

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-000897-179

RAPHAEL BADAoui
and
BENJAMIN LOEUB

Representative Plaintiffs

v.

APPLE CANADA INC.
and
APPLE INC.

Defendants

and

LPC AVOCAT INC.
and
RENNO VATHILAKIS INC.

Representative Plaintiffs' Attorneys

**APPLICATION TO APPROVE A CLASS ACTION SETTLEMENT AND FOR
APPROVAL OF CLASS COUNSEL FEES**
(Articles 590 and 593 C.C.P., article 58 of the *Regulation of the Superior Court of
Québec in civil matters*, CQLR c C-25.01, r 0.2.1)

**TO THE HONOURABLE MARIE-CHRISTINE HIVON OF THE SUPERIOR COURT OF
QUEBEC, DESIGNATED JUDGE IN THE PRESENT CLASS ACTION, THE
REPRESENTATIVE PLAINTIFFS AND THEIR COUNSEL SUBMIT THE FOLLOWING:**

1. The purpose of this application is for the Court to approve the settlement reached by the parties, bringing an end to the present class action;

I. PROCEDURAL BACKGROUND

2. On December 29, 2017, Plaintiff Mr. Badaoui commenced a proposed class action for authorization against the Defendants Apple Canada Inc. and Apple Inc.

(collectively “**Apple**”), amended on December 7, 2018, to add Plaintiff Mr. Loeub;

3. The authorization application sought authorization for a Class of consumers who had purchased iPhones, Apple Watches, iPads, iPods, and MacBooks (the “**Apple Products**”) alleging that the batteries were not durable for a reasonable length of time during normal use;
4. The authorization application also sought authorization for a Subclass of consumers, by asserting that Apple failed to respect sections 37 and 38 of Quebec’s *Consumer Protection Act*, chapter P-40.1 (hereinafter the “**CPA**”) by not informing consumers of their legal warranty at their time of purchase of “AppleCare” or “AppleCare+” extended warranties for Apple Products;
5. The application sought compensatory and punitive damages for both the Class and the Subclass;
6. Apple always denied any wrongdoing and contested authorization and the merits;
7. By judgment rendered on July 16, 2019, the Honourable Justice Chantal Corriveau, J.S.C., granted the status of Representative Plaintiffs to Mr. Badaoui and Mr. Loeub and authorized them to bring a class action for the benefit of the persons forming part of the following classes;

<p>All consumers who, since December 29, 2014, purchased an Apple product including an iPhone, an Apple Watch, an iPad and/or a MacBook with a rechargeable battery (Apple Rechargeable Battery Class);</p>	<p>Tous les consommateurs qui ont acheté depuis le 29 décembre 2014, un produit Apple incluant un iPhone, un Apple Watch, un iPad et/ou un MacBook muni d’une pile rechargeable (Groupe Piles rechargeables Apple);</p>
<p>All consumers who, since December 20, 2015, purchased AppleCare or AppleCare+ for an Apple product in Quebec, including but not limited to an iPhone, Apple Watch, iPad, iPod, and/or a MacBook and were not informed of their legal warranty under the Consumer Protection Act at the time of purchase (AppleCare Class).</p>	<p>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 Loi sur la protection du consommateur au moment de l’achat (Groupe AppleCare).</p>

8. On November 5, 2019, Apple obtained permission from the Court of Appeal to appeal the authorization judgment (*Apple Canada inc. c. Badaoui*, 2019 QCCA 1973);
9. On March 17, 2021, as rectified on April 15, 2021, the Court of Appeal overturned the authorization judgment in part, mainly by redefining the Apple Rechargeable Battery Class as follows (*Apple Canada inc. c. Badaoui*, 2021 QCCA 432):

All consumers who purchased an iPhone since December 29, 2014.	Tous les consommateurs qui ont acheté un iPhone depuis le 29 décembre 2014.
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10. On June 15, 2021, the Representative Plaintiffs filed their Originating Application;
11. On July 5, 2021, the Representative Plaintiffs notified and filed their *Application to Order the Publication of Notice to Class Members and Other Orders to Preserve Evidence*, which was contested by Apple;
12. A hearing was scheduled for May 6, 2022, to debate the aforementioned application. However, on April 29, 2022, the parties informed the Court that they planned to participate in a settlement conference (“CRA”) and asked the Court to suspend the case until after the CRA, which the Court confirmed it accepted by email on May 5, 2022, the whole as appears to the Court record;
13. 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, and continued to have arm’s-length settlement discussions since the mediation to reach the Settlement;
14. The parties are now asking the Court to approve this Settlement Agreement signed by the parties on April 20, 2023, as it appears from the Settlement Agreement filed as **Exhibit R-1** (the “**Settlement**”);
15. The Settlement, which has a guaranteed value of **\$6,000,000.00 CAD** (see definition of “Settlement Amount”, Article 1.1(nn) of the Settlement), notably provides for direct monetary compensation to Class Members and a practice change (Article 1.1(gg)). It also provides for the withdrawal or discontinuance of the Battery Claim **without any release** given to Apple for this claim (Article 5.3);

II. PRE-APPROVAL NOTICE TO CLASS MEMBERS

16. On April 21, 2023, the Representative Plaintiffs filed their *Application for the Approval of the Notice of Hearing, Opt-Out and Discontinuance, and the Appointment of the Administrator*;
17. On May 5, 2023, the Court notably: **(i)** approved the form and content of the Notice; **(ii)** fixed the dates for Class Members to opt-out of or object to the Settlement to June 11, 2023; **(iii)** appointed RicePoint Administration Inc. (“RicePoint”) as the Claims Administrator; and **(iv)** scheduled the Settlement approval hearing for June 12, 2023;
18. According to RicePoint’s report dated October 16, 2023, beginning May 25, 2023 and ending May 30, 2023, RicePoint notably sent the Notice of Hearing, Opt-Out and Discontinuance (the “Notice”) by email to the **2,801,285** contacts provided to them in a list by Apple, the whole as more fully appears from RicePoint’s report communicated as **Exhibit R-2**;

19. The Notice has also been posted on Class Counsels' bilingual website dedicated to this class action and its settlement (www.lpclex.com/applecare) as well as on the Class Action Registry of the Superior Court of Québec;
20. On June 5, 2023, and seeing that the 30-day delay for Class Members to opt-out of or object to the Settlement would not be met (despite the parties' and RicePoint's best efforts in sending the Notices to over 2 million Class Members), the Representative Plaintiffs filed a Notice of Case Management asking the Court to adjourn the Settlement Approval Hearing;
21. On June 8, 2023, the Court rendered a judgment adjourning the Settlement Approval Hearing, which has since been rescheduled to October 20, 2023;
22. As it appears from RicePoint's report (Exhibit R-2), the Class Members have now had well more than the required 30 days (art. 576 al. 3 CCP) to be able to exercise their right to opt-out of the class action or object to the terms of the Settlement;
23. To date – and following the dissemination of the Notice, 175 Class Members have elected to opt-out of the Settlement, as it appears *en liasse* from **Exhibit R-3**;
24. Many Class Members have contacted Class Counsel in support of the Settlement;
25. For the reasons that follow, the Representative Plaintiffs respectfully ask the Court to approve the Settlement;

III. APPROVAL OF THE SETTLEMENT

26. Article 590 C.C.P. provides that a transaction is valid only if approved by the Court. The criteria which the case law has established for approval of a class action settlement are the following:
 - i) the likelihood of success of the action;
 - ii) the importance and nature of the evidence adduced;
 - iii) the terms and conditions of the settlement;
 - iv) the recommendation of counsel and their experience;
 - v) the cost of future expenses and the probable duration of the litigation;
 - vi) the recommendation of a neutral third party, if any;
 - vii) the number and nature of objections to the settlement agreement; and
 - viii) the good faith of the parties and the absence of collusion.

27. The Representative Plaintiffs submit that an analysis of all of these criteria should lead this Court to conclude that the Settlement is more than fair and reasonable and in the best interest of Class Members;

i. **The Likelihood of Success**

28. While the Representative Plaintiffs maintain that their action is well-founded, Apple vigorously denied their claims and allegations. The Settlement specifically indicates that Apple denies any fault, liability or wrongdoing, or the truth of any of the claims or allegations contained in the Class Action or any other allegations made by the Plaintiffs or the Class (Recitals F, K, and Article 9.1);
29. The parties would have entered into serious, costly and contradictory debates as to whether Apple committed the alleged faults and whether its liability is triggered, that they estimate would require a further three years or more to litigate through trial (excluding appeals);
30. It goes without saying that these debates would have extended to the parties hiring experts and bringing in Class Members to testify at trial in order to counter each other's claims;
31. Even if the case was successful on the merits, Class Members may have had to prove their eligibility in a more complicated manner than the simple distribution method provided for in the Settlement (Schedule F), which is essentially that: **(1)** Interac e-transfers of CAD \$25.00 per AppleCare contract will **automatically** be sent to the 76,356 Eligible AppleCare Class Members who meet the criteria (the "Consumer Cash Payment"); and, in addition to the \$25.00, **(2)** Eligible AppleCare Class Members will also be able to submit a Claim for a Consumer Cash Reimbursement, meaning the payment, in Canadian Dollars, **of up to 50%** of what they paid for AppleCare, before sales tax. **No proof of purchase or documentation is required;**
32. There were always the risks that: (i) the case would not be successful on the merits; (ii) that damages would have been difficult to prove – even with the assistance of the experts to be hired by the Plaintiffs; and (iii) it would be difficult to recover even if it were successful on the merits after many years of litigation (for example, difficulties in identifying Class Members who have changed emails or devices, deceased, etc.), and this risk is abated through the Settlement, which guarantees compensation to all Eligible AppleCare Class Members (equivalent to **\$25.00** per AppleCare contract to each AppleCare Class Member, **plus up to 50%** of what they paid for AppleCare), whereas nobody is compensated if the case was dismissed;
33. Lastly, the Plaintiffs and Class Counsel are aware that even if they are successful on the merits of this class action, Apple could very well have filed appeals in respect of multiple issues, thus resulting in increased risk and considerable delays;

ii. **The Amount and Nature of Discovery**

34. As alleged at paragraph 13 above, the parties entered into a confidential mediation process, prior to and during which Apple provided information to the Plaintiffs and their counsel on a confidential basis, which will be confirmed in an affidavit to be filed by Apple prior to the hearing and which shall be filed as **Exhibit R-4** (Plaintiffs and their counsel do not oppose Apple's request that certain information be filed under seal consistent with the jurisprudence of this Court on this issue; see, for example: *Holcman c. Restaurant Brands International Inc.*, 2022 QCCS 3428, paras. 54-66);
35. Therefore, during the settlement negotiations, the Plaintiffs and their attorneys had access to and reviewed relevant information relating to the present class action (on a confidential basis);
36. In reaching the terms of the Settlement, the following was also considered:
 - a) The parties would have spent important resources and would have required experts, private investigators and consumer surveys – perhaps on both sides –, to determine whether there was a fault, and then what the aggregate amount of the damages would be;
 - b) The parties would have tendered a great deal of evidence countering each other's claims;
 - c) Apple has always contended that they did not commit a fault and is not liable to any of the Class Members;
 - d) The value of the \$6 million settlement in proportion to the value of the released claims (which is significant as it appears from Exhibit R-4); and
 - e) Proportionality.

iii. **The Terms of the Settlement:**

37. The Settlement – notably at its Articles 1.1(nn), 5 and Schedule F – provides that Apple will pay the AppleCare Class Members **\$6 million** to resolve (and obtain a release from) the AppleCare extended warranty claims;
38. The Settlement also provides that Mr. Badaoui will discontinue the claim authorized on behalf of the Apple Rechargeable Battery Class (Article 5.3). **Under no circumstances will any member of the Apple Rechargeable Battery Class be granting a release to Apple for the latter claims** and the Notice explicitly mentioned that these Class Members can pursue their claims against Apple should they wish, and that prescription (“limitation periods”) would start running again as of the date of judgment to be rendered (see **Exhibit R-2** at pages 7 and 11 at the top);

39. It is clear from Exhibit R-4 that the terms of Settlement (as a percentage of total AppleCare sales) for the AppleCare Class Members are more than fair and reasonable;
40. In light of the above and on the basis of further representations made in the context of the settlement discussions, the Plaintiffs and Class Counsel accepted that the benefits of the Settlement significantly outweigh its disadvantages and respectfully submit that it is an optimal result for the Class Members and for the justice system;
41. In terms of monetary compensation, the Settlement is a very favorable result for the 76,358 Eligible AppleCare Class Members who purchased AppleCare in an Apple store in Quebec, in that it provides for a resolution of the litigation and for a global payment of \$6 million, less class counsel fees pursuant to article 598 CCP, to be paid out as follows (see Schedule F to the Settlement):
 - a) an **automatic \$25.00 payment** per AppleCare contract that meets the criteria will be sent via e-transfer per AppleCare contract purchased by the Class Member;
 - b) **plus up to 50%** of what they paid for for AppleCare, before sales tax;
42. Claiming the additional amount of up to 50% of the price paid for AppleCare is easy, in that:
 - a) to claim this additional amount, Eligible AppleCare Class Members must simply submit a valid and timely online Claim Form (or paper upon request) to the Claims Administrator on or before the Filing Deadline;
 - b) the Settlement expressly specifies that “**No proof of purchase or documentation is required**, but the Defendants reserve their right to refuse or correct claims to ensure that the correct amount is paid”;
 - c) claimants must simply attest, by way of a checkbox on the online claim form that they were not informed orally and in writing of the existence of the legal warranty when purchasing AppleCare, pursuant to the requirements of Quebec’s *Consumer Protection Act* and its relevant regulation;
43. Additionally, on top of the \$6 million which Apple has agreed to pay for the Settlement, Apple has also assumed the entirety of the fees of the Claims Administrator, RicePoint, which are significant and are **not** deducted from the amount paid to Class Members which is often the case (see article 598 CCP for example);
44. Lastly, one of the main objectives of this class action was to obtain a practice change, which is expressly provided for at Article 1.1(gg) of the Settlement. It appears that this objective has been achieved from the pictures taken in the Apple Stores in Downtown Montreal, South Shore, Laval and Pointe-Claire (Fairview) on October 16-17, 2023, communicated *en liasse* as **Exhibit R-5**;

45. The Plaintiffs and Class Counsel – following several hearings (including at the Court of Appeal), a mediation, and the exchange of relevant information (some of which was provided confidentially as it contains commercially sensitive information to Apple) – have concluded that these terms are fair and reasonable and that their benefits significantly outweigh their disadvantages;

iv. The Attorneys' Recommendations and their Experience

46. Class Counsel, whose practice is focused almost entirely in the area of class actions, have negotiated and recommended the terms and conditions of the Settlement;
47. Class Counsel recommend this Settlement which is beneficial to the Class in terms of monetary compensation, provides for a practice change and respects the rule of proportionality, which clearly outweigh the risks that would arise from continuing the litigation;
48. The Plaintiffs provided their instructions to enter into the Settlement on their own behalf and on behalf of the Class Members and signed the Settlement, as it appears from Exhibit R-1;

v. The Future Expenses and Probable Length of the Litigation

49. If the case were to proceed in an adversarial fashion, there is no doubt that there would be protracted litigation and further important costs;
50. Experts would be hired on both sides and counter the other's claims concerning the alleged fault. Private investigators may have been needed to testify to prove fault on a collective basis and forensic accountants hired to dispute damages;
51. It is therefore safe to say that the present action would take several years to be decided on the merits and there would have been a possibility that a successful judgment could be brought into appeal, causing further delays;
52. Conversely, having obtained a settlement in the form of direct monetary compensation for Eligible AppleCare Class Members – which can represent more than 50% of the claim for compensatory damages for some claimants – is in the interests of judicial economy, proportionality and a favorable result;

vi. The Number and Nature of any Objection:

53. To date, Class Counsel have received 2 objections to the Settlement, copies of which are communicated herewith *en liasse* as **Exhibit R-6**. This is a relatively negligible amount considering the number of emails sent by the Claims Administrator to Class Members on record according to Apple (see Exhibit R-2);
54. Class Counsel have also received 175 opt-outs to date (Exhibit R-3), which is also a relatively negligible number in proportion to total Class Members;

vii. Good Faith of the Parties and the Absence of Collusion:

55. The Settlement was negotiated at arm's-length, in utmost good faith and without collusion between the parties;
56. The negotiations that led to the Settlement were adversarial. The parties participated in a mediation, and met and spoke several times until an agreement was eventually concluded. Some of the notable steps leading up to the Settlement are listed at paragraph 64 below;
57. By all accounts, the lead up to the Settlement, the negotiations concerning the disclosure of information and the negotiations of the details of the Settlement were all done in an adversarial manner and hard fought up until the end;

IV. APPROVAL OF CLASS COUNSEL FEES AND DISBURSEMENTS

58. Class Counsel is requesting the Court's approval of its extrajudicial fees pursuant to Articles 1.1(nn) and 11.1(a) of the Settlement, which provides for Class Counsel fees of 30% (plus taxes) of the Settlement Amount of \$6 million, plus disbursements, which Apple has agreed to pay;
59. It is respectfully submitted that the amount of 30% of the Settlement Amount (i.e. \$1.8 million plus taxes) is fair, reasonable and justified in the circumstances – notably in light of the result achieved and other factors detailed below – and is consistent with the mandate signed by the Plaintiffs and the jurisprudence approving this percentage-based mandate in the class action context, especially when the settlement has a real and guaranteed value as in the present case;
60. The total disbursements incurred by Class Counsel, including in first instance and in appeal, totals \$8,160.50 and are also being requested herein pursuant to Article 11.1(a);
61. Class Counsel is requesting that this Honorable Court approve the amounts agreed to in the Settlement, which are consistent with the jurisprudence and the mandate agreement signed by the Plaintiffs which benefit from a presumption of validity. The following criteria have been developed by the jurisprudence in order to determine whether Class Counsel's fees are fair and reasonable:
 - i) Time and effort expended by the attorneys on the litigation;
 - ii) The importance of the class action;
 - iii) The degree of difficulty of the class action;
 - iv) Class counsel's experience and expertise in a specific field;
 - v) The risks and responsibilities assumed by class counsel;

- vi) The result obtained;
- vii) Fees not contested.

i. Time and effort expended by the attorneys on the litigation

62. To avoid repetition, we refer to paragraphs 2 to 15 above under the heading “Procedural Background”. It took almost 6 years to arrive at the Settlement since the initial filing (including the investigation, litigation, authorization, appeals, negotiations, notice/settlement approvals, etc.);
63. Combined, the Representative Plaintiffs’ attorneys worked over a total of 1,900 hours as of October 18, 2023. The unbilled time to date is more than \$950,000.00 before taxes (using an average hourly rate of \$500). The work is ongoing, including preparation for the October 20, 2023, settlement approval hearing and coordinating with the Claims Administrator, Apple and the Class Members during the upcoming claims process;
64. Some of the notable steps and time expended by Class Counsel in this litigation include:
 - The *Application to Authorize* this class action was initially filed on December 29, 2017;
 - Apple filed its answer on January 26, 2018, contesting the application;
 - The *Application to Authorize* was amended on December 7, 2018, notably adding Plaintiff Mr. Loeub and the cause of action concerning AppleCare;
 - The authorization hearing was held on June 25, 2019, and on July 16, 2019, the Superior Court authorized this class action and appointed Mr. Badaoui and Mr. Loeub as Representative Plaintiffs;
 - On November 5, 2019, the Honourable Marie-France Bich, J.C.A., granted leave for Apple to appeal from the authorization judgment;
 - On March 17, 2021, and as rectified on April 15, 2021, the Quebec Court of Appeal partially overturned the authorization Judgment, mainly by redefining the Battery Class;
 - On June 15, 2021, the Representative Plaintiffs filed their Originating Application;
 - On August 30, 2021, Apple filed its answer by stating its intention to contest the Originating Application;

- On July 15, 2021, the Representative Plaintiffs notified and filed their *Application to Order the Publication of Notice to Class Members and Other Orders to Preserve Evidence*, which was contested by Apple;
 - A hearing was scheduled for May 6, 2022, to debate the aforementioned application. However, on April 29, 2022, the parties informed the Court that they planned to participate in a CRA and asked the Court to suspend the case until after the CRA, which the Court confirmed it accepted by email on May 5, 2022, the whole as appears to the Court record;
 - Prior to the CRA/mediation, the parties exchanged relevant information on a confidential basis, which allowed Class Counsel and Plaintiffs to have a clear understanding of the value of the released claims;
 - On November 1, 2022, the parties participated in the mediation presided by the Honourable Robert Mongeon, which led to an agreement in principle;
 - The arms-length negotiations continued, and the parties eventually agreed on the terms of the Settlement, which was signed on April 20, 2023;
 - The parties finalized the settlement materials, including the notices, and began communicating the notices to Class Members in May of 2023 (pursuant to the Court's judgment of May 5, 2023);
 - Following the distribution of notices, Class Counsel (whose names and contact information were listed in the notices) were flooded with (confidential) phone calls and emails from Class Members and the public, and significant time and resources were expended responding to these Members and coordinating with the Claims Administrator;
65. Class Counsel will devote additional time to complete and oversee the implementation of the Settlement, additional time that will **not** be submitted to this Honourable Court for a fee request and is already contemplated by the total amount of fees requested;
66. Class Counsel has dedicated significant time to the present file, as detailed herein, all without any guarantee of payment. It should be noted that the mandate agreements with the Representative Plaintiffs provide for the calculation of Class Counsel fees as the higher of 30% plus taxes of the recovery or a multiplier of 3.5, as it appears from a copy of the mandate communicated as **Exhibit R-7**;
67. At all times, this litigation was complex and high-risk. Class Counsel conducted extensive legal and factual research in support of this claim, and conducted important settlement negotiations;
68. The process of finalizing the Settlement, along with the related exhibits and other documents, continued for several months following the achievement of a settlement

in principle. Further work was also undertaken in anticipation of the settlement approval hearing, including the preparation of the present Application and arguments;

ii. The importance of the class action

69. The issues – as alleged by the Representative Plaintiffs against the Defendants in their Application – are directly related to the access to justice for the 76,356 Eligible AppleCare Class Members who are eligible to benefit from the direct monetary compensation provided for in the Settlement (in addition to the Quebec public at large who will benefit from the practice change for the future);
70. Often, claims of this nature are claims involving complicated legal, evidentiary and technical issues, but yet relatively small sums of money. They can only be pursued through class actions because individually, a person would not have the means – or the motivation – to obtain justice against large corporations, who have considerable financial resources at their disposal;
71. If it were not for this class action, Class Members would not have been likely to institute individual actions to obtain compensation, nor it likely that there would have been a practice change (see Exhibit R-5). As such, this class action has allowed Class Members to achieve justice, without wasting judicial resources;

iii. The degree of difficulty of the class action

72. Apple would have produced numerous witnesses and expert evidence to counter the Representative Plaintiffs' assertions and to back up its claims that they committed no fault and are not liable for any damages. Apple always argued that it complied with the CPA;
73. A very significant amount of time, energy, and financial resources (such as mandating experts and investigators) would have been necessary to counter Apple's factual and expert evidence, as well as their legal arguments;
74. In sum, Class Members would have faced complex evidence issues, in order to establish the Apple's fault and liability;
75. A significant risk was therefore taken on by Class Counsel in accepting this mandate;

iv. Class counsel's experience and expertise in a specific field

76. The Plaintiffs are represented by the law firms of Renno Vathilakis Inc. and LPC Avocat Inc. The latter's practice is focused almost entirely on consumer protection-related class actions. The firms' biographies are communicated herewith *en liasse* as **Exhibit R-8**;
77. Both firms primarily represent plaintiffs, but also engage in class action defence work. LPC Avocat Inc. previously defended 4 private schools named as Defendants in a class action concerning tuition fees paid during Covid and Renno Vathilakis have

represented large multinational corporations named as Defendants in Quebec class actions on diverse legal issues;

78. Given that Class Counsel focuses on class action litigation, the vast majority of its work is done on a contingency basis, meaning that for cases that are not successful, the firm receives no payment for work performed, which in some cases is quite significant;
79. The professional services offered by Class Counsel are unusual and require specific expertise and professionalism;
80. Often, in this type of work, communication with the public is also necessary, (e.g. by communicating with class members and with the media, maintaining and updating a website, etc.). This requires the firm to be more proactive to protect the interests of the class members whom they represent;
81. There are only a small number of attorneys who take on class action matters in Quebec and in Canada;

v. The risk assumed by Class Counsel

82. As is oftentimes the case in class actions, the risk of success or failure is borne entirely by Class Counsel. In the present case, Class Counsel took on the entire case on a contingency basis;
83. This meant that neither the Plaintiffs nor any Class Members were asked to contribute any fees for the time spent on the file, nor for any of the disbursements made on their behalf by Class Counsel;
84. Class Counsel assumed all the costs and financial risks associated to the present class action. No financing was received from the Fonds d'aide aux actions collectives;
85. Given that in the case of failure, Class Counsel receives nothing – and often loses significant amounts of money – the Courts have recognized that in the case of success, they should be properly compensated for their efforts and for the financial risk (both in time and money) that they have assumed;
86. Class Counsel have worked diligently to advance this litigation to the point of settlement, with no payment for its fees or any guarantee of payment;
87. To conserve and to safeguard the important societal benefits preserved by class actions, especially in the area of consumer protection, it is important that Class Counsel receive a fair payment on their time to provide the appropriate incentive to future counsel;
88. The Class Counsel fees being requested have been considered acceptable by the Courts in similar circumstances (both in terms of percentage (30%) and multiplier (1.89));

vi. The result obtained

89. To avoid repetition, we refer to paragraphs 37 to 45 above under the heading “The Terms of the Settlement”;
90. It is respectfully submitted that the amount of \$6 million recovered collectively under the terms of the Settlement is significant, especially as a proportion to total AppleCare sales to Eligible AppleCare Class Members (Class Counsel does not object to Apple’s request to keep this information confidential; see the Court’s analysis on this point in *Holcman c. Restaurant Brands International Inc.*, 2022 QCCS 3428, paras. 54-66);
91. Additionally, one of the main objectives of this class action was to obtain a practice change in Quebec, which is expressly provided for at Article 1.1(gg) of the Settlement, and is currently in force in Apple Stores in Quebec (see pictures taken on October 16 and 17, 2023, at the Apple Stores in Montreal, Laval, South Shore and West Island, Exhibit R-5);

vii. Fees not contested:

92. No Class Member has indicated their intention to contest the request for Class Counsel fees which were expressly mentioned in the pre-approval notices sent to more than **3 million** Class Members by email and regular mail (Exhibit R-2, page 3). On the other hand, several Class Members contacted Class Counsel to support the Settlement;
93. For all of these reasons, the Plaintiffs and their counsel submit that the Settlement is fair, reasonable, and worthy of the Court’s approval;

PAR CES MOTIFS, PLAISE AU TRIBUNAL :	FOR THESE REASONS, MAY IT PLEASE THE COURT TO:
[1] ORDONNER que les définitions apparaissant dans l’Entente de Règlement s’appliquent au présent jugement, à moins qu’elles ne soient expressément modifiées dans les présentes;	[1] ORDER that the definitions found in the Settlement Agreement find application in the present Judgment, except if specifically modified herein;
[2] ACCUEILLIR la présente <i>Demande d’approbation d’un règlement d’une action collective et des Honoraires des Avocats du Groupe</i> ;	[2] GRANT the present <i>Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees</i> ;
[3] APPROUVER l’Entente de Règlement en tant que transaction au sens de l’article 590 du <i>Code de procédure civile</i> et ORDONNER aux Parties de s’y conformer;	[3] APPROVE the Settlement Agreement as a transaction pursuant to article 590 of the <i>Code of Civil Procedure</i> and ORDER the Parties to abide by it;

<p>[4] DÉCLARER l'Entente de Règlement (y compris son préambule et ses Annexes) juste, raisonnable et dans l'intérêt véritable des Membres du Groupe, constituant une transaction au sens de l'article 2631 du <i>Code civil du Québec</i>, qui lie toutes les parties et tous les Membres du Groupe;</p>	<p>[4] DECLARE that the Settlement Agreement (including its Recitals and its Schedules) is fair, reasonable and in the best interest of the Class Members and constitutes a transaction pursuant to article 2631 of the <i>Civil Code of Quebec</i>, binding upon all parties and upon all Class Members;</p>
<p>[5] DÉCLARER que le paiement par les Défenderesses du Montant de Règlement, suivant l'Entente de Règlement, sera versé en règlement intégral des Réclamations Quittancées contre les Parties Quittancées au sens attribué à ces termes dans l'Entente de Règlement;</p>	<p>[5] DECLARE that the Defendants' payment of the Settlement Amount as detailed in the Settlement Agreement will be in full satisfaction of the Released Claims against the Releasees as defined in the Settlement Agreement;</p>
<p>[6] APPROUVER les Honoraires des Avocats du Groupe prévus à l'article 11 de l'Entente de Règlement et ORDONNER que le paiement des Honoraires des Avocats du Groupe soient payés à même le Montant de Règlement, tel que prévu dans l'Entente de Règlement;</p>	<p>[6] APPROVE the Class Counsel Fees provided for at Article 11 of the Settlement Agreement and ORDER that the Class Counsel Fees be paid from the Settlement Amount, as outlined in the Settlement Agreement;</p>
<p>[7] APPROUVER le paiement des débours des Avocats du Groupe, conformément à l'article 11 de l'Entente de Règlement, pour un montant de 8 160,50 \$ et ORDONNER que les débours des Avocats du Groupe soient payés à même le Montant du Règlement, tel qu'indiqué dans l'Entente de Règlement;</p>	<p>[7] APPROVE the payment of Class Counsel's disbursements, pursuant to Article 11 of the Settlement Agreement, in the amount of \$8,160.50 and ORDER that Class Counsel's disbursements be paid from the Settlement Amount, as outlined in the Settlement Agreement;</p>
<p>[8] APPROUVER le Protocole de Distribution (annexe F) et ORDONNER aux parties de s'y conformer;</p>	<p>[8] APPROVE the Distribution Protocol (Schedule F) and ORDER the parties to abide by it;</p>
<p>[9] ORDONNER l'ajout des éléments suivants sur le Site Web de Règlement de l'Administrateur des Réclamations, dans les dix (10) jours suivant la Date d'effet :</p> <p>(i) le Formulaire de Réclamation pour le Remboursement au comptant au consommateur;</p>	<p>[9] ORDER that, within ten (10) days of the Effective Date, the Claims Administrator shall add the following to the Settlement Website:</p> <p>(i) The Claim Form for the Consumer Cash Reimbursement;</p>

<p>(ii) une copie de l’Avis d’Ordonnance de la Cour, en anglais et en français;</p> <p>(iii) une copie de l’Ordonnance.</p>	<p>(ii) Copies of the Notice of Court Order, in English and French; and</p> <p>(iii) A copy of the Order.</p>
<p>[10] ORDONNER que les documents accessibles sur le Site Web de Règlement soient également accessibles sur le site Web du cabinet des Avocats du Groupe : www.lpclex.com/fr/AppleCare;</p>	<p>[10] ORDER that the documents available on the Settlement Website be also made available on the website of Class Counsel: www.lpclex.com/AppleCare;</p>
<p>[11] ORDONNER la distribution du Fonds de Règlement Total conformément au Protocole de Distribution joint à l’annexe F de l’Entente de Règlement;</p>	<p>[11] ORDER that the distribution of the Total Settlement Fund be carried out following the Distribution Protocol, found in Schedule F to the Settlement Agreement;</p>
<p>[12] ORDONNER à l’Administrateur des Réclamations de fournir, dans les six (6) mois suivant la réalisation de la distribution du Fonds de Règlement Total, une Reddition de Compte conformément à l’article 6.4 de l’Entente de Règlement, afin qu’un jugement de clôture puisse être rendu;</p>	<p>[12] ORDER that, within six (6) months following the completion of the distribution of the Total Settlement Fund, the Claims Administrator will provide a Rendering of Account as provided for at Article 6.4 of the Settlement Agreement, so that a closing judgment can then be pronounced;</p>
<p>[13] ORDONNER que, s’il subsiste un reliquat à la suite de la distribution du Fonds de Règlement Total, conformément à l’article 6.4(a)(v) de l’Entente de Règlement, le Fonds d’aide recevra la part du reliquat à laquelle il a droit en vertu de la loi;</p>	<p>[13] ORDER that, if any balance remains following the distribution of the Total Settlement Fund, pursuant to Article 6.4(a)(v) of the Settlement Agreement, the Fonds d’aide will receive the share of the balance to which it is entitled by law;</p>
<p>[14] ORDONNER le versement cy-près du reste du reliquat après le paiement au Fonds d’aide aux actions collectives à un organisme de bienfaisance à être approuvé par le Tribunal;</p>	<p>[14] ORDER that the remainder of the balance remaining after payment to the Fonds d’aide aux actions collectives will be paid cy-près to a charitable organization to be approved by the Court;</p>
<p>[15] APPROUVER les Avis de l’Ordonnance d’Approbation du Règlement substantiellement dans la forme prévue à l’Annexe E de l’Entente de Règlement;</p>	<p>[15] APPROVE the Notices of Settlement Approval substantially in the form of Schedule E to the Settlement Agreement;</p>
<p>[16] ORDONNER la diffusion des Avis de l’Ordonnance d’Approbation du Règlement (substantiellement dans la forme prévue à l’Annexe E de l’Entente de Règlement)</p>	<p>[16] ORDER that such Notices of Settlement Approval (substantially in the form of Schedule E to the Settlement Agreement) be disseminated in accordance</p>

conformément au Plan Relatif aux Avis joint à l'Annexe C de l'Entente de Règlement;	with the Notice Plan found at Schedule C to the Settlement Agreement;
<u>LOIS SUR LA PROTECTION DES RENSEIGNEMENTS PERSONNELS ET COMMUNICATION DE CES RENSEIGNEMENTS</u>	<u>PRIVACY LAWS AND DISCLOSURE OF PERSONAL INFORMATION</u>
[17] ORDONNER à l'Administrateur Réclamations d'utiliser les informations personnelles concernant une personne qui lui sont fournis tout au long de la procédure de réclamation dans le seul but de faciliter la procédure d'administration des réclamations conformément à l'Entente de Règlement et à aucune autre fin;	[17] ORDER that the Claims Administrator shall use the personally identifiable information provided to it throughout the claims process for the sole purpose of facilitating the claims administration process in accordance with the Settlement Agreement and for no other purpose;
[18] ORDONNER ET DÉCLARER que le présent Jugement constitue un Jugement obligeant les Défenderesses à communiquer des renseignements personnels au sens des lois sur la protection des renseignements personnels applicables, et que le présent Jugement respecte les exigences de toutes les lois sur la protection des renseignements personnels applicables;	[18] ORDER AND DECLARE that this Judgment constitutes a Judgment compelling the production of the information by the Defendants within the meaning of applicable privacy laws, and that this Judgment satisfies the requirements of all applicable privacy laws;
[19] LE TOUT , sans frais de justice.	[19] THE WHOLE , without legal costs.

Montreal, October 18, 2023

Montreal, October 18, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.
Mtre Michael E. Vathilakis
Mtre Karim Renno
For the Representative Plaintiffs
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(s) LPC Avocat Inc.

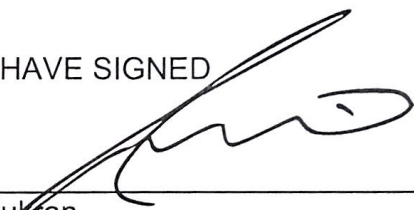
LPC AVOCAT INC.
Mtre Joey Zukran
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276 Saint-Jacques Street, Suite 801
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AFFIDAVIT OF JOEY ZUKRAN

I, Joey Zukran, attorney, practicing my profession at 276, rue Saint-Jacques, Suite 801, Montreal, Quebec, H2Y 1N3, solemnly affirm:

1. That I am one of the attorneys for the Representative Plaintiffs in the present action;
2. That I have taken cognizance of the Application attached and the facts alleged therein are accurate to the best of my knowledge;
3. That said Application is made in good faith.

AND I HAVE SIGNED



Joey Zukran

Solemnly affirmed before me at Montreal
this 18th day of October 2023



Helen Shimansky, Commissioners for Oaths
for the Province of Quebec no. 243283

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

(Class Actions)
SUPERIOR COURT

NO: 500-06-000897-179

RAPHAEL BADAoui
and
BENJAMIN LOEUB

Representative Plaintiffs

v.

APPLE CANADA INC.
and
APPLE INC.

Defendants

and

LPC AVOCAT INC.
and
RENNO VATHILAKIS INC.

Representative Plaintiffs' Attorneys

LIST OF EXHIBITS

- Exhibit R-1:** Copy of the Settlement Agreement signed on April 20, 2023;
- Exhibit R-2:** Copy of the Claim's Administrator's Report dated October 16, 2023;
- Exhibit R-3:** *En liasse*, copies of the 175 opt-out requests;
- Exhibit R-4:** Affidavit of Apple's representative;
- Exhibit R-5:** *En liasse*, pictures taken at the Apple Stores on October 16 and 17, 2023, in Montreal, Laval, South Shore and the West Island;
- Exhibit R-6:** *En liasse*, copies of the 2 objections;
- Exhibit R-7:** *En liasse*, copies of the mandate agreements;

Exhibit R-8: *En liasse*, copies of the biographies of LPC Avocat Inc. and Renno Vathilakis Inc.;

Montreal, October 18, 2023

Montreal, October 18, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.

Mtre Michael E. Vathilakis

Mtre Karim Renno

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(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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NOTICE OF PRESENTATION

TO: Mtre Sarah Woods
Mtre Marie Rondeau
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mrondeau@mccarthy.ca
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Attorneys for the Defendants

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Fonds d'aide aux actions collectives
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Montréal (Québec) H2Y 1B6
frikia.belogbi@justice.gouv.qc.ca / nathalie.guilbert@justice.gouv.qc.ca
Attorneys for the Fonds d'aide aux actions collectives

TAKE NOTICE that the present *Application to Approve a Class Action Settlement and for Approval of Class Counsel Fees* shall be presented for adjudication before the Honourable Marie-Christine Hivon, J.S.C., on **October 20, 2023, at 9:30 a.m. in a room 14.09**, at the Montreal Courthouse or via a TEAMS link.

Montreal, October 18, 2023

Montreal, October 18, 2023

(s) Renno Vathilakis Inc.

RENNO VATHILAKIS INC.
Mtre Michael E. Vathilakis
Mtre Karim Renno
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(s) LPC Avocat Inc.

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500-06-000897-179

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

RAPHAEL BADAOUI ET AL.
Representative Plaintiffs

v.

APPLE CANADA INC. ET AL.
Defendants

and

LPC AVOCAT INC. ET AL.
Representative Plaintiffs' Attorneys

**APPLICATION TO APPROVE A CLASS ACTION
SETTLEMENT AND FOR APPROVAL OF CLASS COUNSEL FEES**
(Articles 590 and 593 C.C.P., article 58 of the *Regulation of the Superior Court of Québec*
in civil matters, CQLR c C-25.01, r 0.2.1)

ORIGINAL

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N/D: JZ-175