entering into any other agreement, contract, conspiracy or combination having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect;

(g) an order pursuant to section 29 of the *Class Proceeding Act*, R.S.B.C. 1996, c.50 ("***CPA***") directing an aggregate assessment of damages;

(h) costs of notice and administering the plan of distribution of the recovery in this action plus applicable taxes pursuant to section 24 of the *CPA*;

(i) damages, including actual, compensatory, incidental, statutory and consequential damages;

(j) punitive or aggravated damages;

(k) costs of investigation pursuant to section 36 of the *Competition Act*;

(l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79; and

(m) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

D. Jurisdiction

82. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and Class Members plead and rely upon the *Court Jurisdiction* and *Proceedings Transfer Act,* R.S.B.C. 2003, c.28 (the "***CJPTA***") in respect of the Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f),(g), (h) and/or (i) of the *CJPTA* because this proceeding:

(a) concerns restitutionary obligations that, to a certain extent, arose in British Columbia

(b) concerns a tort committed in British Columbia;

(c) concerns a business carried on in British Columbia; and/or

(d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

E. Causes of Action

i. Breach of Part IV of the *Competition Act*

83. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

84. Beginning from at least August 9, 2017, and continuing through the present, the Defendants, as well as their co-conspirators, entered into a continuing combination, agreement, arrangement and/or conspiracy in restraint of trade not to compete in the market for Video-Streaming Services in Canada, resulting in Class Members having fewer choices in video-streaming services and paying more for their Netflix, subscriptions than they would have paid but for the Defendants' anti-competitive agreement in violation of Section 45(1) of the *Competition Act.*

85. The Defendants are "competitors" within the meaning of sections 45(1) and (8) of the *Competition Act.*

86. Video-Streaming Services are "products" within the meaning of sections 2 and 45(1) of the *Competition Act.*

87. As averred to above, by means of a conspiracy and/or an unlawful agreement, the Defendants conspired, agreed and/or arranged to:

(a) fix, maintain, increase and/or control the price for the supply of Video-Streaming Services;

(b) allocate sales, territories, customers and/or markets for the supply of Video-Streaming Services; and

(c) fix, maintain, control, prevent, lessen and/or eliminate the supply of Video-Streaming Services.

88. In formulating and carrying out the alleged combination, agreement, arrangement and/or conspiracy, the Defendants, as well as their co-conspirators, did those things that they combined and conspired to do, including but not limited to:

(a) reached agreements-through in-person meetings, exchanges of information, and other communications-whereby the Defendant, Facebook, agreed to refrain from direct competition in the Canadian Video-Streaming Services market in exchange for the Defendant, Netflix's, subscriber data and the purchase of additional targeted advertising on the Defendant, Facebook's, social-media platform, resulting in the Defendant, Netflix, artificially inflating the prices of Video-Streaming Services in Canada;

(b) reached agreements-through in-person meetings, exchanges of information, and other communications-to allow the Defendant, Netflix, to fix, inflate, maintain, and/or stabilize the prices of Video-Streaming Services in Canada;

(c) implemented, monitored, and enforced that conspiracy to allow the Defendant, Netflix, to artificially inflate video-streaming prices through in person meetings, exchanges of information, inter-defendant purchases and/or sales, and other communications; and

(d) the selling of Video-Streaming Services to Class Members at fixed, inflated, maintained, and/or stabilized prices in Canada.

89. The Defendants implemented, in whole or in part in Canada, a directive, instruction, intimation of policy or other communication, which communication was for the purposes of giving effect to a conspiracy, combination, agreement and/or arrangement entered outside Canada in relation to the above that, when entered into Canada, contravened section 46 of the *Competition Act*.

90. This conspiracy is a *per se* violation of 45(1) of the *Competition Act*.

91. The combination, agreement, arrangement and/or conspiracy, as alleged herein, has had the following effects, among others:

(a) price competition has been restrained, suppressed and/or eliminated with respect to Video-Streaming Services sold directly, and/or indirectly, to the Class;

(b) prices paid for Video-Streaming Services sold directly, and/or indirectly, to the Class have been fixed, inflated, maintained and/or stabilized at artificially high, non-competitive levels throughout Canada; and

(c) the Class has been deprived of free and open competition for Video-Streaming Services.

92. As a result of the unlawful conduct, as alleged herein, the Plaintiff and Class Members paid enhanced, inflated, and supra-competitive prices for Video-Streaming Services. The Defendants' conduct caused loss and damage to the Plaintiff and Class Members in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided at Trial.

ii. Civil Conspiracy

93. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

94. The Defendants and their co-conspirators are liable for the tort of civil conspiracy- both under unlawful means conspiracy and predominant purpose conspiracy. The Defendants, and their unnamed co-conspirators, entered into agreements with each

other to use unlawful means which resulted in loss and damage, including special damages to the Plaintiff and Class Members. The unlawful means include the following:

(a) entering into agreements or arrangements to allocate the market and products within the Video-Streaming Services market ;

(b) entering into agreements or arrangements to allow the Defendant, Netflix, to fix, maintain, increase, and/or control prices of Video-Streaming Services sold to customers in Canada, and elsewhere, in contravention of sections 45(1) and 46(1) of the *Competition Act*; and

(c) aiding, abetting, and counselling the commission of the above offences, contrary to sections 21 and 22 of the *Criminal Code* of *Canada*, R.S.C.1985, c C-46.

95. In furtherance of the conspiracy, the Defendants along with their agents, servants and unnamed co-conspirators carried out the acts described above.

96. The acts particularized above were unlawful acts directed towards direct purchasers, and/or indirect purchasers, of Video-Streaming Services, which unlawful acts the Defendants knew would likely cause injury to such direct purchasers, including the Plaintiff.

97. The Defendants and their unnamed co-conspirators were motivated to conspire. Their predominant purpose was to harm Class Members by requiring them to pay artificially inflated prices for Video-Streaming Services, and to illegally increase their profits pursuant to their unlawful agreement whereby the Defendant, Facebook, would refrain from direct competition in the Canadian Video-Steaming Services market in exchange for the Defendant, Netflix's, subscriber data and additional purchase of targeting advertising on the Defendant, Facebook's, social-media platform.

98. The Defendants and their unnamed co-conspirators intended to cause economic loss to the Plaintiff and Class Members. In the alternative, the Defendants and their unnamed co-conspirators knew in the circumstances that their unlawful acts would likely cause injury.

iii. Fraudulent Concealment

99. The Plaintiff and other Class Members had neither actual nor constructive knowledge of the facts constituting their claim for relief.

100. The Plaintiff and Class Members did not and could not have known about the Defendants' anti-competitive agreement. The Defendants engaged in a secret conspiracy that did not reveal facts that would put the Plaintiff or the Class on inquiry notice that there was a conspiracy whereby the Defendant, Facebook, would refrain from direct competition in the Canadian Video-Steaming Services market in exchange for the Defendant, Netflix's, subscriber data and additional purchase of targeting advertising on the Defendant, Facebook's, social-media platform.

101. The Defendants' anti-competitive conspiracy, by its very nature, was self-concealing. Producers of video-streaming services are not exempt from anti-competitive regulation, and thus, the Plaintiff and Class Members reasonably considered the Video-Streaming Services industry to be competitive until recently. A reasonable person under the circumstances would not have been alerted to begin to investigate the legitimacy of prices paid by direct, and/or indirect, purchasers for Video-Streaming Services in Canada.

102. The Plaintiff and Class Members could not have discovered the alleged conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Defendants and non-party co-conspirators to conceal their combination.

103. Throughout the Class Period, the Defendants effectively, affirmatively, and fraudulently concealed their unlawful combination and conspiracy from the Plaintiff and Class Members.

104. The combination and conspiracy, as alleged herein, was fraudulently concealed by the Defendants by various means and methods, including, but not limited to, numerous public statements by the Defendant, Facebook, as to its strategy for its streaming-video platform, Watch, that constitute affirmative acts to mislead the public. These false representations were intended to obscure the real reason for Watch's stagnation. Rather than informing the public that the Defendant, Facebook, had deliberately defunded Watch as a part of an agreement with the Defendant, Netflix, to cede the

market for Video-Streaming Services, these representations falsely suggested that the purpose of Watch has always been as a way to market the Defendant, Facebook's, social-media platform.

105. By virtue of the Defendants' fraudulent concealment of their wrongful conduct, the running of any limitation period has been tolled and suspended with respect to any claims and rights of action that the Plaintiff and Class Members have as a result of the unlawful combination and conspiracy, as alleged herein.

iv. **Unjust Enrichment**

106. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

107. As a result of their unlawful conduct, the Defendants benefitted from a significant enhancement of their revenues pursuant to their unlawful agreement, conspiracy and/or scheme not to compete by allocating markets to one another – video-streaming to the Defendant, Netflix, and data to the Defendant, Facebook. Class Members have suffered a corresponding deprivation as a result of being forced to pay artificially inflated prices for Video-Streaming Services. There is no juristic reason or justification for the Defendants' enrichment, as such conduct is tortious, unjustifiable, and unlawful under the *Competition Act.*

108. It would be inequitable for the Defendants to be allowed to retain any of the ill-gotten gains resulting from their unlawful conduct.

The Plaintiff and Class Members are entitled to the amount of the Defendants' ill-gotten gains resulting from their unlawful and inequitable conduct.

F. Tolling of Limitation Periods

109. The Plaintiff incorporates and re-alleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Notice of Civil Claim.

110. During the Class Period, the Defendants' conspiracy was a continuing violation in which the Defendants repeatedly violated Class Members' interests by adhering to, enforcing, and reaffirming the anti-competitive agreement described herein.

111. The Defendants' continuing adherence to, enforcement of, and reaffirmation of the anti-competitive agreement throughout the Class Period was, and is, consummated through, among other conspiratorial acts, by refusing to compete with each other in the Video-Streaming Services market and communicating with each other to discuss the terms of and continued adherence to the conspiracy.

Plaintiff's address for service:

Dusevic & Garcha
Barristers & Solicitors
#210 - 4603 Kingsway
Burnaby, BC V5H 4M4
Canada

Fax number address for service (if any):

436-3302

E-mail address for service (if any):

None

Place of trial:

Vancouver, British Columbia, Canada

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1
Canada

Dated: November 22, 2024

Signature of K.S. Garcha
lawyer for plaintiff(s)

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The Plaintiff and the Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28 (the "***CJPTA***") in respect of these Defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f), (g), (h) and (l) of the *CJPTA* because this proceeding:

(a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;

(b) concerns a tort committed in British Columbia;

(c) concerns a business carried on in British Columbia; and

(d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The within proposed multi-jurisdictional class proceeding involves an alleged conspiracy among the Defendants to allocate the market for video-streaming services and resulting artificial price increases of such in violation of the *Competition Act.*

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:
[ ] motor vehicle accident
[ ] medical malpractice
[ ] another cause

A dispute concerning:
[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[ ] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues concerning the probate of an estate
[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[x] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws

[ ] none of the above

[ ] do not know

Part 4:

1. Class *Proceedings Act*, R.S.B.C. 1996, c.50

2. *Court Jurisdiction and Proceedings Transfer Act* R.S.B.C. 2003 c.28

3. *Competition Act,* R.S.C. 1985, c.C-34;

4. *Criminal Code of Canada,* R.S.C. 1985, c C-46;

5. *Limitation Act*, S.B.C. 2012, c.13; *Limitations Act*, RSA 2000, c. L-12; *The Limitations Act,* SS 2004, c. L-16.1;*The Limitations Act,* SS 2004, c. L-16.1;*The Limitation of Actions Act*, CCSM c. L150;*Limitations Act,* 2002, SO 2002, c. 24, Sch. B; *Limitations Act*, SNL 1995, c. L-16.1; *Limitation of Actions Act,* SNS 2014, c. 35; *Limitation of Actions Act*, SNB 2009, c. L-8.5; *Statute of Limitations,* RSPEI 1988, c. S-7; *Limitation of Actions Act,* RSY 2002, c. 139; *Limitation of Actions Act*, RSNWT 1988, c. L-8; *Limitation of Actions Act,* RSNWT (Nu) 1988, c. L-8