

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
SUPERIOR COURT

---

NO: 500-06-000897-179

**RAPHAEL BADAoui**  
and  
**BENJAMIN LOEUB**

Representative Plaintiffs

v.

**APPLE CANADA INC.**  
and  
**APPLE INC.**

Defendants

---

**APPLICATION FOR PERMISSION TO WITHDRAW THE BATTERY CLASS AND THE  
RELATED BATTERY CLAIMS**  
(Articles 25, 49 and 585 C.C.P.)

---

**TO THE HONOURABLE MARIE-CHRISTINE HIVON, J.S.C., DESIGNATED JUDGE IN  
THE PRESENT CLASS ACTION, THE REPRESENTATIVE PLAINTIFFS SUBMIT:**

1. By the present Application, the Representative Plaintiffs request that this Court allow them to withdraw the Battery Class and the related “battery claims” on behalf of the Battery Subclass;

**I. PROCEDURAL CONTEXT**

2. On July 16, 2019, the Honourable Justice Chantal Corriveau, J.S.C., authorized the present class action on behalf of the following Class and Subclass (*Badaoui c. Apple Canada inc.*, 2019 QCCS 2930):

<b>Apple Battery Class:</b>  All consumers who, since December 29, 2014, purchased an Apple product including an iPhone, Apple Watch, iPad, iPod and/or MacBook with a rechargeable battery	<b>Groupe des piles rechargeables Apple :</b>  Tous les consommateurs qui ont acheté depuis le 29 décembre 2014, un produit Apple incluant un iPhone, un Apple Watch, un iPad, un iPod et/ou un MacBook muni d'une pile rechargeable;
---	---

<b>AppleCare Subclass:</b> All consumers who, since December 20, 2015, purchased “AppleCare” and/or “AppleCare+” for an Apple product including an iPhone, Apple Watch, iPad, iPod and/or MacBook and were not informed of their legal warranty under the <i>Consumer Protection Act</i> at the time of purchase;	<b>Groupe AppleCare :</b> Tous les consommateurs qui ont acheté depuis le 20 décembre 2015 « AppleCare » et/ou « AppleCare + » pour un produit Apple incluant un iPhone, Apple Watch, iPad, iPod et/ou MacBook et qui n’ont pas été informé de leur garantie légale en vertu de la <i>Loi sur la protection du consommateur</i> au moment de l’achat;
--	--

3. On March 17, 2021, as rectified on April 15, 2021, the Court of Appeal overturned the authorization judgment – in part only as concerns the definition of the Apple Battery Class – and authorized the following Class and Subclass (*Apple Canada inc. c. Badaoui*, 2021 QCCA 432)

<b>Apple Battery Class:</b> All consumers who purchased an iPhone since December 29, 2014.  (hereinafter referred to as the “ <b>Apple Battery Class</b> ”)	<b>Groupe des piles rechargeables Apple :</b> Tous les consommateurs qui ont acheté un iPhone depuis le 29 décembre 2014.  (ci-après nommé le « <b>Groupe</b> »)
<b>AppleCare Subclass:</b> All consumers who, since December 20, 2015, purchased “AppleCare” and/or “AppleCare+” for an Apple product including an iPhone, Apple Watch, iPad, iPod and/or MacBook and were not informed of their legal warranty under the <i>Consumer Protection Act</i> at the time of purchase;  (hereinafter referred to as the “ <b>AppleCare Subclass</b> ”)	<b>Sous-groupe AppleCare :</b> Tous les consommateurs qui ont acheté depuis le 20 décembre 2015 « AppleCare » et/ou « AppleCare + » pour un produit Apple incluant un iPhone, Apple Watch, iPad, iPod et/ou MacBook et qui n’ont pas été informé de leur garantie légale en vertu de la <i>Loi sur la protection du consommateur</i> au moment de l’achat;  (ci-après nommé le « <b>Sous-groupe AppleCare</b> »)

4. The Court of Appeal authorized the Apple Battery Class for iPhones only and removed the other products from this Class (i.e. Apple Watches, iPads, iPods and MacBooks);
5. On June 15, 2021, the Representative Plaintiffs filed their Originating Application;
6. With respect to the **Apple Battery Class**, Plaintiff Mr. Badaoui alleged that his iPhone battery was no longer durable after two years and that Apple failed in its duty to inform

consumers, at the time of purchase, of the limited lifespan of the rechargeable batteries in relation to the lifespan of the iPhone they manufacturer and sell;

7. With respect to the **AppleCare Subclass**, Plaintiff Mr. Loeub alleged that, prior to his purchase of AppleCare+ warranty, Apple failed in its duty to inform regarding Quebec's legal warranty, in violation of section 228.1 CPA;
8. Both Representative Plaintiffs sought compensatory and punitive damages;
9. On November 1, 2022, the parties participated in a mediation presided by the Honourable Robert Mongeon, at the end of which they agreed to a binding agreement in principle to resolve this class action;
10. The parties subsequently agreed to settle the class action and have now finalized their agreement, as appears from a copy of the Settlement Agreement filed herewith as **Exhibit R-1** (the "**Settlement**");
11. The Settlement notably provides: **(i)** for monetary compensation to all AppleCare Subclass Members; and **(ii)** that the Representative Plaintiffs will discontinue or withdraw from the "battery claim" cause of action without any compensation given to the Battery Class Members who will **not** be giving a release to the Defendants or be bound by any release provided for in the Settlement (see Settlement at Articles 1.1(bb), 4.2(a) and 5.3);
12. Pursuant to article 585 C.C.P., an amendment, discontinuance, withdrawal or renunciation of rights must be authorized by the Court. The Court may impose any conditions it considers necessary to protect the rights of the class members, such as the publication of a notice, for example;
13. Pursuant to article 590 C.C.P, a transaction settling a class action is valid only if approved by the Court. The Representative Plaintiffs will therefore present an application for Settlement approval on October 20, 2023, together with the present application;

## **II. WITHDRAWAL OF THE BATTERY CLAIM**

14. As it appears from the Court of Appeal's judgment, the Defendants vigorously contested the Battery Claim on behalf of the Battery Class and were successful in significantly reducing the scope of the initial class definition that was authorized by the Superior Court (par. 69-72);
15. As to the substance of the Battery Claim, the Court of Appeal notably writes:

[86] Apple y voit un raisonnement incohérent et une mauvaise compréhension quant aux garanties légales prévues aux articles 37 et 38 LPC. Je partage ce point de vue.

[87] En effet, la juge a rejeté une bonne partie de la proposition de M. Badoui [sic], soit celle qui correspondait aux garanties légales des articles 37 et 38 *LPC*. Elle conclut que « le reste de la proposition avancée par M. Badaoui est vouée à l'échec », que « [r]ien dans le présent dossier ne permet de soutenir que les défenderesses procurent aux consommateurs à dessein des piles qui soient défectueuses » et que « [r]ien non plus ne permet de soutenir que les piles devraient avoir une durée équivalente à la durée de vie des appareils ».

[88] La juge retient donc qu'il est normal que les piles se détériorent ou se dégradent avec le temps. On comprend également qu'elle rejette l'argument de M. Badaoui selon lequel les piles rechargeables sont défectueuses en raison de leur détérioration prématurée. Ces conclusions me semblent irréconciliables avec les paragraphes 96 *b)* et 97 *b)* du jugement. La juge ne pouvait pas d'un côté rejeter une grande partie de la proposition de M. Badaoui sur la défectuosité de piles ainsi que sur leur durée de vie et, de l'autre, autoriser le recours sur cette question.

16. The battery claim was therefore fragile and the Plaintiffs faced significant challenges in obtaining a favourable judgment on the merits, which would require significant resources on all sides, as well as on the judicial system;
17. There was always the possibility that, on the merits, the Defendants could have invoked article 588 C.C.P. to revise or annul the battery claim portion of the authorization judgment;
18. The Battery Class Members will not be prejudiced if the withdrawal of their claim is allowed, because **no release** is being given to the Defendants with respect to the Battery Class and the related causes of action, and prescription for these claims was either suspended pursuant to article 2908 CCQ or interrupted pursuant to article 2897 CCQ. The parties agree that prescription will now resume for Battery Class Members and related battery claims as of the date of judgment to be rendered;
19. The information in the preceding paragraph was also expressly mentioned to the Class Members in the notices disseminated directly to approximately 3 million people pursuant to the Court's judgment of May 5, 2023, as it appears from the report of the Claims Administrator, RicePoint, communicated as **Exhibit R-2**;
20. The Defendants have assured Class Counsel that they will file an affidavit of Apple's representative, to be communicated as **Exhibit R-3**, affirming that a notice containing the above information was sent by RicePoint (Exhibit R-2) directly to the 2,291,738 individuals who purchased an iPhone in Quebec between December 29, 2014 and January 26, 2023, and who, according to Apple's Records Search, would therefore be part of the "Battery Class";

21. Finally, the information concerning the withdrawal or discontinuance of the Battery Class was also posted on Quebec's Class Action Registry, on Class Counsel's website dedicated to the present class action, and on the Settlement website;
22. In light of the above, the Plaintiffs respectfully submit that: **(i)** sufficient notice of the withdrawal or discontinuance has been given; and **(ii)** the requested withdrawal of the Battery Class and related battery claims is not prejudicial to the integrity of the justice system.

<b>PAR CES MOTIFS, PLAISE AU TRIBUNAL :</b>	<b>FOR THESE REASONS, MAY IT PLEASE THE COURT:</b>
<b>[1] ACCUEILLIR</b> la Demande de désistement du Groupe de Piles rechargeable et des réclamations des piles relatives;	<b>[1] GRANT</b> the Application for withdrawal of the Battery Class and the related battery claims;
<b>[2] AUTORISER</b> les demandeurs à retirer le Groupe de Piles rechargeable et les réclamations et questions communes relatives aux piles;	<b>[2] AUTHORIZE</b> the Plaintiffs to withdraw the Battery Class and the related battery claims and common questions;
<b>[3] LE TOUT</b> , sans frais de justice.	<b>[3] THE WHOLE</b> , without legal costs.

Montreal, October 18, 2023

Montreal, October 18, 2023

*Renno Vathilakis Inc.*

**RENNO VATHILAKIS INC.**

Mtre Michael E. Vathilakis

Mtre Karim Renno

For the Representative Plaintiff

145 St. Pierre Street, Suite 201

Montréal, Québec, H2Y 2L6

Telephone: (514) 937-1221

Fax: (514) 221-3334

Email: [mvathilakis@renvath.com](mailto:mvathilakis@renvath.com)

[krenno@renvath.com](mailto:krenno@renvath.com)

*(s) LPC Avocat Inc.*

**LPC AVOCAT INC.**

Mtre Joey Zukran

For the Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

Telecopier: (514) 221-4441

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

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

(Class Action)  
SUPERIOR COURT

---

NO: 500-06-000897-179

**RAPHAEL BADAoui**  
and  
**BENJAMIN LOEUB**

Representative Plaintiffs

v.

**APPLE CANADA INC.**  
and  
**APPLE INC.**

Defendants

---

**LIST OF EXHIBITS**

---

- Exhibit R-1:** Copy of the proposed Settlement Agreement;
- Exhibit R-2:** Report of the Claims Administrator dated October 16, 2023;
- Exhibit R-3:** Affidavit of Apple representative (to be filed by Apple).

Montreal, October 18, 2023

Montreal, October 18, 2023

*Renno Vathilakis Inc.*

---

**RENNO VATHILAKIS INC.**

Mtre Michael E. Vathilakis

Mtre Karim Renno

For the Representative Plaintiff

145 St. Pierre Street, Suite 201

Montréal, Québec, H2Y 2L6

Telephone: (514) 937-1221

[mvathilakis@renvath.com](mailto:mvathilakis@renvath.com)

[krenno@renvath.com](mailto:krenno@renvath.com)

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**

Mtre Joey Zukran

For the Representative Plaintiff

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

Telephone: (514) 379-1572

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

## NOTICE OF PRESENTATION

---

**TO: Mtre Sarah Woods**  
**Mtre Marie Rondeau**  
[swoods@mccarthy.ca](mailto:swoods@mccarthy.ca)  
[mrondeau@mccarthy.ca](mailto:mrondeau@mccarthy.ca)  
McCarthy Tétrault LLP  
1000 Gauchetière Street West, suite MZ400  
Montréal, QC H3B 0A2  
**Attorneys for the Defendants**

**TAKE NOTICE** that the attached *Application* shall be presented for adjudication before the Honourable Marie-Christine Hivon, J.S.C., at the Montreal Courthouse, situated at 1 Notre-Dame Street East, Montréal (Quebec), H2Y 1B6, on **October 20, 2023, at 9:30 a.m. in room 14.09**, at the Montreal Courthouse or via a TEAMS link.

Montreal, October 18, 2023

Montreal, October 18, 2023

*Renno Vathilakis Inc.*

---

**RENNO VATHILAKIS INC.**  
Mtre Michael E. Vathilakis  
Mtre Karim Renno  
For the Representative Plaintiffs  
145 St. Pierre Street, Suite 201  
Montréal, Québec, H2Y 2L6  
Telephone: (514) 937-1221  
Fax: (514) 221-3334  
Email: [mvathilakis@renvath.com](mailto:mvathilakis@renvath.com)  
[krenno@renvath.com](mailto:krenno@renvath.com)

*(s) LPC Avocat Inc.*

---

**LPC AVOCAT INC.**  
Mtre Joey Zukran  
For the Representative Plaintiffs  
276 Saint-Jacques Street, Suite 801  
Montréal, Québec, H2Y 1N3  
Telephone: (514) 379-1572  
Telecopier: (514) 221-4441  
Email: [jzukran@lpclex.com](mailto:jzukran@lpclex.com)

500-06-000897-179

---

(Class Action)  
SUPERIOR COURT  
DISTRICT OF MONTREAL

---

RAPHAEL BADAOUJ  
ET AL.

Representative Plaintiffs

v.

APPLE CANADA INC.  
ET AL.

Defendants

---

APPLICATION FOR PERMISSION TO WITHDRAW THE BATTERY CLASS AND  
THE RELATED BATTERY CLAIMS  
(ARTICLES 25, 49 AND 585 C.C.P.)

---

ORIGINAL

---

Me Joey Zukran  
LPC **AVOCAT INC.**  
Avocats • Attorneys  
276, rue Saint-Jacques, Suite 801  
Montréal, Québec, H2Y 1N3  
Téléphone: (514) 379-1572 • Télécopieur: (514) 221-4441  
Email: [zukran@lpclex.com](mailto:zukran@lpclex.com)

---

BL 6059

N/D : JZ-175

---