SUPERIOR COURT
(Class Action Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-001374-251

MICHAEL MIRE

Applicant

v.

APPLE CANADA INC.

-and-

APPLE INC.

Defendants

APPLICATION FOR AUTHORIZATION TO ADDUCE EVIDENCE
(Art. 574 and 575 CCP)

TO THE HONORABLE JUSTICE ELENI YIANNAKIS OF THE SUPERIOR COURT IN THE DISTRICT OF MONTREAL, THE DEFENDANTS, APPLE CANADA INC. AND APPLE INC., RESPECTFULLY SUBMIT THE FOLLOWING:

I. INTRODUCTION

1. Apple Canada Inc. and Apple Inc. (the "**Defendants**" or "**Apple**") hereby seek authorization to submit certain relevant documents as evidence.

2. The purpose of this evidence is to allow the Court to benefit from the relevant factual context surrounding the Applicant's allegations and to assist the Court in determining, in an informed manner, whether the authorization criteria set forth at article 575 of the *Code of Civil Procedure* ("**CCP**") are met.

3. The Defendants seek to adduce evidence that is essential and indispensable for the Court to determine whether the Applicant has satisfied his burden of demonstrating a "colour of right" at the authorization stage, further to article 575(2) CCP.

4. The evidence that Apple seeks to file is concise, relevant, and necessary, as it will correct certain allegations by the Applicant that are manifestly inaccurate, erroneous and implausible.

5. This evidence will also complete a factual gap left by the Applicant and allow the Court to have a better understanding of the factual context of this case.

6. The evidence that Apple seeks to submit therefore falls within the "narrow corridor"

permitted by the case law, such that its production as relevant evidence respects the guiding principle of proportionality set out in article 18 of the CCP.

II. BRIEF DESCRIPTION OF THE PROPOSED CLASS ACTION

7. On or around April 7, 2025, the Applicant filed an *Application for authorization to institute a class action* (the "**proposed Class Action**" or the "**Application**") against the Defendants, in relation to their Trade In Program, as defined in the Application.

8. The proposed Class Action aims to represent the following class:

> All persons in Canada who participated in the Apple Trade In Program by providing their Eligible Used Device in the context of the purchase of a New Device from Apple, and who were charged Sales Taxes calculated on the full price of the New Device, or any other Group(s) or Sub-Group(s) to be determined by the Court.

9. In brief, the Defendants' Trade In Program allows consumers to benefit from a credit on the price of a new device when trading-in a used eligible device.

10. The proposed Class Action seeks damages from the Defendants, alleging that they intentionally charged the tax rate on the wrong amount in the context of their Trade In Program and failed to apply trade-in provisions stemming from tax legislation.

11. Since the Applicant filed the proposed Class Action in Québec, the applicable provisions governing trade-ins to which he refers are those set out in the *Excise Tax Act*, RCS, 1985, c. E-15 (the "**ETA**") and the *Act respecting the Québec sales tax*, CQLR, c. T-0 (the "**QST Act**") (collectively, the "**Applicable Tax Legislation**").

12. The Applicant more specifically claims that in the context of their Trade In Program, the Defendants inconsistently, arbitrarily and/or unlawfully charged and collected Goods and Services Tax (GST) and other sales taxes on the full amount of a new device, rather than on the net value.

13. In doing so, the Applicant alleges that the putative class members have been paying undue taxes unlawfully, and that the Defendants made misleading representations and committed prohibited acts, by making the putative class members believe that the sales taxes charged and collected were owed.

14. The Applicant also contends that the Defendants' tax collection practices resulted in an illegal misappropriation and occupation of funds.

III. THE EVIDENCE THE DEFENDANTS SEEKS TO ADDUCE

A. TERMS AND CONDITIONS PERTAINING TO THE TRADE IN PROGRAM & STEP-BY-STEP PROCESS TO COMPLETE A TRADE-IN

15. The Applicant alleges that the trade-in provisions found in the Applicable Tax Legislation were improperly applied.

16. As contemplated by sections 153(4) of the ETA and 54.1 of the QST Act, for there to be a trade-in, the used eligible device must be acquired by the Defendants for their consumption, use or supply in the course of a commercial activity:

ETA:

153 (4) Where, at the time a supplier makes a supply of tangible personal property to a recipient, <u>the supplier accepts</u>, in full or partial consideration for the supply, <u>other property</u> (in this subsection and subsection (5) referred to as the “trade-in”) <u>that</u>

(a) is used tangible personal property or a leasehold interest therein, and

(b) <u>is acquired for consumption, use or supply in the course of a commercial activity of the supplier</u>,

and the recipient is not required to collect tax in respect of the supply of the trade-in, the value of the consideration for the supply made by the supplier is deemed, for the purposes of this Part, to be equal to the amount, if any, by which the value of the consideration for that supply (as otherwise determined under this Part) exceeds

(c) except where paragraph (d) applies, the amount credited to the recipient in respect of the trade-in, and

(d) where the supplier and the recipient are not dealing with each other at arm’s length at the time the supply is made and the amount credited to the recipient in respect of the trade-in exceeds the fair market value of the trade-in at the time ownership thereof is transferred to the supplier, that fair market value.

QST Act:

54.1. Where, at the time a supplier makes a supply of corporeal movable property to a recipient, <u>the supplier accepts</u>, in full or partial consideration for the supply, <u>other property</u> (in this section and in section 54.2 referred to as the “trade-in”) <u>that</u> is used corporeal movable property or a leasehold interest therein and <u>is acquired for consumption, use or supply in the course of a commercial activity of the supplier</u>, and the recipient is not required to collect the tax in respect of the supply of the trade-in otherwise than by reason of the application of subparagraph 3 of the second paragraph of section 422 , the value of the consideration for the supply made by the supplier is deemed to be equal to the amount by which the value of the consideration for that supply, as otherwise determined, exceeds

(1) except where paragraph 2 applies, the amount credited to the recipient in respect of the trade-in; and

(2) where the supplier and the recipient are not dealing with each other at arm’s length at the time the supply is made and the amount credited to the recipient in respect of the trade-in exceeds the fair market value of the trade-in at the time ownership thereof is transferred to the supplier, that fair market value.

[Our underlining]

17. The Defendants seek to adduce into evidence the terms and conditions pertaining to the Trade In Program (the “**Terms and Conditions**”), as well as the step-by-step process for submitting a device for trade-in on Apple’s website and in store, filed in support hereof as **Exhibit D-1 *en liasse***.

18. The Defendants also seek to adduce into evidence their third party vendor, Likewize’s Terms and Conditions pertaining to the Trade In Program, as well as the step-by-step process for submitting a device for trade-in on Likewize’s website, filed in support hereof as **Exhibit D-2 *en liasse***.

19. These documents clearly demonstrate the false, inaccurate and manifestly implausible nature of the Applicant's allegations regarding the relevance of the Applicable Tax Legislation to Apple's Trade In Program.

20. As appears from Apple's Terms and Conditions pertaining to the Trade In (**Exhibit D-1**):

    - The trade-in service is offered and provided by the Vendors;
    - At the completion of the transaction, ownership of the consumer's device is transferred to one of the Vendors;
    - The consumer assigns to Apple the right to collect from the Vendor the value received.

21. Moreover, as appears from the Terms and Conditions available on Likewize's webpage, the Defendants' third party vendor (**Exhibit D-2**):

    - Apple Trade In is provided to Apple consumers by Likewize as an independent third party company;
    - Apple is not a party in the transaction between Likewize and the consumer;
    - Any and all transactions are solely the responsibility of Likewize and the consumer;
    - Consumers must accept these Terms and Conditions as stated here, in order to complete a Product trade through Apple Trade In with Likewize.

22. Clearly, the Defendants do not "acquire" the used devices in the context of the Trade In Program, because they do not take ownership of these devices. The Defendants act as intermediaries between the customer and the third party vendor.

23. Therefore, even assuming the Applicant's allegations as true for the purposes of authorization, it is nevertheless clear that the factual context presented by the Applicant is incomplete and misleads the Court.

24. The Terms and Conditions are thus necessary, because at the authorization hearing, the Court will be called to rule on a point of law essential in determining the fate of the proposed Class Action: whether the trade-in mechanism under the Applicable Tax Legislation applies when a supplier accepts a device on behalf of a third party, without acquiring ownership of the device.

25. It is in the best interest of justice that the Defendants be allowed to adduce this evidence, given that, if the Court determines that it does have jurisdiction over this proposed Class Action (despite the clear provisions of the Applicable Tax Legislation that show otherwise), the proposed Class Action entirely relies on the premise that the trade-in provisions of the Applicable Tax Legislation apply to the Defendants' Trade In Program. If the Court finds that these provisions do not apply, the proposed Class Action is bound to fail.

B. APPLE'S WEBPAGE DETAILING THE TRADE IN PROGRAM

26. The Applicant alleges that the Defendants make false and misleading

representations to putative class members about the existence, charge, amount or rate of duties payable under a federal or provincial statute, contrary to section 227.1 of Québec's *Consumer Protection Act*, RLRQ, c. P-40.1 (the "**CPA**").

27. The Defendants seek to adduce into evidence their webpage detailing the Trade In Program, filed in support hereof as **Exhibit D-3**, which states that "Sales tax will be assessed on the full value of a new device purchase".

28. This evidence is necessary, because it clearly demonstrates the false, inaccurate and manifestly implausible nature of the Applicant's allegations that the Defendants make false and misleading representations to class members about the existence, charge, amount or rate of duties payable under a federal or provincial statute.

29. This evidence also reveals to the Court what information was accessible to consumers regarding the Defendants' disclosure of the method used to calculate the sales taxes under the Trade In Program, and thus completes the factual context of this case and will assist the Court in determining whether there were misrepresentations.

30. This evidence is particularly relevant since the outcome of the misrepresentation claim depends on the Court's determination about the application of the trade-in provisions. Indeed, should the Court conclude that the Defendants' method of calculating sales tax complies with the Applicable Tax Legislation, this evidence would be determinative in resolving the misrepresentation claim, as it would further demonstrate that the Defendants' representation was accurate.

C. THE AFFIDAVIT BY TERRY RYAN, SENIOR TAX DIRECTOR AT APPLE INC.

31. The proposed Class Action is founded on the premise that the Defendants misapplied the Applicable Tax Legislation pertaining to trade-ins, and that the Defendants consequently misappropriated and occupied funds illegally.

32. The Defendants seek to adduce into evidence an affidavit signed by Terry Ryan, Senior Tax Director at Apple Inc., filed in support hereof as **Exhibit D-4**, to establish that the sales taxes charged and collected in the course of the Trade In Program in Canada were, and continue to be, reported and remitted to the Canadian tax authorities (the "**Affidavit**").

33. This Affidavit is necessary, because the Court will be called to rule on its jurisdiction over the proposed Class Action.

34. Indeed, the Defendants intend to contest jurisdiction and argue that the remittance of these taxes to the Canadian tax authorities limits the remedy available to putative class members seeking their reimbursement to the administrative mechanism prescribed under the Applicable Tax Legislation, which constitutes their exclusive means of recovering taxes paid in excess or in error.

35. It is therefore in the best interest of justice to admit this Affidavit into evidence, because it will allow the Court to determine whether it has jurisdiction over the Applicant's claim.

36. Furthermore, this Affidavit both completes the factual context of this case and also corrects the Applicant's allegation that the Defendants have misappropriated and occupied funds in the absence of any legal right.

37. This Affidavit thus demonstrates that the Applicant's allegations in this regard are manifestly inaccurate, erroneous and implausible, which is necessary information for the Court to have in its assessment of the authorization criteria of article 575 CCP.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application for Authorization to Adduce Evidence;

AUTHORIZE the filing of:

- The Terms and Conditions pertaining to Apple's Trade In Program, along with the step-by-step process for submitting a device for trade-in on Apple's website and in store (**Exhibit D-1 *en liasse***);
- Likewize's Terms and Conditions pertaining to Apple's Trade In Program, along with the step-by-step process for submitting a device for trade-in on Likewize's website (**Exhibit D-2 *en liasse***);
- Apple's webpage detailing Apple's Trade In Program (**Exhibit D-3**);
- The affidavit by Terry Ryan, Senior Tax Director at Apple Inc. (**Exhibit D-4**);

THE WHOLE without costs, unless the present Application is contested.

MONTREAL, September 19, 2025

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