C A N A D A

PROVINCE OF QUÉBEC

DISTRICT OF MONTREAL

(Class Action)

SUPERIOR COURT

No: 500-06-001018-197

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Tracey Arial, Claire O'Brien, Erika and Zoe Patton, Alex Tasciyan, Mathew Nucciaroni and Vito DeCicco

Plaintiffs/Petitioners

vs.

Apple Canada Inc. and **Samsung Electronics Canada**

Respondents

Introduction:

Plaintiffs propose three (3) syllogisms:

1. Cellphone models, including certain Defendants' models, when tested using the advertised separation distance emit EMF/SAR in excess of the F.C.C. limit of 1,6 W/kg. This constitutes false advertising. Defendants are well aware of this fact.
2. Cellphone models, including all tested Defendants' models, when tested as used (i.e. separation distance of 2 mm or less) exceed the F.C.C. limit of 1,6 W/kg by up to five (5) times [1]. This constitutes a failure to warn, a failure to inform, and the intentional marketing of an inherently dangerous product.
3. Defendants actions and omissions detailed above cause serious health risks to humans and the environment. The risks constitute a breach of fundamental rights and the *Charters and justify the awarding of punitive damages.* This matter concerns the *quantum* of damages due to class members and is a matter for the Merits.

[1] "ANFR Mobile Phone SAR" data is as published by France's national radiofrequency regulator (*Agence Nationale des Frequences*). data are available on the ANFR website: (https://data.anfr.fr/anfr/visualisation/export/?disjunctive.marque&disjunctive.modele&sort=marque)

Plaintiffs' Notes and Authorities re Apple Canada's Modified Application for Leave to Adduce:

1. Applicant's claim that Defendant's phones, when tested (i) "as advertised"; (ii) *as actually used*, do not meet the FCC SAR limit of 1.6 W/kg, and (iii) are not safe to use. Reference is made to four (4) sets of test results: Chicago Tribune 2019 tests, CBC Marketplace 2017 tests, ANFR (French regulator) "Phonegate" tests (data released by ANFR in March, 2018 following legal action in the French Court) and Penumbra 2019 iPhone 11 SAR test report. These results indicate that the SAR levels indicated by the phones themselves, in user manuals and on Defendants websites are intentionally misleading, constitute false advertising, and fail to warn of a significant risk to life and security of person.
2. In order to show that this is not an insignificant breach, and to quantify class members' damages, Applicants indicate the severity of the false advertising and failure to warn, alleging EMF pollution to human health and the environment. This secondary issue is relevant at the Merits stage only.
3. In this regard Applicants have created a spreadsheet which lists Defendant Exhibits, groups them by category, explains relevance to Syllogisms 1 and 2 Authorization (or at any stage).

Exhibit #	Grouping	Argument Relevance	Jurisprudence
Apple 1	FCC retest of Chicago Tribune	Captured Agency A Defense	Oratoire St.-Joseph
Apple 2	FCC 19-126	Captured Agency Irrelevant to Syllogisms 1 and 2	Definition of "limit"
Apple 3	FDA Report unreliable	Industry false science	Turin decisions AARPA
Apple 4	"Simulates" is false	Syllogism 1 and 2	
Apple 5 *en liasse*	Distances not disclosed	Syllogism 1 and 2	
Apple 6 *en liasse*	"Safety Code" 6	Industry false science Captured Agency Syllogism 3 merits	Turin Decisions AARPA Agency Bias

		Disguised Expertise A defense	Havas Report P-3 F
Apple 7 *en laisse*	"Safety Code" 6	Industry false science Captured Agency Syllogism 3 merits Disguised Expertise A defense	Turin Decisions AARPA Agency Bias Havas Report P-3 F
Apple 8	Durand and Mahons Cumulative Effects of EMF proceedings	Not the proceedings ruled upon. Not similar and even if so, so what?	No relevance, nor any alleged, to Syllogisms 1 and 2 *Bouchard Bank of Montreal, Lauzon c Deux Montagnes, Asselin c Desjardins, Primo Bedding Company c. Air Canada*
Apple 9 and 11	FCC *amicus curiae* filing in *Cohen* and Request FCC appear	California's Class Action jurisdiction challenged based on preemption (NEPA)	No such legal challenge to jurisdiction is available in Quebec
Apple 10	Amended proceedings filed in *Cohen*	In support of preemption jurisdiction challenge	No such legal challenge to jurisdiction is available in Quebec
Samsung 1	FCC 19-126	Captured Agency Irrelevant to Syllogisms 1 and 2	Definition of "limit"
Samsung 2			
Samsung 3	FDA Report unreliable	Industry false science	Turin decisions
Samsung 4	"Safety Code" 6	Industry false science Captured Agency Syllogism 3 merits Disguised Expertise A defense	Turin Decisions AARPA Agency Bias Havas Report P-3 F
Samsung 5	"Safety Code" 6	Industry false science Captured Agency Syllogism 3 merits Disguised Expertise A defense	Turin Decisions AARPA Agency Bias Havas Report P-3 F
Samsung 6	"Safety Code" 6	Industry false science Captured Agency Syllogism 3 merits	Turin Decisions AARPA Agency Bias

		Disguised Expertise A defense	Havas Report P-3 F
Samsung 7	User Manual	Not relevant to syllogisms 1 and 2	*Li c Equifax* paras. 102-3
Samsung 8	User Manual	Admission of distance x.x supports Syllogisms 1 and 2	Supports Syllogisms 1 and 2
Samsung 9	User Manual	Not relevant to syllogisms 1 and 2	*Li c Equifax* paras. 102-3
Samsung 10	User Manual	Not relevant to syllogisms 1 and 2	*Li c Equifax* paras. 102-3
Samsung 11	Radio Equipment Lists	Admission of distance issues & aids Syllogisms 1 and 2	Supports Syllogisms 1 and 2
Samsung 12	Radio Equipment Lists	Admission of distance issues & aids Syllogisms 1 and 2	Supports Syllogisms 1 and 2
Samsung 13	Radio Equipment Lists	Admission of distance issues & aids Syllogisms 1 and 2	Supports Syllogisms 1 and 2
Samsung 14	Radio Equipment Lists	Admission of distance issues & aids Syllogisms 1 and 2	Supports Syllogisms 1 and 2
Samsung 15	Motorola publicity	Corrects error in Class definition	Given amendment not necessary

4. At para. 6 of its Modified Application Apple simplistically characterizes the Applicants allegations to be "that certain smartphone models emit RF radiation that exceeds safety standards set by the FCC." Plaintiffs' claim *cannot fairly be reduced to* "compliance with FCC standards". There are, with respect, three (3) syllogisms alleged.

5. Proposed Apple Exhibits 1, 2, 3, 6 and 7 are inadmissible due to bias, unreliability and are tainted by Defendants' false science. APL-3, 6 and 7 are disguised expertise alleged prematurely. As concerns FCC documentation we refer to "Captured Agency: How the Federal Communications Commission is Dominated by the Industries it Presumably Regulates" by Norm Alster (www.ethics.harvard.edo), which states:

> *"There's no question that the government has been under the influence of industry. The FCC is a captured agency" or "…direct lobbying by industry is just one of many worms in a rotting apple. The FCC sits at the core of a network that has allowed powerful moneyed interests with limitless access a variety of ways to shape its policies, often at the expense of fundamental public interests. As a result, consumer safety, health, and privacy, along with consumer wallets, have all been overlooked, sacrificed, or raided due to unchecked industry influence."*

Also relevant in this regard are the Turin decisions *Romeo c INAIL* and, in *Cohen v. Apple*, the February 10, 2020 decision by the Honorable Mr. Justice Alsup[2]. While the FCC limit of 1.6 W/kg is relevant for syllogism 1, the FCC's opinion on the Chicago Study, even if reliable and unbiased, would be a defense and expertise, to be considered on the merits.

6. Apple's Motion is based on a simplistic premise. We do not just say that RF radiation exceeds FCC safety standards. We say (1) It exceeds what the manufacturer advertises. When the testing is done properly, and not "diesel-gated" it fails by a wide margin; (2) When tested as cellular phones are actually used, SAR for Defendants' handsets exceeds the FCC limit of 1.6 W/kg as much as fivefold as confirmed by Om Gandhi.[3]

> *"Expecting that the SARs for cell phones may exceed the safety limits for body contact, cell phone manufacturers have started to recommend that the devices can be used at 5-25 mm from the body even though it is difficult to see how to maintain this distance correctly under mobile conditions. …most cell phones will exceed the safety guidelines when held against the body by factors of 1.6-3.7 times for the European/ICNIRP standard or by factors as high as 11 if 1-g SAR values were to be measured as required by the U.S. FCC."*

7. At para. 12 Apple state "a report by the Chicago Tribune in August (22nd) 2019 allegedly suggests that certain smartphone models emit RF radiation that exceeds safety standards set by the F.C.C.". The Tribune article (Exhibit P-3A) indicates at pages 9 to 12 that in almost all scenarios (even after "Diesel-gating" by the manufactures) the 1.6 W/kg FCC

[2]C 19-05322 WHA, ORDER CONVERTING MOTION TO DISMISS INTO MOION FOR SUMMARY JUDGMENT AND ALLOWING IMMEDIATE DISCOVERY, Alsup, J. February 10, 2020 Cohen File doc. 94.
[3] *Supra* note 1.

SAR limit is breached (see Standard test results). Exhibit P-3A further indicates that when tested at 2 millimeters separation distance, estimated to be the exposure when carrying a phone in a pocket, the breach is considerably worse (Modified tests). Chicago *did not* test at zero millimeters, which would be actual use. Neither Defendant considers that Plaintiffs submit five (5) data sets as facts alleged to support the conclusions sought in Syllogisms 1 and 2. No mention by Defendants of CBC Marketplace Study (Exhibit P-3B), ANSES 2017 (Exhibit P-3C), ANSES 2019 (P-3D) nor Penumbra (Exhibit P-3H).

8. The 2017 ANSES test results (Exhibit P-3 C), were publicly disclosed in March 2018 only after legal proceedings against the French regulator. The 2015 AFNR data shows that, when tested as used, 9/10 cellphones do *not* comply with exposure limits, or even come close to doing so. Between the body SAR displayed by the manufacturer and the real SAR there were deviations almost five-fold (464%). Since April 2018 in France, 18 models have been withdrawn from market or updated for exceeding SAR threshold. Given the manner by which manufacturers intentionally rigged test results, the ANFR data has been referred to as "Phonegate", inspired by Volkswagen's "Dieselgate" gaming of emissions results. Claimed to be safe, they are not.
9. ANSES expressed test results in terms of the F.C.C. limit of 1.6 W/kg. Those tables are reproduced both in Apple Exhibit 10 at pages 21 to 23 and by our Expert Pedro Gregorio in Exhibit P-3G.
10. These datasets conclusively indicate that even where FCC limit is applied, Defendants cellphones in nearly all cases exceed its 1.6W/kg standard for SAR emissions.

11. In March 2017, CBC tested Samsung Galaxy S-7 and iPhone 7 models at F.C.C.-accredited RF Exposure lab. When tested as used the radiation absorbed increased to three to four times the FCC limit.
12. Doctor Devra Davis, interviewed by Wendy Mesley at 13:41 states: “I think if phones were tested the way people use them none of them would pass”. Cellphones are falsely advertised as safe.
13. The 2019 Penumbra Brands test results (RF Exposure Lab Test Report Number R&D.20191201) also indicate that, when tested in accordance with the measurement procedures specified in IEC 62209-2:2010 at the manufacturer’s stated separation distance of 5 mm, a commercially-sourced Apple iPhone 11 Pro smartphone produced a maximum stand alone SAR value of 3.83 W/kg exceeding the FCC SAR limit of 1.6 W/kg (FCC Rule Parts 2, 27) by 240%.
14. Proposed Exhibit APL-1 seeks to invalidate the Chicago Tribune test results. Were it reliable and unbiased, it would be relevant for the Merits. It is none of the above.
15. In *Cohen et al v. Apple Inc. et al* (U.S. District Court, California Northern District (San Francisco), CIVIL CASE #: 3:19-cv-05322-WHA) the Honorable Mr. Justice Alsop, ruled on February 10, 2020 against Apple’s Motion to Dismiss and invited the FCC to file a Statement of Interest. Exhibits APL-1 and APL-2 concerning the FCC’s Statement to the effect that “RF emissions from F.C.C.-certified cell phones pose no health risks” and “comply with the F.C.C.’s RF standards” are not relevant on Authorization or even at the merits. Apple’s claim the Court lacks jurisdiction in the *Cohen* proceedings has only to do with the U.S. doctrine of preemption, which is to say that as a result of U.S. administrative action pursuant to NEPA, the FCC has exclusive jurisdiction over health and cellphones in

the U.S.. This appears from docket number 104, Apple's Motion for Summary Judgment, filed herewith.[4] Relying on the decisions in *Murray v Motorola* 982 A. 2d 764, 789 (D.C. 2009) and *Farina v Nokia inc.* 625 F. 3d 97 (3rd Cir. 2010) Apple argues the *Cohen* Court must defer to FCC's rulemaking with respect to RF emissions and dismiss for preemption (see pages 15 to 22 of Apple's Motion). All of this is completely irrelevant to the present matter as FCC preemption does not apply and in in no way impairs Quebec's Collective Action jurisdiction. No deference is due the FCC in Quebec.

This Honorable Court clearly has jurisdiction. Exhibit APL-9, FCC's Statement of Interest, is entirely irrelevant outside the United States. As an example, see at para. 3 page 2 "the Court lacks jurisdiction … subject the Hobbs Act. … Any claim that FCC-certified cell phones are unsafe is also preempted by federal [U.S.] law because it conflicts with the FCC's judgment that cell phones satisfy FCC's RF standards and pose no health *risks and may be certified for sale in the United States* (emphasis ours)." It does not apply to Quebec. APL-9 states at p.15 that U.S. lawsuits concerning damages where the FCC limit is met or challenging the adequacy of the limit are preempted (*Murray v Motorola* p. 777). Syllogisms 1 and 2 fail in the U.S. for want of jurisdiction. That is not true in Quebec.

In the United States, preemption does not bar all state tort (delict) claims: "The FCC's RF regulations preempted a state tort suit where the plaintiff, in order to prevail, would have to show that the FCC's standards were "insufficiently protective of Public health and safety" Apple Exhibit APL-9 at page 14 citing *Farina v Nokia* at pages 126-7. To be certified the *Cohen* Plaintiffs must now prove Syllogism 3. In Quebec, Syllogisms 1 and or 2 suffice for Authorization under the *Consumer Protection Act* and the *Civil Code*.

[4] See *Cohen v Apple* doc 104 main Apple Motion for Summary Judgment and *Farina v Nokia inc.* 625 F. 3d 97 (3rd Cir. 2010) and *Murray v Motorola* 625 F. 3d 97 (3rd Cir. 2010) attached with our Notes and Authorities.

16. For these reasons Exhibits APL-10 and APL-11 are not relevant in Quebec.
17. As stated, the extent and degree of health damages from RF radiation are relevant to the *quantum* of damages available for false advertising, and failure to inform consumers of risks and negligence. This is a matter for the Merits. Furthermore, as the FCC is biased, its position on health risks is not reliable. For these reasons Exhibit APL-2 should be refused.
18. Similarly, proposed Exhibit APL-3 might be relevant at the Merits stage, but as it is based upon industry-funded false science, is also biased and unreliable.
19. As noted in detail by Dr. Magda Havas' Report, Exhibit P-3F, Industry Canada and "Safety Code" 6 are notoriously unreliable, consider solely industry-funded studies and ignore (and even deny the existence of) all studies that indicate RF harm or risk. If they could ever be considered relevant, which is denied, it would be at the Merits stage as "expertise".
20. At para. 27 ff of its Modified Application Apple seeks to adduce Industry Canada's SAR data by model ("Radio Equipment List Details") as Exhibit APL-5 *en liasse.* Applicants claim of misinformation relates to these values. This relates to Syllogisms 1 and 2.
21. The documents raise a serious doubt as concerns the distance of testing. This is a glaring omission. This omission renders them relevant to both Syllogisms 1 "simulates" and, as unsafe, also relevant for Syllogism 2.
22. Defendants claim to have met the Industry Canada limit, but the documents purporting to show this do not disclose a Compliance Distance in 75% of the documents filed in APL- 5 *en liasse*. Each Applicant's specific allegation concerns the warnings and information on their phones, all of which refer to FCC SAR levels. The information is reproduced in the Report of Pedro Gregorio, produced as Exhibit P-3 G.

23. Every one of the APL-5 reports prior to 2018 does NOT list a certification distance. Reports start listing the certification distance in Sept 2018; that accounts for 25% of the reports. None of the test reports list test distance. They claim compliance to a distance, but do not provide details of the test distance...

Model	Model Name	Compliance distance listed	Measured Distance	Approval Date	Date Modified
A1428		N	N		
A1429		N	N		
A1453	5S	N	N		
A1456	5C	N	N		
A1457	5S	N	N		
A1507	5C	N	N		
A1522	6 PLUS	N	N		
A1524	6 PLUS	N	N		
A1529	5C	N	N		
A1530	5S	N	N		
A1532	5C	N	N		
A1533	5S	N	N		
A1549	6	N	N		
A1586	6	N	N		
A1633	6S	N	N		
A1634	6S PLUS	N	N		
A1660	7	N	N		
A1661	7 PLUS	N	N		
A1662	SE	N	N		
A1687	6S PLUS	N	N		

A1688	6S	N	N		
A1699	6S PLUS	N	N		
A1700	6S	N	N		
A1723	SE	N	N		
A1724	SE	N	N		
A1778	7	N	N		
A1784	7 PLUS	N	N		
A1863	8	N	N		
A1864	8 PLUS	N	N	08-Sep-17	
A1865	X	N	N	20-Sep-17	
A1897	8 PLUS	N	N	08-Sep-17	
A1901	X	N	N	15-Sep-17	
A1905	8	N	N	08-Sep-17	27-Nov-19
A1920	XS	5	N	05-Sep-18	28-Nov-19
A1921	XS MAX	5	N	06-Sep-18	28-Nov-19
A1984	XR	5	N	19-Sep-18	28-Nov-19
A2097	XS	5	N	05-Sep-18	28-Nov-19
A2099	XS	5	N	05-Sep-18	28-Nov-19
A2101	XS MAX	5	N	05-Sep-18	28-Nov-19
A2103	XS MAX	5	N	05-Sep-18	28-Nov-19
A2105	XR	5	N	19-Sep-18	28-Nov-19
A2111	11	5	N	29-Aug-19	28-Nov-19
A2160	11 Pro	5	N	29-Aug-19	28-Nov-19
A2161	11 Pro	5	N	30-Aug-19	28-Nov-19

Furthermore, the data sought to be filed as Exhibit APL-5 *en liasse* is of assistance as it illuminates the omission on the part of Apple that claimed separation distance/Compliance

Distance) is reliable and veritable. At which distance the SAR levels were tested is nowhere indicated (75% of model list no "Certification Distance" while 100% of models specify no testing distance data). The data in APL-5 therefore suggest Apple's SAR attestations are wholly unreliable.

24. Exhibit APL-5 is extremely relevant to the Authorization criteria and Syllogisms 1 and 2.
25. "Safety Code" 6, as note, is outdated, based exclusively on industry-funded false science and not applicable in these proceedings. As well, if intended as a Defense to our claims of false advertising (which it is not) or Defendants' failure to inform of a health risk, it could only be relevant at the Merits stage as purported expertise. Proposed Exhibits APL-6 and APL-7 are not relevant for Authorization.
26. If the Defendants were permitted to rely on "Safety Code" 6 as justifying emission levels as cellphones are used (Syllogism 2) *or* to claim there are no significant health risks from cellphone exposure to the public or the hypersensitive (children, pregnant women and immunosuppressed) (Syllogism 3), it is respectfully submitted that Plaintiffs would be entitled to file Counter-expertise as concerns these issues.
27. Applicant's Motion at paras. 32 and 33 seek to file proceedings brought by Marcel Durand, Evelyn and Myles Mahon in 2017 concerning the cumulative effects of EMF from all sources combined and over time. Authorization was refused by decision the Honorable Gary D. D. Morrison June 26, 2018, fourteen (14) months before the Chicago Study was published, which publication, say Defendants, is the crux of Plaintiffs' case.
28. The *Durand* proceedings concerned the cumulative effects of all EMF radiation from all sources. Cellphone radiation was included in the myriad of EMF sources at issue. Apple and Samsung were parties. It is not clearly alleged how proposed Exhibit APL-8 is relevant

here, and even if so, why at the Authorization stage. Why is a "similar" class action relevant? We deny "similarity" and say there was a theoretical overlap only. To be relevant, Apple would have to provide a cogent and detailed argument as to how the *Durand and Mahons'* proceedings relate to Syllogisms 1 and 2, which they have not done.

29. Surprisingly, as Apple was a Defendant, Exhibit APL-8 is not the proceedings adjudicated in *Durand and Mahons*. The Motion Seeking Authorization was substantially amended during the Authorization hearing. If similar *is* relevant, then the Motion Seeking Authorization decided must be adduced. If relevant for 575(2), what would it be the "fact alleged"? Need Apple not say *which* alleged appears to justify *which* conclusion sought? Meaningful and compelling reasons are not to be found in Apple's Motion. It has not alleged APL-8's relevance for the Authorization hearing, nor Syllogisms 1 and 2.
30. Access to justice is to be promoted in collective actions. *Kawasaki Kisen Kaisha Ltd. C. Option Consommateur* 2019 QCCA 1139 para. 2 citing *Oratoire Saint-Joseph du Mont Royal c. J.J.* 2019 SCC 35 at 6-12, 56-62 (per Brown J.) 108-111 (per Gascon J.) and 190-202 + 204-2013 (Cote J. in dissent).
31. Only essential and indispensable proof is permitted to Defendants and only as concerns the syllogism(s). "Completing the factual context is not a ground" *Bouchard c. Bank of Montréal* 2019 QCCS 5661 paras. 42+43 (Carl Thibault JCS), *Lauzon c Municipalité (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at paras. 38 page 13, and at para. 72, page 19 citing and applying *Asselin c Desjardins* 2017 1673 (paras. 37-45) and *Primo Bedding Company c. Air Canada* 2019 QCCS 1671 Duprat, J., pp. 6-7 paras 13ff.
32. Prudence is required. *Agostino* cited in *Desaunettes c. Réseau de Transport métropolitain (Exo),* Gagnon J., 2019 QCCS 1894 para 94, p. 14. The proof must be « succinct and

concise ». *Lauzon c Municipalité (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at paras. 48 page 15. It is preferable that in addition to succinct and precise, where the proposed proof has potentially significant consequences, it becomes essential and indispensable, fitting the narrow corridor. *Lauzon c Municipalité (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. para. 88 page 23.

33. Authorization since *Oratoire Saint-Joseph* is a filter. Only frivolous actions with no chance of success denied. *Pilon* c. *Annex Bank of Canada* 2019 QCCS 3607 Hon. Pierre C. Gagnon at paras. 29+30 i.e. "manifestement mal fondée en fait ou en droit*" Oratoire Saint-Joseph* at paras. 22 and 56. The test is similar to that on a Motion to Dismiss under Art. 168 CCP *(Pilon* at paras 33ff). Should a Judge be presented contradictory facts, he or she is to assume, nonetheless, the facts as alleged for Authorization are true. *Lauzon c Municipalité (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, Bisson, J. at para. 38 p. 13.

34. Only neutral and objective proof is admissible. *Pilon c. Banque Annex of Canada* QCCS 4645, The Honorable Pierre C. Gagnon J. at page 13.

35. A jurisdiction argument based on preemption is inapplicable in Quebec. For that reason, the Cohen and FCC documents, APL-1, APL-9, 10 and 11 have nothing to do with the authorization criteria.

36. Industry biased science cannot be argued at this stage as decided in the Italian decision in *Romeo v. INAIL*. In *Lauzon* Mr. Justice Bisson at para. 67 decides that relevant jurisprudence on the party's claims be filed as an Exhibit and as jurisprudence. In this regard we ask your Lordship to do the same with the Italian decision *Romeo c. INAIL*, filed in support of our Motion Seeking Permission to Amend, notified February 9, 2020.

37. Other elements of defense, disguised expertise and expertise alleged prematurely (*Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 CanLii, para. 87, unreliable biased pseudo-scientific claims, alleged prematurely are inadmissible. Contestation of health effects is a matter for the merits. Only when this Court may examine the issue in detail, and with the benefit of Expert evidence, *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650, Bisson, J., paras. 129-130. And at para. 61, the proposed Exhibits do not assist with Plaintiffs' syllogisms 1 and 2 and as the exhaustive factual claim is not before the Court, cause is not now to be considered, *Lauzon c Municipalite (MRC) de Deux Montagnes*, 2019 QCCS 4650 para. 61-62, p. 17. Disguised expertise creates a right to Counter-expertise (para. 87, p. 23).

    Objectivity and neutrality are required for Defendant Exhibits to be allowed. Such neutrality and objectivity must be apparent on the document. Plaintiffs' claimed may not be tested or contradicted via expertise, apparent or disguised, *Lauzon c Municipalite (MRC) de Deux Montagnes*, the Honorable Mr. Justice Bisson, paras 97-8.

38. In general, neither Defendant provides *specific* arguments as to why the proposed proof is relevant at Authorization, nor how all or any of it relates to Plaintiffs' Syllogisms. Perhaps some detail will emerge from their Notes and Authorities, but it is not in their Motions. Such specificity is absolutely required. *Primo Bedding Company c. Air Canada* 2019 QCCS 1671, Hon. Mr. Justice Duprat, p. 8 para. 17, re discovery.

39. Apple seeks to litigate the merits of the present matter *and* preemption, as per *Cohen,* on Authorization. Most of their proposed Exhibits are for a defense the merits, disguised expertise, misleading or simply untrue. However, the admissions and proof in Apple Exhibits APL- 4 and 5 should be considered on Authorization as Apple failed to disclose

the measurement distance in their testing results, this proposed evidence is relevant to the Plaintiffs Syllogisms 1 and 2, therefore facts alleged justifying conclusions sought concerning false and misleading advertising, failure to warn, nuisance and fault.

Respectfully submitted this 19th day of May 2020

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Charles O'Brien, Lorax Litigation
458 Lakeside, Foster Quebec
J0E 1R0 1 450 242 5885