C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

(CHAMBRE DES ACTIONS COLLECTIVES)
COUR SUPÉRIEURE

N^{O} : 500-06-001163-217

OLI & EVE MAISON DE COIFFURE INC.

Demanderesse

c.

GOOGLE LLC,

GOOGLE CANADA CORPORATION,

ALPHABET INC.,

APPLE INC.

et

APPLE CANADA INC.

Défenderesses

DEMANDE DE SUSPENSION
DE LA DEMANDE POUR AUTORISATION D'EXERCER UNE ACTION COLLECTIVE
(ART. 18, 49, 577 C.P.C. ET 3137 C.C.Q.)

À L'HONORABLE DONALD BISSON, J.C.S., JUGE COORDONNATEUR DE LA CHAMBRE DES ACTIONS COLLECTIVES DE LA COUR SUPÉRIEURE, LA DEMANDERESSE EXPOSE RESPECTUEUSEMENT CE QUI SUIT :

I. INTRODUCTION

1. La Demanderesse Oli & Eve Maison de Coiffure Inc. (« **Oli & Eve** ») demande à la Cour de suspendre la *Demande pour autorisation d'exercer une action collective* (« **Demande** ») instituée le 27 septembre 2021.

2. La présente demande de suspension n'est pas contestée par les Défenderesses Google LLC, Google Canada Corporation et Alphabet Inc. (collectivement « **Google** ») ni les Défenderesses Apple Inc. et Apple Canada Inc. (collectivement « **Apple** »).

3. Dans sa Demande, la Demanderesse Oli & Eve allègue que les Défenderesses ont manqué à leurs obligations légales et statutaires, notamment en complotant de manière à restreindre indûment la concurrence en matière de services de recherche générale en ligne, de façon à permettre aux Défenderesses Google de fixer, maintenir, augmenter et contrôler artificiellement le prix de la publicité affichée sur les pages de résultats d'une requête de recherche (*Search Ads*) (la « **Publicité de recherche** »). Pour sa participation au

complot, la Demanderesse allègue que Google paie aux Défenderesses Apple des milliards de dollars par année provenant des bénéfices tirés de la vente de Publicité de recherche à des prix supra-concurrentiels (le « **Complot** »).

4. Dans le cadre de sa Demande, la Demanderesse Oli & Eve demande l'autorisation d'exercer une action collective contre les Défenderesses pour le compte du groupe suivant :

> *Toute personne ayant acheté au Québec de la Publicité de recherche (Search Ads) auprès de GOOGLE depuis le 1er janvier 2005.*

5. La Demanderesse Oli & Eve allègue que, par leurs agissements, les Défenderesses ont manqué à leurs obligations statutaires prévues à la *Loi sur la concurrence* (L.R.C. (1985), c. C-34), notamment à l'article 45 de cette loi et également à leurs obligations générales prévues au *Code civil du Québec*, notamment à celles ayant trait à leur devoir d'agir de bonne foi.

II. LE RECOURS EN COLOMBIE-BRITANNIQUE

6. Le 9 septembre 2021, avant l'institution de la Demande, la demanderesse Performax Health Group a intenté une action collective portant également sur le Complot, soit le dossier *Performax Health Group* v. *Google LLC, Google Canada Corporation, Alphabet Inc., Apple Inc. and Apple Canada Inc.*, no. S-218036 (Cour suprême de la Colombie-Britannique) (le « **Dossier Performax** »), dont le *Notice of Civil Claim* est communiqué au soutien des présentes comme pièce **R-1**.

7. Le Dossier Performax demande la certification d'un groupe national incluant toutes les personnes visées par la Demande, le tout tel qu'il appert du *Notice of Civil Claim* (pièce R-1).

III. LA DEMANDE DE SUSPENSION

8. Compte tenu de ce qui précède, la Demanderesse demande à cette honorable Cour de suspendre la Demande et de convoquer les parties à une conférence de gestion lorsqu'une décision sur la certification du dossier Performax aura été rendue en Colombie-Britannique.

9. Considérant le stade embryonnaire des procédures, la Demanderesse soumet qu'il n'y a aucune raison de craindre que les droits et les intérêts des membres du groupe visé ne seraient pas adéquatement protégés.

10. Finalement, la Demanderesse demande à cette honorable Cour de réserver son droit de demander la levée de la suspension à tout moment et dans la mesure où les circonstances le justifient.

POUR CES MOTIFS, PLAISE AU TRIBUNAL :

ACCUEILLIR la présente *Demande de suspension de la demande pour autorisation d'exercer une action collective*;

SUSPENDRE la *Demande pour autorisation d'exercer une action collective* pour une période allant jusqu'à 60 jours après le jugement qui sera rendu par la Cour suprême de la Colombie-Britannique sur la certification du dossier *Performax Health Group* v. *Google LLC, Google Canada Corporation, Alphabet Inc., Apple Inc. and Apple Canada Inc*., no. S-218036;

PRENDRE ACTE de l'engagement de la Demanderesse Oli & Eve Maison de Coiffure Inc. à fournir à la Cour des rapports périodiques, à un intervalle d'au plus six (6) mois, concernant l'avancement du dossier *Performax Health Group* v. *Google LLC, Google Canada Corporation, Alphabet Inc., Apple Inc. and Apple Canada Inc*., no. S-218036 (Cour suprême de la Colombie-Britannique) et à informer la Cour dans les 30 jours de tout développement significatif pouvant affecter le présent dossier;

CONVOQUER les parties à une conférence de gestion à être tenue dans les 60 jours du jugement à être rendu sur la certification du dossier *Performax Health Group* v. *Google LLC, Google Canada Corporation, Alphabet Inc., Apple Inc. and Apple Canada Inc*., no. S-218036 (Cour suprême de la Colombie-Britannique);

RÉSERVER la compétence de la Cour pour lever cette suspension sur demande, ou de sa propre initiative, si les circonstances le justifient;

LE TOUT sans frais de justice, sauf en cas de contestation.

Montréal, le 10 mai 2022

Belleau Lapointe, s.e.n.c.r.l.

BELLEAU LAPOINTE, S.E.N.C.R.L.
Me Maxime Nasr
Me Josée Cavalancia
Me Emily Bolduc
mnasr@belleaulapointe.com
jcavalancia@belleaulapointe.com
ebolduc@belleaulapointe.com
300, Place d'Youville, bureau B-10
Montréal (Québec) H2Y 2B6
Téléphone : 514 987-6700
Télécopieur : 514 987-6886
Référence : 2002.100
Avocats de la Demanderesse

DÉCLARATION ASSERMENTÉE

Je soussignée, Sarah Olivier, présidente de Oli & Eve Maison de Coiffure Inc., ayant sa place d'affaires au 1225, rue Saint-Charles Ouest, dans la ville de Longueuil, province de Québec, déclare solennellement ce qui suit :

1. Je suis la représentante dûment autorisée de la Demanderesse Oli & Eve Maison de Coiffure Inc.

2. Tous les faits allégués à la présente *Demande de suspension de la demande d'autorisation d'exercer une action collective* sont vrais.

ET J'AI SIGNÉ :

SARAH OLIVIER

AFFIRMÉ solennellement devant moi,
à Montréal, ce 10e jour de mai 2022.

Nicole Lavallée
230663
COMMISSAIRE À L'ASSERMENTATION
Québec

#230663

Commissaire à l'assermentation pour le Québec

AVIS DE PRÉSENTATION

À : Me Nick Rodrigo
Me Faiz Lalani
DAVIES WARD PHILIPS & VINEBERG, S.E.N.C.R.L., S.R.L.
1501 avenue McGill College, 26e étage
Montréal, Québec H3A 3N9
nrodrigo@dwpv.com
Téléphone : (514) 841-6548
Télécopieur : (514) 841-6499
flalani@dwpv.com
Téléphone : (514) 841-6408
Télécopieur : (514) 841-6499

Avocats des défenderesses Google LLC, Google Canada Corporation et Alphabet Inc.

-et-

Me Éric Vallières
Me Yassin Gagnon-Djalo
MCMILLAN, S.E.N.C.R.L., S.R.L.
1000 rue Sherbrooke Ouest, bureau 2700
Montréal, Québec H3A 3G4
eric.vallieres@mcmillan.ca
Téléphone : (514) 987-5068
Télécopieur : (514) 987-1213
yassin.gagnon-djalo@mcmillan.ca
Téléphone : (514) 375-5106
Télécopieur : (514) 987-1213

Avocats des défenderesses Apple Inc. et Apple Canada Inc.

PRENEZ AVIS que la *Demande de suspension de la demande d'autorisation d'exercer une action collective* sera présentée pour adjudication devant l'honorable Donald Bisson, juge de la Cour supérieure, du district judiciaire de Montréal, au Palais de justice de Montréal, situé au 1, rue Notre-Dame Est, Montréal, à l'heure et à la date qui conviendra à la Cour.

VEUILLEZ AGIR EN CONSÉQUENCE.

Montréal, le 10 mai 2022

Belleau Lapointe, s.e.n.c.r.l.

BELLEAU LAPOINTE, S.E.N.C.R.L.
Me Maxime Nasr
Me Josée Cavalancia
Me Emily Bolduc
mnasr@belleaulapointe.com
jcavalancia@belleaulapointe.com
ebolduc@belleaulapointe.com
300, Place d'Youville, bureau B-10
Montréal (Québec) H2Y 2B6
Téléphone : 514 987-6700
Télécopieur : 514 987-6886
Référence : 2002.100
Avocats de la Demanderesse

No. S 218036
Vancouver Registry

In the Supreme Court of British Columbia

Between

PERFORMAX HEALTH GROUP

Plaintiff

and

GOOGLE LLC, GOOGLE CANADA CORPORATION, ALPHABET INC., APPLE INC. and APPLE CANADA INC.

Defendants

NOTICE OF CIVIL CLAIM

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

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

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

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

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

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

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

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

Time for response to civil claim

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

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or

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

PART 1: STATEMENT OF FACTS

Overview

1. This action arises from a conspiracy between Google and Apple to restrain competition for general internet search engines ("Search Engines"), as a result of which Google acquired and maintained market power which it used to charge supracompetitive prices for internet search advertising services ("Search Ads") to advertisers in Canada. The conspiracy between Google and Apple has included agreements to allocate the market for, lessen competition in, and limit the supply of Search Ads in Canada, and elsewhere. In exchange, Google has paid Apple billions of dollars a year from the supracompetitive profits that Google earned from the sale of Search Ads at supracompetitive prices.

2. When a user types an inquiry into a Search Engine using an internet-enabled mobile device (smartphone or tablet) or personal computer (PC desktop or laptop),

responses to the inquiry are displayed on a Search Engine Results Page ("SERP"). The SERP displays paid Search Ads with the results to the search inquiry. Individuals and businesses in Canada purchase Search Ads from Search Engine owners.

3. Google and Apple own two of the most important and comprehensive technology "ecosystems" in the world. Google's mobile operating system (Android) and Apple's mobile operating system (iOS) are the dominant mobile platforms in the industry. Google's PC operating system (Chrome OS) and Apple's PC operating system (macOS) have significant shares of the PC market. Both companies offer mobile and PC browsers (Google Chrome and Apple's Safari browser). One internet service that is conspicuously absent from the Apple ecosystem but dominant in the Google ecosystem, however, is a Search Engine.

4. Since at least 2005, Google and Apple and their senior executives entered into illegal, anti-competitive agreements (the "Agreements") in furtherance of their conspiracy. Under the Agreements:

   (a) Apple made Google the default Search Engine on Apple PC and mobile devices;

   (b) Apple agreed not to develop and offer its own Search Engine; and

   (c) Google paid Apple billions of dollars a year (the "Payments") from the supracompetitive profits Google earned from the sale of Search Ads.

5. In the absence of the Agreements, the Apple defendants would have been likely to compete with Google and so would have provided a competitive threat to Google in relation to Search Engines and Search Ads in Canada, and elsewhere. In the absence of the Agreements, this competitive threat would have constrained Google's market power, as a result of which prices for Search Ads would have been lower. As a result of the Agreements, the plaintiff and members of the Proposed Class have been harmed by paying artificially inflated prices for Search Ads.

The Plaintiff and The Class

6. The plaintiff, Performax Health Group, is a physiotherapy clinic in Burnaby, British Columbia.

7. This action is brought on behalf of members of the class (the "Class Members") consisting of the plaintiff and all residents of Canada who purchased Search Ads from Google from 2005 to the present (the "Class Period").

8. Search Ads are defined as all types of advertisements displayed on SERPs in response to online search queries, except for specialized search advertisements displayed on specialized search engines. Specialized search engines index pages for particular topics only, such as travel bookings.

9. Excluded from the class are the defendants, their parent companies, subsidiaries and affiliates.

The Defendants

10. The Google defendants (collectively, "Google") market, sell and distribute Search Engines, Search Ads, and the Android operating system, in Canada, and elsewhere. Increasing the audience for its Search Engine so that it can sell Search Ads is central to Google's business model.

11. The defendant Alphabet Inc. ("Alphabet") is a publicly traded extraprovincal company duly incorporated pursuant to the laws of Delaware with a principal place of business at what is known as the Googleplex, 1600 Amphitheatre Parkway, Mountain View, California 94043. Alphabet is a holding company and the parent company of Google LLC. Alphabet was created in 2015 as a subsidiary of Google, Inc. Through a merger and stock swap under Delaware law, Alphabet became the parent company and Google, Inc. became the subsidiary. Google, Inc. became Google LLC after a reorganization in 2017. Alphabet reported that 86% of their 2019 revenue came from advertising, including through Google Ads.

12. The defendant Google LLC is an extraprovincial company duly incorporated pursuant to the laws of Delaware as a limited liability company with a principal place of business at what is known as the Googleplex, 1600 Amphitheatre Parkway, Mountain View, California 94043. Google LLC is an internet advertising company. At all material times, Google LLC has engaged in the business of selling and distributing Search Ads and Search Engines globally.

13. The defendant Google Canada Corporation ("Google Canada") is a Canadian subsidiary of Google LLC with a registered head office located in California, USA, and two satellite offices in Toronto and Kitchener, Ontario. At all material times, Google Canada has engaged in the business of Search Ads and Search Engines in Canada.

14. The businesses of the Google defendants are inextricably interwoven with those the others and each is the agent of the others for the purposes of the provision of Search Engines and sale of Search Ads in Canada.

15. The Apple defendants (collectively, "Apple") market, sell and distribute mobile and PC internet enabled mobile devices, including iPhones, iPads and Mac desktop and laptop computers, and the Apple mobile and PC operating systems in Canada, and elsewhere. Apple is a potential competitor with Google in the Search Engines and Search Ads markets.

16. The defendant Apple, Inc. is an extraprovincial company headquartered in Cupertino, California, with a registered agents' office at 818 West Seventh Street, Suite 930 Los Angeles, CA 90017.

17. The Defendant, Apple Canada Inc. ("Apple Canada") is an extraprovincial company duly incorporated pursuant to the laws of Ontario with a registered head office located in Toronto, Canada. At all material times, Apple Canada has engaged in the business of selling hardware, software and digital content.

18. The businesses of Apple, Inc. and Apple Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the

manufacture, marketing, and sale of hardware, software and digital content, including but not limited to iPhones, iPads, laptops and computers in Canada.

19. The defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators.

20. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

21. Various persons and individuals not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants or have aided and abetted the defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct

The Search Ads Industry

Search Engines, Web Browsers and Operating Systems

22. Google's search business is a two sided platform in which the Search Engine provides free internet search to users on one side and advertisers pay for Search Ads aimed at users on the other side. As a result of the Agreements between Google and Apple, Google acquired and maintained market power on both sides of the search platform which enabled Google to charge supracompetitive prices for advertising to the Plaintiff and the other Class Members. Google shared the resulting revenues with Apple pursuant to the Agreements.

23. The Search Ads side of the Google search platform constitutes a market that is conducive to the alleged conspiracy. It is highly concentrated and there are high barriers to entry.

24. Search Engines allow users to search for information across the entire internet. When a search user enters a query into a Search Engine, software algorithms evaluate the relevance of webpages and then deliver the results on a SERP. The Search Engine displays Search Ads on the SERP with the non-advertising search results.

25. Search Engines are distributed primarily on mobile devices and PCs. These devices contain web browsers (software applications for accessing information on the internet) and other "search access points" that rely on a Search Engine.

26. Being preset as the default Search Engine is the most effective way for Search Engines to reach users, develop scale, and become or remain competitive.

27. Google's Android operating system prioritizes access to the Google Search Engine. Pursuant to the Agreements, both Apple's operating systems (mobile and PC) and web browsers prioritize access to the Google Search Engine.

Search Ads

28. Search Ads are sold by entities that also provide Search Engines to internet users, usually for free. Market dominance in Search Engines enables market dominance in Search Ads.

29. Other forms of advertising are not reasonable substitutes for Search Ads.

Barriers to Entry

30. There are barriers to entry in the Search Ads market that protect Google's advertising dominance. Most critically, Search Ads require a Search Engine with sufficient scale to make advertising an efficient proposition for businesses.

31. Canada has three online Search Engines: Google, Bing, and DuckDuckGo. DuckDuckGo combines search results from different sources (including Bing) depending on the search query. A fourth Search Engine, Yahoo!, purchases search results from Bing. According to public data sources, Google dominates the Search Engine market in Canada with approximately 92 percent market share,

followed by Bing with about 5 percent, and DuckDuckGo with less than two percent.

32. The creation, maintenance, and growth of a Search Engine requires a significant capital investment, highly complex technology, access to effective distribution, and adequate scale. Developing a Search Engine on the scale of Google, as well as viable search algorithms, would require an upfront investment of billions of dollars and there are few potential competitors other than Apple. The costs for maintaining a Search Engine can reach hundreds of millions of dollars a year.

The Mobile Search Distribution Channel

33. Mobile devices like smartphones and tablets represent the largest and, over the last five years, fastest growing search distribution channel.

34. In Canada, Apple mobile devices account for roughly 53 percent of mobile-device usage, and Google mobile devices or devices using Google's Android operating system account for roughly 45 percent of mobile device usage. All other mobile operating systems, combined, account for less than one percent of mobile device usage in Canada.

35. As a result of the Agreements, Google's Search Engine is set as the default for almost 90 percent of the mobile browser usage on mobile devices in Canada. As a result, Google has preset default status for an overwhelming share of the search access points on mobile devices sold in Canada.

The Computer Search Distribution Channel

36. In Canada, Google Chrome is the leading PC browser, with just over 60 percent market share. Apple's Safari browser has approximately 15 percent share of the PC browser market. Microsoft's Edge has approximately 10 percent market share, and Mozilla's Firefox and Internet Explorer together have approximately 10 percent share.

37. As a result of the Agreement, Google's Search Engine is set as the default Search Engine on the browsers of approximately 75% of PCs in the Canadian market.

Google and Apple's Anti-Competitive Conduct

38. Beginning in or around 2005, Google and Apple first entered into the Agreements, which were renewed from time to time, including up to the present, and which included the following:

    (a) Apple and Google agreed to make Google the preset default Search Engine for Apple's Safari browser. In return, Google gave Apple a significant percentage of Google's advertising revenue derived from the search queries on Apple devices. Further, as part of the Agreements, Apple agreed not to compete in Search Engines or Search Ads;

    (b) In 2007, the Agreements were extended to cover iPhones; and

    (c) In 2016, the Agreements expanded further to cover additional search access points—Siri (Apple's voice-activated assistant) and Spotlight (Apple's system-wide search feature)—making Google the preset default general Search Engine for both services.

39. The Agreements give Google preset default position on all significant search access points for Apple PCs and mobile devices. In exchange, Google pays Apple billions of dollars of the revenue Google generates from Search Ads.

40. The effects of the Agreements are that:

    (a) other Search Engines are locked out of one of the most significant distribution channels for Search Engines: Apple's devices, including iPhones, iPads, laptops and desktop computers, and Apple's Safari browser;

    (b) Apple did not compete with Google in Search Engines and Search Ads; and

(c) Google has secured and maintained default Search Engine status on Apple devices, which gives Google market power in the Search Engine and Search Ads markets.

41. Google used this market power to charge the plaintiff and the Class Members supracompetitive prices for Search Ads. The revenue generated from the supracompetitive prices is shared between Google and Apple through the Payments.

42. In the absence of the Agreements, Apple would have been likely to compete with Google by developing or acquiring, or credibly threatening to develop or acquire, its own Search Engine, and selling or credibly threatening to sell Search Ads.

43. The Agreements were intended to, and did, increase prices of Search Ads, and lessened unduly competition in the sale of Search Ads. The defendants knew the Agreements would injure purchasers of Search Ads.

44. The Canadian subsidiaries of the foreign defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.

45. Google and Apple knew or ought to have known that the Agreements would effectively foreclose competition in the Search Engine and Search Ads markets. Google and Apple knew and intended that the Agreements would allow Google to charge supracompetitive prices for Search Ads. Google and Apple knew and intended that the increased revenue arising from the supracompetitive prices would benefit both of them.

Damages and Disgorgement

46. As a result of the Agreements, price competition in the Search Ads market has been restrained or eliminated, and as a result the prices of Search Ads have been

inflated, resulting in loss to the plaintiff and Class Members. In particular, Class Members paid more than they would have in a competitive market.

47. The plaintiffs and Class Members have suffered loss and damage in an amount including and in excess of the Payments (the "Overcharge"). Full particulars of the loss and damage will be provided before trial.

48. The plaintiff and Class assert that the Overcharge is capable of being reasonably assessed on an aggregate basis as the difference between the price actually paid for Search Ads and the prices they would have paid in the absence of the Agreements.

49. The defendants ill-gotten gains are measured by the amount of the Overcharge collected from the class members as a result of the Agreements.

50. All amounts payable to the class on account of damages and disgorgement should be calculated on an aggregate basis pursuant to section 24 of the *Class Proceedings Act*, RSBC 1996, c 50 (the "*Class Proceedings Act*"), or otherwise.

Fraudulent Concealment

51. The defendants actively, intentionally and fraudulently concealed the existence of their unlawful conduct from the public, including the plaintiff and the Class Members, and in particular the agreements not to compete with each other in Search Engines or Search Ads. The affirmative acts of the defendants were fraudulently concealed and carried out in a manner that precluded detection.

52. The defendants took active, deliberate and wrongful steps to conceal their participation in the alleged conspiracy.

53. Because the defendants' conduct was kept secret, the plaintiff and the Class Members were unaware of the defendants' unlawful conduct.

54. On October 20, 2020, the United States Department of Justice filed a complaint against Google LLC alleging that Google has "foreclosed competition for internet

search", and "monetizes this search monopoly in the markets for search advertising".

PART 2: RELIEF SOUGHT

55. The plaintiff, on its own behalf, and on behalf of the Class Members, claims against the defendants for:

(a) An order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;

(b) A declaration that the defendants engaged in conduct contrary to s. 45 and s. 46 of the *Competition Act* as it existed prior to and after March 12, 2010;

(c) A declaration that plaintiff and Class Members are entitled to damages pursuant to s. 36 of the *Competition Act*;

(d) General damages for conduct that is contrary to *Competition Act*, RSC 1985, c 16 (2nd Suppl.) Part VI (the "*Competition Act")*;

(e) A declaration that the defendants engaged in an unlawful means conspiracy;

(f) General damages for conspiracy in the amount of the Overcharge;

(g) A declaration that the defendants have been unjustly enriched in the amount of the Overcharge;

(h) An order that the defendants account for and make restitution or disgorge to the plaintiff and Class Members in an amount equal to the Overcharge;

(i) A declaration that the defendants' conduct gives rise to extracontractual civil liability to the Class Members who purchased Search Ads in Québec pursuant to article 1457 of the Civil Code of Québec:

(j) Judgment in the amount of the Overcharge;

(k) Special damages;

(l) Aggravated, exemplary and punitive damages;

(m) Pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128 128 and similar provisions under the *Judgment Interest Act*, RSA 2000, c J-1, *Pre-judgment Interest Act*, SS 1984-85-86, c P-22.2, *The Court of Queen's Bench Act*, CCSM c C280, *Courts of Justice Act*, R.S.O. 1990, c. C.43, *Civil Code of Québec*, CQLR c CCQ-1991 (including the additional indemnity provided for in article 1619), *Judicature Act*, RSNB 1973, c J-2, *Judicature Act*, RSNS 1989, c 240, *Judicature Act*, R.S.P.E.I. 1988 c. J-2.1, *Judgment Interest Act*, RSNL 1990, c. J-2, *Judicature Act*, R.S.Y. 2002, c. 128, *Judicature Act*, R.S.N.W.T., 1988 c. J-1, *Rules of the Supreme Court of the Northwest Territories*, NWT Reg (Nu) 010-96;

(n) An injunction enjoining the Defendants from conspiring or agreeing with each other, in relation to the Search Engines or Search Ads markets;

(o) Costs for the administration of the plan of distribution for relief obtained in this action, including an aggregate damage award;

(p) Costs of investigation and prosecution of this proceeding pursuant to s. 36 of the *Competition Act*; and

(q) Such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

Breach of the Competition Act

56. The defendants' conduct was in breach of Part VI of the *Competition Act*. The plaintiff and the class members claim loss and damage under s. 36 of the *Competition Act* resulting from this unlawful conduct.

57. Contrary to s. 45 of the *Competition Act,* from at least as early as 2005 until at least March 12, 2010, the defendants engaged in the Agreements, which included a conspiracy, combination, and agreements to:

(a) prevent, limit or lessen, unduly, the production of Search Ads and enhance unreasonably the price of Search Ads,

(b) to prevent or lessen, unduly, competition in the production, manufacture, purchase, sale or supply of Search Ads, and

(c) restrain or injure competition unduly in the Search Ads market.

58. Particulars of the defendants' conduct includes, but is not necessarily limited to, the conduct described at paragraphs 37-44 above.

59. The Defendants' illegal conduct from 2005 to March 12th, 2010 established and maintained Google's market power and continued to negatively impact competition and increase prices for Search Ads after March 12, 2010 and until the end of the Class Period.

60. Contrary to s. 45 of the *Competition Act* after March 12, 2010, for the duration of the Class Period, the Defendants engaged in the Agreements, which included conspiring, agreeing or arranging with each other to:

(a) allocate sales or markets for the supply of Search Ads; and

(b) fix, maintain, control, prevent, lessen or eliminate the supply of Search Ads.

61. In the absence of the Agreements, Apple would likely have competed with or provided a competitive threat to Google in the supply of Search Ads.

62. Google and Apple's conduct described in paragraphs 37-44 occurred throughout the Class Period. Google and Apple's conduct directly resulted in supracompetitive prices being paid for Search Ads.

63. The Canadian subsidiaries, Google Canada and Apple Canada, participated in and furthered the objectives of the conspiracy described above, by knowingly modifying their competitive behaviour in accordance with instructions received from their parent companies, Google and Apple. Google Canada and Apple Canada thereby acted in concert with Google and Apple in carrying out the conspiracy and is liable for such acts in breach of s. 46 of the *Competition Act*.

Civil Conspiracy

64. Further, or alternatively, the Agreements were unlawful acts directed towards the plaintiff and the Proposed Class, which unlawful acts the defendants knew or ought to have known in the circumstances would likely cause injury to the plaintiff and the Proposed Class and, as such, the defendants are jointly and severally liable for the tort of civil conspiracy.

65. During and prior to the Class Period, at times and places some of which are unknown to the plaintiff and the Class, the defendants wrongfully and unlawfully conspired and agreed with one another, to allocate the market for Search Ads.

66. The defendants' conduct was prohibited, unlawful, and constituted illegal acts, including:

(a) an unlawful restraint of trade at common law and equity;

(b) an offence related to competition contrary to s. 45 of the *Competition Act* as it existed prior to and after March 12, 2010; and

(c) an offence contrary to s. 1 and s.2 of the *Sherman Act*, CH 647, 26 Stat. 209, 15 U.S.C. and the applicable United States of America's state competition laws.

Unjust Enrichment

67. Further, or in the alternative, the plaintiff pleads that they and the Class Members are entitled to claim and recover the unjust enrichment accruing to the defendants.

68. The defendants have benefited and been unjustly enriched from the supra-competitive prices paid for Search Ads in the amount of the Overcharge. The plaintiff and other Class Members have suffered a corresponding deprivation in the amount of the Overcharge.

69. There is no juristic reason for the defendants' enrichment, since the artificially inflated prices received by the defendants stems from their prohibited and unlawful acts including, but not limited to:

    (a) breaches of Part VI of the *Competition Act*;

    (b) an unlawful restraint of trade at common law and equity; and

    (c) breaches of the *Sherman Act* and the applicable U.S. state anti-trust laws.

70. In particular, any contracts upon which the defendants purport to rely to receive the Overcharge are void because they are (1) prohibited by statute, both in Canada and elsewhere, entered into with the object of doing an act prohibited by statute, and/or require performance of an act prohibited by statute, (2) in contravention of common law principles, and/or (3) in contravention of public policy, in that they are, amongst other things, in restraint of trade.

71. The plaintiff and Class Members are entitled to restitution of the benefit received by the defendants from the plaintiff and the Class Members:

    (a) the defendants were unjustly enriched by receipt of the Overcharge;

    (b) the Class Members suffered a deprivation by paying the Overcharge;

    (c) the defendants engaged in illegal conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;

    (d) the Overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;

    (e) justice and good conscience require restitution;

(f) the integrity of the marketplace would be undermined if the court did not order restitution; and

(g) there are no factors that would, in respect of the artificially induced Overcharge, render restitution unjust.

72. Equity and good conscience require the defendants to make restitution to the plaintiff and the Class Members of the Overcharge from the sale of Search Ads, or alternatively to disgorge that amount to the plaintiff and the Class Members as ill gotten gains.

Claims of the Québec Class Members

73. The defendants, and each of them, committed a fault related to their obligation not to cause injury to others.

74. The defendants' conduct caused injury in Québec by artificially inflating the prices of Search Ads sold in Québec during the Class Period.

75. Therefore, the defendants' conduct gives rise to extracontractual civil liability under article 1457 of the *Civil Code of Québec*.

Exemplary and Punitive Damages

76. Google and Apple used their joint market power to profit from illegal and prohibited conduct. Search Engines are ubiquitous in Canadian society and a necessary element of almost all Canadians' personal and working lives. Search Ads are crucial to the success of Canadian businesses. The defendants were aware that their actions would have a significant adverse impact on the plaintiff and the Class Members. The conduct of the defendants was high-handed, reckless, without care, deliberate and in disregard of the plaintiffs' and Class Members' rights. The defendants conduct purposely stifled innovation worldwide. Such harm to competition requires a deterrent award.

77. In order to achieve its deterrence and public interest objectives, any punitive damages award should be significant. A punitive damages award must be

sufficiently large to ensure the artificially inflated prices are not perceived as a mere cost of doing business or a license to breach the law.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 09/Sep/2021

Signature of lawyer
for plaintiff

Reidar Mogerman, Q.C.

ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA

The Plaintiff Performax Health Group, claims the right to serve this pleading on the defendants outside British Columbia on the ground that there is a real and substantial connection between British Columbia and the facts alleged in this proceeding and the plaintiff and other Class Members plead and rely upon the *Court Jurisdiction and Proceedings Transfer Act*, RSBC 2003 Ch. 28 (the "CJPTA") in respect of these defendants. Without limiting the foregoing, a real and substantial connection between

British Columbia and the facts alleged in this proceeding exists pursuant to ss.10 (f) –(i) CJPTA because this proceeding:

> (f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
>
> (g) concerns a tort committed in British Columbia;
>
> (h) concerns a business carried on in British Columbia; and
>
> (i) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

> (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
>
> (a) prepare a list of documents in Form 22 that lists
>
> (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
>
> (ii) all other documents to which the party intends to refer at trial, and
>
> (b) serve the list on all parties of record.

APPENDIX

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

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy to allocate the market for, lessen competition in, and limit the supply of Search Ads sold in North America and worldwide. During the Class Period, the defendants participated in an illegal conspiracy. The Plaintiff and the Class Members suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

☐ a motor vehicle accident

☐ medical malpractice

☐ another cause

A dispute concerning:

☐ contaminated sites

☐ construction defects

☐ real property (real estate)

☐ personal property

☐ the provision of goods or services or other general commercial matters

☐ investment losses

☐ the lending of money

☐ an employment relationship

☐ a will or other issues concerning the probate of an estate

☐ a matter not listed here

THIS CLAIM INVOLVES:

☒ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☐ none of the above

☐ do not know

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

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

2. *Competition Act*, RSC 1985, c 16 (2nd Suppl.)

N° : 500-06-001163-217

(CHAMBRE DES ACTIONS COLLECTIVES)
COUR SUPÉRIEURE
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

OLI & EVE MAISON DE COIFFURE INC.

Demanderesse

c.

GOOGLE LLC,

GOOGLE CANADA CORPORATION,

ALPHABET INC.,

APPLE INC.

et

APPLE CANADA INC.

Défenderesses

PIÈCE R-1

Belleau Lapointe
AVOCATS | BARRISTERS AND SOLICITORS
300, PLACE D'YOUVILLE, BUREAU B-10
MONTRÉAL (QUÉBEC) H2Y 2B6
TÉLÉPHONE : (514) 987-6700
TÉLÉCOPIEUR : (514) 987-6886

BB-8049 **Dossier : 2002.100**

Me Maxime Nasr | mnasr@belleaulapointe.com
Me Josée Cavalancia | jcavalancia@belleaulapointe.com
Me Emily Bolduc | ebolduc@belleaulapointe.com

N° : 500-06-001163-217

(CHAMBRE DES ACTIONS COLLECTIVES)
COUR SUPÉRIEURE
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

OLI & EVE MAISON DE COIFFURE INC.

Demanderesse

c.

GOOGLE LLC,

GOOGLE CANADA CORPORATION,

ALPHABET INC.,

APPLE INC.

et

APPLE CANADA INC.

Défenderesses

DEMANDE DE SUSPENSION DE LA DEMANDE POUR AUTORISATION D'EXERCER UNE ACTION COLLECTIVE (ART. 18, 49, 577 C.P.C. ET 3137 C.C.Q.), DÉCLARATION ASSERMENTÉE, AVIS DE PRÉSENTATION ET PIÈCE R-1

ORIGINAL

Belleau Lapointe
AVOCATS | BARRISTERS AND SOLICITORS
300, PLACE D'YOUVILLE, BUREAU B-10
MONTRÉAL (QUÉBEC) H2Y 2B6
TÉLÉPHONE : (514) 987-6700
TÉLÉCOPIEUR : (514) 987-6886

BB-8049 **Dossier : 2002.100**

Me Maxime Nasr | mnasr@belleaulapointe.com
Me Josée Cavalancia | jcavalancia@belleaulapointe.com
Me Emily Bolduc | ebolduc@belleaulapointe.com