

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT OF QUÉBEC
(CLASS ACTION)

No.: 500-06-000722-146

R CHARBONNEAU [REDACTED]

Petitioner

vs.

APPLE CANADA INC. [REDACTED]

-and-

APPLE, INC. [REDACTED]

Respondents

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
QUÉBEC, SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, THE
PETITIONER STATES THE FOLLOWING:

Introduction:

1. Petitioner wishes to institute a class action on behalf of the following Group of which Petitioner is a member:

All persons in Canada (subsidiarily in Quebec), who purchased and/or own a 2011 MacBook Pro Laptop equipped with Advanced Micro Devices (AMD) graphics processing unit (GPU), manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other Group(s) or Sub-Group(s) to be determined by the Court;

(hereinafter referred to as the “**Class Members**”, the “**Class**”, the “**Group Members**”, the “**Group**”, “**Customers**”, or the “**Consumers**”);

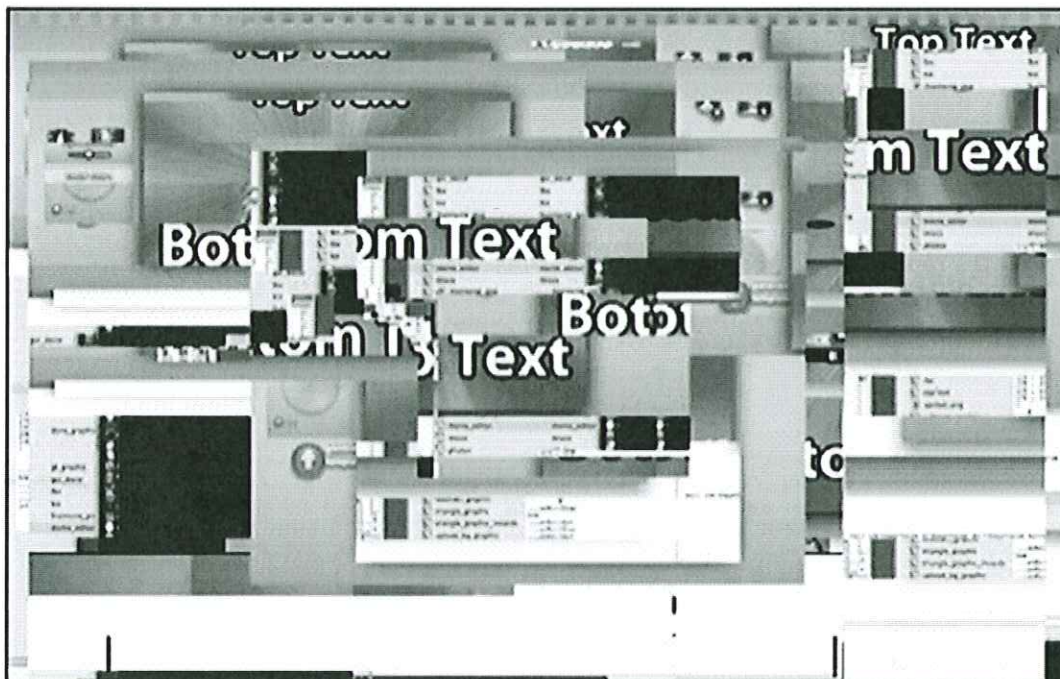
2. Respondent Apple, Inc. (“**Apple USA**”) is an American company incorporated in the state of California USA and having its head office in Cupertino, California. Apple USA developed, manufactured, distributed, and sold the MacBook Pro laptop computer throughout Canada, including in the Province of Quebec, either directly or indirectly through its affiliate and/or subsidiary Respondent Apple Canada Inc. (“**Apple Canada**”). Apple Canada had its elected domicile in the city of Westmount, Province of Quebec at the time Apple USA and Apple Canada were selling the 2011 MacBook Pro laptop in issue in these proceedings to Canadian consumers, the whole as appears more fully from a copy of the *Registre des entreprises* CIDREQ report, communicated herewith as **Exhibit R-1**. Given their close ties, both Respondents are being collectively referred to herein as “**Apple**”;

The situation:

3. On February 24, 2011, Aiming to control the lucrative market for high-end laptop computers used by consumers and professionals, Apple introduced

and began selling the new fifteen and seventeen inch 2011 MacBook Pro Laptops (hereinafter the “**MacBook Pro Laptop(s)**”);

4. As Apple’s most expensive and feature-packed laptop line, the MacBook Pro Laptops were marketed to Consumers and professionals who were seeking a durable, high-performance product that was suitable for graphics-intensive tasks.
5. Just days after these laptops went on sale, Consumers worldwide began reporting to Apple that the 2011 MacBook Pro Laptops suffered from random bouts of graphical distortion, system instability and system failures, as shown below:



6. Apple’s Customers paid a premium for their products and were promised, and came to expect, the highest levels of performance, graphical richness, and durability. Apple, however, has failed to remedy the inherent graphics defect

in the 2011 MacBook Pro Laptop, causing tens of thousands of frustrated and disappointed customers to air their grievances online on websites like Facebook, Reddit, change.org, and Apple's own discussion forums;

7. On or about October 24, 2014, a "Class Action Complaint and Demand for Jury Trial" was filed against Apple before the United States District Court, Northern District of California, and stemming from the graphic distortion with the MacBook Pro Laptops (hereinafter the "**California Class Action**"), a copy of which is filed herewith, as though recited at length herein, as **Exhibit R-2**;

The Graphics Processing Units

8. The 2011 MacBook Pro Laptops were sold until approximately May 2012. The laptops contain two graphics chips, also known as graphics processing units ("**GPUs**"), which are manufactured by Advanced Micro Devices ("**AMD**") and Intel, respectively. When performing the graphically demanding tasks for which the 2011 MacBook Pro Laptop was designed, like using an external monitor, editing digital photographs, and editing video footage, the 2011 MacBook Pro Laptop engages the powerful AMD GPU to process graphics. Everyday tasks, such as web browsing or word processing, are handled by the efficient, relatively low-powered Intel GPU;
9. Apple specifically represented that the 2011 MacBook Pro Laptops were suitable for graphics-intensive applications, like computer-aided design, high definition video projects, and games;
10. The increased graphical performance capability of the MacBook Pro Laptops with AMD GPUs was a key selling point of the 2011 MacBook Pro Laptops;
11. The 2011 MacBook Pro Laptops commanded a premium, in large part because of the additional graphics-processing power they offered. Indeed,

the starting price of a 2011 MacBook Pro Laptop with an AMD GPU was \$1,849 for a fifteen-inch model and \$2,499 for a seventeen-inch model. By contrast, the average starting price of a Windows laptop during that same period was approximately \$500;

12. Days after the 2011 MacBook Pro Laptops went on sale, a firestorm of complaints erupted on Apple's discussion forums, and Apple stores were flooded with consumers whose brand-new laptops were experiencing graphical issues, including severe screen distortion, pixilation, graphical artifacts, and ghosting, that often precipitated the system shutting down or failing completely;
13. The graphical issues and system failures with the 2011 MacBook Pro Laptops were nearly identical to problems that plagued the 2008 MacBook Pro Laptops, which were eventually recalled. Yet rather than issuing a recall for the 2011 MacBook Pro Laptops, Apple hurriedly release a software patch intended to address graphical stability in the 2011 MacBook Pro Laptops. The software patch was ineffective because, as Apple knew from its experience with the 2008 MacBook Pro Laptops, the defect at issue is physical and cannot be fixed with a software patch;
14. The defect in the 2011 MacBook Pro Laptops stems from the lead-free solder used to connect the AMD GPU to the main circuit board of the laptop (hereinafter the "**Logic Board**"). While Apple could have used the more durable leaden solder in the 2011 MacBook Pro Laptops, it chose to use lead-free solder in all its laptops, presumably to reduce manufacturing costs;
15. Lead-free solder, which is typically composed of a combination of tin and silver, suffers from two well-known problems. First, it tends to develop microscopic "tin whiskers," which cause short circuiting and other problems within electronic devices;

16. Additionally, lead-free solder tends to crack when exposed to rapid changes in temperature;
17. The 2011 MacBook Pro Laptops run very hot when performing graphically demanding tasks due to a confluence of high-performance hardware, poor ventilation, and the overuse of thermal paste within the laptop. The high temperatures and large temperature swings inside the computer, known as "stress cycles," cause the brittle, lead-free solder connecting the AMD GPU to the logic board to crack. Both of these shortcomings with lead-free solder are well known and are preventable with the use of standard solder;
18. When the lead-free solder cracks it degrades the data flow between the GPU and the logic board. A small crack can cause the laptop's graphics to become distorted on occasion. But as cracks in the lead-free solder propagate over time, the graphics issues worsen and system stability decreases, until eventually the computer is completely unusable. This defect related to the lead-free solder connecting the GPU to the logic board (hereinafter the "**Graphics Defect**") limits all computers from performing as advertised and warranted;
19. While the 2011 MacBook Pro Laptops were under Apple's one-year warranty, Apple would, in some cases, replace consumers' entire logic boards in response to the Graphics Defect. A new logic board, however, was no fix because the new logic boards used the same lead-free solder to connect the AMD GPU. As a result, the laptops again failed in time, sometimes in a matter of days;
20. Many Consumers reported that even after receiving new logic boards, their systems continued to exhibit the Graphics Defect and crash or fail. Now, even years outside of the Apple warranty period, a replacement logic board is still

the only option that Apple offers for its inherently defective product;

21. An out of warranty logic board replacement can cost over 600\$ (parts, labor and taxes). Consumers who are aware of the Graphics Defect are understandably hesitant to spend hundreds of dollars on an out-of-warranty repair that simply swaps out a non-functional and defective part with a temporarily functional but equally defective replacement;
22. Apple has also failed to reimburse owners for out of pocket repairs and has surprisingly ignored the claims of the thousands of customers who, in many cases, complained directly to Apple CEO Tim Cook (such as the Petitioner) and paid for the out of pocket repairs when they failed to obtain a response from Apple;

Apple's Durability Advantage

23. A central reason Class Members were willing to pay more for the 2011 MacBook Pro Laptops is longevity. A computer's longevity can be measured in terms of hardware longevity and software longevity;
24. With respect to hardware longevity, MacBook Pro Laptops were unique in that Apple built them with a "unibody" aluminum enclosure, instead of the multi-piece plastic enclosures that are common to most laptops. The aluminum enclosure lent the appearance of greater durability to the average Consumer, who thought that on the basis of appearance alone, the MacBook Pro Laptops were built to last longer than the average laptop. Indeed, Apple touts the long-term durability of its laptops on its website, namely that:

"So we design everything from our largest displays to our smallest cables to be durable and long lasting. And to make sure they are, we test them in our Reliability Testing Lab at our headquarters in Cupertino.

[...]

Our built in notebook batteries last up to five years. Which saves on buying new batteries, produces less waste, and increases the lifespan of your notebook.

And when Apple product owners pass along their devices to friends or family, they're conserving resources, too. Sometimes the mark of a great product isn't how many you sell, but how much it's used."

the whole as more fully appears from a copy of the extract of Apple's website, communicated herewith as **Exhibit R-3**;

25. In addition to Apple's written representations about the durability of the MacBook Pro Laptops, Apple trained its sales staff to represent that the high cost of the MacBook Pro Laptops was justified because the laptops would last many years. Class Members, including Petitioner, relied on these representations when purchasing a 2011 MacBook Pro Laptop, which cost many times more than competing laptops;

26. Apple Customers and Petitioner paid a premium for their MacBook Pro Laptops because they believed that Apple hardware would last for many years, and that Apple would continue to support older laptops with software updates for up to seven years, and that Apple would remedy any inherent defects in the laptops even outside of the warranty period;

The 2011 MacBook Pro Laptops' Immediate Failure

27. As previously mentioned, less than a week after Apple first began selling the MacBook Pro Laptops, a firestorm of complaints erupted among purchasers on Apple's discussion forums. By and large, the complaints were the same—the same graphically demanding tasks that prompted consumers to purchase their MacBook Pro Laptops were causing graphical anomalies, system freezes, and system failures;

28. For example, in less than a month, a discussion thread related to the Graphics Defect had generated 1,094 responses. A sampling of consumer complaints on the 2011 Apple discussion thread is copied below (as appears from the California Class Action, paragraph 33):

Date	Complaint
Mar. 3, 2011	I have had the same thing several times with my 15" 2011 2.2GHz model. Each time it was when the system was under load and the fans start running high and then there is a freeze.
Mar. 5, 2011	Great. I'm having the exact same issue. It happens when rendering video in iMovie. The fan comes on and everything freezes. I can do nothing but a hard reset. Now I'm wondering if I should return this \$2000 item and wait until all the bugs are fixed.
Mar. 6, 2011	Happened 3 times now, mine freezes and the screen goes all funny (like it has hundreds of dead pixels)
Mar. 6, 2011	Exactly the same issues are happening with my 15 inch MBP 2.2 ghz i7. When rendering from After Effects the fans go wild, like an airplane and the CPU temp reaches 98C, then sometimes everything freezes but the cursor movement, only way forward is a hard reset.
Mar. 12, 2011	I ordered a 15.4" 2.2Ghz MacBook Pro, and received it on Wednesday night. The computer continuously froze even when doing simple tasks, such as listening to iTunes (no other apps running). One time it froze with garbled video and pixels. And last night (Friday), it froze and never came back. Turning it on produces only a black screen. I know it's powering on, as I can hear it, and the light on the front is on, but the screen doesn't turn on. I just got back from the Apple Store, where they were unable to fix it after trying everything. They suggested a replacement. Now I have to mail back my \$2500 machine, and wait an extra week to use it.

29. Furthermore, less than a month after the release of the MacBook Pros, technology websites began reporting on the Graphics Defects;

30. In an ultimately unsuccessful attempt to quell criticism, Apple quickly announced a pending software update for the MacBook Pro Laptops to

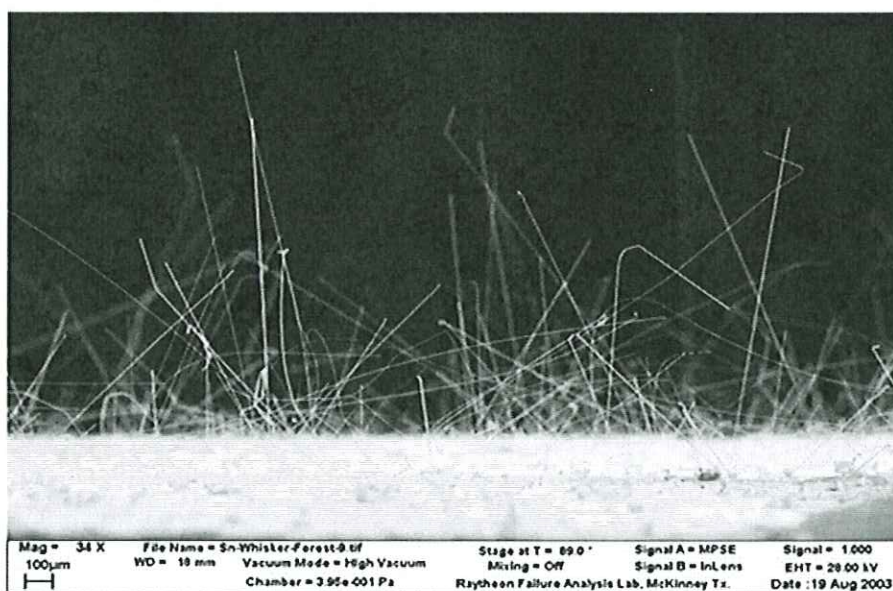
address “graphical stability.” On or about March 21, 2011, less than a month after the MacBook Pro Laptops went on sale in Canada (on or about February 24, 2011), Apple released a software update for the MacBook Pro Laptops’ operating systems, which purported to “improve graphics stability and external display compatibility.” the whole as appears from Apple’s software upgrade popup below, alleged at paragraph 35 of the California Class Action :



31. The day that Apple’s software update was released, consumers reported that the update failed to remedy the Graphics Defect, and in some cases made it worse, the whole as more fully appears from the online comments posted by users having performed the upgrade, communicated herewith as **Exhibit R-4**;

The Source of the Graphics Defect

32. As previously mentioned, the AMD GPU is soldered onto the MacBook Pro Laptops' logic board. These soldered connections pass information between the GPU and the logic board;
33. The solder used to connect the GPU to the logic board is devoid of lead. Lead-free solder is typically comprised of a combination of silver and tin and is known to be less reliable than leaden solder for two reasons. First, the tin used in the solder creates "tin whiskers," which can cause short circuits within the components. Second, the lead-free solder tends to crack when exposed to cycles of low and high temperature generated by a laptop thereby making lead-free assembly less reliable than lead-based assembly;
34. The first reason that lead-free solder is less reliable is due to the growth of "tin whiskers," as shown below, which are small, thin metallic hair-like growths that emerge from the surface of solid tin. Tin whiskers can cause short circuits in electronics devices. However, for an unknown reason, leaden solders do not develop tin whiskers:



35. The high-powered AMD GPU in the MacBook Pro Laptops creates a significant amount of heat when in use. The AMD GPU in the MacBook Pro Laptops is powerful because it contains a large number of transistors, which allow it to perform more calculations per second than a processor with fewer transistors. Switching a transistor on or off requires electric current. Thus, the more transistors there are in a GPU, the more current is necessary to power the GPU. Because GPUs are not perfectly efficient, some of the electric current used to power a GPU's transistors is lost as heat, which escapes into the surrounding environment;
36. In a laptop, all of the components are bundled tightly together, which restricts the airflow needed for cooling. The problem of lack of airflow in laptops is aggravated in the MacBook Pro Laptops because the computer's aluminum enclosure contains very few vents for hot air to escape. Thus, when the AMD GPU is activated in the affected MacBook Pro Laptops, the internal components of the laptop can reach extremely high temperatures;
37. The problem of heat is exacerbated by the excessive use of thermal paste in the GPUs. Thermal paste is used to allow heat-generating components, like a GPU, to dissipate heat to a heat sink attached to the logic board. When too much thermal paste is used, however, it can actually diminish the computer's ability to dissipate heat. This problem was noted the day after the MacBook Pro Laptops went on sale, the whole as more fully appears from appears from a copy of the February 25, 2011 article entitled "*iFixIt's 2011 MacBook Pro Teardown: Better Repairability, But May Be Prone To Overheating*", communicated herewith as **Exhibit R-5**;
38. High temperatures in the MacBook Pro Laptops caused by the operation of the AMD GPU, the lack of ventilation, and the misapplication of thermal paste,

heats up the lead-free solder connecting the AMD GPU to the logic board. The heat itself, or the rapid cycling of temperature caused by the intermittent activation of the AMD GPU, stresses the brittle lead-free solder connecting the GPU to the logic board and eventually causes it to crack;

39. A crack in the lead-free solder between the GPU and the logic board disrupts the flow of data between the GPU and the logic board, which causes the Graphics Defect and, eventually, total failure of the MacBook Pro Laptops;
40. Apple has long known about the risks of GPU defects due to solder-related failures in MacBook Pro Laptops. Indeed, the 2008 MacBook Pro Laptops suffered from a nearly identical Graphics Defect, which led to a recall by Apple;
41. Respondents also knew or should have known that the Graphics Defect was bound to recur in the MacBook Pro Laptops because they use the same lead-free solder and aluminum enclosure as the 2008 MacBook Pro laptops, and contain an even more powerful and hotter-running GPU;
42. Despite knowing of these defects in the MacBook Pro Laptops, Respondents never notified owners or purchasers of the MacBook Pro Laptops of the defect or provided a workable solution;

Apple's Inadequate Response To The Graphics Defect

43. From the time the MacBook Pro Laptops went to market to this day, tens of thousands of online complaints posted by Class Members show that Apple's purported "graphical stability" update did nothing to remedy the Graphics Defect;
44. An ongoing discussion thread regarding these Graphics Defects on Apple's

forum is still active (initiated in 2013 and still actively ongoing today) and has received approximately ten thousand replies and more than two million page views, the whole as more fully appears from a printout of extracts of Respondents' discussion board in question, under the subject "2011 MacBook Pro and Discrete Graphics Card", a copy of which is communicated herewith as **Exhibit R-6**¹;

45. In fact, dozens of journalists and technology websites have reported on the issue, the whole as more fully appears from a copy of various news articles, communicated herewith as **Exhibit R-7**, *en liasse*;
46. Similarly, an active and growing Facebook group dedicated to that Graphics Defect called "2011 MacBook Pro and Discrete Graphics Issue" has over 4,000 members;
47. Apple has failed to repair the Graphics Defect. In fact, consumers who brought their MacBook Pro Laptops in for service during the warranty were often told there was no detectable problem, or that the issue was due to water damage or software installed post-purchase;
48. Accordingly, in an attempt to fix the graphical defect, Apple can, at best, replace the MacBook Pro Laptops' logic board with an equally defective logic board. In fact, many consumers are now on their third or fourth logic board from Apple;
49. The reason Apple replaced the entire logic board instead of the GPU, which is the source of the defect, is because the GPU is soldered to the logic board, and it is more time consuming and costly to repair a defective GPU than it is

¹ Exhibit R-6 only includes extracts of the comments located at the following link since printing them all would be hundreds if not thousands of pages (Petitioner reserving his right to amend this exhibit in order to include further comments): <https://discussions.apple.com/thread/4766577?tstart=0>

to have an entire logic board assembled;

50. As a result, consumers who would have returned their MacBook Pro Laptops had they known that the Graphics Defect was systemic, received inadequate warranty service and a logic board that was inherently defective;
51. Apple has issued recalls for this very same defect when it is economically convenient. Indeed, the 2011 iMac desktop computers, which contain the same line of AMD GPUs, also manifested the Graphics Defect. However, the AMD GPUs in the iMacs could be swapped out by hand because they were not soldered to the logic board as they are with the MacBook Pro Laptops;
52. Accordingly, replacing the GPU on an iMac costs far less than it does for the MacBook Pro Laptops. As a result, when certain graphics defect manifested in the 2011 iMacs, Apple issued a recall and undertook to replace the iMac's AMD video cards, free charge for four (4) years after the first retail sale of the computer, the whole as more fully appears from the iMac recall explanation webpage at <http://support.apple.com/en-us/HT203787>, last modified on November 8, 2014, communicated herewith as **Exhibit R-8**;
53. Because the purported "graphical stability" fix and warranty repairs offered by Apple failed to remedy the Graphics Defect, Petitioner and Class Members purchased a computer they would have never bought had they been informed of the Graphics Defect and now are unable to use their 2011 MacBook Pro Laptops;
54. As a result, the complaints about the Graphics Defect that affects all of the 2011 MacBook Pro Laptops has continued. Indeed, a petition on change.org to Apple's chief executive officer, Timothy D. Cook, which was posted more than 2 years after announcement of the "graphical stability" fix, has received over 29,000 signatures (supporters) to date, the whole as more fully appears

from a copy of the petition dated December 1, 2013, entitled "*Timothy D. Cook, Replace or Fix All Early 2011 Macbook Pro with Graphics Failure*", communicated herewith as **Exhibit R-9**;

55. Respondents warranted that the MacBook Pro Laptops would be free from defects in material and workmanship that occur under normal use during the warranty period;

56. Specifically, Respondents provided a "Limited Warranty" that warrants the product "against defects in materials and workmanship when used normally in accordance with Apple's published guidelines for a period of ONE (1) YEAR from the date of original retail purchase by the end-user purchaser." As stated above, the MacBook Pro Laptops have a known defect in the physical interface between the graphics processing hardware and the logic board;

FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

57. Petitioner is a mobile innovations analyst, with over four (4) years of experience in the tech industry, having completed a Management Information Systems (MIS) bachelor's degree from Concordia University (2012), which included multiple courses in computer hardware and software;

58. On April 10, 2011, merely a few months after the MacBook Pro Laptops went on sale in Canada, Petitioner purchased a 15-inch 2011 MacBook Pro laptop (early 2011 model), from the Apple retail store, for over \$2,000;

59. During the week of September 8, 2014, Petitioner's MacBook Pro Laptop began evidencing symptoms of the Graphics Defect when performing high graphical load tasks;

60. On September 16, 2014, Petitioner took his MacBook Pro Laptop into the Fairview Pointe Claire Apple retail store at which time an Apple agent ran a diagnostic test and informed Petitioner that the Graphics Defect was due to the Logic Board;
61. The Apple agent told Petitioner that his MacBook Pro Laptop was outside of the one-year Apple warranty, but the Apple agent did not mention that many other consumers had experienced this same issue. Petitioner was only given the choice to disburse \$622.65 for the labor and replacement of the Logic Board, which Petitioner did, the whole as more fully appears from the Genius Bar Work Confirmation receipt as well as the Apple issued receipt, communicated herewith as **Exhibit R-10**, *en liasse*. Petitioner claims the reimbursement of this amount from Respondents;
62. Petitioner retrieved his "repaired" MacBook Pro Laptop on September 19, 2014;
63. The very same night, Petitioner's "repaired" MacBook Pro Laptop exhibited the very same Graphics Defect leaving Petitioner no other option but to bring his MacBook Pro Laptop back to the Apple retail store;
64. On September 24, 2014, Petitioner returned to the Apple retail store. After the Apple technician from the Genius bar ran diagnostic tests, Petitioner was once again informed that the Graphics Defect was due to the Logic Board and that said Logic Board needed to be replaced. Since Petitioner had purchased the new Logic Board merely days prior, the replacement was covered under the warranty, the whole as more fully appears from a copy of the Genius Bar Work Authorization and Genius Bar Work Confirmation receipts, communicated herewith as **Exhibit R-11**, *en liasse*;
65. Petitioner retrieved his "repaired" MacBook Pro Laptop on September 29, 2014;

66. On September 30, 2014, Petitioner wrote a detailed explanation e-mail to Apple CEO's Tim Cook, *inter alia* summarizing his issues to date with his MacBook Pro Laptop, confirming that he was not the only Apple Customer complaining about this issue, and offering his assistance if required in order to resolve the issue, since Consumers' expectation when purchasing a high-end and expensive MacBook Pro Laptop was that it would last more than 3 years, the whole as more fully appears from Petitioner's September 30, 2014 e-mail to Tim Cook, communicated herewith, as **Exhibit R-12**;
67. After several failed attempts by Apple to repair the Graphics Defect affecting Petitioner' MacBook Pro Laptop and after disbursing over \$600 in repairs as mentioned above, and further to Petitioner's September 30, 2014 e-mail, on October 2, 2014, Petitioner received a call from Eric Estrella (hereinafter "**Estrella**"), an Apple executive relations agent;
68. During said telephone conversation, Petitioner explained to Estrella that his MacBook Pro Laptop had once again begun demonstrating visual irregularities;
69. Given his MIS degree and his experience in the IT industry, Petitioner ran a series of tests to determine what had lead to the crash but was unable to determine if the problem was related to the Logic Board or another component;
70. Eager to resolve the issue, Petitioner offered his help to troubleshoot and/or diagnose the issue and requested that his defective MacBook Pro Laptop be replaced by another refurbished model and that he be reimbursed for the cost disbursed for the repair, namely \$622.65, the whole as more fully appears from a copy of the confirmation e-mail sent by Petitioner to Estrella on October 2, 2014 further to their telephone conversation, communicated herewith as **Exhibit R-13**;

71. During the October 2, 2014 telephone call, Estrella transferred Petitioner to an Apple customer service agent by the name of Josh. During said telephone conversation with Josh, the Apple agent acknowledged that the issue Petitioner was experiencing was due to the GPU. The Apple agent explained to Petitioner that it was solely the Apple retail store that had the power to decide to swap Petitioner's defective MacBook Pro Laptop for a different non-defective model. However, rather than replacing Petitioner's MacBook Pro Laptop, the Fairview Pointe Claire Apple retail store decided that another repair, the third in the same period, should be attempted, the whole as more fully appears from a copy of the e-mail sent by Petitioner to Estrella, dated October 3, 2014, communicated herewith as **Exhibit R-14**;
72. Following the Apple agent's instructions, on October 6, 2014, Petitioner brought in his MacBook Pro Laptop, for the third time, to the Fairview Pointe-Claire Apple retail store for repairs. Petitioner explained to the Apple agent that his MacBook Pro Laptop continued to produce graphic anomalies and that the main Logic Board had already been replaced twice, the whole as more fully appears from a copy of the Genius Bar Work Authorization and Genius Bar Work Confirmation receipts, communicated herewith as **Exhibit R-15, en liasse**;
73. Once again, Petitioner left his MacBook Pro Laptop with the Apple genius bar hoping that they would resolve the issue once and for all;
74. Frustrated by this situation, and after several attempts to remedy the situation through Apple, on October 7, 2014, Petitioner served Apple, by registered mail, with an *Office de la Protection du Consommateur* Formal Demand Notice explaining the issue and demanding that, in the event his defective MacBook Pro Laptop cannot be repaired, that it be replaced by another laptop of equal specification and value, and claiming the reimbursement of the

\$622.65 he had disbursed, within 45 days failing which legal proceedings would be instituted, the whole as more fully appears from a copy of Petitioner's Formal Demand Notice sent to Apple, communicated herewith as **Exhibit R-16**;

75. On October 10, 2014, Petitioner went to the Apple retail store to pick up his purportedly "repaired" MacBook Pro Laptop and was informed that no hardware changes or repairs were performed on his laptop and that the issue was related to the operating system;

76. A few days later, Petitioner started experiencing the same Graphics Defect and reached out by e-mail once again to Estrella from the Apple executive relations team hoping to solve the issue quickly since Petitioner would be unavailable until October 20, 2014, the whole as more fully appears from a copy of the e-mail sent by Petitioner to Estrella, dated October 14, 2014, communicated herewith as **Exhibit R-17**;

77. On October 19, 2014, Petitioner sent a follow up e-mail to Estrella explaining that he and a senior Apple technician had been unsuccessful in retrieving logs to diagnose the issue affecting his MacBook Pro Laptop and that the issue persists. Given said multiple failed attempts, Petitioner once again requested that said issue be resolved, the whole as more fully appears from a copy of the e-mail sent by Petitioner to Estrella, dated October 19, 2014, communicated herewith as **Exhibit R-18**;

78. On October 21, 2014, well over a month since this issue had begun, Petitioner had a telephone conversation with Estrella, the content of which was reiterated in his e-mail of same date, in which he was informed that the only option was to bring his defective MacBook Pro Laptop into the Apple retail store for repairs for the fourth time. Petitioner was also informed that his laptop would not be replaced by another non-defective model. Moreover,

Estrella offered Petitioner a \$100 discount on a new Apple laptop, which as Petitioner explained would not even cover the \$622.65 that he had disbursed already to replace the Logic Board, the whole as more fully appears from a copy of the e-mail sent by Petitioner to Estrella, dated October 21, 2014, communicated herewith as **Exhibit R-19**;

79. The R-19 e-mail also confirms that Estrella and other Apple specialists had previously admitted to Petitioner that Petitioner's high-end MacBook Pro Laptop should not have died in only three (3) years, which is what Petitioner and Class Members are *inter alia* claiming herein;

80. The R-19 e-mail also requests a copy from Apple of all case files concerning his MacBook Pro Laptop, which Apple has since neglected or refused to provide, and the e-mails requests a written response by Estrella by return e-mail, which Estrella later refused to provide, explaining during a telephone conversation with Petitioner that Apple does not answer via e-mail, except to provide contact information;

81. Since the Graphics Defect persisted, on or about October 31, 2014, Petitioner brought in his MacBook Pro Laptop to the Apple retail store for the fourth time. Once again, Petitioner's was informed that the Logic Board had to be replaced, for the third time, and the laptop was taken in for further tests and repairs;

82. All the "repairs" were completed and Petitioner's MacBook Pro Laptop was returned to Petitioner on November 7, 2014, the whole as appears from a copy of the Genius Bar Work Authorization and Genius Bar Work Confirmation receipts, communicated herewith as **Exhibit R-20**, *en liasse*;

83. Despite the multiple repairs and the multiple replacement of the Logic Board, Petitioner's MacBook Pro Laptop continued to shows symptoms of the graphics defect when running design and prototyping applications. On

November 10, 2014, Petitioner sent an e-mail to Estrella informing him of the persisting issues and hoping that said issues be resolved once and for all, the whole as more fully appears from a copy of the e-mail sent by Petitioner to Estrella, dated November 10, 2014, communicated herewith as **Exhibit R-21**;

84. On November 11, 2014, Estrella finally responded to Petitioner's e-mail, asking that Petitioner contact him by telephone to "handle" this issue, the whole as more fully appears from a copy of the e-mail sent to Petitioner by Estrella, dated November 11, 2014, communicated herewith as **Exhibit R-22**. Petitioner called Estrella but Estrella did not answer;

85. Therefore, on November 12, 2014, Petitioner brought his defective MacBook Pro Laptop to the Apple retail store which finally replaced Petitioner's defective MacBook Pro Laptop with a new MacBook Pro Laptop, the whole as more fully appears from a copy of the replacement receipt, communicated herewith as **Exhibit R-23**;

86. Although Petitioner's MacBook Pro Laptop was ultimately replaced, Petitioner has not been reimbursed for the cost of the initial Logic Board replacement, more specifically the \$622.65, which Petitioner claims from Respondents and as he demanded in his formal demand letter (Exhibit R-16);

87. Frustrated by this whole ordeal and considering that Apple had failed to reimburse his \$622.65 as he had demand (R-16), Petitioner searched online to determine if a class action had been commenced in Canada on this issue;

88. Petitioner found an online news article (<http://appleinsider.com/articles/14/10/28/apple-hit-with-class-action-lawsuit-over-2011-macbook-pro-graphics-failures>), a copy of which is communicated herewith as **Exhibit R-24**, which reported about a class action being instituted in the U.S.A. on this issue, namely the California Class Action. Petitioner reviewed said article and the California Class Action Complaint (Exhibit R-2)

and noticed that he had experienced the same issues being alleged in said US proceedings. Petitioner did not find any class action proceedings having been filed in Quebec or elsewhere in Canada;

89. Petitioner therefore contacted the undersigned attorneys who have already litigated multiple consumer class actions, including against Apple, informed them of the US class action proceedings pending, and mandated the undersigned attorneys to investigate the situation and to institute the present proceedings on his behalf and on behalf of all Canadian Class Members;

90. Petitioner is justified to rely on *inter alia* the allegations contained in the US proceedings in order to further support his *prima facie* burden to demonstrate an arguable case herein and Petitioner reserves his right to amend these proceedings in order to add in further documents and/or proceedings from the US class action proceedings;

91. When he purchased his 2011 MacBook Pro Laptop, Petitioner did not know and was not made aware that his MacBook Pro Laptop suffered from the latent Graphics Defect described hereinabove. Had he been made aware of this, he would not have purchased the said laptop;

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

92. Petitioner and the Class members suffered actual damages when they purchased the MacBook Pro Laptop, which are unreliable or unusable as personal computing devices;

93. Furthermore, Petitioner and the Class Members have suffered or will suffer damages in the form of *inter alia* out-of-pocket expenditures for repairs and attempted repairs of the MacBook Pro Laptops as a direct and proximate result of the Graphics Defects, which was known by Respondents to be

present in their products;

94. Moreover, Petitioner and the Class Members have suffered or will suffer damages in the form of diminished value of the MacBook Pro Laptop as a direct and proximate result of the Graphics Defect;
95. Petitioner and the Class Members have suffered or will suffer damages inasmuch as they did not get the full benefit of their laptop, including during “repairs”, as a direct and proximate result of the Graphics Defect which the Respondents has been unable to remedy under the Apple warranty;
96. Had Petitioner and the Class Members known of the Graphics Defect at the time of purchase, they would not have purchased the MacBook Pro Laptops especially at the premium price for which they were sold;
97. Because of the relatively small size of the individual Class Member’s claims, it is unlikely that individual Class Members could afford to seek recovery on their own. This is especially true in light of the size and resources of Respondents;
98. Respondents knew that Petitioner and Class Members would rely on Apple’s representations, marketing, and warranties regarding the quality of the MacBook Pro Laptops and their graphics-processing capabilities;
99. Class Members are entitled to claim from Apple the reimbursement of any repair costs previously disbursed by them in an attempt to address and solve the Graphics Defect in question, as Petitioner disbursed (as detailed above);
100. Furthermore, Class Members who have not received a replacement non-defective MacBook Pro Laptop are entitled to claim from Apple the reimbursement of their original purchase price of their defective 2011 MacBook Pro Laptop (which they would not have purchased, at its premium

price, had they been made aware of the defect);

101. Finally, for all of the reasons more fully detailed above, Petitioner respectfully submits that Apple was grossly and/or intentionally negligent and is liable to pay punitive damages to the Class Members;
102. Indeed, Apple has known about the Graphics Defect for years, has received thousands of complaints from Customers, and Apple still refuses to recall and properly repair the Class Member's MacBook Pro Laptops. Apple has chosen instead to earn additional profit, benefiting from its own turpitude, by selling replacement Logic Boards to Class Members such as Petitioner, whereas Apple knows or should know that the replacement Logic Board have the same defect and that the same problem will reoccur;
103. Respondents' above detailed actions qualify its fault as intentional which is a result of wild and foolhardy recklessness in disregard for the rights of the Class Members, with full knowledge of the immediate and natural or at least extremely probable consequences that its actions would cause to the Class Members;
104. Respondents' negligence has shown a malicious, oppressive and high-handed conduct that represents a marked departure from ordinary standards of decency. In that event, punitive damages should be awarded to Class Members;
105. Following the filing of the California Class Action, Canadian purchasers of a 2011 MacBook Pro Laptop expressed, through online forums, that they too had also experienced the Graphics Defect described herein and/or disbursed hundreds of dollars in repairs like Petitioner had, some of these Consumers hoping for class action relief here in Canada as well, the whole as more fully appears from the comments on the article entitled *Apple face class-action lawsuit over 2011 Macbook Pro GPU Issues*, posted on the 9TO5MAC website, communicated herewith as **Exhibit R-25**;

CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

106. The composition of the Group makes the application of Articles 59 or 67 C.C.P. impractical for the following reasons;
107. The sales of MacBook Pro Laptops are widespread in Quebec and Canada;
108. Petitioner is unaware of the specific number of persons included in the Group but given the MacBook Pro Laptops' tremendous popularity, it is safe to estimate that it is in the tens of thousands (if not more);
109. Class members are numerous and are scattered across the entire province and country;
110. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the Class Members themselves could afford such individual litigation, the Court system could not as it would be overloaded. Further, 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;
111. Also, a multitude of individual actions instituted risks having contradictory judgments on similar questions of fact and law;
112. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class Member to obtain mandates and to join them in one action;
113. The recourses of the members raise identical, similar or related questions

of fact or law, namely:

- a. Whether the 2011 MacBook Pro Laptops suffer from a common Graphics Defect;
 - b. Whether Defendant knew of and failed to warn Class Members of the Graphics Defect;
 - c. Whether Respondents failed to disclose material information to Class Members;
 - d. Whether Respondents' omission of material facts is misleading and/or reasonably likely to deceive a reasonable Consumer;
 - e. Whether Respondents' purported software update to address "graphical stability" and/or the Logic Board replacements, resolved the Graphics Defect;
 - f. Whether Respondents should have recalled the MacBook Pro Laptops;
 - g. Whether the 2011 MacBook Pro Laptops have not or will not perform in accordance with the reasonable expectations of ordinary Consumers;
 - h. Whether Respondents are liable to pay compensatory damages to the Class Members, including without limitation the repair costs disbursed and the reimbursement of the initial purchase price, and if so in what amount?
 - i. Whether Respondents are liable to pay exemplary or punitive damages to the Class Members, and if so in what amount?
114. The majority of the issues to be dealt with are issues common to every Class Member;

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

NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

116. The action that the Petitioner wishes to institute for the benefit of the Class Members is an action in damages and restitution for product liability, misrepresentations, false advertising, and latent defect;

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

GRANT the class action of the Plaintiff and each of the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the Class Members;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in compensation of the damages suffered, including but without limitation the reimbursement of the purchase price and the reimbursement of repair costs, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and additional indemnity on the above sums according to Law from the date of service of the Motion to authorize the bringing of 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, additional indemnity, 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 solidarily to bear the costs of the present action including experts' fees and notice fees;

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

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

- a. Petitioner resides in the District of Montreal;
- b. Respondents sold and repaired the MacBook Pro Laptops in the District of Montreal and Apple Canada had its *domicile élu* and principal place of business in the District of Montreal at the relevant times;
- c. Many Class Members are domiciled or work in the District of Montreal;
- d. Petitioner's legal counsel and Respondents' legal counsel practice law in the District of Montreal;

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

- a. is a member of the Class and has a monetary claim against Respondents, as detailed above;
- b. purchased the 2011 MacBook Pro Laptop and had it “repaired” by Apple multiple times, to no avail, dealing with and writing to many Apple representatives, including the CEO, and disbursing hundreds of dollars, the whole as more fully detailed above, as though recited at length herein;
- c. Petitioner heavily researched this issue and gave Apple the opportunity to remedy the situation, the whole as more fully detailed above and as appears from his “R” exhibits, for instance without limitation in the Formal Demand Letter sent to Respondents (R-16) and the California Class Action Complaint (R-2) that Petitioner found, reviewed and forwarded to the undersigned attorneys;
- d. understands the nature of the action and has the capacity and interest to fairly and adequately protect and represent the interests of the Class Members;
- e. is determined to lead the present file until a final resolution of the matter, the whole for the benefit of the Class Members;
- f. is available to dedicate the time necessary for the present action before the Courts of Quebec and to collaborate with Class Counsel in this regard;
- g. is ready and available to manage and direct the present action in the interest of the Class Members and is determined to lead the present

file until a final resolution of the matter, the whole for the benefit of the Class Members;

- h. does not have interests that are antagonistic to those of other Class Members;
- i. 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;
- j. has given the mandate to the undersigned attorneys to post the present matter on their firm website in order to keep the Class Members informed of the progress of these proceedings and in order to more easily be contacted or consulted by said Class Members. In this regard, Petitioner reserves his right to amend these proceedings in order to file any communications received from the Class Members in this regard;
- k. is, with the assistance of the undersigned attorneys, ready and available to dedicate the time necessary for this action and to collaborate with other Class Members and to keep them informed;

120. 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 and restitution for product liability, misrepresentations, false advertising, and latent defect;

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

All persons in Canada (subsidiarily in Quebec), who purchased

and/or own a 2011 MacBook Pro Laptop equipped with Advanced Micro Devices (AMD) graphics processing unit (GPU), manufactured, distributed, sold, or otherwise put onto the marketplace by the Respondents, or any other Group(s) or Sub-Group(s) to be determined by the Court;

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

- a. Whether the 2011 MacBook Pro Laptops suffer from a common Graphics Defect;
- b. Whether Defendant knew of and failed to warn Class Members of the Graphics Defect;
- c. Whether Respondents failed to disclose material information to Class Members;
- d. Whether Respondents' omission of material facts is misleading and/or reasonably likely to deceive a reasonable Consumer;
- e. Whether Respondents' purported software update to address "graphical stability" and/or the Logic Board replacements, resolved the Graphics Defect;
- f. Whether Respondents should have recalled the MacBook Pro Laptops;
- g. Whether the 2011 MacBook Pro Laptops have not or will not perform in accordance with the reasonable expectations of ordinary Consumers;

- h. Whether Respondents are liable to pay compensatory damages to the Class Members, including without limitation the repair costs disbursed and the reimbursement of the initial purchase price, and if so in what amount?
- i. Whether Respondents are liable to pay exemplary or punitive damages to the Class Members, and if so in what amount?

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

GRANT the class action of the Plaintiff and each of the Class Members;

DECLARE the Defendants solidarily liable for the damages suffered by the Plaintiff and each of the Class Members;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in compensation of the damages suffered, including but without limitation the reimbursement of the purchase price and the reimbursement of repair costs, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay to Plaintiff and each of the Class Members a sum to be determined in punitive and/or exemplary damages, and **ORDER** collective recovery of these sums;

CONDEMN the Defendants solidarily to pay interest and additional indemnity on the above sums according to Law from the date of service of the Motion to authorize the bringing of 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, additional indemnity, 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 solidarily to bear the costs of the present action including experts' fees and notice fees;

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

DECLARE that all Class Members who 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 thirty (30) days from the date of the publication of the notice to the Class Members;

ORDER the publication of a notice to the Class Members in accordance with Article 1006 C.C.P., pursuant to a further Order of the Court, and

ORDER Respondents to pay for said publication costs;

THE WHOLE with costs including all publication costs and/or expertise costs.

MONTREAL, DECEMBER 3, 2014

LEX GROUP INC.

(s) David Assor

Per: David Assor

Attorneys for Petitioner