

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

N<sup>o</sup> : 500-06-000602-124

SUPERIOR COURT  
(Class Action)

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JONATHAN NOVA, domiciled and residing at

[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

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

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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 4S 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 iPhones 4s onto the marketplace in Canada and Quebec;
5. Given the close ties between the Respondents and considering the preceding, both Respondents are solidarily liable and jointly and severally 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. In September, 2011, Apple announced that it would be introducing a new product on the market. It was widely rumoured and expected that a new iPhone 5 was being introduced by Apple on the market;
7. However, on October 14, 2011, after significant efforts on the part of Apple to create hype around this new product launch, Apple instead introduced the iPhone 4S, with the S denoting the new Siri application, which had been added by Apple to the previous iPhone 4 model;
8. The main difference between the iPhone 4 smart phone model and the iPhone 4S smart phone model was the new "Siri" feature, and Apple's entire launch of

this new iPhone model was centered on Apple's claim that the addition of Siri over the previous iPhone 4 model was a substantial breakthrough development;

9. The Siri feature is a voice recognition application that allows the smart phone's user to issue voice commands to the mobile telephone, which will in turn execute certain tasks in response. This application is described as follows by Respondents:

"Siri on iPhone 4S lets you use your voice to send messages, schedule meetings, place phone calls, and more. Ask Siri to do things just by talking the way you talk. Siri understands what you say, knows what you mean, and even talks back. Siri is so easy to use and does so much, you'll keep finding more and more ways to use it."

as it appears on Respondent Apple Inc.'s webpage concerning Siri, hereby filed as **Exhibit R-2**;

10. This new feature was extensively advertised, as can be seen, among other things, on Respondents' Youtube Channel, copy of which is filed as **Exhibit R-3**;
11. Respondents' advertising and marketing campaign is designed to cause consumers to purchase the iPhone 4S over other smart phones because of its Siri feature;
12. Respondents' advertisements regarding the Siri feature are fundamentally and designedly false and misleading. Although the iPhone 4S is markedly more expensive than the iPhone 4, the iPhone 4S's Siri feature does not perform as advertised and implied by Apple, rendering the iPhone 4S largely a more expensive version of the iPhone 4;
13. Indeed, the iPhone 4S advertised priced by Apple for consumer purchase is 649\$, while an iPhone 4 (without Siri) can be purchased for 549\$;
14. Apple had actual or constructive knowledge of the iPhone 4S's shortcomings prior to its distribution. The Siri Application often fails to understand the commands of its user, or simple provides a wrong answer to the command. Indeed, buried in Apple's current website is the amorphous sentence: "Siri is currently in beta and we'll continue to improve it over time." However, Respondents' media marketing, ads, and advertising campaign, including but not limited to the abovementioned Youtube channel, fail to mention the word "beta", and the fact that Siri is, at best, a work-in-progress;

15. Similarly, Respondents never disclosed that the Siri transactions depicted in its advertisements are fiction and that actual consumers using actual iPhone 4Ss cannot reasonably expect Siri to perform the tasks performed in these advertisements;
16. The information withheld from Petitioner and the other Group members is material and would have been considered by a reasonable person, as are the misrepresentations regarding Siri, all as more detailed herein;
17. Respondents' misrepresentations concerning the Siri feature of the iPhone 4S are misleading, false, and reasonably likely to deceive and have deceived Petitioner and members of the Group;
18. As a result of the misleading message about the iPhone 4S's Siri feature, Respondents have been able to charge a significant price premium for the iPhone 4S;
19. Respondents knew or should have known that the iPhone 4S does not perform in accordance with the advertisements and marketing materials they disseminated, yet failed to warn its customers of the problem;
20. To ordinary and prudent owners and consumers, the above-mentioned advertisement and implied functionality were likely to induce them into purchasing an iPhone 4S;

**Petitioner:**

21. Petitioner Jonathan Nova bought an iPhone 4S in December 2011 through Telus, his mobile service provider and Apple retailer;
22. Petitioner was well aware of advertising regarding the Siri feature at the time of purchase, was induced to buy an iPhone 4S model due to the Siri feature, and planned on using it as a time management/planning device;
23. However, after attempting to use it several times, Petitioner noticed that Siri often failed to operate properly, and that he could not rely on it;
24. Although Petitioner still owns his iPhone 4S, he no longer uses the Siri feature;

**FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBER SOF THE GROUP**

25. The Petitioners and the Group Members are comprised of persons who have purchased or otherwise became the owners of the iPhone 4S mobile telephone by Respondents which are affected by the abovementioned problem;
26. Accordingly, the Group Members are entitled to a price reduction of the purchase price of their iPhone 4S and compensation for any other expenses incurred or other damages suffered stemming from the iPhone 4S's Siri application failure;

### **CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

27. The composition of the group makes the application of article 59 or 67 C.C.P. impractical or impossible for the reasons detailed below;
28. The number of persons included in the Group are in the hundreds of thousands;
29. 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;
30. 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;
31. 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;
32. 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;
33. The recourses of the Members raise identical, similar or related questions of fact or law, namely:
  - a. Does the Respondents' iPhone 4S Siri application function properly?
  - b. Are the Respondents responsible to pay compensatory damages to Group Members stemming from the iPhone 4S's Siri application's failures, and if so in what amount?

c. Are the Respondents responsible to pay any other compensatory, moral, punitive and/or exemplary damages to Group Members, and if so in what amount?

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

**NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

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

36. 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 provide a price reduction on the purchase price paid for the iPhone 4S mobile telephone to the Members of the Group, 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 4S Siri application's failures;

**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;

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

- a. Respondents' iPhone 4S 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;
38. 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 an iPhone 4S mobile telephone with a faulty Siri application, 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;
39. 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 4S 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. Does the Respondents' iPhone 4S Siri application function properly??
- b. Are the Respondents responsible to pay compensatory damages to Group Members stemming from the iPhone 4S' Siri application's failures, and if so in what amount?
- c. Are the 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 the Defendants;

**CONDEMN** to provide a price reduction on the purchase price paid for the iPhone 4S mobile telephone to the Members of the Group, 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 4S Siri application's failures;

**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, March 20 2012**

*Merchant Law Group LLP*

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**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 30th, 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.

**Exhibit R-2:** copy of Respondent Apple Inc.'s webpage

**Exhibit R-3:** copy of Respondents' Youtube channel

These Exhibits are available on request.

**MONTREAL, March 20, 2012**

*Merchant Law Group LLP*

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**MERCHANT LAW GROUP LLP**  
Attorneys for Petitioners and the  
Class Members