SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000551-107

DATE : June 27, 2013

BY THE HONOURABLE PIERRE NOLLET, J.S.C.

GAD ALBILIA
Petitioner
c.
APPLE INC.
and

APPLE CANADA INC.

Respondents

JUDGMENT

I. THE MOTION

[1] Petitioner wishes to institute a Class Action on behalf of the following group:

> all residents in Canada who have purchased or otherwise acquired an iPhone or iPad ("iDevice") and who have downloaded free Apps from the App Store onto

their iDevices since December 1, 2008 through to the present, or any other group to be determined by the Court.

[2] Alternatively, Petitioner proposes to limit the group to Quebec residents.

[3] In the present context, Apps are applications that run on the iDevices and are developed by third parties to be made available only on Apple's virtual store.

[4] Petitioner seeks the following remedies:

4.1. injunctive relief against Respondents so that they cease allowing third parties to collect and disseminate personally identifiable information;

4.2. indemnify Class Members for: (i) iDevices resources consumed by third parties without Class Members' knowledge or permission; (ii) misrepresenting the value of the iDevice; (iii) allowing third parties to collect and disseminate personally identifiable information; (iv) maintaining a log of Class Members movements and allowing third parties to access that information;

4.3. punitive damages.

II. CONTEXT

[5] Apple Inc. is the developer, manufacturer, licensor and distributor of iDevices. iDevices contain an operating system (the iOS) developed and implemented by Apple Inc.

[6] Apple Inc. maintains a virtual store where Apps are offered either on a free or on paying basis (App store).

[7] It is alleged that the success of the iDevices is dependent on the quantity and quality of the Apps offered in the App store as consumers would buy iDevices primarily to have access to the numerous applications.

[8] Apple Inc. provides third parties with software development kits (SDKs). This is the only way for a third party to provide an App to Apple Inc. All Apps are reviewed and accepted by Apple Inc. prior to being offered on the App store. Petitioner refers to this entire system as Apple's ecosystem.

[9] The Petitioner claims that personal identifiable information concerning each of the Class Members was collected through the Apps and was transmitted, without their knowledge or permission, to third-parties, for purposes wholly unrelated to the use and functionality of their iDevices or the Apps.

[10] The information collected would have included Class Members' precise home and workplace locations and current whereabouts; unique device identifier (UDID) assigned to Class Members' iDevice; personal name assigned to the device; Class

Member's gender, age, postal code, and time zone; as well as App-specific activity such as the functions Class Members performed on the App; search terms entered; and selections of movies, songs, restaurants, etc...;

[11] Petitioner also claims that each of the Class Members had the resources of their iDevice (iDevice storage, battery life, and bandwidth) consumed and diminished without their permission. Such resources were used both by Respondents and by free Apps downloaded for purposes unrelated to the use and functionality of the iDevices or the Apps contained therein.

[12] Petitioner argues that if Class Members had known about those characteristics, they would not have purchased iDevices or, certainly, would not have paid what they did for devices that were substantially devalued by what is alleged to be the undesirable characteristics inextricably linked to the devices and their operating environment.

[13] The Class period referred to in the motion starts December 1, 2008 and runs through the final judgment.

[14] Petitioner is a computer engineer who owned iPhones operating iOs 4, iOs 5 and iOs6. He has not, however, owned an iPad.

[15] He has downloaded and installed several free Apps. The motion does not specify to what extent he used each or some of them.

[16] Petitioner was inspired to take this action when he learned of the institution of two Class Actions filed in the United States regarding the facts alleged in his proceedings. He has filed as exhibits, proceedings relating to one of those cases, namely Case 5:11-md-02250-LHK, In re: iPhone Application Litig. (the American case)[1]. This case leads him to believe that he too, could have suffered injury from the same behaviour attributed to Apple.

[17] Petitioner produced as evidence a *Wall Street Journal* article[2] as well as a research paper published by the author Eric Smith[3].

[18] In addition to Petitioner's allegations and the exhibits filed with the Motion for Authorization, the Court has relied upon the following evidence adduced in the record pursuant to permission granted by the undersigned:

18.1. Transcript of the examination of Petitioner;

18.2. Affidavit of Jane Horvath, a privacy officer of Apple inc.;

18.3. A copy of Apple's privacy statement applicable during the relevant class

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[1] R-4.
[2] R-3.
[3] R-2.

period[4];

18.4. Terms of sale of iDevices[5]:

[19] Petitioner downloaded free Apps including Apps that uses the geolocation services. He accepted all the stock settings for the iDevices and the Apps. Petitioner consented and agreed to provide information and consent whenever Apps requested same.

[20] The evidence is also that Petitioner never turned off the geolocation services. He never personally experienced any instance of an App actually collecting or transmitting his personal information (or anyone else's) to a third party. He cannot testify as to any tangible injury suffered as a result of the alleged breach of privacy.

[21] Petitioner alleges injury in respect of the use of his devices' resources and purchase price.

[22] Petitioner initiated his motion while he owned an iPhone operating under iOs 4. He has since purchased two more iPhones, reinstalled the same Apps for which he complains of privacy invasion and still has not turned off the geolocation services which he claims invaded his privacy and takes up significant space on his iDevice.

[23] There are no allegations that Petitioner negotiated a lower price for his second and third iPhone after learning of what Petitioner alleges to be misrepresentations as to the value of the iDevices.

III. PARTIES' POSITIONS

[24] Petitioner's claim is based on Apple having full control over the Apps and Apple ecosystem allowing for the making of clandestine and intrusive use of personally identifiable information while representing to its clients that they will protect their privacy. The geolocation issue relates to the ability for certain limited Apps running on a particular version of an iOS to access the iDevice whereabouts even when geolocation services were turned off. As for the use of resources, Petitioner alleges false representations as to the free aspects of the Apps and the fact that the use of Class Members resources is not disclosed.

[25] Respondents argue that the Class Action cannot succeed as it provides for an infinite variety of classes defeating the economy and efficiency of the Class Action process, that the burden of demonstration has not been met and that Petitioner has no valid claim against Respondents.

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[4] D-1.
[5] D-2.

[26] As well, Respondents argue that the motion does not respect Article 1002 *C.C.P.* because it does not adequately indicate the nature of the recourses sought and the allegations of fault are contradicted by the evidence.

IV. THE LAW

[27] Articles 1002 and 1003 *C.C.P.* provides as follows:

> "**1002.** A member cannot institute a class action except with the prior authorization of the court, obtained on a motion.
>
> The motion states the facts giving rise thereto, indicates the nature of the recourses for which authorization is applied for, and describes the group on behalf of which the member intends to act. It is accompanied with a notice of at least 10 days of the date of presentation and is served on the person against whom the applicant intends to exercise the class action; the motion may only be contested orally and the judge may allow relevant evidence to be submitted.
>
> **1003.** The court authorizes the bringing of the class action and ascribes the status of representative to the member it designates if of opinion that:
>
> *(a)* the recourses of the members raise identical, similar or related questions of law or fact;
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> *(b)* the facts alleged seem to justify the conclusions sought;
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> *(c)* the composition of the group makes the application of article 59 or 67 difficult or impracticable; and
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> *(d)* the member to whom the court intends to ascribe the status of representative is in a position to represent the members adequately.

V. DISCUSSION

[28] Let us now examine the criteria as they apply to the present case.

A. Requirements of Article 1002 *C.C.P.*

[29] Respondents argue that Petitioner has not properly stated the facts giving rise to the proposed Class Action nor stated clearly the legal grounds of his action. Respondents also question the description of the group.

[30] With respect to the issue of properly stating the facts, the Court will examine it when reviewing the criterion set out in 1003 b) C.C.P.

[31] As for the second issue of properly stating the legal grounds, it has been dealt with in several decisions including most recently by my colleague Justice Schrager in *Blackette.*[6]

> The law does not require a statement of the legal argument upon which Petititoner relies. As a general rule, a party is not required to allege the law in a motion to institute proceedings (Article 76 C.C.P.). Petitioner is not required *per se* to state that his recourse is founded in contract or in extra-contractual liability.

[32] In the case at hand, Petitioner has identified in his legal argument, the statutory grounds for his claims. This is sufficient for the purposes of article 1002 C.C.P. His claim is based on selected provisions of the *Consumer Protection Act*[7], *Competition Act*[8], *Quebec Charter of Human Rights and Freedoms*[9] and *Civil Code of Quebec.*

[33] The description of the group is a more difficult issue to deal with.

[34] The Class description must be based on objective criteria, which are rational and not circular or imprecise[10]. The proposed Class has only two criteria. Aside from the residency requirement, one must have owned an iDevice and downloaded free Apps. The issue of consent is not dealt with in the description of the proposed Class.

[35] Interestingly paragraph 37 of the Motion for Authorization reads as follows:

> 37 None of the Respondents adequately informed Class Members of their practices, and none of the Respondents obtained Class Members' consent to do so;

[36] As we can see from the above, individuals who consented might have to be treated differently from those who did not consent. Each free App may have a variety of different consent. When consent is absent one must look at the information collected and disseminated, if any. The judge on the merit will also have to examine what is deemed to be proper consent and what such consent relates to.

[37] In paragraph 24.4 the Motion for Authorization adds:

> 24.4 Class Members were not fully informed by Apple that, to use "free" Apps or geolocation features on their iDevices, they would unknowingly provide data that would allow the third-parties to personally identify them, and thereafter give the third-parties full access to any user data on their iDevices as detailed below;

[38] A distinction can also be made between free applications that do not collect any information or do not transmit any data to any third party and those who do.

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[6] *Blackette* c. *Research in Motion Ltd.* 2013 QCCS 1138 par. 26.
[7] R.S.Q. c. P-40.1.
[8] R.S.C. 1985, c. C-34.
[9] R.S.Q. c. C-12.
[10] *George* v. *Quebec (Procureur General)*, 2006 QCCA 1204.

[39] On that basis and many more examples provided by Respondents, it is argued that there are so many variables to take into account that it defeats the purpose of a Class Action and makes it impossible to properly describe the group.

[40] Given that it is the Respondents that will or will not be found faulty and that no claim is made against the many developers of the Apps, the Court finds that the actual hearing on the merit may provide options or solutions to consider those variables.

[41] First, Petitioner will have to prove his allegations. It is against this evidence that Respondents will defend and not against the entire universe of free Apps.

[42] Second, it is likely that free Apps will be divided in a variety of categories. For examples, those who are legitimately collecting personally identifiable information, those who are not collecting or disseminating any information etc... The Court could then determine the value of the claim in respect of each category of Apps as opposed to each individual Apps.

[43] In the Court's view, all of the Respondents' arguments regarding the consent or lack thereof, the voluntary provision of information by Class Members and other similar elements that distinguish Class Members between them can be raised by them in their defence or alternatively when dealing with the « lien de causalité ».

[44] The description of the group is very broad. It risks capturing individuals who are not intended to be captured. This is something to be debated on the merits.[11]

[45] In light of the fact that Class Action is first and foremost a procedural means, Petitioner suggests that any flaws in the group definition is not fatal and asks the Court to modify the group definition as it seems fit.

[46] Such power has been recognized by the Courts in the past[12]. It has also been determined that this could be done later on in the process[13]. The Court finds it is unnecessary to proceed to any modification at the present stage except for the issue of the so-called geolocation bug. The issue is so limited that it deserves a separate Class.

[47] As the case develops this issue of the group description will be reassessed. It is possible that further classes will have to be formed.

[48] With respect to the national Class sought by Petitioner given that the allegations of the Motion for Authorization are deemed to be true,the Court finds that the criteria set out in section 3148 C.c.Q. is met with respect to Quebec residents.

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[11] *Paris* c. *Lafrance*, 2011 QCCS 4619.
[12] *Lallier* c. *Volkswagen Canada inc.* 2007 QCCA 920 par. 18.
[13] *Carrier* c. *Quebec (Procureur General)*, 2011 QCCA 1231.

[49] The Court deems however, that Petitioner has failed to establish a real and substantial connection for residents outside Quebec.

[50] The legal theory behind Petitioner's allegations is principally based on the application of privacy laws in Quebec including the *Quebec Charter of Human Rights and Freedoms* and civil liability arising from the *Civil Code* as it regards misrepresentations. The Petitioner has not demonstrated that the legal systems in the twelve and more different jurisdictions that he wishes to apply to this case rely on similar laws and concepts. Relying on federal legislation may not be relevant here unless there is a demonstration that this legislation applies.

[51] With respect to the principal establishment of one of the two Respondents being in the province of Quebec, this does not automatically create a real and substantial connection. A principal establishment should not be confused with a head office. Unlike the *Brito*[14] case, a principal establishment may exist in other provinces and territories as well.

B. Article 1003(b) *C.C.P.* The facts alleged seem to justify the conclusions sought

[52] In respect to the argument that the facts do not give rise to the remedy sought, the Court points out that, at the authorisation stage, the allegations must be taken as true and the burden of the Petitioner is strictly a burden of demonstration as opposed to proving his allegations.

[53] The demonstration required means that all the allegations and the produced or adduced evidence support the conclusion by the Court, that a fault, damages and a causal link will be proven. It is not sufficient to make a mere affirmation that would be vague, general or imprecise[15]. However allegations do not have to be as precise as they would be in the actual Class Action proceeding[16].

[54] Respondents have raised very serious issues and difficulties arising from the Motion for Authorization as drafted. It was for the Respondents to demonstrate that on its face the allegations of fact are incontestably without merit, that is, if the facts were proven they could not lead to the conclusions sought by Petitioner[17]. This is a high standard to meet. For the reasons explained below, the Court concludes that the action is not clearly frivolous and manifestly destined to fail.

[55] The Respondents wish the Court to examine some of the evidence adduced to come to the conclusion that the allegations are contradicted by this evidence. In the

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[14] *Brito* v. Pfizer *Canada inc.* 2008 QCCS 2231.
[15] *Harmegnies* v. *Toyota Canada inc.* J.E. 2008-848.
[16] *Comité d'environnement de la baie inc.* c. *Société d'électrolyse et de chimie Alcan ltée*, 1990 R.J.Q. 655 (C.A.).
[17] *Carrier* v. *Quebec (Procureur General)*, 2011 QCCA 1231.

Court's view, this exercise requires going beyond the simple filtering exercise expected at this stage of the proceedings. This will be for the judge on the merit to do.

[56] In the Motion for Authorization[18], Petitioner alleges that Respondents treat UDID information as personally identifiable information because, if combined with other information, it can be used to personally identify a user.

[57] Petitioner does not allege that this actually occurred. In Respondents' view there is no demonstration of harm. From the Court's perspective, at this point, the allegation is sufficient to support the legal syllogism. It remains to be proven.

[58] As well Petitioner relies on a newspaper article and self-published research paper that he read without much further investigation on his part. Respondents claims a newspaper article does not constitute proof or even a demonstration of fact, nor is it sufficient to establish the existence of any apparent right [19].

[59] *The Wall Street Journal* article and the research by Eric Smith may eventually constitute part of the evidence but the Motion for Authorization contains many more allegations of facts, which if proven, might lead to the conclusion sought. The legal syllogism should not be reduced to those two single elements.

[60] Respondents also argue that it is impossible to conclude that a loss has occurred from the allegations in respect of the entire class. Justice Kasirer already commented that bare bone allegations may be sufficient provided that the allegations are precise in that respect[20]. Whether it is the punitive damages, the use of the iDevice resources or the misrepresentation as to the value of the iDevice, the allegations are sufficiently precise to merit a hearing.

[61] Accordingly, the Court finds that Petitioner has met the test of Article 1003(b).

C. Article 1003(a) *C.C.P.* The recourses of the members raise identical, similar or related questions of law or fact

[62] Petitioner proposes the following common questions:

62.1. Did the Respondents cause or facilitate the creation of personally identifiable profiles of Class Members?

62.1.1. Did the Tracking Companies, without authorization, use Apple's iOS and Application Programming Interface ("API") to create personally identifiable profiles of Class Members?

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[18] Par. 28 to 30.
[19] *Option Consommateurs* v. *Novopharm Ltd.*, 2006 QCCS 118.
[20] *Option Consommateurs* v. *Infineon Technologies, a.g.* 2011 QCCA 2116.

62.1.2. Did the Respondents fail to disclose that the Tracking Companies, without authorization, tracked and compiled Class Members' private information?

62.1.3. Did the Respondents, contrary to their representations, allow the Tracking Companies to create, or cause or facilitate the creation of, personally identifiable consumer profiles of Class Members?

62.1.4. Are the Respondents continuing to allow the Tracking Companies to retain and/or sell, valuable information assets from and about Class Members?

62.2. Did the Respondents obtain, retain and/or sell Class Members' personally identifiable information without their knowledge and consent, or beyond the scope of their consent?

62.2.1. Did the Respondents collect location data from iPhones even after the user turned " Off " the Location Services function?

62.2.2. Did the Respondents profit, or intend to profit from the collection of geolocation data?

62.3. Did the Respondents fail to disclose material terms regarding the collection and dissemination of the Class Members' personally identifiable information?

62.4. Were the iDevice Apps used to capture Class Members' UDID, location, username/password, or other such information?

62.5. What use was made of the Class Members' personally identifiable information?

62.6. Did the Respondents violate the privacy of Class Members?

62.7. Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

62.8. Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

62.9. Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

62.10. Were the Respondents unjustly enriched?

[63] In *Collectif de defense des droits de la Montérégie (CDDM)*[21] the Court of Appeal provided that a single identical, similar our related question of fact or law was sufficient to meet the criterion of article 1003(a) *C.C.P.* provided such question is not insignificant on the outcome of the Class Action.

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[21] *Collectif de défense des drtois de la Montérégie (CDDM)* c. *Centre hospitalier régional du Suroît du Centre de Santé et Services sociaux du Suroît*, 2011 QCCA 826.

[64] Because of the wide variety of individual circumstances for each Class Member, Respondents are of the view that it is impossible to couch identical, similar or related questions of law or facts.

[65] Justice Kasirer in the case of *Montreal* v. *Biondi*[22] determined that the common question of fault is sufficient to authorize a Class Action even if the causal link requires individual proof.

[66] Petitioner alleges in paragraph 40.46 of the Motion for Authorization that " *Despite its representations and the duties to Class Members that Apple undertook to protect their personal information from being accessed and exploited by third parties like the Tracking Companies, Apple knowingly permits Apps that subject consumers to privacy exploits and security vulnerabilities to be offered in the App Store* ".

[67] This behaviour may give rise to punitive damages even in the absence of compensatory damages. Punitive damages are recognized as an autonomous regime of damages as opposed to solely an accessory to compensatory damages[23]. This in and of itself would constitute a common question. The Court believes however that there is much more to be considered based on the facts alleged.

[68] Based on the legal syllogism proposed, one question relating to Tracking Compagnies and another relating to unjust enrichment should be dropped. As well, questions regarding geolocation data need to be limited to the geolocation Class. Ultimately it will be up to the judge on the merit to decide which questions are most relevant based on the evidence. The criterion set out in Article 1003(a) is however met.

[69] For the time being the Court defines the questions as follows with comments on two notable exceptions:

69.1. Did the Respondents cause or facilitate the creation of personally identifiable profiles of Class Members?

69.1.1. *Excluded: (Did the Tracking Companies, without authorization, use Apple's iOS and Application Programming Interface ("API") to create personally identifiable profiles of Class Members?)* This question is not part of the issues as defined by Petitioner. The Tracking companies are not part of the Class Action and therefore their behaviour may be incidental but certainly not part of the common questions.

69.1.2. Did the Respondents fail to disclose that the Tracking Companies, without authorization, tracked and compiled Class Members' private information?

69.1.3. Did the Respondents, contrary to their representations, allow the Tracking Companies to create, or cause or facilitate the creation of, personally

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[22] 2013 QCCA 404.

[23] *De Montigny* c. *Brossard (Succession)*, [2010] 3 R.C.S. 64.

identifiable consumer profiles of Class Members?

69.1.4. Are the Respondents continuing to allow the Tracking Companies to retain and/or sell, valuable information assets from and about Class Members?

The sub questions above should in fact be part of the following question.

69.2. Did the Respondents obtain, retain and/or sell Class Members' personally identifiable information without their knowledge and consent, or beyond the scope of their consent?

69.3. With respect to members of the Geolocation Class:

69.3.1. Did the Respondents collect location data from iPhones even after the user turned " Off " the Location Services function?

69.3.2. Did the Respondents profit, or intend to profit from the collection of geolocation data?

69.4. Did the Respondents fail to disclose material terms regarding the collection and dissemination of the Class Members' personally identifiable information?

69.5. Were the iDevice Apps used to capture Class Members' UDID, location, username/password, or other such information?

69.6. What use was made of the Class Members' personally identifiable information?

69.7. Did the Respondents violate the privacy of Class Members?

69.8. Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

69.9. Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

69.10. Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

69.11. Excluded: *(Were the Respondents unjustly enriched?)* The issue of unjust enrichment is not alleged in the Motion for Authorization. What Petitioner proposes as the legal syllogism is that Respondents misrepresented the true cost of the iDevices. This relates to the value of counterpart paid in return of the iDevice based on representations made. Unjust enrichment is a completely different issue. Accordingly it should not form part of the common questions.

D. Article 1003(c) *C.C.P.* The composition of the group makes the application of Articles 59 or 67 *C.C.P.* difficult or impracticable

[70] Given the number of owners of iDevices who downloaded free Apps, this is clearly a case where the application of Articles 59 or 67 *C.C.P.* would be impractical. The Court finds that this criterion is met.

E. Article 1003(d) *C.C.P.* The member to whom the Court intends to ascribe the status of representative is in a position to represent the members adequately

[71] Author Yves Lauzon writes that the representative must be « *de bonne foi, sérieux et sincère et enfin crédible dans sa démarche...il doit agir pour obtenir justice, pour lui et pour les membres du groupe et ne doit donc pas être en conflit d'intérêts avec ces derniers.* [24]»

[72] Professor Pierre-Claude Lafond argues the importance of the three criteria: the legal interest, competency and absence of conflict[25].

[73] Let's examine Petitioner's interest first. This is the legal interest that the Court is concerned about.

[74] Respondents underlined the fact that Petitioner does not own and iPad as an impediment for him to act. With respect, the Court does not view this as an impediment to representing owners of iPads given that the issues raised are similar for both devices.

[75] Indeed, based on Jane Horvath's affidavit certain iPads only have Wi-Fi while others, have also 3G connectivity. iPhones have Wi-Fi and 3G connectivity. At this point this information does not lead to the conclusion that iPads with Wi-Fi only should be excluded. Evidence on the merit will determine the necessity of further defining the group.

[76] Respondents also argue that the Petitioner has suffered no damage.

[77] The Court takes into account the legal syllogism with respect to punitive damages and concludes that Petitioner has an interest similar to Class Members.

[78] No conflict was alleged and as a computer engineer Petitioner seems to have basic credentials to understand the case and support it.

[79] Respondents also claim that even after learning of the potential harm, Petitioner reinstalled each of the App he is complaining of being intrusive on his subsequent

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[24] Yves LAUZON. *Le Recours Collectif*, Cowansville, Éditions Yvon Blais, 2001, p. 47.

[25] Pierre-Claude LAFOND, *Le recours collectif comme voie d'accès à la justice pour les consommateurs*, Montréal, Thémis, 1996 à la p. 419 cité dans *Bouchard* c. *Agropur Coopérative*, 2006 QCCA 1342, par. 76 à 77.

iDevices. He has failed to minimize his damages. The Court is of the view that, to the extent Respondents are correct, this constitute a potential defense to the action. In no way it circumvents the certification of the Class Action.

[80] To conclude, the Court notes that the Petitioner alleges that he downloaded numerous Apps including those identified in the American Case that are reported to collect and transmit personal information. He does not allege having used those Apps and he has no personal knowledge as to which Apps actually collect and transmit such information. In fact, he relies almost entirely on the American case, the *Wall Street Journal* and the Eric Smith's article to support his claim. This is all hearsay at this point. This does not disqualify the Petitioner as a representative. The Court must provide Petitioner and the Class Members the opportunity to prove their allegations. Because of the nature of Class Actions, the bar should not be set too high when it comes to approving a proper representative.

FOR THESE REASONS, THE COURT:

GRANTS the Motion for Authorization;

AUTHORIZES the bringing of a Class Action in the form of a motion to institute proceedings in damages and for injunctive relief;

ASCRIBES Petitioner the status of representative of the persons included in the Class herein described as:

> all residents in Quebec who have purchased or otherwise acquired an iPhone or iPad ("iDevice") and who have downloaded free Apps from the App Store onto their iDevices since December 1, 2008 through to the present.
>
> and (the Geolocation Class)
>
> all residents in Quebec who have purchased or otherwise acquired an iPhone and turned Location Services off on their iPhones prior to April 27, 2011 and have unwittingly, and without notice or consent transmitted location data to Respondents' servers.

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

1) Did the Respondents cause or facilitate the creation of personally identifiable profiles of Class Members?
2) Did the Respondents obtain, retain and/or sell Class Members' personally identifiable information without their knowledge and consent, or beyond the scope of their consent?

   Did the Respondents fail to disclose that the Tracking Companies, without authorization, tracked and compiled Class Members' private information?

Did the Respondents, contrary to their representations, allow the Tracking Companies to create, or cause or facilitate the creation of, personally identifiable consumer profiles of Class Members?

Are the Respondents continuing to allow the Tracking Companies to retain and/or sell, valuable information assets from and about Class Members?

3) With respect to members of the Geolocation Class:

Did the Respondents collect location data from iPhones even after the user turned "Off" the Location Services function?

Did the Respondents profit, or intend to profit from the collection of geolocation data?

4) Did the Respondents fail to disclose material terms regarding the collection and dissemination of the Class Members' personally identifiable information?

5) Were the iDevice Apps used to capture Class Members' UDID, location, username/password, or other such information?

6) What use was made of the Class Members' personally identifiable information?

7) Did the Respondents violate the privacy of Class Members?

8) Were Class Members prejudiced by the Respondents' conduct, and, if so, what is the appropriate measure of these damages?

9) Are Class Members entitled to, among other remedies, injunctive relief, and, if so, what is the nature and extent of such injunctive relief?

10) Are the Respondents liable to pay compensatory, moral, punitive and/or exemplary damages to Class Members, and, if so, in what amount?

IDENTIFIES the conclusions sought by the Class Action to be instituted as being the following:

GRANT the Class Action of the Petitioner and each of the members of the classes;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioner and each of the members of the classes;

ORDER the Defendants to permanently cease from continuing to collect and disseminate Class Members' personally identifiable information;

CONDEMN the Defendants to pay to each member of the classes a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the classes, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a Class

Action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the classes;

DECLARES that all members of the classes that have not requested their exclusion, be bound by any judgement to be rendered on the Class Action to be instituted in the manner provided for by the law;

ORDERS the publication of a notice to the members of the classes in accordance with the modalities to be determined by this Court and to this end;

ORDERS Petitioner to submit a draft notice in both French and English including modalities of publication and proposed costs prior to July 30, 2013;

AUTHORIZES Respondents to submit comments on said notice, modalities and costs prior to August 15, 2013;

FIXES the delay of exclusion at forty-five (45) days from the date of the publication of the notice to the members, date upon which the members of the classes that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

THE WHOLE with costs including publications fees.

Pierre Nollet, j.s.c.

Me Jeff Orenstein
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Me Kristian Brabander
Me Simon Potter
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