

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

NO: 500-06-000897-179

(Class Action)  
SUPERIOR COURT

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RAPHAEL BADAOUI, [REDACTED]  
[REDACTED]

and

BENJAMIN LOEUB, [REDACTED]  
[REDACTED]

Applicants

-vs-

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

and

**APPLE INC.**, legal person having its head office at 1 Infinite Loop, Cupertino, California, 95014, United States of America

Defendants

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**AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFFS**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**TO THE HONOURABLE CHANTAL CORRIVEAU, J.C.S., ACTING AS THE DESIGNATED JUDGE IN  
THE PRESENT CASE, YOUR APPLICANTS STATE AS FOLLOWS:**

**I. GENERAL PRESENTATION**

1. On December 28<sup>th</sup>, 2017, Defendants Apple Canada Inc. and Apple Inc. (hereinafter collectively referred to as "**Apple**") publicly admitted the following, Applicant disclosing

the support article published by Apple on its website titled “*iPhone Battery and Performance - Understand iPhone performance and its relation to your battery*” as **Exhibit P-1**:

Batteries are a complex technology, and there are a number of variables that contribute to battery performance and related iPhone performance. **All rechargeable batteries are consumables and have a limited lifespan — eventually their capacity and performance decline so that they need to be serviced or recycled.** As this happens, it can contribute to changes in iPhone performance.

[our emphasis underlined in bold]

2. Apple further confirms that the products it manufactures, markets, sells and services are only durable for a limited amount of time, even in normal use, as it appears from its webpage titled “*Battery Service and Recycling*”, Applicant disclosing **Exhibit P-2**;
3. According to Apple (see Exhibit P-2) the products referred to in the preceding paragraph include iPhones, Apple Watches, iPads, iPods and MacBooks (hereinafter the “**Apple Products**”);
4. Apple Products come with a one-year warranty that includes “*service coverage for a defective battery*”, during which Apple will replace defective batteries at no charge to Class Members;
5. However, after the one-year conventional warranty period, Class Members who purchased and/or own Apple Products with defective batteries are forced to pay Apple anywhere from \$99.00 plus taxes and more if they wish to keep using their Apple Products;
6. Apple also sells extended warranties called “AppleCare” and “AppleCare+”, which, for an additional cost of \$169.00 plus taxes and more (depending on the Apple Product) extends consumers’ coverage to 2-3 years from their original purchase date;
- 6.1 Apple’s “AppleCare” and “AppleCare+” extended warranty is not more advantageous than the legal guarantee under Quebec’s *Consumer Protection Act* and its price is disproportionate to the point of causing objective lesion to all “AppleCare” and “AppleCare+” purchasers;
7. When marketing, selling and servicing its Apple Products and its AppleCare extended warranties, Apple fails to inform Quebec consumers of their legal rights under Quebec’s *Consumer Protection Act* (hereinafter the “**CPA**”), which provides as follows:

**37.** Goods forming the object of a contract must be fit for the purposes for which goods of that kind are ordinarily used.

**38.** Goods forming the object of a contract must be durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use.

8. Considering the high prices paid by Class Members for Apple Products, in normal use Apple Products are not durable for a reasonable length of time;
9. In other jurisdictions, such as in the United Kingdom, Apple Products are under warranty for six-years as a minimum, while Quebec consumers only receive a one-year warranty for virtually identical Apple Products, Applicant disclosing **Exhibit P-3**;
10. Consequently, Applicant wishes to institute a class action on behalf of the following class and sub-class of which he is a member, namely:

**Class:**

Every consumer [...] who purchased an Apple Product including an iPhone, Apple Watch, iPad, iPod and/or a MacBook;

(hereinafter referred to as the “**Class**”)

**Sub-Class:**

Every consumer [...] who purchased “AppleCare” and/or “AppleCare+” for an Apple Product including an iPhone, Apple Watch, iPad, iPod and/or a MacBook, and was not informed of their legal warranty under sections 37 and 38 of the *CPA* at the time of purchase;

(hereinafter referred to as the “**Sub-Class**”)

or any other Class or Sub-Class to be determined by the Court;

**II. THE PARTIES**

11. Applicants both reside in the judicial district of Montreal and are consumers within the meaning of the *CPA*;
12. Defendant Apple Inc. is a multinational technology company based in Cupertino, California, that designs, develops, markets, sells and services consumer electronics, including Apple Products;
13. Defendant Apple Canada Inc. operates as a subsidiary of Defendant Apple, Inc. and

engages in the distribution and servicing of Apple Products in Canada, as it appears from the extract of the CIDREQ, **Exhibit P-4**;

14. The Defendants are “*merchants*” within the meaning of the *CPA* and their activities are governed by this legislation, among others;

**III. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):**

**A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT**

**The cause of action of Applicant Raphael Badaoui**

15. On or around December 20<sup>th</sup>, 2014, Mr. Badaoui purchased an Apple iPhone 6+ for \$969.00 for his personal use, Applicant disclosing his proof of purchase as **Exhibit P-5**;
16. Mr. Badaoui purchased the iPhone so that he can use it as a mobile phone with Rogers, to take pictures and videos, as well as to use the internet;
17. Initially, Mr. Badaoui's iPhone functioned perfectly;
18. However, after two years of normal use, the battery on Mr. Badaoui's iPhone began to die much quicker than usual;
19. As a result, Mr. Badaoui had to continuously charge his phone at home overnight, at work during the day and in his car while commuting;
20. After two years, Mr. Badaoui's iPhone was no longer fit to be used as a mobile smartphone, since it almost always had to be connected to a charger and dies very quickly when it is not;
21. Contrary to what is provided for under section 38 of the *CPA*, Mr. Badaoui's iPhone was not durable in normal use for a reasonable length of time, having regard to its price (\$969.00), the terms of the contract and the conditions of its use (a mobile smartphone);
22. Mr. Badaoui would have never paid \$969.00 for his iPhone had he known at the time of his purchase that his iPhone would have only been durable for two years (a fact Apple must have known well before its admission/notice to consumers on December 28<sup>th</sup>, 2017);
23. In light of the 6-year warranty offered by Apple to consumers in the United Kingdom, Mr. Badaoui alleges that 6 years, at the least, would constitute a reasonable length of time under section 38 of the *CPA*;
24. By refusing to replace Mr. Badaoui's defective battery free of charge after the one-year

conventional warranty period, Apple is profiting from its intentional violation of section 38 CPA by forcing Mr. Badaoui to purchase a replacement battery, Applicant disclosing **Exhibit P-6**;

- 24.1 On January 30, 2018, Mr. Badaoui purchased a replacement battery from the Apple store in Fairview Pointe-Claire and was forced to pay Apple \$40.24, which should have been covered under the CPA's legal warranty and which should have been replaced by Apple at no cost to him, Applicant disclosing the receipt as **Exhibit P-7**;
- 24.2 The price of \$40.24 paid by Mr. Badaoui is abusive and disproportionate to the point of causing him objective lesion (s. 8 CPA) because he should have not been charged anything at all;
25. The Applicant believes that further evidentiary support for his allegations will come to light after a reasonable opportunity for discovery;
26. Applicant's damages are a direct and proximate result of Apple's misconduct;
27. As a result of the foregoing, Mr. Badaoui is [...] justified in claiming compensatory damages in the amount of \$40.24, as well as punitive damages based on violations of section 38 CPA (pursuant to section 272 CPA);

#### **The cause of action of Applicant Benjamin Loeub**

- 27.1 On October 21, 2018, Mr. Loeub purchased AppleCare+ from the Apple store in Laval, Applicant disclosing *en liasse* the email confirmation from Apple dated October 22, 2018 titled "AppleCare+ Proof of Coverage" and the PDF terms and conditions document attached thereto as **Exhibit P-8**;
- 27.2 Mr. Loeub paid \$169.00 plus tax (\$194.31) for AppleCare+ from Apple, as it appears from his receipt disclosed as **Exhibit P-9**;
- 27.3 Mr. Loeub purchased AppleCare+ for his "iPhone 8" (his iPhone 8 is connected with Fido) because he was told by Apple representatives that the warranty on his Apple iPhone 8 was for 12 months and that AppleCare+ gave him an additional 12 months of warranty;
- 27.4 At no time prior to purchase (and even until the present date) did Apple ever inform Mr. Loeub (in any way or form) about the legal warranty under Quebec's CPA;
- 27.5 The "AppleCare+" he purchased for \$194.31 – which represents approximately 25% of the value of his iPhone 8 – does not offer Mr. Loeub a more advantageous warranty than the legal warranty under Quebec's CPA (it is worth mentioning that the price for AppleCare+ is the same for less expensive model iPhones such that the percentage can be more than 25% for many class members);

- 27.6 Therefore, the price of \$194.31 paid by Mr. Loeub is abusive and disproportionate to the point of causing him objective lesion (s. 8 CPA) because, under Quebec consumer law, an iPhone 8 that retails from \$800 to \$1000 is covered under the legal warranty of ss. 37, 38 and 53 CPA for at least 2 years (and even more according to the jurisprudence);
- 27.7 As a result of the foregoing, Mr. Loeub is justified in claiming compensatory damages in the amount of \$194.31 as well as punitive damages pursuant to section 272 CPA.

**Applicants' claim for punitive damages**

28. Apple's overall conduct before, during and after the violation, was lax, careless, passive and ignorant with respect to Quebec consumers' rights and to their own obligations;
29. In this case, Apple continues to breach the CPA, without any explanation, for a significant period;
30. Aggravating the matter is that Apple has already extended its warranty period for consumers in other jurisdictions (such as in the United Kingdom and the European Union), but intentionally ignores the statutory rights of Quebec consumers;
31. This *laissez-faire* attitude, of it's not cheating unless you get caught, is in and of itself an important reason for this Court to impose measures that will punish Apple, as well as deter and dissuade other foreign entities from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
32. The reality is that has Apple generated hundreds of millions of dollars in revenues over the years by selling its Apple Products, batteries and extended warranties to Quebec consumers, and abiding by Quebec's legal warranty under section 38 CPA would have an adverse effect on Apple's bottom line;
33. Indeed, Apple demonstrated through its behavior (before, during and after the violation) that it is more concerned about its bottom line than about consumers' rights and their own obligations under the CPA;
34. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
35. Apple's violations were intentional, calculated, malicious and vexatious;
36. Applicants are accordingly entitled to claim and do hereby claim from Apple \$300.00 per Class Member on account of punitive damages;
37. Apple's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstance;

**B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:**

38. All Class Members have a common interest both in proving the violations of sections 8, 37, 38 and 53 of the *CPA* and in maximizing the aggregate of the amounts unlawfully charged to them by Apple;
39. All Sub-Class Members have a common interest both in proving the violation of sections 8, 37, 38, 53, 219 and 228 of the *CPA* and in maximizing the aggregate of the amounts unlawfully charged to them by Apple when purchasing an extended warranty (including “AppleCare” and “AppleCare+”);
40. Class and Sub-Class Members also have an interest in proving that the fees charged by Apple for its extended warranties are disproportionate, exploitative and abusive, because Class and Sub-Class Members had a statutory right to a legal warranty (at no fee) which Apple intentionally ignored;
41. The nature of the interest necessary to establish the standing of the Applicant must be viewed from the perspective of the common interest of the proposed Class and Sub-Class and not solely from the perspective of the representative plaintiff;
42. In this case, the legal and factual backgrounds at issue are common to all the members of the Class and Sub-Class, namely whether Apple: i) fails to respect the statutory warranty provided for under Quebec law; and ii) misleads consumers and/or fails to inform them of an important fact (i.e. the existence of a legal warranty under s. 38 *CPA*) when selling its Apple Products and extended warranties;
43. By reason of Apple’s unlawful conduct, Applicant and every Class and Sub-Class Member have suffered damages, which they may collectively claim against Apple;
44. In taking the foregoing into account, all members of the Class and Sub-Class are justified in claiming the sums which they unlawfully overpaid to Apple, as well as punitive damages pursuant to section 272 *CPA*;
45. Each Class and Sub-Class Member is justified in claiming at least one or more of the following as damages:
  - Reimbursement of a portion of the costs of their Apple Product(s);
  - Reimbursement of the whole (or a portion) of the costs incurred to purchase an extended warranty from Apple; and
  - Punitive damages in the amount of \$300.00 each.
46. All of the damages to the Class and Sub-Class Members are a direct and proximate result of Apple’s misconduct;

47. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
48. **The recourses of the Class and Sub-Class Members raise identical, similar or related questions of fact or law, namely:**
- a) Did Apple fail in its obligations under sections 37 and 38 of the *CPA* to provide Class Members with a legal warranty free of charge under Quebec law, and if so, are Class Members entitled to compensation?
  - b) Did Apple engage in false, misleading, or deceptive acts or practices regarding the marketing, distribution, sale and/or servicing of Apple Products?
  - c) Is Apple liable to the Class and Sub-Class members for reimbursement of a portion of the price paid for their Apple Products and/or Apple extended warranties as a result of its fault?
  - d) Did Apple conceal or fail to mention an important fact in any of the representations made to Quebec consumers concerning Apple Products and/or Apple extended warranties?
  - e) Is Apple liable to the Class and Sub-Class Members for reimbursement of the whole or a portion of the price paid for Apple Products and/or Apple extended warranties in reason of its concealment or failure to inform them?
  - f) Does the disproportion between the fees charged to Class and Sub-Class Members for Apple Products and Apple's extended warranties and the value of the Products and service provided by Apple constitute exploitation and objective lesion under section 8 of the *CPA*?
  - g) Are the fees charged to Class and Sub-Class Members by Apple for its extended warranties excessively and unreasonably detrimental to consumers such that the contractual clauses allowing Apple to charge such fees are abusive under article 1437 of the *CCQ*?
  - h) Is the clause concerning a one-year warranty in Apple's terms and conditions null, entitling Class and Sub-Class Members to a full reimbursement of the amounts paid to replace their defective batteries in Apple Products after the initial one-year period?
  - i) Should an injunctive remedy be ordered to prohibit Apple from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
  - j) Is Apple responsible to pay compensatory [...] and/or punitive damages to Class

and Sub-Class Members and in what amount?

**C) THE COMPOSITION OF THE CLASS**

49. The composition of the Class and Sub-Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
50. Apple has likely sold millions of Apple Products and extended warranties to consumers in Quebec during the Class Period;
51. The size of the Class is conservatively estimated to include tens of thousands of consumers in Quebec;
52. The names and addresses of all persons included in the Class are not known to the Applicant, however, are likely in the possession of Apple;
53. Class members are very numerous and are dispersed across the province, across Canada and elsewhere;
54. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class and Sub-Class Member to obtain mandates and to join them in one action;
55. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class and Sub-Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

**D) THE CLASS MEMBERS REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFFS ARE IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**

56. Applicant<sub>s</sub> requests that they be appointed the status of representative plaintiff<sub>s</sub> for the following principal reasons recognized and applied liberally by recent jurisprudence:
  - a) they are both members of the Class and Sub-Class and both have a personal interest in seeking the conclusions [...] proposed herein;
  - b) they are competent, in that they have the potential to be the mandataries of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
  - c) their interests are not antagonistic to those of other members of the Class;
57. Additionally, Applicant<sub>s</sub> respectfully add that:
  - a) they have the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;

- b) Mr. Badaoui initially contacted his attorneys to mandate them to file the present application for the sole purpose of having his rights, as well as the rights of other Class and Sub-Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of Apple's illegal behavior and so that Apple can be held accountable for its misconduct;
  - c) Mr. Loeub is eager and available to act as co-representative plaintiff so that all Sub-Class members can be compensated for their overpayment of AppleCare;
  - d) they cooperate and will continue to fully cooperate with their attorneys, who have experience in consumer protection-related class actions;
  - e) they have read this Application prior to its court filing, reviewed the exhibits in support thereof and understand the nature of the action;
58. As for identifying other Class and Sub-Class Members, Applicants draw certain inferences from the situation, notably from the notice Apple issued on its website on December 28<sup>th</sup>, 2017, titled "*A Message to Our Customers about iPhone Batteries and Performance*" (Exhibit P-6). Consequently, Applicants realize that by all accounts, there is a very important number of consumers that find themselves in an identical situation, and that it would not be useful for them to attempt to identify them given their sheer number;
59. For the above reasons, Applicants respectfully submit that their respective interests and competences are such that the present class action could proceed fairly and in the best interest of Class and Sub-Class Members;

#### **IV. DAMAGES**

60. During the Class Period, Apple has likely generated hundreds of millions of dollars selling Apple Products and extended warranties while intentionally choosing to ignore the law in Quebec;
61. Apple's misconduct is reprehensible and to the detriment of vulnerable Quebec consumers;
62. Apple must be held accountable for the breach of obligations imposed on it by consumer protection legislation in Quebec, including:
- a) Quebec's *Consumer Protection Act*, notably sections 8, 37, 38, 53, 219, 228 and 272;
63. In light of the foregoing, the following damages may be claimed against Apple:
- a) compensatory damages, in an amount to be determined, on account of the damages suffered; and

- b) punitive damages, in the amount of \$300.00 per Class member, for the breach of obligations imposed on Apple pursuant to section 272 *CPA*;

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

64. The action that the Applicants wish to institute on behalf of the members of the Class and Sub-Class is an action in damages, declaratory judgment and injunctive relief;
65. The conclusions that the Applicants wish to introduce by way of an originating application are:

**GRANT** Plaintiffs' action against Defendants on behalf of all the Class and Sub-Class Members;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicants and each of the Class and Sub-Class Members;

**DECLARE** that the fees charged by Defendants for replacement batteries for their Apple Products amount to exploitation under section 8 of the *CPA*;

**DECLARE** that the fees charged by Defendants for their extended warranties amount to exploitation under section 8 of the *CPA*;

**DECLARE** that the fees charged by the Defendants for replacement batteries for their Apple Products and extended warranties are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the *CCQ*;

**DECLARE** abusive, null and in violation of public order the clause concerning a one-year warranty in the Defendants' terms and conditions;

**ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;

**DECLARE** that the legal warranty for Apple Products under section 38 of the *CPA* last for a period of at least six years;

**CONDEMN** the Defendants solidarily to pay to each Class and Sub-Class Member compensatory damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each Class and Sub-Class Member the sum of \$300.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and the additional indemnity on the above sums according to 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 forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class and Sub-Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

66. The interests of justice favour that this Application be granted in accordance with its conclusions;

## **VI. JURISDICTION**

67. The Applicants suggest that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Applicants have their domicile and residence in the judicial district of Montreal;

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

**GRANT** the present application;

**AUTHORIZE** the bringing of a class action in the form of an originating application in damages;

**APPOINT** the Applicants the status of representative plaintiffs of the persons included in the Class herein described as:

#### **Class:**

Every consumer [...] who purchased an Apple Product including an iPhone, Apple Watch, iPad, iPod and/or a MacBook;

(hereinafter referred to as the “**Class**”)

#### **Sub-Class:**

Every consumer [...] who purchased “AppleCare” and/or “AppleCare+” for an Apple Product including an iPhone, Apple

Watch, iPad, iPod and/or a MacBook, and was not informed of their legal warranty under sections 37 and 38 of the *CPA* at the time of purchase;

(hereinafter referred to as the “**Sub-Class**”)

or any other Class or Sub-Class to be determined by the Court;

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

- a) Did Apple fail in its obligations under sections 37 and 38 of the CPA to provide Class Members with a legal warranty free of charge under Quebec law, and if so, are Class Members entitled to compensation?
- b) Did Apple engage in false, misleading, or deceptive acts or practices regarding the marketing, distribution, sale and/or servicing of Apple Products?
- c) Is Apple liable to the Class and Sub-Class members for reimbursement of a portion of the price paid for their Apple Products and/or Apple extended warranties as a result of its fault?
- d) Did Apple conceal or fail to mention an important fact in any of the representations made to Quebec consumers concerning Apple Products and/or Apple extended warranties?
- e) Is Apple liable to the Class and Sub-Class Members for reimbursement of the whole or a portion of the price paid for Apple Products and/or Apple extended warranties in reason of its concealment or failure to inform them?
- f) Does the disproportion between the fees charged to Class and Sub-Class Members for Apple Products and Apple’s extended warranties and the value of the Products and service provided by Apple constitute exploitation and objective lesion under section 8 of the CPA?
- g) Are the fees charged to Class and Sub-Class Members by Apple for its extended warranties excessively and unreasonably detrimental to consumers such that the contractual clauses allowing Apple to charge such fees are abusive under article 1437 of the CCQ?
- h) Is the clause concerning a one-year warranty in Apple’s terms and conditions null, entitling Class and Sub-Class Members to a full reimbursement of the amounts paid to replace their defective batteries in

Apple Products after the initial one-year period?

- i) Should an injunctive remedy be ordered to prohibit Apple from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct, as well as its concealment of important facts?
- j) Is Apple responsible to pay compensatory [...] and/or punitive damages to Class and Sub-Class Members and in what amount?

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

**GRANT** Plaintiffs' action against Defendants on behalf of all the Class and Sub-Class Members;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Applicant and each of the Class and Sub-Class Members;

**DECLARE** that the fees charged by Defendants for replacement batteries for their Apple Products amount to exploitation under section 8 of the CPA;

**DECLARE** that the fees charged by Defendants for their extended warranties amount to exploitation under section 8 of the CPA;

**DECLARE** that the fees charged by the Defendants for replacement batteries for their Apple Products and their extended warranties are excessively and unreasonably detrimental to consumers or adhering parties and are therefore not in good faith under article 1437 of the CCQ;

**DECLARE** abusive, null and in violation of public order the clause concerning a one-year warranty in the Defendants' terms and conditions;

**ORDER** the Defendants to cease from continuing their unfair, false, misleading, and/or deceptive conduct, as well as their concealment of important facts;

**DECLARE** that the legal warranty for Apple Products under section 38 of the CPA last for a period of at least six years;

**CONDEMN** the Defendants solidarily to pay to each Class and Sub-Class Member compensatory damages, in an amount to be determined, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay to each Class and Sub-Class Member the sum of \$300.00 on account of punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants solidarily to pay interest and the additional indemnity on the above sums according to 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 forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual Class and Sub-Class Members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants solidarily to bear the costs of the present action at all levels, including the cost of all exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

**RENDER** any other order that this Honourable Court shall determine;

**DECLARE** that all members of the Class and Sub-Class that have not requested their exclusion, be bound by any judgement 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 members, date upon which the members of the Class and Sub-Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

**ORDER** the publication of a notice to the members of the Class and Sub-Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of Le Journal de Montréal and the MONTREAL GAZETTE;

**ORDER** that said notice be published on the Defendants' various websites, Facebook pages and Twitter accounts, in a conspicuous place, with a link stating "Notice to Quebec Consumers";

**ORDER** the Defendants to send an Abbreviated Notice by e-mail to each Class and Sub-Class Member, to their last known e-mail address, with the subject line "Notice of a Class Action";

**ORDER** the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class and Sub-Class Members, including their names, addresses, phone numbers and email addresses;

**RENDER** any other order that this Honourable Court shall determine;

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

Montréal, December 7<sup>th</sup>, 2018

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

**Me Joey Zukran**

Co-Counsel for Applicant

Montréal, December 7<sup>th</sup>, 2018

*(s) Renno Vathilakis Inc.*

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**RENNO VATHILAKIS INC.**

**Me Michael Vathilakis**

**Me Karim Renno**

Co-Counsel for Applicant

C A N A D A

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
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NO: 500-06-000897-179

**RAPHAEL BADAoui**

and

**BENJAMIN LOEUB**

Applicants

-vs-

**APPLE CANADA INC.**

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**APPLE INC.**

Defendants

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**LIST OF EXHIBITS**

- Exhibit P-1:** Copy of support article published by Apple on its website on December 28<sup>th</sup>, 2017 titled *“iPhone Battery and Performance - Understand iPhone performance and its relation to your battery”*;
- Exhibit P-2:** Apple webpage titled *“Battery Service and Recycling”*;
- Exhibit P-3:** Apple webpage titled *“Apple Products and Consumer Laws in the United Kingdom”*;
- Exhibit P-4:** Extract of the CIDREQ for Apple Canada Inc.;
- Exhibit P-5:** Copy of Applicant’s proof of purchase for iPhone 6+;
- Exhibit P-6:** Copy of Apple’s notice to consumers dated December 28<sup>th</sup>, 2017, titled *“A Message to Our Customers about iPhone Batteries and Performance”*;
- Exhibit P-7:** Copy of Apple Fairview Pointe-Claire receipt for Mr. Badaoui’s replacement battery (\$40.24), dated January 30, 2018;

**Exhibit P-8:** En liasse, copy of the email confirmation from Apple to Mr. Loeub dated October 22, 2018 titled "AppleCare+ Proof of Coverage" and the PDF terms and conditions document attached thereto;

**Exhibit P-9:** Copy of Mr. Loeub's proof of purchase for AppleCare+ for \$169.00 plus tax.

These exhibits are available on request.

Montréal, December 7<sup>th</sup>, 2018

*(s) LPC Avocat Inc.*

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**LPC AVOCAT INC.**

**Me Joey Zukran**

Co-Counsel for Applicant

Montréal, December 7<sup>th</sup>, 2018

*(s) Renno Vathilakis Inc.*

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**RENNO VATHILAKIS INC.**

**Me Michael Vathilakis**

**Me Karim Renno**

Co-Counsel for Applicant

500-06-000897-179

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(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

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RAPHAEL BADAOUI  
and  
BENJAMIN LOEUB

Applicants

v.

APPLE CANADA INC. ET AL.

Defendants

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**AMENDED APPLICATION TO AUTHORIZE THE  
BRINGING OF A CLASS ACTION AND TO APPOINT  
THE STATUS OF REPRESENTATIVE PLAINTIFFS**  
(ARTICLES 571 AND FOLLOWING C.C.P.)

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**ORIGINAL**

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Me Joey Zukran  
**LPC AVOCAT INC.**

Avocats • Attorneys

5800 blvd. Cavendish, Suite 411

Montréal, Québec, H4W 2T5

Téléphone: (514) 379-1572 • Télécopieur: (514) 221-4441

Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

**BL 6059**

N/D : JZ-175

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