

SUPERIOR COURT

(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000551-107

DATE: June 16, 2022

BY THE HONOURABLE PIERRE NOLLET, J.S.C.

NUMA BALMER

and

LISE SÉNÉCAL

and

RAMZI SFEIR

Plaintiffs/Class Representatives

v.

APPLE INC.

and

APPLE CANADA INC.

Defendants

JUDGMENT ON DISCONTINUANCE

[1] On June 27, 2013, the Court authorized the class action against the Defendants on behalf of the following group:

“all residents in Quebec who have purchased or otherwise acquired an iPhone or iPad (“iDevice”) and who have downloaded free apps from the App Store onto their iDevices since December 1, 2008 through to the present.

and (the Geolocation Class)

all residents in Quebec who have purchased or otherwise acquired an iPhone and turned Location Services off on their iPhones prior to April 27, 2011 and have unwittingly, and without notice or consent transmitted location data to Defendants' servers"

[Class Members]

[2] In this litigation, the Plaintiffs have alleged *inter alia* that third parties had secretly collected Class Members' personal data from their iDevices by using Apple-approved mobile software applications ("Apps") and that the Defendants either allowed this to occur or else failed to prevent it from occurring.

[3] On April 22, 2022, the Plaintiffs filed an Application for a Discontinuance seeking permission to discontinue the present legal proceedings pursuant to articles 9 al. 2, 19, 213, and 585 C.C.P. based on the following reasons:

3.1. Parallel cases on which the present litigation was based have been litigated in the United States and were largely unsuccessful:

- The case of *In re iPhone Application Litigation* – Court file no. 5:11-md-02250-LHK (U.S. District Court for the Northern District of California) was dismissed on Apple's motion for summary judgment.
- The case of *Opperman v. Path, Inc. et al.* – Court file no.13-cv-00453-JST (U.S. District Court for the Northern District of California) is a bit more nuanced, having had the false advertising claims against Apple dismissed at certification and having settled with certain app companies that were not named in the present class action.

3.2. Apple represented and Plaintiffs agreed that the access issue was corrected in September 2012 with Apple's introduction of iOS 6. This operating system incorporated a series of controls that prevented apps from accessing any personal information from iOS without first obtaining the user's express consent. Since then, all iOS versions have contained these controls and required the user's consent before an app can access personal information from a user's device.

[4] The Application for discontinuance was publicly notified in La Presse+ and The Montreal Gazette.

[5] Despite the public notice given, only one member of the class has indicated in writing to the Plaintiffs' attorneys, his intent to oppose the discontinuance, This person was not present at the hearing and did not request to be appointed as a representative;

[6] The Representative Plaintiffs are no longer interested in pursuing the case on behalf of the Class.

[7] The class action faces serious issues in proving prejudice on the merits and there are no allegations that justify an award of punitive damages¹.

[8] **CONSIDERING** the Application as well as the Exhibits in support thereof produced in the Court record;

[9] **CONSIDERING** that no release is being given to Apple and that all Class Members may introduce their own claim or to introduce a Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative if they so desire;

[10] **SEEING** the consent by the Defendants to the discontinuance without costs save and except for the payment of reasonable extrajudicial fees and disbursements;

[11] **SEEING** section 585 C.c.p. which requires the approval of the Court for a discontinuance after the authorization of the class action;

[12] **CONSIDERING** that the Court finds the discontinuance to be in the interest of justice;

FOR THESE REASONS, THE COURT:

[13] **ACCUEILLE** la demande; **GRANTS** the application;

[14] **AUTORISE** les demandeurs à se **AUTHORIZES** the Plaintiffs to discontinue
désister de la demande détaillée the Amended Particularized Motion to
amendée introductive d'instance; Institute Proceedings;

[15] **PERMETS** aux demandeurs de **ALLOWS** the Plaintiffs to file their
produire leur désistement au dossier de la discontinuance in the Court record within 30
Cour dans les 30 jours de la date du days following the date of this Judgment;
présent Jugement;

[16] **APPROUVE** le texte de l'avis **APPROVES** the text of the public notice to
public aux membres du Groupe selon le Class Members in accordance with Exhibit
texte reproduit à la Pièce R-3; R-3;

¹ *Sofio c. Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*, 2015 QCCA 1820 at paras 14-22; *Sofio c. Organisme canadien de réglementation du commerce des valeurs mobilières (OCRCVM)*, 2014 QCCS 4061 at paras 34-69; *Li c. Equifax Inc.*, 2019 QCCS 4340 at paras 2334.

[17] **ORDONNE** aux demandeurs de **ORDERS** the Plaintiffs to ensure that said veiller à la publication de tel avis public, public notice is published, in bilingual format: sous forme bilingue :

- a) Au Registre des actions collectives du Québec;
- a) On the Quebec Class Actions Registry;
- b) Sur le site internet www.clg.org durant au moins 120 jours consécutifs;
- b) On the website www.clg.org for a duration of at least 120 consecutive days;

[18] **ORDONNE** qu'une copie de tel **ORDERS** that a copy of said public notice be avis public soit transmise par courriel à sent by email to every person who toute personne ayant manifesté aux expressed an interest in the present action avocats du Groupe son intérêt dans la to Class Counsel; présente action collective;

[19] **LE TOUT**, sans frais de justice. **THE WHOLE** without legal costs.



PIERRE NOLLET, J.S.C.

Mtre Andrea Grass
Mtre Jeff Orenstein
Consumer Law Group Inc.
Attorneys for the Plaintiffs

Mtre Amanda Gravel
Mtre Kristian Brabander
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Attorneys for the Defendants

Hearing date: June 16, 2022

Pièce R-3 / Exhibit R-3

AVIS DE DÉSISTEMENT D'UNE ACTION COLLECTIVE	NOTICE OF DISCONTINUANCE OF A CLASS ACTION
<p>1. Le 27 juin 2013, la Cour supérieure du Québec a autorisé l'action collective contre les Défenderesses dans le district de Montréal, sous le numéro de dossier 500-06-000551-107, au nom du groupes suivants:</p> <ul style="list-style-type: none"> • <i>tous les résidents du Québec qui ont acheté ou autrement acquis un iPhone ou un iPad (« iDevice ») et qui ont téléchargé gratuitement des Apps de l'App Store sur leurs iDevices depuis le 1^{er} décembre 2008 jusqu'à aujourd'hui.</i> <p><i>et (le groupe de la géolocalisation)</i></p> <ul style="list-style-type: none"> • <i>tous les résidents du Québec qui ont acheté ou autrement acquis un iPhone et désactivé les services de localisation sur leurs iPhones avant le 27 avril 2011 et qui ont involontairement, et sans préavis ni consentement, transmis des données de localisation aux serveurs des Défenderesses</i> <p>2. Le XXXXX 2022, la Cour supérieure du Québec a autorisé les Demandeurs à se désister des procédures judiciaire, mettant ainsi fin à l'action collective;</p>	<p>1. On June 27, 2013, the Superior Court of Quebec authorized the class action against the Defendants in the district of Montreal, under file number 500-06000551-107, on behalf of the following classes:</p> <ul style="list-style-type: none"> • <i>all residents in Quebec who have purchased or otherwise acquired an iPhone or iPad ("iDevice") and who have downloaded free Apps from the App Store onto their iDevices since December 1, 2008 through to the present.</i> <p><i>and (the Geolocation Class)</i></p> <ul style="list-style-type: none"> • <i>all residents in Quebec who have purchased or otherwise acquired an iPhone and turned Location Services off on their iPhones prior to April 27, 2011 and have unwittingly, and without notice or consent transmitted location data to Defendants' servers;</i> <p>2. On XXXXX, 2022, the Superior Court of Quebec authorized the Plaintiffs to discontinue the legal proceedings, thereby putting an end to the class action;</p>

<p>SOYEZ AVISÉ que le tribunal ayant maintenant permis le désistement, l'action collective est terminée. Les délais de prescription ne sont plus suspendus. Par conséquent, les membres du groupe ne seront plus représentés par l'action collective et il leur appartient d'instituer une action distincte, s'ils le désirent.</p>	<p>BE AWARE that now that the Court has allowed the discontinuance, the class action is terminated. Limitation periods (i.e. prescription) are no longer suspended. Therefore, class members will be required to pursue their own legal claims, should they so desire.</p>
<p>Pour plus d'informations sur cette action collective, vous pouvez visiter le https://www.clg.org/RecoursCollectif/Liste-des-recourscollectifs/Apple-iPhone-et-iPad-App-violation-de-vie-privee--recours-collectifnational</p> <p>Sur ce site, vous pourrez télécharger et consulter les documents suivants : (a) le Jugement accordant l'autorisation ; (b) les procédures judiciaires, et (c) le Jugement autorisant le désistement.</p>	<p>For more information on the class action, you may visit https://www.clg.org/ClassAction/List-of-Class-Actions/AppleiPhone-and-iPad-App-Privacy-ViolationNational-Class-Action</p> <p>On this website, you can also download and view the following documents: (a) the Judgment granting authorization; (b) the Court proceedings, and (b) the Judgment allowing the discontinuance.</p>