

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Action)
SUPERIOR COURT

NO: 500-06-001328-240

LEA [REDACTED]

Applicant

v.

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

and

APPLE INC., legal person having its head office at 1 Infinite Loop, Cupertino, California, 95014, U.S.A.

Defendants

AMENDED APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
(ARTICLES 571 AND FOLLOWING C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT STATES:

1. Applicant wishes to institute a class action on behalf of the following class of which she is a member:

Class: All natural and legal persons in Quebec who purchased, acquired, owned or leased an Apple iPhone advertised as water-resistant to a depth of 1 to 6 metres and for up to 30 minutes (iPhone 7 models and later);	<u>Groupe :</u> <u>Toutes les personnes physiques et morales au Québec qui ont acheté, acquis, possédé ou loué un iPhone d'Apple annoncé comme étant résistant à l'eau jusqu'à une profondeur de 1 à 6 mètres et jusqu'à 30 minutes (modèles iPhone 7 et ultérieurs);</u>
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or any other Class to be determined by the Court;	ou tout autre groupe à être déterminé par la Cour ;
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I. THE PARTIES

2. Applicant is a CEGEP student who resides in the judicial district of Montreal and is a consumer within the meaning of the *Civil Code of Quebec*, the *CPA* and the *Competition Act*;
3. Defendant Apple Inc. is a multinational technology company based in Cupertino, California, that designs, develops, markets, sells and services consumer electronics, including Apple products such as the iPhone;
4. 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-1**;
5. The Defendants (herein referred to collectively as “**Apple**”) are “*merchants*” within the meaning of the *Civil Code of Quebec*, the *CPA* and the *Competition Act*; their activities are governed by these legislations, among others;

II. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION (575 CCP):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT

6. The Applicant acquired her brand-new Apple iPhone 15 (pink, 128gb) on around December 7, 2023;
7. Applicant communicates a copy of the receipt for her iPhone 15 as **Exhibit P-2**;
8. Apple currently sells the iPhone 15 (pink, 128gb) for \$1,129.00 plus taxes, as it appears from **Exhibit P-3**;
9. The Applicant’s iPhone 15 bears the serial number ending in L2DJ and this device is registered to her personal Apple ID and bank cards, as it appears from screenshots of her Apple iCloud account disclosed as **Exhibit P-4**;
10. On its website and in its marketing online and in-stores, Apple uses the image of a water drop, and declares in clear and simple language that the iPhone 15 is “*Remarkably resistant*” and “*water resistant*”, and in French “*Tellement résilient*” and “*résiste à l’eau*”, as it appears from the English (www.apple.com/ca/iphone-15/) and French (www.apple.com/ca/fr/iphone-15/) versions of Apple’s website disclosed *en liasse* as **Exhibit P-5**;



Remarkably resistant.
iPhone is splash-, water- and dust-resistant.³ What a relief.



Tellement résilient.
iPhone résiste à l'eau, aux éclaboussures et à la poussière³. C'est quand même rassurant.

11. The above declarations about the iPhone's supposed remarkable water-resistance contains a footnote #3 – which cannot and does not correct the false representations displayed prominently – that contains the following declarations and representations about its iPhone 15 (virtually identical to the ones made for the other iPhone models – iPhone 7 and later – mentioned at paragraph 14 below):

Footnote 3:

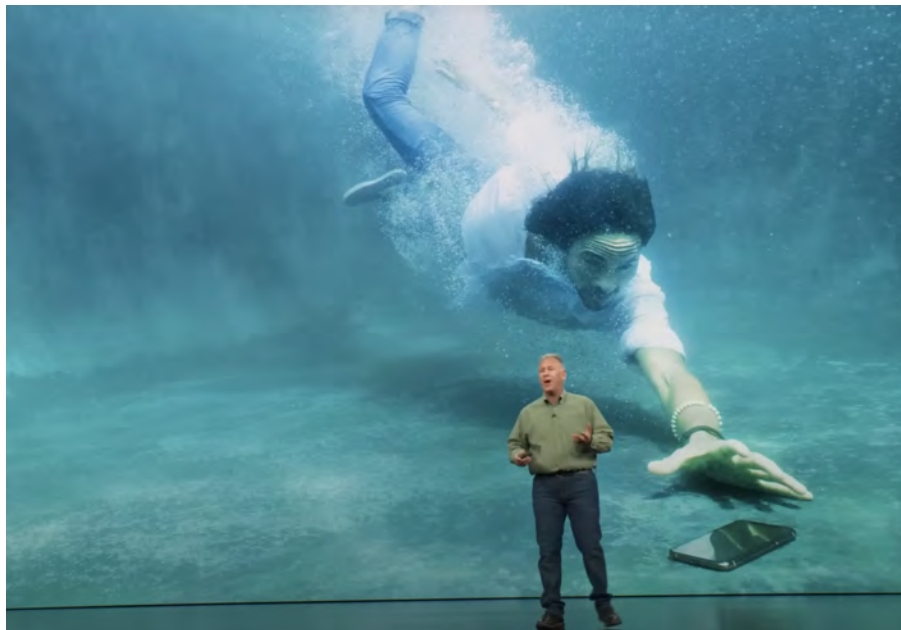
English Apple website:	French Apple Website:
iPhone 15 and iPhone 15 Plus are splash-, water- and dust-resistant and were tested under controlled laboratory conditions with a rating of IP68 under IEC standard 60529 (maximum depth of 6 metres up to 30 minutes) . Splash, water and dust resistance are not permanent conditions. Resistance might decrease as a result of normal wear. Do not attempt to charge a wet iPhone; refer to the user guide for cleaning and drying instructions. Liquid damage not covered under warranty.	iPhone 15 et iPhone 15 Plus sont résistants à l'eau , aux éclaboussures et à la poussière et ont été testés dans des conditions de laboratoire contrôlées. Ils sont certifiés IP68 (jusqu'à 30 minutes à une profondeur maximale de 6 mètres) , conformément à la norme CEI 60529. La résistance à l'eau, aux éclaboussures et à la poussière n'est pas permanente et peut diminuer avec une usure normale. Ne tentez pas de recharger un iPhone mouillé; consultez le guide d'utilisation pour obtenir les directives de nettoyage et de séchage. Les dommages causés par un liquide ne sont pas couverts par la garantie.

12. As it appears from the above disclosure, Apple declares that its iPhones are **IP68** certified. Of course, IP68 is a technical term and means little to the average consumer. However, during his keynote speech on September 18, 2018, Phil Schiller, Senior VP of Worldwide Marketing at Apple, explained to the world what IP68 certified means to Apple – and what Apple means when it says IP68 certified to the public – as it appears from the video of his speech uploaded to Apple's official YouTube channel filed as **Exhibit P-6** (minutes 40:00 to 41:00), and the transcript filed as **Exhibit P-7**:

“**IP68**, that means it’s protected to two meters for up to 30 minutes. So if you happen to be **hanging by the pool, drop your phone in the water, don’t worry**. Dive down, grab it, rinse it, let it dry, **you’ll be fine**.”

And the team tested it in [many] different liquids, in chlorinated water, salt water, orange juice, tea, wine, even beer. This is some of the most fun, intense testing we get to do at Apple.”

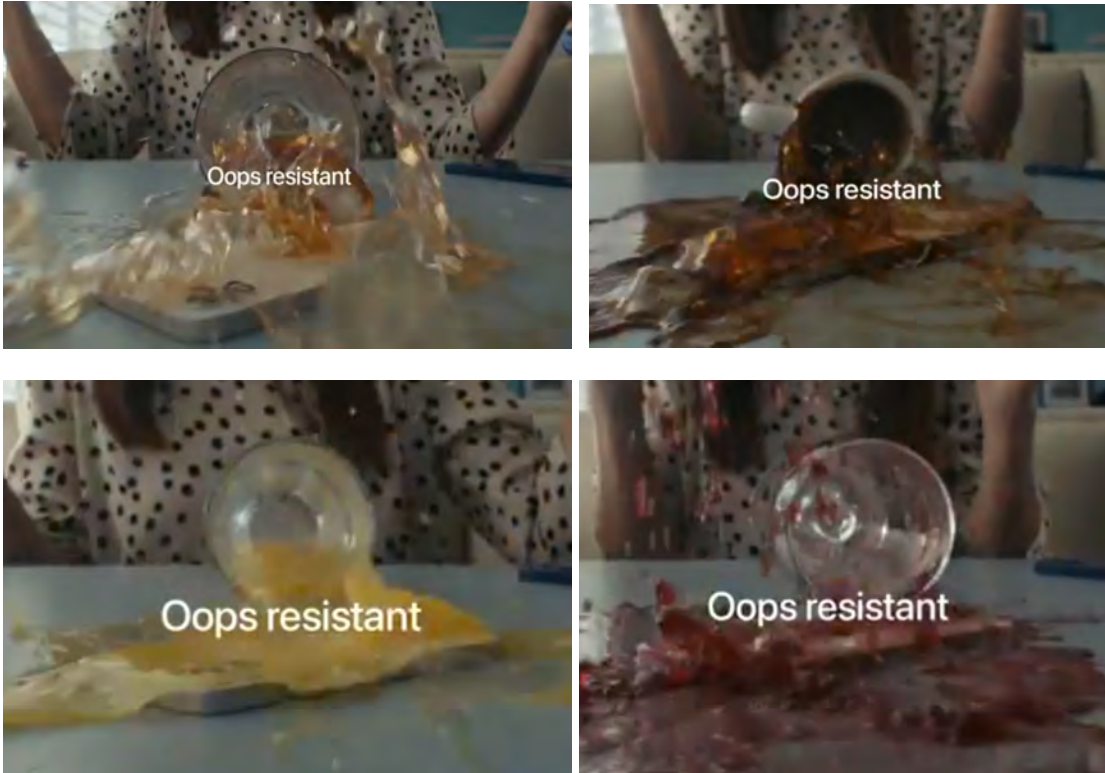
13. While Mr. Schiller was making these declarations about the iPhone’s water resistance, the following images appeared in the background on a big screen:



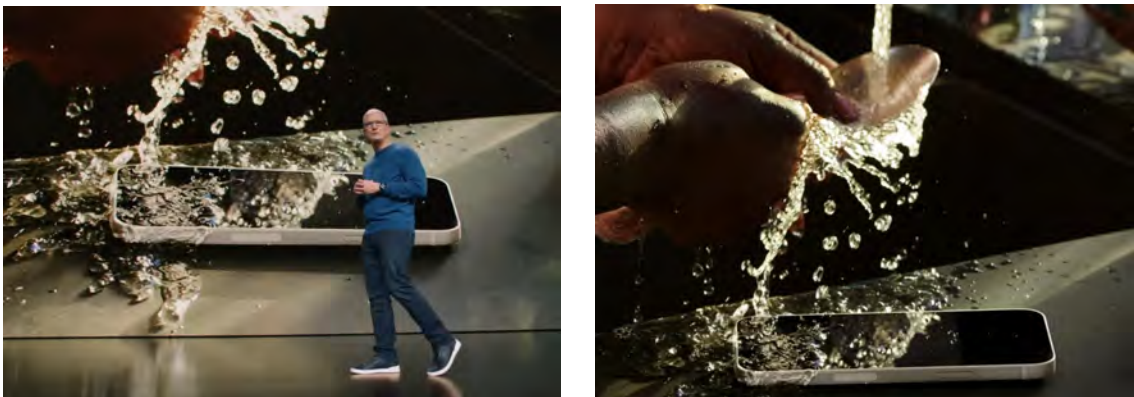
13.1 Apple continued to advertise how resistant, supposedly, its iPhones were to accidental liquid contact at its following annual event (September 10, 2019), as it appears from the video uploaded to Apple's official YouTube channel, with more than 19.2 million subscribers and 11 million views, communicated as **Exhibit P-14** (minutes 105:38 to 105:51 and 131:40 to 131:50). Apple showed the following footage when advertising its "water resistant iPhone", leaving no doubt that its iPhone was designed to sustain such water contact – and advertised as such:



13.2 During its 2020 annual event (October 13, 2020), Apple advertised its iPhones as **“oops resistant”** synonymously with “water resistant”, which is an admission that Apple concedes that water/liquid contact is **“accidental”**, as it appears from the video uploaded to Apple’s official YouTube channel, with more that 61 million views, communicated as **Exhibit P-15** (minutes 44:00 to 44:10, and minute 47:22 where Apple again refers to the **IP68 rating**):



13.3 At its 2021 annual event (September 14, 2021), Apple’s CEO, Tim Cook – who was also at the other events – advertised the “water resistance” of Apple’s iPhone’s and walked in front of the below image displayed on a big screen, as it appears from the video uploaded to Apple’s official YouTube channel communicated as **Exhibit P-16** (see minutes 38:15 to 38:22, and minutes 40:02 and 100:06 where Apple states that the iPhone: **“has industry leading IP68 water resistance”**):



- 13.4 At all times when Apple broadcasted and advertised that its iPhones are water resistant and IP68 certified to tens of millions of people, Apple failed to mention that its warranty excludes “liquid contact”. In any case, Apple’s warranty cannot contradict Apple’s advertising which is broadcasted and viewed significantly more than the warranty (and the liquid contact exclusion) buried in Apple’s website;
- 13.5 Quebec law states that goods or services supplied by a merchant must conform to a statement or advertisement made about them; such statements and advertisements are binding on the merchant as if they were part of the contract (*Abicidan c. Bell Canada*, 2017 QCCS 1198, par. 17). Therefore, where there are two contradicting clauses in a contract as in the present case (the first being the pictures and declarations made by Apple regarding IP68 certification reproduced above that clearly signify that the iPhones can sustain significant liquid contact that form part of the contract in Quebec, and the second being the “liquid contact” exclusion in Apple’s warranty), the contract must be interpreted in favour of the adherent/consumer in all cases (article 1432 C.C.Q. and section 17 CPA);
14. Apple continues to perpetuate the false message that it will cover “**accidental**” liquid damage until this date. On its currently live webpage titled “About splash, water, and dust resistance of iPhone 7 and later” (www.support.apple.com/en-ca/108039), Apple states that the Applicant’s iPhone 15 is among many iPhone models that “are resistant to **accidental** spills from common liquids, such as soda, beer, coffee, tea, and juice” / “Ces modèles sont résistants aux déversements **accidentels** de liquides courants, comme les boissons gazeuses, la bière, le café, le thé et les jus” as it appears from **Exhibit P-8**;
15. The above images and declarations are not puffery: Apple literally tells people that they can drop their iPhone in a pool and “*you’ll be fine*”. As the Applicant learnt the hard way, Apple’s front-level employees use a different script than their executives;
16. Indeed, as a result of this advertising and these declarations, Applicant was under the impression that her iPhone 15 was water resistant – or as Apple states: “*Tellement résilient*” and “*résistants à l’eau... jusqu’à 30 minutes à une profondeur maximale de 6 mètres*”, and “oops resistant”;
17. However, Apple’s declarations reproduced above (Exhibits P-5, P-6, P-7 [...] P-8, P-14, P-15 and P-16) are false, because iPhones are routinely damaged by liquid contact that Apple advertised and promised that they could withstand;
- 17.1 Instead of standing by its advertising and promises concerning its iPhones’ water resistance and declarations about the IP68 certification related to its iPhones, Apple systemically voids its customers’ warranties – contrary to all the expectations its advertising gives – because the liquid indicator built-in to the iPhone appears to be too sensitive and turns red to indicate “liquid damage”, even when the iPhone comes into contact with less liquid than Apple advertised it could sustain;

The Applicant's iPhone:

18. On or around August 16, 2024, Applicant was at the pool on vacation with friends in Cancun, Mexico, when her Apple iPhone 15 came into contact with a very small amount of water. A few minutes later, Applicant noticed that her iPhone was no longer functioning;
19. Applicant emphasizes that her phone was not submerged into water and that only a few splatters of water came into contact with her iPhone (significantly less water than appears in the images reproduced at paragraphs 13 to 13.3 above);
20. On August 22, 2024, Applicant went to the Apple Store on Sainte-Catherine in Montreal (after booking a genius bar appointment with a case ID, as appears from **Exhibit P-9**), explained the situation, and asked them to repair her iPhone. Apple's representative examined her iPhone for a few seconds (she simply looked at the charging port with a flashlight and removed the sim card) and informed her that Apple refuses to repair her iPhone due to water damage;
21. While Apple and its Senior VP of Worldwide Marketing at Apple, Phil Schiller, broadcasted pictures of the iPhone falling to the bottom of a pool and promises the public "*you'll be fine*", Apple's staff is instructed to systemically refuse repairs when there is "liquid contact". This is a flagrant situation of false advertising that causes financial prejudice to consumers;
22. It is worth noting that the Applicant's iPhone 15 is still within the 1-year conventional warranty provided by Apple and well within the legal warranty under the CPA;
23. Applicant explained to the Apple Store representative that iPhone claims that the iPhone 15 is water resistant and that her phone did not go into water more than 6 meters deep for more than 30 minutes (or anywhere close to that). In response, the Apple Store representative told her that her options were to either purchase a new iPhone 15 for more than \$1,100.00 plus taxes, or to contact her credit card company who may offer insurance for purchases made on a credit card (which is absurd because it unfairly shifts Apple's liability to the credit card insurance);
24. The Apple Store representative also told the Applicant that this situation is so common and widespread that she sees this type of "water damage" situation every day. She made it clear to the Applicant that Apple will not repair or replace her iPhone free of charge and that she should contact Apple customer support by phone if she wished to escalate her situation;
- 24.1 On August 22, 2024, the Applicant's father contacted Apple's customer service department by phone on her behalf, re-emphasizing all of the above and asked Apple to repair or replace the Applicant's iPhone free of charge, but Apple once again refused;

25. During that call, Apple’s representative curiously compared the iPhone to a television and explained how a television wouldn’t work if damaged by water. Of course, television manufacturers don’t tell their customers that “you’ll be fine” if their television falls in a pool;
26. Also during that call, Apple’s representative stated that the iPhone “comes with a 1-year limited warranty, but it doesn’t cover accidental damage” and that “**liquid damage is considered to be accidental**”. She stated that she was the highest “point of contact” of telephone support (“senior advisor”) and encouraged the Applicant’s father to “*take action*” if they were not satisfied with her conclusion;
27. Applicant hereby takes action;
28. Apple’s water resistance claims are false and misleading because the Applicant’s iPhone was permanently damaged after coming into significantly less liquid contact than 6 meters of water for 30 minutes;
- 28.1 Additionally, the clause in Apple’s warranty (**Exhibit P-17**) which systematically and automatically voids the warranty for liquid contact (which Apple then – and contradictorily – considers to be “accidental damage”), is abusive within the meaning of section 8 CPA and article 1437 C.C.Q., because Apple expressly advertised that its iPhones are “oops resistant” and “oops”, by definition, is accidental;
- 28.2 The abusive, unfair and contradictory exclusion in Apple’s warranty reads as follows (see **Exhibit P-17** which is the most current warranty; the exclusions below appear to be identical in all previous versions during the Class period):

English version	French version
This Warranty does not apply: ...	La présente garantie ne s’applique pas : ...
(d) to damage caused by accident , abuse, misuse, fire, liquid contact , earthquake or other external cause;	(d) aux dommages imputables à un accident , à un abus, à une mauvaise utilisation, à un incendie, au contact d’un liquide , à un tremblement de terre ou à toute autre cause externe;

- 28.3 This exclusion is abusive on its face because Apple advertises that its iPhones can sustain both significant liquid contact and accidents caused by liquid (“oops resistant”) as alleged and reproduced at paragraphs 13 to 13.3 above;
- 28.4 Telling people that the IP68 rating means that their iPhones can be submerged in a pool for 30 minutes and that “you’ll be fine” (Exhibits P-6 and P-7) to then systemically exclude “liquid contact” as an “accident” under its warranties, is the epitome of bad faith, abuse and false representations, all of which must be sanctioned by this Court;

29. Applicant can no longer use her iPhone 15 and will have to eventually purchase a new iPhone;
30. In short, Applicant's iPhone was damaged by liquid contact that Apple advertised and promised that it could withstand;
31. Applicant's damages are a direct and proximate result of Apple's illegal conduct;
32. As a result of the foregoing, Applicant and Class Members are justified in claiming compensatory damages, as well as punitive damages based on Quebec's *Consumer Protection Act*, the *Civil Code of Quebec* and the *Competition Act*;
- 32.1 The Applicant also seeks injunctive relief ordering Apple to cease the prohibited practices alleged herein;

Applicant's claim for punitive damages

33. Applicant is a consumer using her iPhone for personal use and can therefore claim punitive damages for a breach of the CPA, pursuant to s. 272 CPA;
34. 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;
35. Apple is a repeat and ongoing offender with respect to the claims raised herein;
36. On November 30, 2020, it was reported by multiple news outlets that Apple was fined \$12 million for unfair and misleading claims about the water resistance of several of their iPhone models included in this class action (iPhone 8, iPhone 8 Plus, iPhone XR, iPhone XS, iPhone XS Max, iPhone 11, iPhone 11pro and iPhone 11 pro Max), as it appears *en liasse* from **Exhibit P-10**;
37. In particular, the first article in Exhibit P-10 states that the Italian antitrust authority found that Apple was guilty of the following two things:

"The first concerns the marketing of a number of different iPhone models – iPhone 8, iPhone 8 Plus, iPhone XR, iPhone XS, iPhone XS Max, iPhone 11, iPhone 11pro and iPhone 11 pro Max – in which it was claimed that each of the advertised products was water resistant to a maximum depth varying between 4 meters and 1 meter depending on the model. for up to 30 minutes.

According to the Authority, however, the messages did not clarify that these claims were true only in the presence of specific conditions, for example during specific and controlled laboratory tests with the use of static and pure water, and not in normal use of the devices by consumers.

Second, and more seriously, Apple made iPhone water resistance claims in its marketing, but then refused warranty service on phones which suffered water damage.

Furthermore, the disclaimer “The guarantee does not cover damage caused by liquids”, **given the emphatic advertising boast of water resistance, was considered likely to deceive consumers by not clarifying which type of guarantee it referred to (conventional guarantee or legal guarantee), nor was it deemed capable of adequately contextualizing the conditions and limitations of the claims of water resistance.**

The Antitrust also considered it appropriate to take into account **Apple’s refusal, in the post-sales phase, to honor warranties when those iPhone models were damaged by water or other liquids, thus depriving consumers of the rights they should expect from the guarantee or in the Consumer Code.**

[our emphasis in bold]

38. A copy of the October 27, 2020, decision by the Italian AGCM and its Statement are communicated herewith *en liasse* as **Exhibit P-11** (to be translated for the authorization hearing);
39. On February 24, 2022, the Italian Court published its judgment dismissing Apple’s appeal, as it appears from the judgment disclosed as **Exhibit P-12** (to be translated for the authorization hearing);
40. It is therefore clear that Apple is well aware of the issue and intentionally continues to breach the *CPA*, the *Civil Code of Quebec* and the *Competition Act* for a significant period;
41. For instance, despite the Italian appeal decision – and almost 2 years later – nowhere in Apple’s advertising (or even its footnote 3 reproduced at paragraph 11 above) does Apple make it clear to the average consumer that its water-resistance claims are only accurate in ideal laboratory conditions, and that the Apple iPhones had not passed the same tests in real-life conditions (in fact, Mr. Schiller gave the public the impression that Apple “*tested it in [many] different liquids, in chlorinated water, salt water, orange juice, tea, wine, even beer. This is some of the most fun, intense testing we get to do at Apple*” (Exhibits P-6 & P-7);
42. There is therefore no doubt that Apple’s water resistance claims are false, misleading and intentional;
43. Worse, Apple’s employees are instructed to systemically refuse to repair or replace iPhones when their visual inspection concludes “liquid contact”, which contradicts the representations it makes to the public about the iPhone’s water resistance and IP68 certification;

- 43.1 Apple continues its abuse of Quebec residents by using the same exclusion in Quebec (Exhibit P-17) that the Italian authorities punished Apple for (Exhibit P-11 and Exhibit P-12)
44. Applicant asks this Court to impose measures that will punish Apple, as well as deter and dissuade Apple and other merchants from engaging in similar reprehensible conduct to the detriment of Quebec consumers;
45. The reality is that Apple has likely generated hundreds of millions of dollars in revenues over the years by selling its iPhones to Quebec consumers;
46. Apple's violations are intentional, calculated, malicious and vexatious;
47. Apple's violations are systemic and, based on the Applicant's experience at the Apple Store as alleged at paragraph 20 above, Applicant believes that the only "test" that the Apple Store employees perform is to verify with a flash light whether the liquid indicator built-in to the iPhone turned red (indicating water contact) and, if so, systemically refuse to repair or replace iPhones advertised as water-resistant. Applicant communicates a video of an example of this "test" as **Exhibit P-13**;
- 47.1 Additionally, it is evident that Apple's iPhone liquid indicators are too sensitive because, as in the Applicant's case, the indicator turns red with liquid contact even below the 6 meter or 30 minutes thresholds advertised by Apple, and Apple then completely voids the warranty (including for all other reasons once the customer brings it in, even for something other than liquid damage);
- 47.2 This systemic voiding of the warranty means that Class Members' iPhones will always be categorized as having "accidental damage" and their warranty voided not only for liquid contact, but for anything else whatsoever;
- 47.3 Systematically categorizing liquid contact as "accidental damage" – even though Apple advertises that its iPhones can sustain significant liquid contact and "you'll be fine" – and voiding Class Members' warranties causes significant prejudice and stress to Class Members, and enriches Apple who then benefits from a new iPhone purchase (or the cost paid by Class members to replace or repair their iPhones);
48. Applicant is accordingly entitled to claim and does hereby claim from Apple \$500.00 per Class Member on account of punitive damages;
49. Apple's patrimonial situation is so significant that the foregoing amount of punitive damages is appropriate in the circumstances;

B) COMMON QUESTIONS

50. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
- a) Are Apple's representations that its iPhones are Water-resistant to a depth

of 1 to 6 meters and for up to 30 minutes misleading?

- b) Are Apple's representations that its iPhones are "*Remarkably resistant*" and "*water resistant*", and in French "*Tellement résilient*" and "*résiste à l'eau*" misleading?
 - c) Did Apple conceal or fail to mention an important fact in any of the representations made to Class Members concerning the water resistance of its iPhone?
 - d) Did Apple act in bad faith by refusing to repair or replace the Class Members' iPhones?
 - e) Is the clause that excludes "liquid contact" in the Apple One (1) Year Limited Warranty abusive within the meaning of section 8 CPA or article 1437 C.C.Q., and, if so, should it be declared void?
 - f) Is the liquid indicator on the Class Members' iPhones faulty, in that it turns red after liquid contact Apple advertised the iPhones could sustain?
 - g) Are Class Members entitled to compensatory damages and in what amount?
 - h) Are Class Members who are consumers within the meaning of the CPA entitled to punitive damages and in what amount?
 - i) Are Class Members who paid any amount to repair or replace their iPhones damaged by water infiltration (for less than 1 to 6 meters and less than 30 minutes) entitled to a reimbursement or damages?
 - j) Should an injunctive remedy be ordered to prohibit Apple from continuing to perpetrate its prohibited conduct, as well as its concealment of important facts?
51. Each Class Member is justified in claiming at least one or more of the following as damages:
- Reimbursement of the whole (or a portion) of the costs of their Apple iPhone;
 - Reimbursement of the whole of the costs incurred to repair their iPhone after Apple refused to cover water damage under its warranty or otherwise;
 - Punitive damages in the amount of \$500.00 each.
52. All of the damages to the Class Members are a direct and proximate result of Apple's misconduct;
53. Individual questions, if any, pale by comparison to the common questions that are

significant to the outcome of the present Application;

C) COMPOSITION OF THE CLASS

54. The composition of the 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;
55. Apple has likely sold millions of iPhones to consumers in Quebec during the Class Period;
56. On its website (Exhibit P-8), Apple declares that the iPhone models “iPhone 7 and later” are water-resistant in a similar or identical manner as the Applicant’s iPhone 15, meaning that there are at least 30 different model iPhones included in this class action;
57. When the Applicant visited the Apple Store on Sainte-Catherine on August 22, 2024, the Apple representative who looked at her iPhone told her that the “liquid contact” issue is very common and that she sees similar cases every day;
58. The size of the Class is conservatively estimated to include tens of thousands of people in Quebec;
59. 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 (Apple keeps records of visits to the Apple Store and the results of their inspection of the device, including water damage or liquid contact). Applicant hereby calls on Apple to preserve all of these records;
60. Class Members are very numerous and are dispersed across the province and Canada;
61. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
62. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) ADEQUATE REPRESENTATIVE

63. Applicant requests that she be appointed the status of representative plaintiff for the following principal reasons:
 - a) she is a member of the Class and has a personal interest in seeking the conclusions that she proposes herein;

- b) she is competent, in that she has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) her interests are not antagonistic to those of other members of the Class;
64. Additionally, Applicant respectfully adds that:
- a) she has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
 - b) she wants to hold Apple accountable for its illegal practices and to help other Class Members similarly situated be compensated; and
 - c) she cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;
65. As for identifying other Class Members, Applicant draws certain inferences from the situation and realizes 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 to attempt to identify them given their sheer number;
66. For the above reasons, Applicant respectfully submits that her interest and competence are such that the present class action could proceed fairly and in the best interest of Class Members;

III. DAMAGES

67. During the Class period, Apple has likely generated hundreds of millions of dollars selling Apple iPhones to Class Members and charging Class Members to repair or replace iPhones damaged by “liquid contact” (which should have been covered under the warranty after they marketed these iPhones as water-resistant to a depth of 1 to 6 meters and for up to 30 minutes);
68. Apple’s misconduct, including the systemic voiding of warranties on account of “liquid contact” that is advertised its iPhones can sustain is reprehensible and to the detriment of vulnerable Quebec consumers;
69. Apple must be held accountable for the breach of obligations imposed on it by law, including the:
- a) *Consumer Protection Act*, notably sections 8, 17, 37, 38, 40, 41, 42, 43, 219, 228, 253 and 272;
 - b) *Civil Code of Quebec*, notably articles 6, 7, 1407, 1432, 1437 and 1458; and
 - c) *Competition Act*, notably sections 36 and 52.

70. 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;
 - b) reimbursement for Class Members who already paid for “liquid contact”/water damage related repairs (or replacements) that should have otherwise been performed (or replaced) by Apple free of charge; and
 - c) punitive damages, in the amount of \$500.00 per Class Member, for the breach of obligations imposed on Apple pursuant to section 272 CPA;

IV. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

71. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages, declaratory judgment and injunctive relief;
72. The conclusions that the Applicant wishes to introduce by way of an originating application are:

GRANT Plaintiff’s action against Defendants on behalf of all the Class Members;

ORDER the Defendants to cease engaging in the prohibited practices and to cease failing to disclose important information concerning water resistance when selling iPhones;

DECLARE abusive, null and void, the portion of the clause which appears in the Apple One (1) Year Limited Warranty and that voids the warranty on account of “liquid contact”:

<u>English version</u>	<u>French version</u>
<u>This Warranty does not apply:</u> ... <u>(d) to damage caused by accident, abuse, misuse, fire, liquid contact, earthquake or other external cause;</u>	<u>La présente garantie ne s’applique pas :</u> ... <u>(d) aux dommages imputables à un accident, à un abus, à une mauvaise utilisation, à un incendie, au contact d’un liquide, à un tremblement de terre ou à toute autre cause externe;</u>

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class Members;

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

CONDEMN the Defendants, solidarily, to pay to each Class Member the sum of

\$500.00 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, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

CONDEMN the 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;

V. JURISDICTION

73. The Applicant suggests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Applicant is a consumer who and resides 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, declaratory judgment and injunctive relief;

APPOINT the Applicant the status of representative plaintiff of the persons included in the Class herein described as:

Class: All natural and legal persons in Quebec who purchased, acquired, owned or leased an Apple iPhone advertised as water-resistant to a depth of 1 to 6 metres and for up to 30 minutes (iPhone 7 models and later); or any other Class to be determined by the Court;	<u>Groupe :</u> <u>Toutes les personnes physiques et morales au Québec qui ont acheté, acquis, possédé ou loué un iPhone d'Apple annoncé comme étant résistant à l'eau jusqu'à une profondeur de 1 à 6 mètres et jusqu'à 30 minutes (modèles iPhone 7 et ultérieurs);</u> <u>ou tout autre groupe à être déterminé par la Cour ;</u>
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IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Are Apple's representations that its iPhones are water-resistant to a depth of 1 to 6 meters and for up to 30 minutes misleading?
- b) Are Apple's representations that its iPhones are "Remarkably resistant" and "water resistant", and in French "Tellement resilient" and "résiste à l'eau" misleading?
- c) Did Apple conceal or fail to mention an important fact in any of the representations made to Class Members concerning the water resistance of its iPhone?
- d) Did Apple act in bad faith by refusing to repair or replace the Class Members' iPhones?
- e) Is the clause that excludes "liquid contact" in the Apple One (1) Year Limited Warranty abusive within the meaning of section 8 CPA or article 1437 C.C.Q., and, if so, should it be declared void?
- f) Is the liquid indicator on the Class Members' iPhones faulty, in that it turns red after liquid contact Apple advertised the iPhones could sustain?
- g) Are Class Members entitled to compensatory damages and in what amount?
- h) Are Class Members who are consumers within the meaning of the CPA entitled to punitive damages and in what amount?
- i) Are Class Members who paid any amount to repair or replace their iPhones damaged by water infiltration (for less than 1 to 6 meters and less than 30 minutes) entitled to a reimbursement or damages?
- j) Should an injunctive remedy be ordered to prohibit Apple from continuing to perpetrate its prohibited conduct, as well as its concealment of important facts?

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

GRANT Plaintiff's action against Defendants on behalf of all the Class Members;

ORDER the Defendants to cease engaging in the prohibited practices and to cease failing to disclose important information concerning water resistance when selling iPhones;

DECLARE abusive, null and void, the portion of the clause which appears in the Apple One (1) Year Limited Warranty and that voids the warranty on account of “liquid contact”:

English version	French version
<u>This Warranty does not apply:</u> ... <u>(d) to damage caused by accident, abuse, misuse, fire, liquid contact, earthquake or other external cause;</u>	<u>La présente garantie ne s’applique pas :</u> ... <u>(d) aux dommages imputables à un accident, à un abus, à une mauvaise utilisation, à un incendie, au contact d’un liquide, à un tremblement de terre ou à toute autre cause externe;</u>

DECLARE the Defendants liable for the damages suffered by the Applicant and each of the Class Members;

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

CONDEMN the Defendants, solidarily, to pay to each Class Member the sum of \$500.00 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, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

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

CONDEMN the 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

ORDER the publication of a notice to the Class Members in accordance with article 579 C.C.P., pursuant to a further order of the Court, and **ORDER** the Defendants to pay for said publication costs;

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 that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

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

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, August 26, 2024

(s) LPC Avocats

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