

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N^o : 500-06-000594-123

1
SUPERIOR COURT
(Class Action)

PEGUY DIEUDONNE, [REDACTED]
[REDACTED]

Petitioner

-VS-

APPLE INC., a legal person duly constituted according to the law, having its principal place of business at Infinite Loop, city of Cupertino, State of California, 95014, United States of America;

and

APPLE CANADA INC., a legal person duly constituted according to the law, having a place of business at 555, Dr. Frédérik-Phillips, suite 210, city of Saint-Laurent, Province of Quebec, H4M 2X4

**MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND
TO ASCRIBE THE STATUS OF REPRESENTATIVE**
(Art. 1002 C.C.P. and following)

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER STATES THE FOLLOWING:

GENERAL PRESENTATION

1. Petitioner wishes to institute a class action on behalf of the following group, of which he is a member, namely:

- All persons in Canada who purchased and/or otherwise became the owner of an iPhone 4 mobile telephone or any other group to be determined by the Court;

alternatively (or as a subclass):

- All persons in Quebec who purchased and/or otherwise became the owner of an iPhone 4 mobile telephone or any other group to be determined by the Court;

(hereinafter, Class Members are collectively referred to as, "Petitioner(s)", "Class Member(s)", "Group Member(s)", the "Group", the "Class", the "Member(s)", the "Consumer(s)");

Respondents

2. Respondent Apple, Inc. is a computer hardware and software company having its head office at 1 Infinite Loop, city of Cupertino, State of California, 95014, USA;
3. Respondent Apple Computer, Inc does business in Canada and Quebec through Apple Canada Inc., which has a principal place of business at 555, Dr. Frédérik-Phillips, suite 210, city of Saint-Laurent, Province of Quebec, H4M 2X4, the whole as more fully appears from a copy of the Quebec Registraire des Entreprises Report attached hereto as **Exhibit R-1**;
4. Apple Canada Inc. is an affiliate of Apple Computer, Inc. and as such they have both, either directly or indirectly, performed any one of the commercial activities of designing, manufacturing, distributing, importing, selling, and/or putting iPods onto the marketplace in Canada and Quebec;
5. Given the close ties between the Respondents and considering the preceding, both Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, both Respondents will be referred to as "Apple" for the purposes hereof;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

6. The 30th of July 2010, Respondents released their new iPhone 4 in Canada;
7. It was marketed, advertised and sold as a high quality smartphone product designed to meet consumer and business requirements, and during the relevant period, was among the most expensive consumer mobile telephones sold;
8. The iPhone 4 was touted as a powerful, full-featured mobile telephone with a high quality redesigned case and antennae, high quality voice communications, wireless email, text messaging, web browsing and hundreds of applications available for download;
9. Furthermore, at all pertinent times Respondents represented to the public, including group members, that the iPhone 4 mobile telephone was a dependable and reliable mobile device that was free from defects;
10. However, in the first weeks following its release, it was discovered by many users that the mobile telephone case and antenna design is defective. The case and antenna design has led to a substantial degradation in signal quality and dropped calls when the phone is used in a normal and foreseeable fashion by users;
11. The iPhone 4 also has a software problem, where the faulty software provides users with a misleading manifestation of the quality of the mobile signal as it fails to accurately display the strength of the mobile signal and fails to optimize the antenna reception;
12. At all pertinent times Respondents represented to the public, including Group members, that the iPhone 4 was a dependable, reliable mobile device which was free from defects;
13. However, the iPhone4 suffered from an extremely defective antenna system built in to the body of the phone where it was subject to substantial interference and degradation of the wireless signal when held in a normal manner and held in a manner reasonably expected by users of such device. Respondents failed to ensure a dependable mobile antenna system was in place;
14. Respondents have been aware for a substantial period of time that the iPhone4 was prone to unreasonably poor reception, antenna design defects, and dropped calls. Nevertheless, Respondents failed to warn its customers of the problem or filed to prevent them from suffering poor reception;

15. Respondents' main response to date is to buy a \$29.95 dollar case. Respondents have failed to effectively remedy the problems and defects inherent in the iPhone4. Unwilling to admit fault, Respondents sat silently while consumers purchased these defective products without warning customers about the risks inherent in purchasing and relying upon a iPhone4 as a mobile telephone communication device;
16. In addition to the reception problems with the antenna and case design, Respondents designed their smartphone antenna related software in a materially defective manner including, but not limited to, inaccurately manifesting the number of bars or quality of the reception of the iPhone4 devices and not optimizing the antenna signal quality. Respondents knew or should have known of the material defects in their antenna related software design and taken steps to advise potential purchasers of the defects and taken steps to fix such software before the iPhone4 was placed into the marketplace for purchase or at least in a more expedient fashion.
17. To ordinary and prudent owners and consumers, the above-mentioned defects were latent;

Petitioner:

18. Petitioner Peguy bought an iPhone 4 on the 4 of October 2010 through Fido, his mobile service provider;
19. His new iPhone 4 was plagued with problems, such as loss of signal, loss of text messages, application failures and so forth;
20. Petitioner used his iPhone 4 for some time before being forced to get it exchanged for a new one in October 2011, as the problems were rendering the phone unusable;
21. Petitioner has been using the second iPhone 4 he received as an exchange since then;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

22. The Petitioners and the Group Members are comprised of persons who have purchased or otherwise became the owners of the iPhone 4 mobile telephone by Respondents which are defective, as detailed above;

23. Accordingly, the Group Members are entitled to a full reimbursement of the purchase price of their iPhone 4 and compensation for any other expenses incurred or other damages suffered stemming from the iPhone 4's defects;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

24. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;

25. The number of persons included in the Group are in the hundreds of thousands;

26. The names and addresses of all persons included in the Group are not known to the Petitioner, however, Respondents are likely to possess data regarding sales and distribution figures;

27. In addition, given the costs and risks inherent in an action before the Courts, many people will hesitate to institute an individual action against Respondents. Even if the Group Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Furthermore, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the Court system;

28. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Member of the Group to obtain mandates and to join them in one action;

29. In these circumstances, a class action is the only appropriate procedure for all of the Members of the Group to effectively pursue their respective rights and have access to justice;

30. The recourses of the Members raise identical, similar or related questions of fact or law, namely:

- a. Did Respondents' iPhone 4 mobile telephone have a latent defect?
- b. Are Respondents responsible to reimburse the purchase price paid by Group Members for the iPhone mobile telephone?
- c. Are Respondents responsible to pay compensatory damages to Group Members stemming from the iPhone 4's defects, and if so in what amount?
- d. Are Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

31. The interests of justice favour that this motion be granted in accordance with its conclusions;

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

32. The action that Petitioner wishes to institute for the benefit of the members of the class is an action in damages for product liability;

33. The conclusions that Petitioner wishes to introduce by way of a motion to institute proceedings are:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to reimburse to the Members of the Group the purchase price paid for the iPhone 4 mobile telephone, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount of compensatory damages to Group Members stemming from the iPhone 4 mobile telephone's defects;

CONDEMN Defendants to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

34. Petitioner suggests that this class action be exercised before the Superior Court in the District of Montreal for the following reasons:

- a. Respondents' iPhone mobile telephones are sold in the District of Montreal;
- b. Group Counsel are domiciled in the District of Montreal;
- c. Petitioner is domiciled in the District of Montreal;

35. Petitioner, who is requesting to obtain the status of representative, will fairly and adequately protect and represent the interest of the Members of the Group, since Petitioner:

- a. purchased a defective iPhone 4 mobile telephone, as detailed above;
- b. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Members of the Group;
- c. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Group attorneys in this regard;
- d. is ready and available to manage and direct the present action in the interest of the Group Members that Petitioner wishes to represent, and is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Group;
- e. does not have interests that are antagonistic to those of other members of the Group;
- f. has given the mandate to the undersigned attorneys to obtain all relevant information to the present action and intends to keep informed of all developments;
- g. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Members of the Group and to keep them informed;

36. The present motion is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages;

ASCRIBE the Petitioner the status of representative of the persons included in the group herein described as:

- All persons in Canada who purchased and/or otherwise became the owner of an iPhone 4 mobile telephone or any other group to be determined by the Court;

alternatively (or as a subclass):

- All persons in Quebec who purchased and/or otherwise became the owner of an iPhone 4 mobile telephone or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a. Did Respondents' iPhone 4 mobile telephone have a latent defect?
- b. Are Respondents responsible to reimburse the purchase price paid by Group Members for the iPhone mobile telephone?
- c. Are Respondents responsible to pay compensatory damages to Group Members stemming from the iPhone 4 mobile telephone's defects, and if so in what amount?
- d. Are Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT Plaintiff's action against Defendants;

CONDEMN Defendants to reimburse to the Members of the Group the purchase price paid for the iPhone 4 mobile telephone, plus interest as well the additional indemnity since the date of purchase;

CONDEMN Defendants to pay an amount of compensatory damages to Group Members stemming from the iPhone 4 mobile telephone's defects;

CONDEMN Defendants to pay an amount in compensatory, moral, punitive and/or exemplary damages to every Group Member, plus interest as well the additional indemnity;

GRANT the class action of Petitioner on behalf of all the Members of the Group;

ORDER the treatment of individual claims of each Member of the Group in accordance with articles 1037 to 1040 C.C.P.;

RENDER any other order that this Honourable Court shall determine and that is in the interest of the Members of the Group;

THE WHOLE with interest and additional indemnity provided for in the Civil Code of Quebec and with full costs and expenses including expert's fees and publication fees to advise members;

DECLARE that all Members of the Group that have not requested their exclusion from the Group in the prescribed delay to be bound by any judgment to be rendered on the class action to be instituted;

FIX the delay of exclusion at 30 days from the date of the publication of the notice to the Members;

ORDER the publication of a notice to the Members of the Group in accordance with article 1006 C.C.P.;

THE WHOLE with costs to follow.

MONTREAL, February 23 2012

Merchant Law Group LLP

MERCHANT LAW GROUP LLP
Attorneys for Petitioners

**NOTICE TO DEFENDANT
(Art. 119 C.C.P.)**

TO:

APPLE COMPUTER, INC.

1 Infinite Loop, city of Cupertino,
State of California, 95014,
United States of America;

and

APPLE CANADA INC.

555, Dr. Frédérik-Phillips, suite 210,
Saint-Laurent, Quebec,
H4M 2X4

TAKE NOTICE that the Petitioner has filed this action or application in the office of the Superior Court of the judicial district of Montreal.

To file an answer to this action or application, you must first file an Appearance, personally or by advocate, at the Courthouse of Montreal situated at 1 Notre Dame East, Montreal, Quebec, within ten (10) days of service of this Motion.

If you fail to file an Appearance within the time limit indicated, a judgment by default may be rendered against you without further notice upon the expiry of the ten (10) day period.

If you file an Appearance, the action or application will be presented before the Court on **April 3rd, 2012 at 9:00 AM**, in room **2.16** of the Courthouse. On that date, the Court may exercise such powers as are necessary to ensure the orderly progress of the proceeding or the Court may hear the case.

In support of the Motion To Authorize The Bringing Of A Class Action And To Ascribe The Status Of Representative, the Petitioner discloses the following Exhibits:

Exhibit R-1: copy of the Quebec Registraire des Entreprises Report, Apple Canada inc.

These Exhibits are available on request.

MONTREAL, February 23, 2012

Merchant Law Group LLP

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Attorneys for Petitioners and the
Class Members