C A N A D A

PROVINCE OF QUÉBEC

DISTRICT OF MONTREAL **SUPERIOR COURT**

(Collective Action)

No: 500-06-001018-197

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Tracey Arial, 7353 Dunver, Verdun, Qc., H4H 2H6; **Claire O'Brien**, 5975 Cote St Antoine, Apt. 17 Montreal, H4A 1S6; **Erika Patton**, 665 Verdure, Brossard, Qc., J4W 1R5; **Alex Tasciyan**, 616 De Namure, Saint-Lambert, Qc., J4S 1Z4; **Mathew Nucciaroni**, 5552 Snowden Apt. 5, Montreal, Quebec and **Vito DeCicco**, 222 Georges-Vanier Blvd., Montreal, Qc., H3J 2Z1

Plaintiffs/Petitioners

vs.

Apple Canada Inc., 120 Bremner Blvd. #1600, Toronto, Ont., M5J 0A8 and **Samsung Electronics Canada**, 2050 Derry Rd. W. Mississauga, Ont., L5N 0B9

Respondents

MOTION FOR AUTHORIZATION TO INSTITUTE
A COLLECTIVE ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE
(Articles 571 ff., C.C.P.)

Introduction

If a cellphone is marketed and sold to consumers, the device is never supposed to exceed the maximum allowable limit for radiofrequency ("RF") radiation exposure.

Defendants market and sell some of the most popular smartphones in the world, including Apple's iPhones and Samsung's Galaxy phones - as emitting less RF radiation than that set by law and as being completely safe to carry and use on or in close proximity to the human body.

Hold your smartphone to your ear for a phone call? No problem, say Defendants. Carry your smartphone in your back pocket? Of course, say Defendants. Use your smartphone to conduct a sonogram of your unborn child in utero? That's ok too, according to Samsung.

In fact, however, recent testing of Defendants' products shows that the potential exposure for an owner carrying the phone in a pants or shirt pocket was over the exposure limit, sometimes far exceeding it – in some instances by 500 percent.

Numerous recent scientific publications, supported by hundreds of scientists worldwide, have shown that RF radiation exposure affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on general well-being in humans. Thus, Defendants' design, manufacture, and sale of smartphones that far exceed federal guidelines exacerbates the health risks to Plaintiffs and the Classes.

Plaintiffs thus bring this Complaint for negligence, breach of warranty, consumer fraud and unjust enrichment, seeking material, moral and punitive (treble) damages, the costs of medical monitoring, restitution and injunctive relief.

PARTIES

Plaintiffs

Tracey Arial is a freelance journalist and resident of Verdun, Qc. She purchased a Samsung Galaxy S8 (SM-G950W) in August of 2018, prior to this time she owned and used a Samsung Galaxy S5 (SM-G903W). Arial regularly carries and uses the phone on or near her body. Despite having taken precautionary measures to minimize her exposure, including the use of air tube headphones, using speakerphone mode to avoid holding the phone to her head, and carrying the phone in a shielded radiation-reducing pouch when streaming media; she would not have purchased the phone and/or would not have paid as much for the phone had she understood the risk of radiation exposure from the phone. As a result of Samsung's actions as alleged herein, Arial has been damaged and is now at risk for problems associated with RF radiation exposure.

Claire O'Brien leased a Samsung A-20 in June of 2019. Once she learned of the exposure caused by her phone she decided to take protective measures including those described herein;

Erika Patton, a resident of Brossard, Quebec, who previously owned an iPhone 6S plus for 2 years, then inherited her boyfriend's Samsung Galaxy S8 plus in August, and regularly carries and uses the phone on or near her body. She would not have used the phone and/or would not have paid as much for the phone had she understood the risk of radiation exposure from the phone. She now takes extra precautions to protect herself from the exposure of the phone by using a protective pouch for the phone as well as air headphones in order to make calls and listen to music.

Alexander Tasciyan, who previously owned Erika Patton's Samsung Galaxy S8 plus for the past 3 years, now owns a Samsung Galaxy S10 plus who he carries on his person for most of the day. Had he known in advance about the EMF dangers associated with his device, he wouldn't have purchased a newer version of the phone. Nevertheless, he is now taking extra precaution to protect himself from the device such as using a protective case and air headphones.

Matthew Nucciaroni purchased Samsung S7 in 2016.

Vito Di Cicco bought an iPhone 7 about 3 years ago. Once he learned of the EMF risk of his phone, he decided to use a protective case and air headphones.

Plaintiffs are collectively referred to as the "Samsung Plaintiffs". The Apple Plaintiffs and Samsung Plaintiffs are collectively referred to as "Plaintiffs."

Defendants

Apple, Inc. ("Apple") is a California corporation and has an office in Ontario at 120 Bremner Boulevard #1600, Toronto, M5J A08. Apple designs, manufactures and sells various consumer electronics, computer software and online services. Apple's consumer electronics products include the iPhone 8 and iPhone X. Apple transacts substantial business throughout the Province of Quebec, through advertising, marketing and ownership of numerous Apple retail stores throughout Quebec. Apple also transacts business nationwide with 22 Apple stores in Canada, advertising, marketing, distributing and selling its iPhone products nationwide and ownership of Apple retail stores.

Samsung Electronics Canada, Inc. ("Samsung") maintains its principal place of business at 2050 Derry Rd. W., Mississauga, Ontario.

Samsung transacts substantial business throughout Quebec and also transacts business nationwide, advertising, marketing, distributing and selling its smartphone products nationwide.

SUBSTANTIVE ALLEGATIONS

The Role of Smartphones in North American Culture

According to Pew Research Center, 96 percent of Americans own a cellphone of some kind.[1] Of those, 81 percent own smartphones,[2] up from just 35% in Pew Research Center's first survey of smartphone ownership conducted in 2011.[3]

Roughly 20 percent of American adults are "smartphone-only" internet users, meaning they own a smartphone but don't otherwise subscribe to internet service.[4]

According to the Chicago Tribute, there are currently an estimated 285 million smartphones in active use in the United States.[5]

[1] https://www.pewinternet.org/fact-sheet/mobile/

[2] PC Magazine defines the term "smartphone" as "[a] cellphone and handheld computer that created the greatest tech revolution since the Internet. A smartphone can do everything a personal computer can do, and because of its mobility, much more . . . A smartphone combines a cellphone with e-mail and Web, music and movie player, camera, camcorder, GPS navigation, voice recorder, alarm clock, flashlight, photo album, address book and a lot more. It is also a personal assistant that delivers information and answers questions about almost everything …. A lot more personal than a personal computer, a smartphone is generally within reach at all times." *See* http://www.pcmag.com/encyclopedia/term/51537/smartphone

[3] *Id.*

[4] *Id.*

[5] https://www.chicagotribune.com/investigations/ct-cell-phone-radiation-testing-20190821-72qgu4nzlfda5kyuhteiieh4da-story.html

And, 29 percent of U.S. teens sleep with their cellphones in bed with them, according to a 2019 report by the nonprofit organization Common Sense Media.

B. Defendants Market and Sell Their Smartphones as Being Safe to Use on and Close to the Human Body at All Times.

Widely recognized as Apple's premier product line, iPhone is a line of industry-leading smartphones that debuted on June 29, 2007.

When Steve Jobs introduced the iPhone in 2007, he described it as "the Internet in your pocket for the first time ever." He emphasized that the "iPhone is like having your life in your pocket."[6] And displayed behind Jobs as he launched the iPhone was the following picture:

In July of 2016, Apple celebrated the sale of its billionth iPhone.[7] Apple included within the press release announcing that milestone sale the following quote from its CEO Tim Cook: "iPhone has become one of the most important, world-changing and successful products in history. It's become more than a constant companion. iPhone is truly an essential part of our daily life and enables much of what we do throughout the day." [8]

Throughout the years, Apple has continued to expound on the theme of keeping the iPhone in your pocket. In May 2018, Apple released a commercial for iPhone X, touting the phone's camera and portrait lighting capabilities. In the ad, a woman is seen taking the iPhone X out of her pocket. Immediately,

[6] https://thenextweb.com/apple/2015/09/09/genius-annotated-with-genius/
[7] https://www.apple.com/newsroom/2016/07/apple-celebrates-one-billion-iphones.html
[8] *Id.*

lights, umbrellas and all of the other trappings of a professional studio appear around her.[9] The commercial ends with the slogan "Studio in Your Pocket": [10]

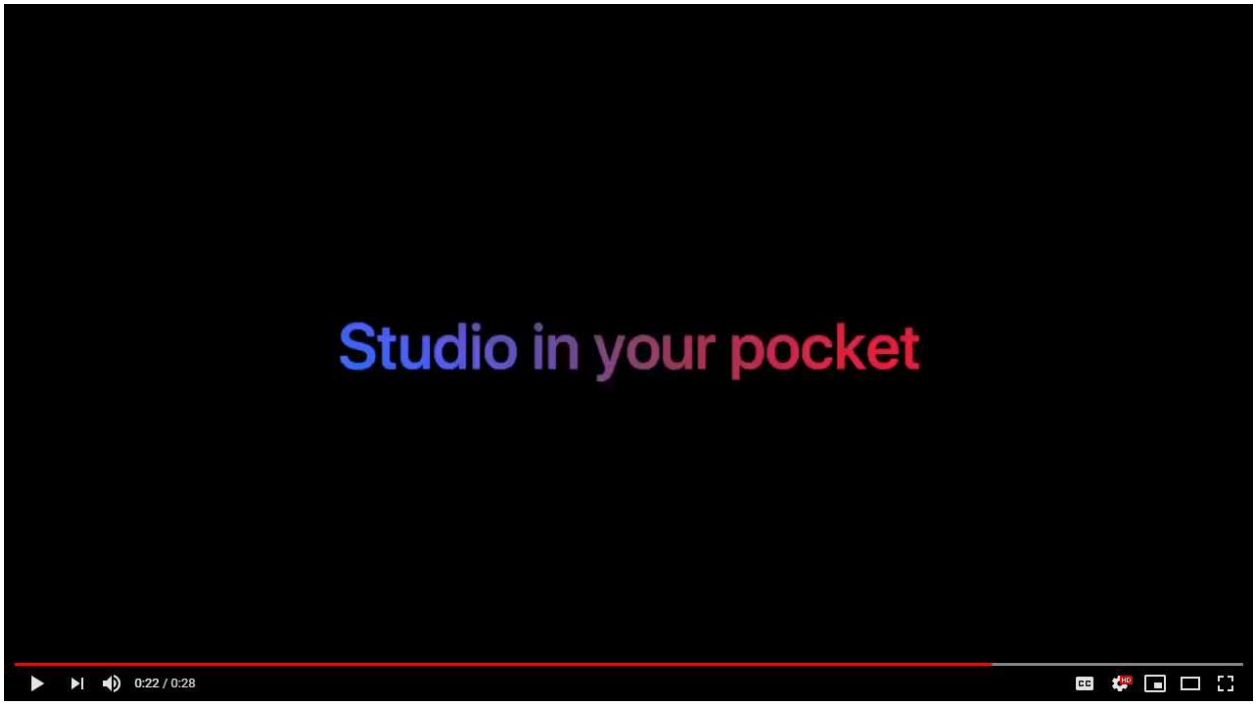
Apple's commercials also regularly show people listening to music through headphones with their iPhones in their pockets [11] or using the iPhones while holding it in their bare hands.[12]

Apple's commercials show people using iPhones in their beds,[13] even being held against a person's body as they fall asleep while watching a video. [14]

Following Apple's lead, Samsung launched the first android-based smartphone in April 2009. The Galaxy S series of smartphones has made Samsung the biggest seller of smartphones in the world.

Like Apple, Samsung advertises people using its smartphones in close proximity to their bodies.

For example, one commercial shows a pregnant woman lying in bed and touching the cell phone to her belly to take a sonogram of her child in utero. In the same commercial, a child has his smartphone tucked into his backpack. [15]



[9] https://www.youtube.com/watch?v=NApRGgbm480

[10] https://www.youtube.com/watch?v=NApRGgbm480
[11] https://www.ispot.tv/ad/wC3Y/apple-iphone-x-sway-song-by-sam-smith
[12] https://www.ispot.tv/ad/I9eg/apple-iphone-privacy-on-iphone-inside-joke
[13] https://www.ispot.tv/ad/IjPm/apple-iphone-xr-and-xs-depth-control-alejandro ; https://www.ispot.tv/ad/I_8y/apple-iphone-private-side
[14] https://www.ispot.tv/ad/oVp4/apple-iphone-xr-battery-life-up-late-song-by-julie-andrews
[15] https://www.adsoftheworld.com/media/film/samsung_samsung_galaxy_the_future

Another commercial shows a hiker take the Samsung phone out of her back pants' pocket at the summit.[16] Thus, at all relevant times, Defendants have touted the use of their smartphones as being safe and appropriate to use while touching or within close proximity to the human body.

C. The Dangers of Cellphone Exposure

1. Radio Frequency (RF) Exposure

Cellphones use radio waves to communicate with a vast network of fixed installations called base stations or cell towers. These radio waves are a form of electromagnetic radiation, in the same frequency range used by TVs and microwave ovens.

The public relations position from cellphone manufacturers, including Defendants, is that this kind of radiation, also known as radio frequency (RF) exposure, is not the same as ionizing radiation, such as gamma rays and X-rays, which can strip electrons from atoms and cause serious biological harm, including cancer.

However, RF exposure, sometimes also called non-ionizing electromagnetic field exposure, at high levels can heat biological tissue and cause harm. Eyes and testes are especially vulnerable because they do not dispel heat rapidly.

In fact, in 2015, more than 150 scientists from around the world sent an appeal to the United Nations and World Health Organization, calling for more protective RF exposure guidelines, and education of the public concerning the attendant health risks, particularly to children and fetal development.

The appeal, titled "International Appeal: Scientists call for Protection from Non- ionizing Electromagnetic Field Exposure," as of August 25, 2019 has been signed by 250 EMF scientists.[17]

In relevant part, the appeal explained the risk of RF exposure:

> Numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on general well-being in humans.

Moreover, in the fall of 2018, in one of the largest studies to date, the National Toxicology Program ("NTP"), a research group within the National Institutes of Health, U.S. Department of Health and Human Services, found that high exposure to the kind of radiofrequency radiation used by cellphones was associated with "clear evidence" of cancerous heart tumors in male rats.

The NTP studies were conducted to test the assumption that cell phone radiofrequency radiation could not cause cancers or other adverse health effects (other than by tissue heating) because this type of radiation (non-ionizing) did not have sufficient energy to break chemical bonds. [18]

[16] https://www.bestadsontv.com/ad/107658/Samsung-Do-What-You-Cant
[17] https://www.emfscientist.org/index.php/emf-scientist-appeal
[18] https://thehill.com/opinion/healthcare/416515-theres-a-clear-cell-phone-cancer-link-but-fda-is-downplaying-it

The results of the NTP studies demonstrated that cell phone radiation caused Schwann cell cancers of the heart and brain gliomas in rats, as well as DNA damage in the brain. [19]

Consistent with these findings, in May 2011, the International Agency for Research on Cancer (IARC), a part of the World Health Organization, classified radio-frequency radiation from wireless devices as a "possible human carcinogen" based largely on findings of increased risks of gliomas (a malignant type of brain cancer) and Schwann cell tumors in the brain near the ear in humans after long term use of cellphones. [20]Thus, the same tumor types are elevated in both animals and humans exposed to cell phone radiation.

2. Testing for RF Exposure

When cellphones hit the market in the 1980s, authorities focused on setting an exposure limit to address only the heating risks of cellphones. Scientists found that animals showed adverse effects when exposed to enough radiofrequency radiation to raise their body temperature by 1 degree Celsius. Authorities used this finding to help calculate a safety limit for humans, building in a 50-fold safety factor.

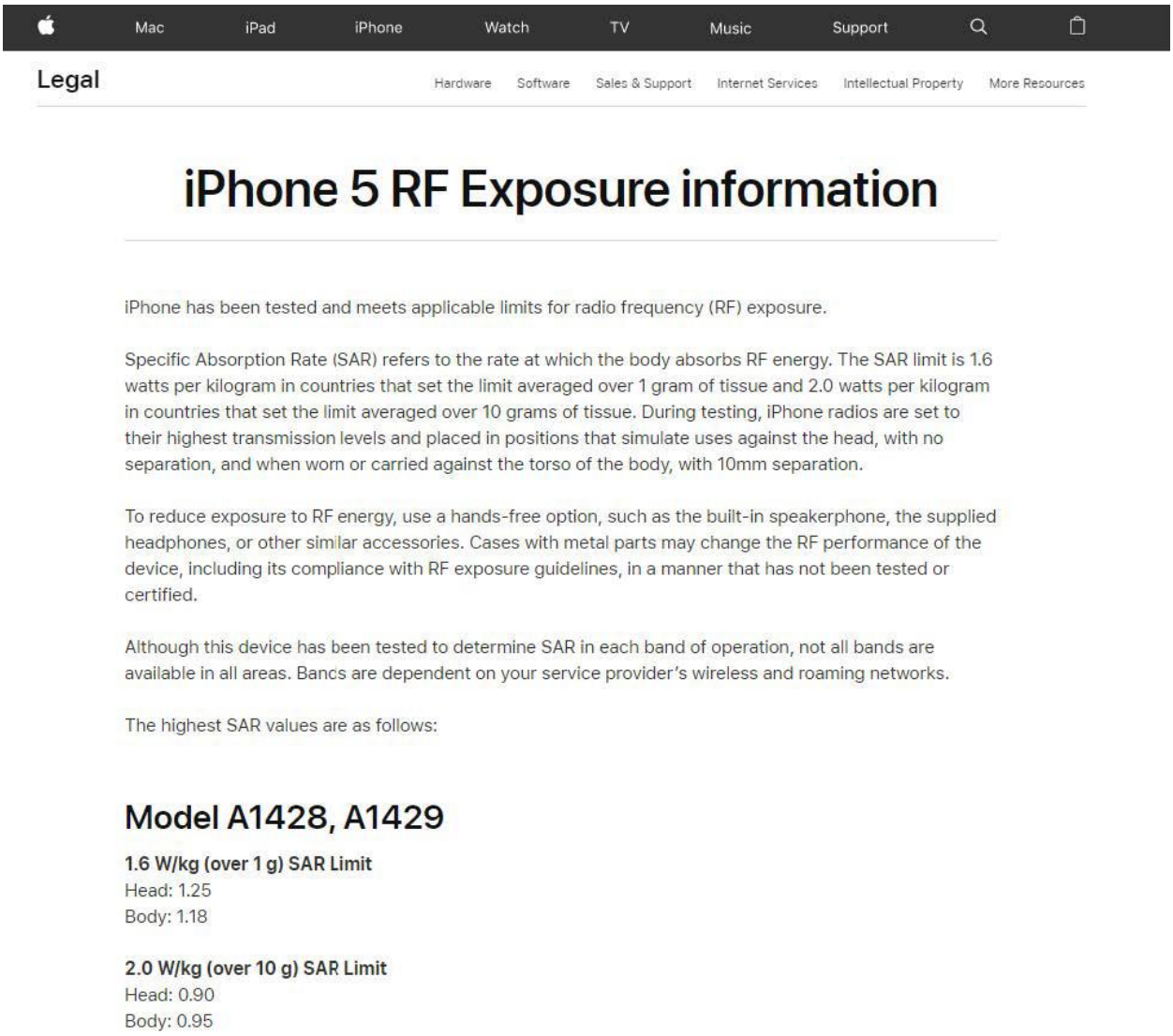
The final rule, adopted by the Federal Communications Commission ("FCC") in 1996, stated that cellphone users cannot potentially absorb more than 1.6 watts per kilogram averaged over one gram of tissue. To demonstrate compliance, phone makers were told to conduct two tests: when the devices were held against the head and when held up to an inch from the body.

Before a new cellphone model can be brought to market, a sample phone must be tested and comply with an exposure standard for radiofrequency radiation.

Companies testing a new phone for compliance with the safety limit are permitted to position the phone up to 25 millimeters away from the body — nearly an inch — depending on how the device is used.

Nonetheless, on its website, in the "Legal" section, Apple warrants that it tests the iPhone at the "highest transmission levels and placed in positions that simulate uses against the head, with no separation, and when worn or carried against the torso of the body, with 10mm separation." [21]

[19]https://thehill.com/opinion/healthcare/416515-theres-a-clear-cell-phone-cancer-link-but-fdais-downplaying-it
[20]https://www.iarc.fr/wp-content/uploads/2018/07/pr208_E.pdf
[21]https://www.apple.com/legal/rfexposure/iphone5,1/en/(emphasis supplied)
Apple also warrants that it tests its iPods at 5mm separation. https://www.apple.com/legal/rfexposure/ipod5,1/en/



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iPhone 5 RF Exposure information

iPhone has been tested and meets applicable limits for radio frequency (RF) exposure.

Specific Absorption Rate (SAR) refers to the rate at which the body absorbs RF energy. The SAR limit is 1.6 watts per kilogram in countries that set the limit averaged over 1 gram of tissue and 2.0 watts per kilogram in countries that set the limit averaged over 10 grams of tissue. During testing, iPhone radios are set to their highest transmission levels and placed in positions that simulate uses against the head, with no separation, and when worn or carried against the torso of the body, with 10mm separation.

To reduce exposure to RF energy, use a hands-free option, such as the built-in speakerphone, the supplied headphones, or other similar accessories. Cases with metal parts may change the RF performance of the device, including its compliance with RF exposure guidelines, in a manner that has not been tested or certified.

Although this device has been tested to determine SAR in each band of operation, not all bands are available in all areas. Bands are dependent on your service provider's wireless and roaming networks.

The highest SAR values are as follows:

Model A1428, A1429

1.6 W/kg (over 1 g) SAR Limit
Head: 1.25
Body: 1.18

2.0 W/kg (over 10 g) SAR Limit
Head: 0.90
Body: 0.95

For some past models, Apple's website told users of the iPhone 4 and 4s: "Carry iPhone at least 10mm away from your body to ensure exposure levels remain at or below the as-tested levels." The site says those phones were tested at a distance of 10 millimeters.

When Apple submitted its application to the FCC to market the iPhone 7, the company included a similarly worded radiation statement, suggesting users carry the device at least 5 millimeters from the body, records show. But iPhone 7s (and subsequent models) sold to the public did not include that advice. [22]

Similarly, on its website, Samsung provides users the opportunity to check the RF emission levels on its website. Samsung represents not only its smartphones meet federal requirements, but also that "Body-

[22] https://www.chicagotribune.com/investigations/ct-cell-phone-radiation-testing-20190821-72qgu4nzlfda5kyuhteiieh4da-story.html

worn SAR testing has been carried out at a separation distance of 0.0 cm." Samsung thus implies that using, carrying or wearing its smartphones on or in close proximity to the human body is completely safe.

3. Testing RF Exposure Shows Clear Risk to Plaintiffs and the Class

Beginning in or about August 2018, the Chicago Tribune hired RF Exposure Lab in San Marcos, California to measure eleven different cellphone models for radiofrequency radiation. [23]

RF Exposure, an accredited testing lab recognized by the FCC, has conducted radiation tests for fifteen years for wireless companies seeking FCC approval for new products.[24]

In August and October 2018, twelve phones were tested: three iPhone 7s, an iPhone X, an iPhone 8, an iPhone 8 Plus, a Galaxy S9, a Galaxy S8, a Galaxy J3, a Moto e5 Play, a Moto g6Play and a Vivo 5 Mini (collectively, the "Affected Phones"). [25]

According to the lab, all of the tests were done in accordance with FCC rules and guidelines.[26]

In one phase of the testing, all phones were positioned at the same distance from the simulated body tissue that the manufacturers chose for their own tests — from 5 to 15 millimeters, depending on the model.[27]

Prior to each test, the laboratory reviewed the publicly-available testing data that phone manufacturers had submitted to the FCC to demonstrate compliance with radiofrequency radiation limits and gain permission to market the devices.[28]

For each phone model, the laboratory determined which licensed band, frequency and channel yielded the highest radiofrequency radiation reading in the manufacturer's own tests, and then replicated this configuration.[29]

Plaintiffs expect that the list of smartphones included in this group will expand with discovery and reserve their right to amend accordingly.

To conduct the tests, each phone was placed underneath a tub containing specially formulated liquid intended to simulate the electrical properties of human body tissue.[30]

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[23] https://www.chicagotribune.com/investigations/ct-cell-phone-radiation-testing-methodology--20190821-whddrljk6fbmxoqh25u5t7lkb4-story.html
[24] *Id.*
[25] *Id.* Plaintiffs expect that the list of smartphones included in this group will expand with discovery.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*

The laboratory used a base station simulator to place a call to the phone and adjusted the base station's settings to replicate the desired configuration, causing the phone to operate at full power.[31]

A probe attached to a robotic arm then moved in the liquid for eighteen minutes, taking 276 measurements of the radiofrequency radiation absorbed. The results constituted the Specific Absorption Rate, or SAR, which must be under the federal safety limit.[32]

Two tests were conducted on each phone. In the first tests, each device was placed the same distance away from the outside of the tub that the manufacturers selected when they tested the phone.[33]

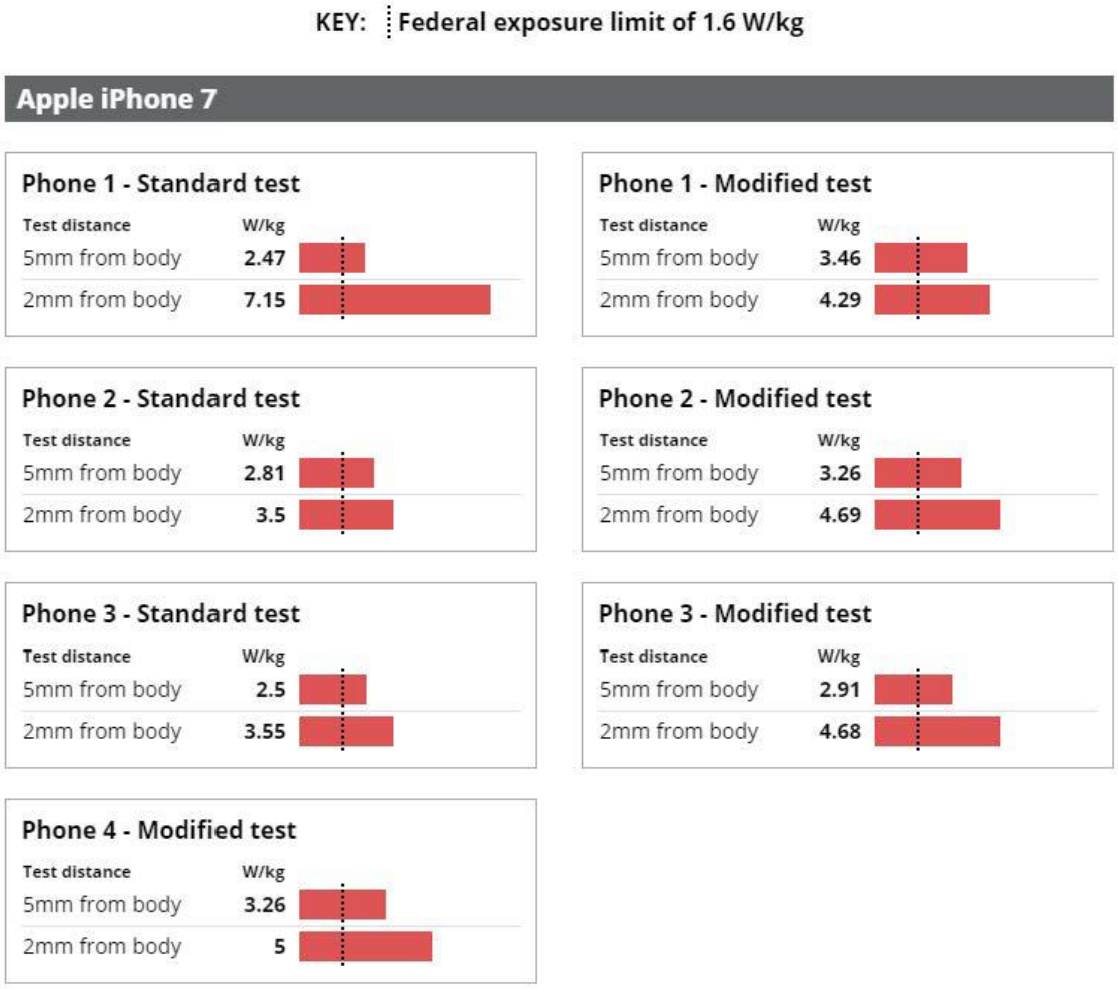
In the second test, the phones were placed 2 millimeters from the tub, a smaller distance meant to reflect a phone being carried in a pants or shirt pocket, based on actual measurements of pieces of dress shirts, T-shirts, jeans, track pants and underwear.[34]

In a second round of testing in March 2019, a person touched or grasped the originally- tested iPhones, plus one additional one, for the duration of the process. This was action intended to activate sensors designed to reduce the phones' power.[35]

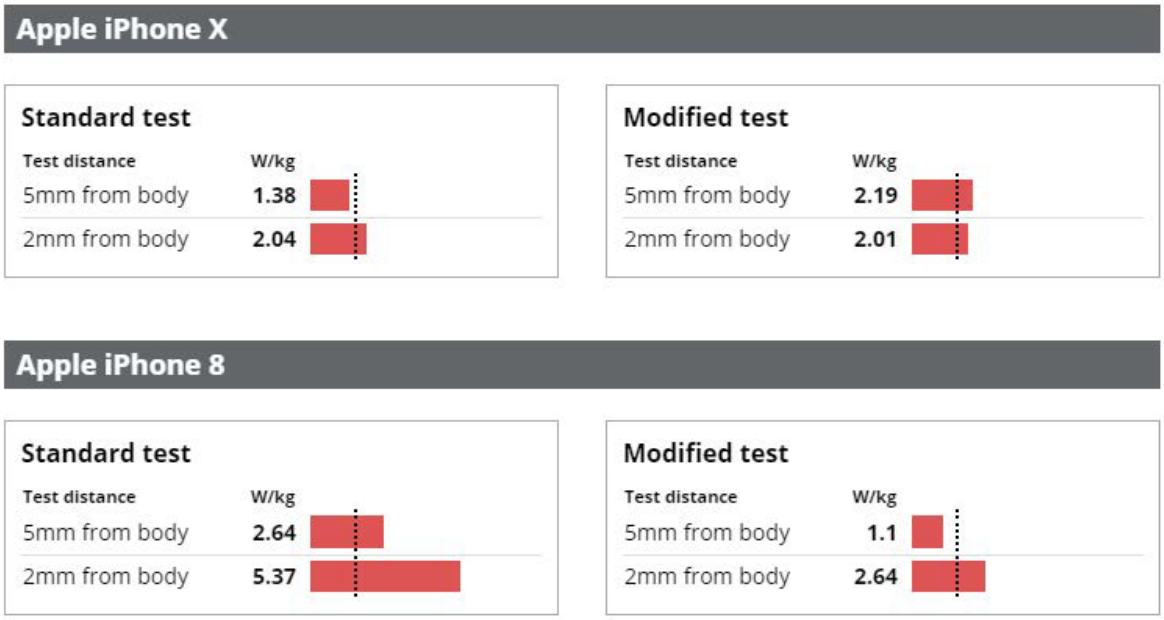
The results by model follow.

For the iPhone 7 models, in the original or standard test at 5 millimeters, the RF exposure averaged 2.59 W/kg – more than the 1.6 W/kg limit. In the second or modified test at 5 millimeters, the RF exposure averaged 3.225 W/kg – more than twice the federal exposure limit. [36]At 2 millimeters, results from the original and modified tests ranged from 3.5 W/kg to 7.15 W/kg.

[31] *Id.*
[32] *Id.*
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] https://www.chicagotribune.com/investigations/ct-cell-phone-radiation-testing-20190821-72qgu4nzlfda5kyuhteiieh4da-story.html

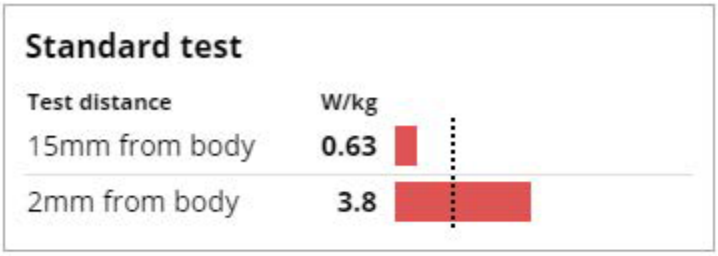


The Apple iPhone X and iPhone 8 each scored three out of four tests above the [add Canadian limit here] federal limit of 1.6W/kg:

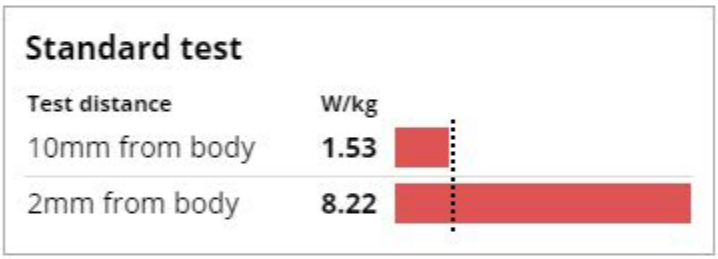


When tested at 2 millimeters, the Samsung Galaxy S8 exceeded the federal limit by more than 500 percent:

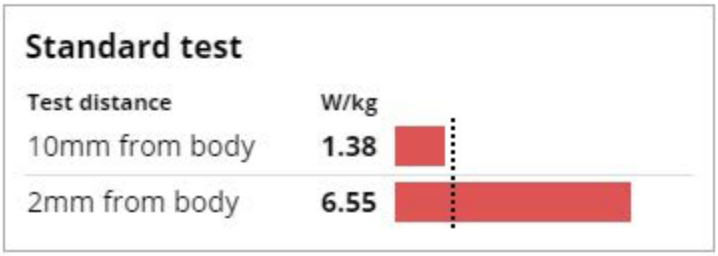
Samsung Galaxy S9



Samsung Galaxy S8



Samsung Galaxy J3



These results are not an aberration, but instead reflect actual emissions conducted by an FCC-accredited laboratory under the same conditions used by the manufacturers themselves.

Notwithstanding these results and the studies reflecting the dangers inherent at these levels, Defendants have failed to take steps to prevent this excessive RF radiation exposure or to warn Plaintiffs and the Class of the dangers associated with using their products.

CLASS ACTION ALLEGATIONS

The Apple Plaintiffs bring this action as a class action pursuant to Article 575 of the Quebec *Code of Civil Procedure* on behalf of themselves and all others similarly situated as members of the following "Apple Class": "All persons who purchased an iPhone 7, 8, or X for personal or household use in the province of Quebec and in Canada."

The Samsung Plaintiffs bring this action as a class action on behalf of themselves and all others similarly situated as members of the following "Samsung Class": "All persons who purchased a Samsung Galaxy S8, S9, or J3 for personal or household use in the province of Quebec and in Canada.

Common Questions of Law and Fact.

Common questions of law and fact applicable to all members of the Class predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

a. Whether Apple and Samsung properly tested their smartphones before selling them to the Plaintiffs and the Class;

b. Whether Apple and Samsung represented and/or warranted that their smartphones were safe for ordinary use;

c. Whether the smartphones were safe for ordinary use;

d. Whether the RF radiation from the smartphones placed Plaintiffs and Class members at risk for cancer and other health problems;

e. Whether Defendants owed a duty to Plaintiffs and Class members to disclose the dangers of their smartphones;

f. Whether Defendants intentionally misrepresented the safety of the Plaintiffs' and Class members' smartphones to them and the public;

g. Whether Plaintiffs or Class Members are entitled to medical monitoring;

h. Whether Plaintiffs and the members of the Class have sustained financial loss, and the proper measure of any such financial loss;

i. Whether Plaintiffs and the members of the Class are entitled to restitution;

j. Whether Plaintiffs and the members of the Class are entitled to punitive damages, and the proper measure of any such damages.

k. Whether Plaintiffs and the members of the Class are entitled to materiel damages, and the proper measure of any such damages.

Representative Nature of Plaintiffs: Plaintiffs' claims are typical of those held by the other members of the Class in that each of them own one of Defendants' smartphones that exceed federal RF radiation exposure limits.

Adequacy of Representation: Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained trial counsel experienced in complex litigation including complex consumer class action litigation, and Plaintiffs intend to vigorously prosecute this action.

Plaintiffs have no interests in this action that are adverse or antagonistic to the interests of the Class.

Class action litigation is the only reasonable and proportionate recourse when compared with all other available means for the fair and efficient adjudication of this controversy. The damages, harm and financial detriment suffered by individual members of the Class are relatively minor compared to the burden and expense that would be entailed by individual prosecution of their claims against Defendants.

It would thus be practically impossible for the members of the Class, on an individualized basis, to effectively seek and obtain redress for the wrongs committed against them.

In addition, even if the Class members could —and realistically would be willing—to pursue such individualized litigation, this Court likely could not reasonably sustain the imposition on resources that individualized litigation over this controversy would entail.

Further, individualized litigation would create the danger of inconsistent or contradictory judgments arising from the identical factual predicate.

Individualized litigation would also result in a substantial increase in the time and expense required of the parties and the Court to address the issues raised by this litigation.

By contrast, litigation of the controversy outlined herein as a class action provides the benefits of adjudication of these issues in a single, unitary proceeding, provides substantial economies of scale, allows comprehensive supervision of the legal and factual issues raised herein by a single court, and presents no unusual management difficulties under the circumstances presented here.

Damages may be calculated from the data maintained in Defendants' and third-party carriers' records, so that the cost of administering a recovery for the Class can be minimized. The precise measure of damages available to Plaintiffs and the Class, however, is not a barrier to class certification.

THE AUTHORIZATION CRITERIA

Art 575 (A) Identical, Similar or Related issues of Law

(a) Products unsafe for use as intended and provide insufficient warning of risk their use entails

1. A specific regime for hazardous consumer products and those with insufficient security warnings is established by the *Quebec Consumer Protection Act* and the *Civil Code of Quebec*. Article 906 of the *Quebec Civil Code* has been properly interpreted to extend that protection to electricity.[37] The relevant provisions are:

[37] Baudoin, Deslauriers et Moore, *La responsabilité du fabriquant et du vendeur – l'évolution historique* 2-352 as concernselectrocution and explicitly tout doute sur la qualification des ondes et des diverses formes d'énergie qui sont réputés meubles corporels que leur source soit mobilière ou immobilière.as concernselectricity and Art. 609 *C.C.Q.* at *see Enterprise d'electricité du Centre-Ville c. Groupe Sedgeinc*, 2016 QCCQ 11464 at para. 36 holding that waves constitute a corporeal moveable good. In *3296008 Canada Inc. c. Groupe Commerce Cie. d'assurances*,

37. Goods forming the object of a contract must be fit for the purposes for which goods of that kind are ordinarily used.
1978, c. 9, s. 37.

38. Goods forming the object of a contract must be durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use.
1978, c. 9, s. 38.

53. A consumer who has entered into a contract with a merchant is entitled to exercise directly against the merchant or the manufacturer a recourse based on a latent defect in the goods forming the object of the contract, unless the consumer could have discovered the defect by an ordinary examination.

The same rule applies where there is a lack of instructions necessary for the protection of the user against a risk or danger of which he would otherwise be unaware.

The merchant or the manufacturer shall not plead that he was unaware of the defect or lack of instructions.

The rights of action against the manufacturer may be exercised by any consumer who is a subsequent purchaser of the goods.
1978, c. 9, s. 53.

272.*If the merchant or the manufacturer fails to fulfil an obligation imposed on him by this Act*, by the regulations or by a voluntary undertaking made under section 314 or whose application has been extended by an order under section 315.1, *the consumer may demand*, as the case may be, subject to the other recourses provided by this Act,
(a) the specific performance of the obligation;
(b) the authorization to execute it at the merchant's or manufacturer's expense;
(c) that his obligations be reduced;
(d) that the contract be rescinded;
(e) that the contract be set aside; or
(f) that the contract be annulled,
without prejudice to his claim in damages, in all cases. *He may also claim punitive damages* [emphasis added].
1978, c. 9, s. 272; 1992, c. 58, s. 1; 1999, c. 40, s. 234.

906. Waves or energy harnessed and put to use by man, whether their source is movable or immovable, are deemed corporeal movables.

1467. The owner of an immovable, without prejudice to his liability as custodian, is bound to make reparation for injury caused by its ruin, even partial, whether the ruin has resulted from lack of repair or from a defect in construction.

2002 CanLII 10117 (QC CS) para. [32] L'électricité est considérée comme meuble corporel selon l'article 906C.c.Q., cet article nouveau apour but d'éviter

> **1468.** The manufacturer of a movable thing is bound to make reparation for Injury caused to a third person by reason of a safety defect in the thing, even if it is incorporated with or placed in an immovable for the service or operation of the immovable.
>
> The same rule applies to a person who distributes the thing under his name or as his own and to any supplier of the thing, whether a wholesaler or a retailer and whether or not he imported the thing.
>
> **1469**.A thing has a safety defect where, having regard to all the circumstances, it does not afford the safety which a person is normally entitled to expect, particularly by reason of a defect in design or manufacture, poor preservation or presentation, or the lack of sufficient indications as to the risks and dangers it involves or as to the means to avoid them.
>
> **1473.** The manufacturer, distributor or supplier of a movable thing is not bound to make reparation for injury caused by a safety defect in the thing if he proves that the victim knew or could have known of the defect, or could have foreseen the injury.
>
> Nor is he bound to make reparation if he proves that, according to the state of knowledge at the time that he manufactured, distributed or supplied the thing, the existence of the defect could not have been known, and that he was not neglectful of his duty to provide information when he became aware of the defect.

2. The *Consumer Protection Act* provides for a specific regime of proof as concerns warranties of quality and the duty to warn the consumer as concerns consumer products, which, pursuant to Arts. 906 and 1468-9 C.C.Q. includes *inter alia* cellular telephony.

3. Recourses relying on Arts. 37 and 53 of the *Consumer Protection Act* require the consumer to show *only* that the product was not fit for the use it was intended (i.e. poses a serious health risk) or failed to provide a reasonable security warning and that the defect was not self-evident upon casual inspection by the consumer;[38]

4. This limited proof shifts the burden to the Defendant, who must show that there is no risk and that proper warnings were provided. The Defendant may *not* claim he was unaware of the defect or risk as he is presumed to have that knowledge;

5. « Le respect des normes par le commerçant ou le manufacturier ne met pas nécessairement ces parties à l'abri d'une conclusion de déficit d'usage »[39].

6. In *Fortin c. Mazda Canada inc.*, 2016 QCCA 31 Honorable Mr. Justice Gagnon writing for the Court of Appeal held:

> [83] Cela dit, l'usage protégé par la garantie de qualité est autonome. Le respect des normes par le commerçant ou le manufacturier ne met pas nécessairement ces

[38] Bourassa, Sylvie, *Consumer Protection Act and Regulation Concerning its Application*, YvonBlais, 2018, annotations to Articles 37 and 53;
[39]*Fortin c Mazda Canada inc*. 2016 QCCA 31, cited in Bourassa, Baudouin supra… [add ref.] As concerns electrocution see *Hydro-Québec c. Boyer* [1985] R.L. 165 para. 37.

parties à l'abri d'une conclusion de déficit d'usage[40]. D'ailleurs, une importante jurisprudence appuie cette idée[41].

[84] La garantie d'usage imposée au commerçant et au manufacturier crée pour ces parties une obligation de résultat[42]. Celle-ci repose essentiellement sur les attentes légitimes de l'acheteur. Or, quitte à le redire, de telles attentes ne sont pas tributaires des normes de l'industrie. Ce principe a été reconnu dans l'arrêt *Banque de Nouvelle-Écosse c. Raymond*[43]:

> Cet énoncé comporte un sophisme de droit. Ce n'est pas parce qu'un objet a été fabriqué suivant les normes de construction que l'acheteur ne pourra demander l'annulation de la vente, s'il s'avère qu'il est impropre à l'usage auquel il est destiné et pour lequel il a été acheté et vendu. Ce que les intimés ont acheté, ce n'étaient pas des objets fabriqués conformément à certaines normes, mais ce qu'on leur a représenté comme étant des maisons mobiles et, partant, des bâtiments destinés à l'habitation. À savoir si en l'espèce ce fut le cas, était essentiellement une question de fait.

[85] Bref, le décideur qui choisit de trancher la question des attentes raisonnables du consommateur sur la seule base d'une norme quelconque commet une erreur en droit.

7. *Infineon*, confirmed by *Charles c. Boiron Canada inc.* 2016 QCCA 1716, at para 45 confirms that statutory compliance is not decisive:

> [70] Article 1003(*a*) of the *C.C.P.* requires that "the recourses of the members raise identical, similar or related questions of law or fact".
>
> [71] According to the appellants, the only question common to the members of the proposed group is whether the appellants committed a fault. They argue that, given the range of products containing DRAM, the large number of distribution chains and their complexity, the inherent differences between the direct and indirect purchasers, and the nature of the aggregate claim, it

[40] J. Edwards, *supra*, note 10, nos 326 et 327, p. 151; P.-G. Jobin avec la collaboration de M. Cumyn, *supra*, note 20, no 155, 197.
[41] *Groupe Commerce (Le), compagnie d'assurances c. New Holland Canada ltée*, J.E. 2004-467 (C.Q.), où le tribunal conclut que même si les boulons d'une presse à foin respectent les normes, ces derniers présentent tout de même un déficit d'usage; *Deschênes c. Desparois*, 2007 QCCS 1081, où le tribunal conclut que l'absence de drain français autour d'une maison constitue un vice caché même si les normes à l'époque de la construction d'une maison n'exigeaient pas ce type de drain; *Doucet c. Golding*, J.E. 2004-1548 (C.Q.); *Stepanian c. Marmor*, [2001] R.J.Q. 2704 (C.Q.), paragr. 37 et 38; *Vallée c. Méthot*, 2013 QCCQ 4719; *EconomicalMutualInsurance Group c. Crane Canada inc*., 2010 QCCS 328, conf. par 2011 QCCA 2359; *Boisclair c. Desormeaux*, 2013 QCCS 3965, conf. par*Laframboise c. Boisclair*, 2015 QCCA 842, où la Cour confirme sur le fond, mais infirme sur la répartition des dommages.
[42] J. Edwards, *supra*, note 10, nos 326 et 327, p. 151.
[43] *Banque de Nouvelle-Écosse c. Raymond*, J.E. 87-299 (C.A.).

would be impossible for the trial judge to establish an injury or a causal connection on a group-wide basis.

[72] This perspective is flawed. There is no requirement of a fundamental identity of the individual claims of the proposed group's members. At the authorization stage, the threshold requirement for common questions is low. As the Court of Appealnoted in *Collectif de défense des droits de la Montérégie (CDDM) v. Centre hospitalier régional du Suroîtdu Centre de santé et de services sociaux du Suroît*,2011 QCCA 826 (CanLII), at para. 22, even a single identical, similar or related question of law would be sufficient to meet the common questions requirement set out in art. 1003(*a*), provided that it is significant enough to affect the outcome of the class action.

[73] There is no requirement that each member of a group be in an identical or even a similar position in relation to the defendant or to the injury suffered. Such a requirement would be incompatible with the concern for judicial economy which the class action serves by avoiding duplicated or parallel proceedings (see *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 S.C.R. 534, at para. 27). The Court of Appeal summarized this as follows in *Guilbert v. Vacances sans Frontière Ltée*, 1991 CanLII 2869 (QC CA), [1991] R.D.J. 513:

[TRANSLATION] The fact that the situations of all members of the group are not perfectly identical does not mean that the group does not exist or is not uniform. To be excessively rigorous in defining the group would render the action useless . . . in situations in which claims are often modest, there are many claimants and dealing with cases on an individual basis would be difficult. [p. 517]

[74] In applying these principles to the case at bar, the motion judge and the Court of Appeal correctly held that there are no differences between the members of the proposed group at the authorization stage that adversely affect the unity of the group as regards the common questions requirement. All the members, regardless of their individual circumstances, have a common interest both in proving the existence of a price-fixing conspiracy and in maximizing the amount of the resulting unlawful overcharge. Any disparity between the direct purchasers' relationships with the appellants and those of the indirect purchasers does not alter the fact that they have a collective interest in these questions of fault and liability. Any conflicts of interests can be addressed at trial.

> [96] The appellants are correct in asserting that compliance with statutory duties can inform questions with respect to civil law duties. However, compliance with statutory obligations is not always determinative of the issue of civil fault. As Kasirer J.A. rightly stated at para. 88 of his reasons, "[c]are must be taken . . . not to conflate the notion of civil fault and the violation of a statutory norm, whether in a commercial setting or elsewhere." He correctly pointed out that just because a failure to discharge a statutory obligation leads to a demonstration of fault in all but the most exceptional cases, it does not follow that a civil fault is absolved where there is no such failure. As J.-L. Baudouin and P. Deslauriers state in La responsabilité civile (7th ed. 2007), vol. I, at No. 1-188:
>
> > [translation] In principle, a failure to discharge a specific obligation imposed by a statute or a regulation, especially if it is intentional or serious, constitutes a civil fault,

since it amounts to the breach of a mandatory standard of conduct established by the legislature. Nevertheless, adhering to such a standard does not in itself exempt one from liability.

[97] They go on to state the following, at No. 1- 189:

> [translation] . . . the mere fact that in a given case the defendant adhered to statutory or regulatory standards does not automatically rule out the possibility that he or she will nevertheless be held liable on the basis of the general law. Statutory provisions therefore do not have the effect of limiting the general obligation of good conduct in one's relations with others, and this means that it is not necessary to prove the violation of a statutory or legal rule for another person to be held liable.

[98] Applying this principle, we cannot accept that the appellants are exempt from civil liability because their liability has not been proven under s. 45 of the Competition Act. The Court must consider the liability of the appellants under the broad standards of art. 1457 of the C.C.Q., not the narrower standards of s. 45 of the Competition Act, a penal provision.

8. The "reasonable expectations" of the Representatives, and all Quebec consumers, when purchasing Defendants' products or services was not to be exposed to dangerous levels of a toxic and addictive pollutant, namely non-ionizing radiation;

9. The manufacturers and vendors obligations are of result both pursuant to the *Consumer Protection Act* and the *Civil Code of Quebec*.

[70] Article 1003(*a*) of the *C.C.P.* requires that "the recourses of the members raise identical, similar or related questions of law or fact".

10. [71] According to the appellants, the only question common to the members of the proposed group is whether the appellants committed a fault. They argue that, given the range of products containing DRAM, the large number of distribution chains and their complexity, the inherent differences between the direct and indirect purchasers, and the nature of the aggregate claim, it would be impossible for the trial judge to establish an injury or a causal connection on a group-wide basis.
11. [72] This perspective is flawed. There is no requirement of a fundamental identity of the individual claims of the proposed group's members. At the authorization stage, the threshold requirement for common questions is low. As the Court of Appealnoted in *Collectif de défense des droits de la Montérégie (CDDM) v. Centre hospitalier régional du Suroîtdu Centre de santé et de services sociaux du Suroît*,2011 QCCA 826 (CanLII), at para. 22, even a single identical, similar or related question of law would be sufficient to meet the common questions requirement set out in art. 1003(*a*), provided that it is significant enough to affect the outcome of the class action.

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[74] In applying these principles to the case at bar, the motion judge and the Court of Appeal correctly held that there are no differences between the members of the proposed group at the authorization stage that adversely affect the unity of the group as regards the common questions requirement. All the members, regardless of their individual circumstances, have a common interest both in proving the existence of a price-fixing conspiracy and in maximizing the amount of the resulting unlawful overcharge. Any disparity between the direct purchasers' relationships with the appellants and those of the indirect purchasers does not alter the fact that they have a collective interest in these questions of fault and liability. Any conflicts of interests can be addressed at trial.

Failure to Warn

A second related category of liability, both under consumer protection legislation and at common law, is the failure to warn or to sufficiently warn of the danger posed or to provide instruction as to the manner of safe use of a product. The prevention of incorrect or dangerous use is one of the principle objectives of the duty to inform.[44] It is a continuing obligation as the manufacturer is required to inform users of risks even after the product is sold, *Hollis v Dow Corning,* an application of the precautionary principle.[45]

Fault-based Liability and Abuse of right: Articles 6, 7, 1457-8 and 1467-9 C.C.Q.

6. Every person is bound to exercise his civil rights in accordance with the requirements of good faith.

7. No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner, and therefore contrary to the requirements of good faith.

CONDITIONS OF LIABILITY
§ 1. — General provisions

1457. Every person has a duty to abide by the rules of conduct incumbent on him, according to the circumstances, usage or law, so as not to cause injury to another.

Where he is endowed with reason and fails in this duty, he is liable for any injury he causes to another by such fault and is bound to make reparation for the injury, whether it be bodily, moral or material in nature.

[44]Baudouin, Deslauriers and Moore, *infra* at para. 2-354 citing *Thibault c. St. Jude Medical Inc*. J.E. 2004-1924.
[45] Ibid at para.2-355.

> He is also bound, in certain cases, to make reparation for injury caused to another by the act, omission or fault of another person or by the act of things in his custody.
>
> **1458.** Every person has a duty to honour his contractual undertakings.
>
> Where he fails in this duty, he is liable for any bodily, moral or material injury he causes to the other contracting party and is bound to make reparation for the injury; neither he nor the other party may in such a case avoid the rules governing contractual liability by opting for rules that would be more favourable to them.
>
> **(1467.**to **1469** reproduced above)

Another common issue is whether Defendants' EMF emissions constitute an attractive nuisance or fall within the civil law definition of a trap, defined for the Plaintiff/Petitioners by Mr. Justice Beetz in *Rubis* c. *Grey Rocks* as:

> The infinite variety of factual situations makes it impossible to define exactly what constitutes a trap. However, we can say that a trap is in general an intrinsically dangerous situation. The danger should not be apparent but hidden: for example, a door opening not onto a regular stairway, as might be expected, but onto vertical steps like those of a scaffold: *Drapeau v. Gagné*, [1945] Que. K.B. 303; [46]

Abuse of rights was defined by the Supreme Court in *St. Lawrence Cement*:

> [24] Article 7 *C.C.Q.* thus gives effect to the principle of the relativity of rights, which applies to rights as absolute in theory as the right of ownership. According to this principle, one person's right necessarily limits that of another person, and to uphold all such rights concurrently will reduce the absoluteness of each (A. Nadeau and R. Nadeau, *Traité pratique de la responsabilité civile délictuelle* (1971), at pp. 227-28). This is true of all rights that are protected in civil law. Such rights remain limited by their coexistence and by the fact that they conflict with one another. As Albert Mayrand writes, "[a]ll rights have limitations; when a person under the pretense of exercising an actual right goes beyond the sphere of that right, it is said that he has committed an abuse of right" ("Abuse of Rights in France and Quebec" (1974), 34 *La. L. Rev.* 993, at p. 993; see also J. Ghestin and G. Goubeaux, *Traité de droit civil — Introduction générale* (3rd ed. 1990), at p. 678).
>
> [25] Article 7 *C.C.Q.* places two limits on rights: a right may be exercised neither with the intent of causing injury nor in an excessive and unreasonable manner.

13. The Court then points out that in contradistinction to civil liability pursuant to Arts. 1457 and 1458 C.C.Q., the presumption that the act is lawful must first be rebutted by proving abuse. "Violation of a standard of conduct is therefore inextricably linked to the concept of abuse of rights"[47].

[46] [1982] 1 S.C.R. 452 at 466.
[47] *St. Lawrence Cement* at para 29.

14. An owner causing abnormal annoyances without the intent to injure or excessive and unreasonable conduct does not abuse his or her rights as there is no wrongful conduct, as "abuse" implies blame[48]. A finding of abnormal annoyances is insufficient to establish abuse of right. However, the owner who commits fault *is* liable even where the damage is insufficient to meet the standard of abnormal annoyances.

15. Environmental standards place limits on the exercise of rights[49]. Plaintiffs allege the breach of sections 1 and 46.1 of the Quebec *Charter* and sections 19.1, 20, 21 and 22 of the *Environment Quality Act*.

16. Relying in part on *Brochu* a second authorized addiction class action is *Letourneau c. JTI-MacDonald Corp*. 2005 CanLII 4070. Failure to warn of an inherently hazardous product forms part of the claim. As well, denial of the risk via "false science" and influence of government "regulations" were found by the Honorable Justice Pierre Jasmin:

> [51] Elles n'ont jamais communiqué, à tout le moins de façon directe, toute l'information sur les risques et les dangers de la consommation du tabac. Elles ont toujours prétendu que le tabac n'était pas nocif ou, à tout le moins, qu'il existait une controverse scientifique sur le sujet. Elles ont élaboré des stratégies de mise en marché pour tenter d'établir des associations dans l'esprit des consommateurs pour renforcer l'acceptabilité sociale de l'usage du tabac.
>
> ....
>
> [54] De plus, comme le démontrent les témoignages de dirigeants des intimées devant le Comité Isabelle (1968-1969) ou devant le Comité législatif de la Chambre des communes du Canada qui étudiait le projet de loi interdisant la publicité en faveur des produits du tabac et réglementant leur étiquetage (P.L.C-51) (1987-1988), la position des intimées a été des plus ambiguës. Elles n'ont jamais reconnu de façon claire, précise et non équivoque que le tabac représentait un danger pour la santé. Si on se fie aux témoignages de leurs représentants, même en ce qui concerne l'usage du tabac par les femmes enceintes, il n'y aurait aucune preuve scientifique des méfaits pour le fœtus et le tout ferait l'objet d'une controverse.
>
> [55] Le cancer est une cause importante de décès.
>
> [56] Le tabac peut aggraver l'état de santé des consommateurs.

"So dangerous an element as electricity"

The electrification cases hold those distributing electricity or selling electric products to a higher duty of care given the inherently dangerous nature of electricity. "Cette obligation est proportionelle au danger inherent a l'utilization du bien".[50]Electricity, as a moveable, falls within the ambit of Art. 1468 C.C.Q. by operation of Art. 906 C.C.Q., as noted by Baudoin, Deslauriers and Moore at para. 2-382.

[48] Ibid at para. 30.
[49] Ibid at para 32.
[50]Baudouin, Deslauriers et Moore, *La responsabilité du fabriquant* (2014) para. 2-377;

In *The Royal Electric co.* vs. *Hévé* [1902] 32 S.C.R. 462, the supply of electric light was held by the Supreme Court of Canada to be an "operation of a dangerous nature", requiring the "exercise of a high degree of skill, care and foresight". Mr. Justice Taschereau held:

> They cannot have taken the high degree of care that the law demands from a company trading in so dangerous an element as electricity[51].

Given the particularly dangerous nature of electricity, the court presumed the liability of the Defendant, which it failed to rebut:

> I fully agree with the law as stated by Mr. Justice Hall that the defendants, while dealing in and disposing of a commodity of so recognised a dangerous character as electricity, are bound to a supervision and a diligence proportionate to the peculiar character and danger of the commodity to which they deal[52].

Their imprudence constituted negligence.

17. The principle was upheld by the Supreme Court of Canada in *Vandry* vs. *The Quebec Railway Light, Heat and Power co.* [1916] 53 S.C.R. 72 where responsibility *without fault* for failure to ground a transformer was held pursuant to Art. 1054 C.C. Mr. Justice Idington held:

> There could be found no excuse for attempting to supply electric current without testing to see if the fixtures were sufficient to ensure safety when protected by means of grounding. If so found it could and should protect by grounding. Otherwise it should, out of regard to the lives and property of others, refuse to turn its dangerous machine's destructive forces upon the property[53].

Mr. Justice Brodeur held that Defendants failed to rebut their presumed liability:

> Il est indéniable que l'accident a été causé par un courant électrique dont elle avait la garde et elle a en vertu de l'article 1054 du code civil engagé sa responsabilité, à moins qu'elle ne prouve qu'elle n'a pu empêcher le fait qui a causé les dommages.
>
> Il est du devoir d'une compagnie qui exploite un commercé d'une nature aussi dangereuse de prendre toutes les précautions nécessaires pour empêcher tout accident qui pourrait se produire, ainsi que cette cour l'a décidé dans la cause de *Royal Electric Company v. Hévé*[54].

18. On appeal the House of Lords held that the presumption of liability for things under one's care could *only* be rebutted by proof of "inability to prevent the damage"[55]. The justification for this absolute liability without fault is "[recent] growth of scientific inventions and their exploitation"[56]. Lord Sumner concludes:

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[51] Ibid at page 466. As concern traps causing electrocution, *Hydro-Québec c. Boyer* [1985] R.L. 165 para. 30 and 37.
[52] Ibid at page 470.
[53] At page 87
[54] At page 124
[55] *Quebec Railway Light Heat and Power co.* v. *Landry* [1920] 52 D.L.R. 136 [H.L.] at 143-4, per Lord Sumner
[56] Ibid at page 144

> [I]t is impossible to say that the escape of electricity into customers' houses and the consequent damage […] was a necessary incident of the exercise of the power to distribute high tension current[57].

19. In *Les Soeurs de la Charite de Quebec c. Dame Paradis*, 1966 B.R. 616, the Court of Appeal applied the presumption of liability in a case of electrocution due to lack of insulation. The Defendant was presumed to know of the defect in the thing under its control, *electric current*, and as no proof was made that the damage was unavoidable, the Sisters were held liable, though 15% of the liability was attributed to the victim.

20. Baudoin, Deslauriers and Moore[58] argue one basis for liability are inherently dangerous products and those with hidden defects which render the manufacturers and vendors liable. As concerns electricity they refer to cases of improper insulation *(Provencher c. Adressograph-Multigraph du Canada Ltee*, [1984] C.S. 290; J.E. 85-510 (C.A.), fire in a dryer caused by arcing due to improperly insulated wiring (*Citadelle c. Camco. Ltd*, 2007 QCCA 1763) and a fire in an electric massaging bed (*Groupe Ledor inc. c. Usine Rotec inc*., 2013 QCCS 6975). The latter case cites the comments of the Minister of Justice for Articles 1468 and 1469 C.C.Q.:

> [58] Finalement, les obligations de ces articles ne sont pas seulement extracontractuelles comme en font foi les commentaires du Ministre de la justice lors de l'adoption du *Code civil du Québec* :
>
> « Cet article, de droit nouveau, énonce des règles destinées à protéger le public contre les défauts de sécurité de produits manufacturés ou fabriqués. Le premier alinéa impose ainsi clairement au fabricant de la totalité ou d'une partie d'un bien meuble, et donc à tout participant au processus de fabrication du bien, l'obligation de réparer tout préjudice, corporel, moral ou matériel, causé à autrui par un défaut de sécurité du bien. » MINISTÈRE DE LA JUSTICE, *Commentaires* du *ministre de la Justice - Le Code civil du Québec*, t. 1, Québec, Les Publications du Québec, 1993.

21. The issues of an inherently dangerous consumer product, tobacco, and the burden of proof on Plaintiffs to prove causality for health damages were discussed by the Honorable Mr. Justice Riordon in *Letourneau* as follows:

> [70] Même si le Tribunal rejette le témoignage de MM. Flaherty et Lacoursière pour les motifs qui seront exposés plus loin, il n'y a pas de raison de ne pas tenir compte de cette assertion puisqu'elle donne une idée de la connaissance qu'avait la compagnie de la situation. Il tombe pratiquement sous le sens que, bien vite, les compagnies en ont su d'avantage que le grand public sur le produit du grand public, puisque les premières étaient prévenues à ce sujet par leur personnel scientifique et par leurs sociétés affiliées. Le témoignage de ces experts amène à conclure que les compagnies étaient parfaitement au fait des risques et des dangers du tabagisme dès le début de la période visée.
>
> [71] Le Tribunal reconnaît que ce qui précède n'est pas lié directement aux maladies en cause dans le dossier Blais. La plupart du temps, le Dr Greene et M. Gibb parlent de « maladie » de manière générale, et les historiens ne sont pas plus précis. Quoi qu'il en soit, le Tribunal n'y voit pas d'empêchement à en déduire la connaissance qu'avait ITL des maladies en cause. Personne ne peut raisonnablement douter que n'importe quel cadre de

[57] Ibid at pages 147-8, confirmed by *La Securité Nationale c. Rondeau* 1993 CanLII 4072 (QCCA).

[58] *La responsabilite du fabricant et du vendeur- L'evolution historique*, Yvon Blais, 2014 paras. 2-351 to 2-363

> compagnie de tabac à l'époque aurait inclus le cancer du poumon, le cancer de la gorge et l'emphysème parmi les maladies vraisemblablement causées par le tabagisme.
>
> [72] Le Tribunal conclut donc que pendant toute la période visée, ITL connaissait les risques et dangers que ses produits provoquent l'une des maladies en cause.
>
> [73] Non seulement cette conclusion répond par l'affirmative à la deuxième question commune dans le cas d'ITL, mais elle élimine du même coup les moyens de défense qu'offre l'article 1473. Par conséquent, dans la mesure où ITL est trouvée coupable de la faute consistant à vendre un produit vicié par un défaut de sécurité, la seule défense possible est de prouver que les membres du groupe connaissaient ou auraient pu connaître ou prévoir le danger.

(b) a breach of the "right to live in a healthful environment in which biodiversity is preserved" provided for by Art. 46.1 of the Quebec *Charter*[59];

(c) A breach of the rights to Life, Liberty and Security of Person

Punitive damages pursuant to the Quebec *Consumer Protection Act*, *The Canadian Charter of Rights and Freedoms* and the Quebec *Charter of Human Rights and Freedoms* C-12

(b) *Injunctive relief*

In *Canada Paper Co.* v. *Brown* [1922] 63 S.C.R. 243 the neighbor of a pulp and paper mill sued the mill's operator over noxious odors and fumes and sought an injunction. Anglin J., writing for himself and Davies C.J. refer to the concept of nuisance and confirmed that the annoyances were in excess of anything that could be justified in the context of neighborhood relations. Brodeur J. relied both on the abuse of right of ownership and on excessive annoyances caused by the odors[60].Injunction to cease polluting was recognized by the Honorable Mr. Justice Carl Lachance recognized the validity of such an order, once expert evidence could be heard in *Regroupement des citoyens du quartier c. Alcoa* 2007 QCCS 2691:

> [108] La sixième conclusion vise à forcer Alcoa « *de cesser d'émettre des HAP au-delà d'un niveau que déterminera le Tribunal après consultation d'un expert indépendant* ».
> […]
>
> [113] Les arguments de faits et de droit soulevés par la requérante semblent sérieux et, en cette matière où la santé des gens peut être mise en péril au point qu'une étude biologique est en cours, nous estimons que la conclusion est recevable à ce stade-ci.

[59] This claim also includes the claim for damage to farm animals caused by stray voltage. Stray voltage also constitutes neighborhood annoyance.
[60] *Saint Lawrence Cement* at para. 44.

[114] Lors de l'audition au fond, le Tribunal déterminera avec l'éclairage de la preuve si les émissions respectent les lois et pourra, en conséquence, accorder, modifier ou refuser cette demande d'injonction.

(c) *Medical Monitoring*

22. The cost of medical monitoring in the present matter should be considered a legitimate claim based on U.S. environmental law precedent. Medical monitoring has not to our knowledge been recognized in Quebec as free healthcare is available. The situation is different as concerns Petitioners' claim as they and class members suffer from a non-recognized medical ailment. In particular, the Minister of Health instructed doctors not to find a causal relationship between EMF exposure and any health damages (Exhibit P-4). As such, the reason for which medical monitoring has not been recognized is inapplicable in the present circumstances, while the reasons for its being ordered in American environmental, pharmaceutical and implant jurisprudence is operative.

NEGLIGENT MISPRESENTATION AGAINST APPLE

The Apple Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

Apple had a duty to communicate accurate information to Plaintiffs about the RF exposure from their iPhones.

Defendant intentionally misrepresented the safety of affected Galaxy phones, assuring Class Members that they had been adequately tested, and were safe to use on and in close proximity to their bodies at all hours of the day and night, despite information within its knowledge indicating that the RF exposure was linked to cancer and other health risks.

Even when repeatedly faced with a wealth of warnings from scientists and the dangers associated with RF exposure from smartphones, Defendant continues to make no effort to protect or warn current or prospective owners of its affected Galaxy phones. Rather, Defendant has turned a blind eye to these inconvenient truths, opting to double-down on statements that the phones are safe to use without restriction on placement.

Plaintiffs, in reliance on Defendant's claims regarding the ways in which the affected Galaxy phoneswere safe to and should be used, continued to use and place the affected Galaxy phones on and in close proximity to their bodies.

Plaintiffs' reliance was justified given Defendant's superior position of authority and knowledge.

As a result, on information and belief, Plaintiffs have been exposed to harmful levels of RF radiation that could negatively affect their health for many years to come.

Plaintiffs and Class members are thus entitled to the establishment of a medical monitoring program that includes, among other things: (i) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and (2) Notifying all Class members in writing that they

may require frequent medical monitoring necessary to diagnose conditions resulting from RF radiation exposure.

NEGLIGENT MISPRESENTATION AGAINST SAMSUNG

The Samsung Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

Samsung had a duty to communicate accurate information to Plaintiffs about the RF exposure from their iPhones.

Defendant intentionally misrepresented the safety of the iPhones, assuring Class Members that the iPhones had been adequately tested, and were safe to use on and in close proximity to their bodies at all hours of the day and night, despite information within its knowledge indicating that the RF exposure was linked to cancer and other health risks.

Even when repeatedly faced with a wealth of warnings from scientists and the dangers associated with RF exposure from smartphones, Defendant continues to make no effort to protect or warn current or prospective owners of its iPhones. Rather, Defendant has turned a blind eye to these inconvenient truths, opting to double-down on statements that the iPhones are safe to use without restriction on placement.

Plaintiffs, in reliance on Defendant's claims regarding the ways in which the iPhone was safe to and should be used, continued to use and place the iPhone on and in close proximity to their bodies.

Plaintiffs' reliance was justified given Defendant's superior position of authority and knowledge.

As a result, on information and belief, Plaintiffs have been exposed to harmful levels of RF radiation that could negatively affect their health for many years to come.

Plaintiffs and Class members are thus entitled to the establishment of a medical monitoring program that includes, among other things: (i) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and (2) Notifying all Class members in writing that they may require frequent medical monitoring necessary to diagnose conditions resulting from RF radiation exposure.

NEGLIGENCE AGAINST APPLE

The Apple Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

Apple owed Plaintiffs a duty to exercise reasonable care in selling smartphones that emitted RF radiation at safe levels when placed on or in close proximity to their bodies.

Defendant failed to exercise reasonable care when, after knowingly designing and manufacturing iPhones whose RF exposure exceeded safe limits when used on or in close proximity to the human body,

it did not take any measures to warn or protect Plaintiffs and Class members from RF exposure and, instead, covered up any risks by misrepresenting the safety of the smartphones.

Defendant knew or should have known that Plaintiffs and the Class members would foreseeably suffer injury from RF radiation exposure as a result of Defendant's failure to exercise ordinary care.

Defendant's negligence proximately caused Plaintiffs' and the Class members' damages and their increased risk of harm as documented herein.

Plaintiffs and Class members are therefore entitled to the establishment of a medical monitoring program that includes, among other things: (1) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and (2) Notifying all Class members in writing that they may require frequent medical monitoring necessary to diagnose conditions resulting from RF radiation exposure.

NEGLIGENCE AGAINST SAMSUNG

The Samsung Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth here.

Samsung owed Plaintiffs a duty to exercise reasonable care in selling smartphones that emitted RF radiation at safe levels when placed on or in close proximity to their bodies.

Defendant failed to exercise reasonable care when, after knowingly designing and manufacturing affected Galaxy phones whose RF exposure exceeded safe limits when used on or in close proximity to the human body, it did not take any measures to warn or protect Plaintiffs and Class members from RF exposure and, instead, covered up any risks by misrepresenting the safety of the smartphones.

Defendant knew or should have known that Plaintiffs and the Class members would foreseeably suffer injury from RF radiation exposure as a result of Defendant's failure to exercise ordinary care.

Defendant's negligence proximately caused Plaintiffs' and the Class members' damages and their increased risk of harm as documented herein.

Plaintiffs and Class members are therefore entitled to the establishment of a medical monitoring program that includes, among other things: (1) Establishing a trust fund, in an amount to be determined, to pay for the medical monitoring of all Class members; and (2) Notifying all Class members in writing that they may require frequent medical monitoring necessary to diagnose conditions resulting from RF radiation exposure.

VIOLATIONS OF THE CANADIAN COMPETITION ACT (CCA)

The Apple Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Apple Plaintiffs on behalf of the nationwide Apple Class.

The Canadian Competition Act (CCA) proscribes acts of unfair competition, including any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising. Defendant's conduct, as described herein, was and is in violation of the CCA.

Defendant's conduct violates the CCA in at least the following ways: Defendant failed to disclose that the Affected Phones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant intentionally and knowingly misrepresented material facts regarding the Affected Phones with an intent to mislead Plaintiffs and the Class.

In purchasing or leasing the Affected Phones, Plaintiffs and the other Class members were deceived by Defendant's failure to disclose that the phones emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels.

Plaintiffs relied upon Defendant's false misrepresentations when purchasing their phones and as a result suffered an injury-in-fact and lost money.

Plaintiffs relied on Defendant's material representations and/or omissions that the Affected iPhones they were purchasing were safe to use and free from defects.

Defendant owed Plaintiffs and the Class a duty to disclose the truth about its the RF radiation exposure from its Affected Phones, because Defendant: (i) possessed exclusive knowledge of the levels of RF radiation exposure emitted from its phones; and (ii) misrepresented and/or made incomplete representations concerning the levels of RF radiation exposure when the phones were used or carried on or in close proximity to the body.

Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiffs and the other Class members overpaid for their smartphones, and/or their smartphones have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

Defendant's violations present a continuing risk to Plaintiffs as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these smartphones, would not have purchased or leased these smartphones at the prices they paid, and/or would have purchased or leased less expensive alternative cellphones that did not emit RF radiation exposure at unsafe levels.

Accordingly, Plaintiffs and the other Class members have suffered injury in fact, including lost money or property, as a result of Defendant's misrepresentations and omissions.

Plaintiffs request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including replacement of the devices with safe equivalent phones of equivalent functionality, restitution and/or restitutionary disgorgement, punitive damages and for such other relief as may be appropriate.

VIOLATIONS OF THE CANADIAN COMPETITION ACT AGAINST SAMSUNG

The Samsung Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Samsung Plaintiffs on behalf of the nationwide Samsung Class.

Defendant's conduct violates the CCA in at least the following ways: Defendant failed to disclose that the Affected Galaxy Phones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant intentionally and knowingly misrepresented material facts regarding the Affected Phones with an intent to mislead Plaintiffs and the Class.

In purchasing or leasing the Affected Phones, Plaintiffs and the other Class members were deceived by Defendant's failure to disclose that the phones emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels.

Plaintiffs relied upon Defendant's false misrepresentations when purchasing their phones and as a result suffered an injury-in-fact and lost money.

Plaintiffs relied on Defendant's material representations and/or omissions that the Affected Phones they were purchasing were safe to use and free from defects.

Defendant owed Plaintiffs and the Class a duty to disclose the truth about its the RF radiation exposure from its Affected Phones, because Defendant: (i) possessed exclusive knowledge of the levels of RF radiation exposure emitted from its phones; and (ii) misrepresented and/or made incomplete representations concerning the levels of RF radiation exposure when the phones were use or carried on or in close proximity to the body.

Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiffs and the other Class members overpaid for their smartphones, and/or their smartphones have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant' misrepresentations and omissions.

Defendant's violations present a continuing risk to Plaintiffs as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these smartphones, would not have purchased or leased these smartphones at the prices they paid, and/or would have purchased or leased less expensive alternative cellphones that did not emit RF radiation exposure at unsafe levels.

Accordingly, Plaintiffs and the other Class members have suffered injury in fact, including lost money or property, as a result of Defendant's misrepresentations and omissions.

Plaintiffs request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and members of the Class any money it acquired by unfair competition, including replacement of the devices with safe equivalent phone with similar functionality, restitution and/or restitutionary disgorgement, as well as punitive damages; and for such other relief as may be appropriate.

VIOLATIONS OF THE QUEBEC CONSUMER PROTCTION ACT AGAINST APPLE

The Apple Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Apple Plaintiffs on behalf of the nationwide Apple Class.

Defendant violated the Quebec Consumer Protection Act (CPA) in numerous respects. Defendant failed to disclose that the Affected Phones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant intentionally and knowingly misrepresented material facts regarding the Affected Phones with an intent to mislead Plaintiffs and the Class.

In purchasing or leasing the Affected Phones, Plaintiffs and the other Class members were deceived by Defendant's failure to disclose that the phones emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels.

Plaintiffs and Class members reasonably relied upon Defendant's false misrepresentations and omissions. They had no way of knowing that Defendant's representations were false and gravely misleading. Plaintiffs and Class members did not, and could not, unravel Defendant's deception on their own.

Defendant knew or should have known that its conduct violated the CPA.

Defendant owed Plaintiffs and the Class a duty to disclose the truth about its the RF radiation exposure from its Affected Phones, because Defendant: (i) possessed exclusive knowledge of the levels of RF radiation exposure emitted from its phones; and (ii) misrepresented and/or made incomplete representations concerning the levels of RF radiation exposure when the phones were used or carried on or in close proximity to the body.

Plaintiffs and the other Class members relied on Defendant's material representations and/or omissions that the Affected iPhones they were purchasing were safe to use and free from defects.

Defendant's conduct proximately caused injuries to Plaintiffs and the other Class members.

Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiffs and the other Class members overpaid for their smartphones, and/or their smartphones have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

Defendant's misrepresentations and omissions alleged herein caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Phones.

Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these smartphones, would not have purchased or leased these smartphones at the prices they paid, and/or would have purchased or leased less expensive alternative cellphones that did not emit RF radiation exposure at unsafe levels.

Plaintiffs were deceived by Apple's failure to disclose the true nature of its Smartphones.

Plaintiffs demand judgment against Defendant under the CPA for injunctive relief as may be appropriate and an award of attorneys' fees and costs.

Defendants were given notice of its violations of the CLRA pursuant to CAL. CIV. CODE § 1782(a). The notice was transmitted to Defendants on August 23, 2019.

VIOLATIONS OF THE QUEBEC CONSUMER PROTECTION ACT AGAINST SAMSUNG

The Samsung Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Samsung Plaintiffs on behalf of the nationwide Samsung Class.

Defendant violated the Quebec Consumer Protection Act ("CPA") in numerous respects.

Defendant failed to disclose that the Affected Phones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant intentionally and knowingly misrepresented material facts regarding the Affected Phones with an intent to mislead Plaintiffs and the Class.

In purchasing or leasing the Affected Phones, Plaintiffs and the other Class members were deceived by Defendant's failure to disclose that the phones emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels.

Plaintiffs and Class members reasonably relied upon Defendant's false misrepresentations and omissions. They had no way of knowing that Defendant's representations were false and gravely misleading. Plaintiffs and Class members did not, and could not, unravel Defendant's deception on their own.

Defendant knew or should have known that its conduct violated the CPA.

Defendant owed Plaintiffs and the Class a duty to disclose the truth about its the RF radiation exposure from its Affected Phones, because Defendant: (i) possessed exclusive knowledge of the levels of RF radiation exposure emitted from its phones; and (ii) misrepresented and/or made incomplete representations concerning the levels of RF radiation exposure when the phones were used or carried on or in close proximity to the body.

Plaintiffs and the other Class members relied on Defendant's material representations and/or omissions that the Affected Phones they were purchasing were safe to use and free from defects.

Defendant's conduct proximately caused injuries to Plaintiffs and the other Class members.

Plaintiffs and the other Class members were injured and suffered ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of Defendant's conduct in that Plaintiffs and the other Class members overpaid for their smartphones, and/or their smartphones have suffered a diminution in value. These injuries are the direct and natural consequence of Defendant's misrepresentations and omissions.

Defendant's misrepresentations and omissions alleged herein caused Plaintiffs and the other Class members to make their purchases or leases of their Affected Phones.

Absent those misrepresentations and omissions, Plaintiffs and the other Class members would not have purchased or leased these smartphones, would not have purchased or leased these smartphones at the prices they paid, and/or would have purchased or leased less expensive alternative cellphones that did not emit RF radiation exposure at unsafe levels.

Plaintiffs were deceived by Samsung's failure to disclose the true nature of its Smartphones.

Plaintiffs demand judgment against Defendant under the CPA for injunctive relief as may be appropriate and an award of attorneys' fees and costs.

VIOLATIONS OF THE CANADIAN COMPETITION ACT AND THE QUEBEC CONSUMER PROTECTION ACT AGAINST APPLE

Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Apple Plaintiffs on behalf of purchasers who are members of the Apple Class.

Publication Notice

6 . . Publication of Notice: in Quebec, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

Defendant failed to disclose that the that the Affected iPhones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant caused to be made or disseminated throughout Quebec, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to Defendant, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

Defendant has violated the Consumer Protection Act because the misrepresentations and omissions regarding the functionality, reliability, and safety of the Affected iPhones as set forth in this Complaint were material and likely to deceive a reasonable consumer.

Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices.

In purchasing or leasing their Affected iPhones, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to the functionality, reliability, and safety of the Affected iPhones.

Defendant's representations turned out not to be true because the Affected iPhones emit unsafe levels of RF radiation exposure when used or carried on or in close proximity to the body.

Had Plaintiffs and the other Class members known this, they would not have purchased or leased their smartphones and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their smartphones.

All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business.

Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in Quebec and nationwide.

The facts concealed and omitted by Defendant to Plaintiffs and the other Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Affected iPhones or pay a lower price. Had Plaintiffs and the other Class members known of the higher RF radiation exposure at the time they purchased or leased their Affected iPhones, they would not have purchased or leased those smartphones, or would have paid substantially less than they did. Plaintiffs' and the other Class members' injuries were proximately caused by Defendant's fraudulent and deceptive business practices.

Plaintiffs, individually and on behalf of the other Class members, request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Class members any money Defendant acquired by unfair competition, including restitution, replacement of the devices with safe equivalent phones and/or restitutionary disgorgement, punitive damages and for such other relief as may be appropriate.

VIOLATIONS OF THE CANADIAN COMPETITION ACT ADVERTISING LAW AGAINST SAMSUNG

The Samsung Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Samsung Plaintiffs on behalf of the nationwide Samsung Class.

Plaintiffs incorporate by reference all paragraphs as though fully set forth herein.

This claim is brought by the Samsung Plaintiffs on behalf of purchasers who are members of the Samsung Class.

Publication Notice

. . . from Quebec, in any newspaper or other publication, or any advertising device, . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

Defendant failed to disclose that the that the Affected Galaxy Phones (i) emitted RF radiation exposure when used or carried on or in close proximity to the human body at unsafe levels; and (ii) that the RF radiation exposure was far worse than a reasonable consumer would expect given the premium paid for these smartphones over a cellphone.

Defendant caused to be made or disseminated in Quebec, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the

exercise of reasonable care should have been known to Defendant, to be untrue and misleading to consumers, including Plaintiffs and the other Class members.

Defendant has violated the CPA because the misrepresentations and omissions regarding the functionality, reliability, and safety of the Affected Phones as set forth in this Complaint were material and likely to deceive a reasonable consumer.

Plaintiffs and the other Class members have suffered an injury in fact, including the loss of money or property, as a result of Defendant's unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected Phones, Plaintiffs and the other Class members relied on the misrepresentations and/or omissions of Defendant with respect to the functionality, reliability, and safety of the Affected Phones.

Defendant's representations turned out not to be true because the Affected Phones emit unsafe levels of RF radiation exposure when used or carried on or in close proximity to the body.

Had Plaintiffs and the other Class members known this, they would not have purchased or leased their smartphones and/or paid as much for them. Accordingly, Plaintiffs and the other Class members overpaid for their smartphones.

All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendant's business.

Defendant's wrongful conduct is part of a pattern or generalized course of conduct that is still perpetuated and repeated, both in Quebec and nationwide.

The facts concealed and omitted by Defendant to Plaintiffs and the other Class members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease the Affected Phones or pay a lower price.

Had Plaintiffs and the other Class members known of the higher RF radiation exposure at the time they purchased or leased their Affected Phones, they would not have purchased or leased those smartphones, or would have paid substantially less than they did.

Plaintiffs' and the other Class members' injuries were proximately caused by Defendant's fraudulent and deceptive business practices.

Plaintiffs, individually and on behalf of the other Class members, request that this Court enter such orders or judgments as may be necessary to restore to Plaintiffs and the other Class members any money Defendant acquired by unfair competition, including restitution, replacement of the devices with safe equivalent phones and/or restitutionary disgorgement, punitive damages and for such other relief as may be appropriate.

VIOLATION OF CONSUMER PROTECTION LEGISLATION AGAINST APPLE

Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

At all times relevant hereto, Defendant designed, manufactured, produced, marketed and/or sold the Affected iPhones.

575(2) the facts alleged appear to justify the conclusions sought;

The threshold here is also low; a *prima facie* case will suffice[61]. Hearsay evidence, including scientific studies are to be considered[62].

In *Letourneau* the second criteria was discussed as follows:

b) Les faits allégués justifient-ils les conclusions recherchées?

> [61] Il est utile de rappeler encore une fois qu'au niveau des autorisations, le Tribunal n'a pas à se prononcer sur le droit mais sur l'apparence de droit. En somme, il s'agit de déterminer si *prima facie*, il est possible ou vraisemblable que le juge du fond en arrive à la conclusion recherchée, c'est-à-dire la responsabilité des intimées, s'il est d'avis que les faits allégués ont été prouvés à sa satisfaction.
>
> [62] Ainsi, tant en vertu du C.c.B.C. que du C.c.Q., les intimées pourraient être tenues responsables en vertu de leur obligation de renseignement qu'elles n'auraient pas remplie adéquatement.
>
> [63] Les intimées prétendent que depuis plusieurs années, les fumeurs sont très bien informés des méfaits de la cigarette pour la santé. Or, dans leurs allégations, les requérants insistent sur le fait que ce ne sont pas les intimées qui ont fourni l'information et que de toute manière l'information que pourraient avoir les fumeurs est tout à fait insuffisante et contrée par de l'information trompeuse véhiculée par la publicité des intimées relativement à leurs différents produits. Ainsi, en présentant leur cigarette douce ou légère comme étant moins dangereuse pour la santé, ou comme pouvant créer moins de dépendance, les intimées pourraient avoir commis une faute.
>
> [64] Il pourrait également y avoir faute civile des intimées si le juge du fond conclut qu'elles ont fait défaut d'informer ou du moins d'informer suffisamment les consommateurs des dangers de leurs produits ou des particularités les rendant impropres à un usage courant.
>
> [65] Il pourrait également conclure que cette obligation de renseignement est continue et particulièrement intense lorsque le bien est intrinsèquement dangereux, comme l'est la cigarette.
>
> [66] Les requérants allèguent que les fautes commises par les intimées sont intentionnelles puisqu'il ne s'agit pas d'un produit utile mais au contraire qui est potentiellement dangereux pour la santé. Ce produit est utilisé pour satisfaire à la dépendance engendrée par la nicotine qui y est contenue et ne peut donc être consommé sans danger puisque la cigarette tue des dizaines de milliers de canadiens à chaque année.

[61] See *Oratoire Saint-Joseph, supra* at para. 42, citing *Infineon* at para. 94.
[62] *Letourneau* at para. 43 citing *Bellavance c. Klein*, 1996 CanLII 6079 (QCCA); *Lambert (Gestion Peggy) c. Ecolait.*

[67] Le juge du fond pourrait donc arriver à la conclusion que les intimées n'ont pas été de bonne foi en mettant sur le marché un produit dangereux et en ne divulguant pas pleinement et de façon précise les risques associés à son usage.

1. Citing at length the duty to inform recognized in *Brochu* as concerns addictive products and in *Hollis* as concerns inherently dangerous ones, Mr. Justice Jasmin held:

[75] Les intimées ont allégué que c'est en toute connaissance de cause que les fumeurs continuent de fumer et qu'elles ne peuvent donc être tenues responsables de ce choix éclairé. Il est utile de reprendre ici quelques observations de l'honorable juge Banford dans la cause *Brochu* c. *La Société des loteries et des jeux du Québec*[18].

> « [57]. *Dans ces conditions, il prétend que l'intimée avait une obligation d'informer les usagers des dangers inhérents à l'utilisation de tels appareils. À cet égard, les prétentions du requérant n'apparaissent pas sans fondement, notamment à la lumière des principes émis par la Cour suprême du Canada dans l'arrêt Banque de Montréal c. Bail ltée, notamment les propos suivants :*
>
> *Le fabricant, par exemple, connaît ou est présumé connaître les risques et dangers créés par son produit, ainsi que les défauts de fabrication dont il peut souffrir. Ces informations exercent une influence certaine dans les décisions du consommateur relativement à l'achat et à l'usage de ces produits. Le plus souvent, le consommateur fait confiance au fabricant à cet égard ou se trouve dans l'impossibilité de connaître ces informations. Il en va de même pour les autres manifestations de l'obligation de renseignement.*
>
> [58] *Ainsi, si un danger de dépendance lié à l'usage des ALV existe n'est-il pas réaliste de plaider, comme le requérant, que pour effectuer un choix éclairé, les usagers doivent en être adéquatement informés?*
>
> [59] *Par conséquent, si un tribunal bien au fait de l'ensemble de la situation en venait à la même conclusion, il pourrait reconnaître le bien-fondé du recours du requérant et condamner l'intimée à compenser le préjudice subi en raison de cette situation. «*

[76] Dans l'arrêt *Hollis* c. *Dow Corning Corporation*, l'honorable juge La Forest apporte les commentaires suivants relativement à l'obligation de mise en garde du fabricant d'un produit qui peut très bien s'appliquer aux intimées :

« Il est bien établi en droit de la responsabilité délictuelle au Canada que le fabricant d'un produit a le devoir de mettre les consommateurs en garde contre les dangers inhérents à son utilisation, dont il est ou devrait être au courant.

[…]

L'obligation de mise en garde vient corriger le déséquilibre des connaissances entre le fabricant et les consommateurs en prévenant ces derniers de l'existence d'un danger et en leur permettant de prendre des décisions éclairées concernant l'utilisation sécuritaire du produit.

[…]

Si l'utilisation ordinaire présente des dangers importants, une mise en garde générale sera rarement suffisante; elle devra au contraire être suffisamment détaillée pour donner au consommateur une indication complète des dangers précis que présente l'utilisation du produit.

[…]

Les tribunaux de notre pays reconnaissent depuis longtemps que les fabricants de produits destinés à être ingérés ou consommés par l'organisme ou à y être autrement placés, et donc fortement susceptibles de causer des dommages aux consommateurs, sont en conséquence soumis à une norme de diligence élevée au regard du droit de la négligence. »

[77] Le juge du fond pourrait vraisemblablement en arriver à la conclusion, s'il est satisfait de la preuve, que les intimées ont commis une faute en négligeant d'informer adéquatement les fumeurs des conséquences précises que comporte l'utilisation des cigarettes, et notamment de la dépendance causée par la nicotine. Il pourrait également en venir à la conclusion que les intimées sont responsables s'il est d'avis qu'elles n'ont pas fait tout en leur possible pour créer une cigarette dont le taux de nicotine est tellement bas ou absent qu'il amènerait une bonne partie des fumeurs à se départir beaucoup plus facilement de leur dépendance et à éventuellement cesser de fumer.

[78] Une telle obligation pourrait sembler exorbitante pour les intimées puisqu'à la longue, ceci pourrait éventuellement mener à la disparition complète de leurs opérations puisqu'il n'y aurait plus de fumeurs. N'est-ce pas là le souhait de tous les gouvernements aux prises avec le coût exorbitant des soins de santé causé par les méfaits du tabac? Quelle personne sensée, fumeuse ou non-fumeuse, pourrait prétendre aujourd'hui que la cigarette a une quelconque utilité. Au contraire, la cigarette est non seulement inutile, mais elle est dangereuse et crée de sérieux problèmes de santé et, dans bien des cas, cause des problèmes tels que l'emphysème, le cancer et les maladies cardiaques.

[79] Peut-on affirmer que les fumeurs qui sont dépendants de la nicotine ont fait un choix éclairé en décidant de fumer et, comme le prétendent les intimées, que c'est en toute connaissance de cause et parce qu'ils le désirent qu'ils continuent à fumer? Peut-on penser que les fumeurs aux prises avec un cancer du poumon, sont heureux de leur sort? Peut-on sincèrement croire que les fumeurs, qui représentent maintenant la minorité, qui sont souvent pointés du doigt, qui doivent se réfugier dans des endroits qui leur sont réservés, ou qui doivent s'entasser les uns sur les autres en plein hiver à l'extérieur pour fumer, sont vraiment heureux de leur sort et souhaitent continuer à être dépendants de la cigarette? Il est permis d'en douter.

[80] Le Tribunal en vient à la conclusion que les faits allégués par les requérants paraissent justifier les conclusions recherchées. (references omitted)

575 (3) the composition of the class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;

The members of the Classes are so numerous as to render the rules of mandate difficult or impracticable. Although the precise number of Class members is unknown, based upon information and belief Plaintiffs allege that the Class contains a million members. The true number of Class members is known by Defendants, however, and, thus, may be notified of the pendency of this action through electronic mail, first class mail and/or by published notice or recall.

575 (4) the class member appointed as representative plaintiff is in a position to properly represent the class members.

The Court of Appeal has recognized that proportionality provides access to justice for related victims who otherwise cannot withstand the cost, complexity and expense of protracted proceedings.

Sibiga, confirmed in *Commission Scolaire de la Jonquière c. Marcil*, at para. 16:

> [144] Limiting the class to consumers who travelled only to the U.S. would, at this stage, be an arbitrary exercise of discretion. The prima facie case that Quebecers travelling to Europe or elsewhere were improperly charged roaming fees is based on the same reasoning that suggests that travelers to the U.S. other than the appellant were improperly charged: the difference is only in the numbers that, in the case of the U.S., makes the inference more probable. Moreover, there seems to be no logical reason why consumers should have to introduce separate class actions for each country in which roaming charges were levied – the respondents seem to suggest, in their written argument, that this is the only way forward. This position strikes me as contrary to the application of the principle of proportionality that a judge is called on to undertake based on article 1003 C.C.P. [63]

In *Abicidan c. Bell*, the Court of Appeal confirmed that the Representative is not required to represent the entirety of the case to be brought:

> [41] Même si le demandeur n'allègue pas avoir vu toutes les publicités après 2012, le Tribunal est d'avis qu'il y a apparence de droit pour toute la période, depuis le début de 2010. En effet, il est suffisant que le demandeur ait vu quelques publicités prétendument trompeuses, et non pas toutes. Autrement, l'exercice d'une action collective pour une même violation alléguée de la LPC serait plutôt illusoire. La question fondamentale touchant la publicité de Bell Canada attaquée est donc ici la même pour tous les membres du groupe visé. La situation se distingue donc ici du cas de l'affaire *Billette c. Groupe*

[63] Cited and relied upon in *Comm. Scolaire de la Jonquière c. Marcil* 2017 QCCA 652 at para. 16. Note this Class Action has 46 Defendants and the Lac Megantic class action had 46, or so.

Dumoulin Électronique Inc.[20], dans lequel la Cour supérieure avait limité l'autorisation d'exercer un recours collectif à la seule faute subie par la requérante, et non pas aux autres causes d'action potentielles que d'autres membres du groupe pourraient avoir.[64]

As concerns toxic tort litigation the refusal to limit the class due to the subjective nature of certain environmental damages was explained in *Arrouart c. Anacolorinc.* 2018 QCCS 650:

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[64]See *Krantz*, 2006(Authorization decision) : [191] Rappelons que le requérant n'a pas à établir qu'il est le représentant «parfait» ou «idéal». Il suffit qu'il puisse assurer «*une représentation adéquate des membres*» (art. 1003 d) C.p.c.).

[192] Pour pouvoir assurer une telle représentation, on recherche idéalement un membre sérieux, qui a une bonne connaissance du dossier, qui s'est impliqué personnellement, qui a un intérêt certain et évident pour la question en litige[50] et qui pourra bien mener le recours. Le représentant n'a toutefois pas à posséder toutes ces qualités, encore moins au même degré.

[193] Dans *Guilbert c. Vacances Sans Frontières ltée****[51]***, la Cour d'appel, sous la plume de M. le juge LeBel, maintenant à la Cour suprême, retenait les critères suivants :

« *[…] Il s'intéresse visiblement au problème, a fait une enquête raisonnable, est au courant des difficultés survenues et il paraît capable de diriger les démarches nécessaires pour mener à bien ces procédures. […] Si, par ailleurs, il se montre apte à gérer le recours, le requérant peut obtenir le statut de représentant.* »

[194] D'autre part, le représentant n'a pas à posséder toutes et chacune des caractéristiques des membres du groupe[52]. Il suffit qu'il en possède certaines. Tant mieux s'il est représentatif.

[195] Rappelons enfin que les tribunaux favorisent une approche libérale dans l'interprétation du critère de l'article 1003 d). Dans l'affaire *Greene c. Vacances Air Transat inc.****[53]***, la Cour d'appel énonce :

« *Il est sans doute souhaitable que le meilleur des membres se voit conférer le statut de représentant. Toutefois, la perfection n'étant pas de ce monde, notre Cour a choisi de ne pas sacrifier la représentation adéquate à l'élitisme afin de favoriser l'exercice du recours collectif. D'ailleurs, les affaires* Guilbert c. Vacances Sans Frontière ltée, Château c. Placements Germarich inc. *et* Lasalle c. Kaplan *illustrent cette tendance de notre Cour à privilégier une approche libérale dans le choix du représentant.* »

[196] En l'espèce, si le requérant n'est pas le représentant «idéal», il n'en est pas loin. Il demeure dans un immeuble immédiatement adjacent à une section de l'autoroute Ville-Marie où les travaux ont eu lieu. Il fait partie du milieu visé par le recours. En fait, il a subi au premier chef les effets du bruit et de la poussière.

[197] Par ailleurs le requérant connaît bien le dossier et toute la problématique qu'il sous-tend. Il a fait des recherches, a rencontré des gens et a même localisé sur une carte l'origine des plaintes qui ont été reçues par Transports Québec en rapport avec les travaux. Il a amassé de façon extensive l'information sur les problèmes qui se sont posés, leur nature et leur origine. Il connaît aussi des questions techniques.

[198] Le requérant n'a pas résidé sur les lieux pendant les premiers mois de 1998 où les travaux ont commencé, mais cela n'est pas requis. Il y a résidé pendant la très grande partie du temps où les travaux ont été effectués et où ils ont apparemment créé bruit et poussière. Le requérant a lui-même été affecté de la plus grande façon par le bruit et la pollution qu'il dénonce.

[80] De plus, la Cour d'appel, dans l'arrêt *Carrier* c. *Québec (Procureur général)* où les requérants invoquaient une pollution sonore provenant de l'autoroute Laurentienne, en accueillant l'appel d'un jugement ayant refusé l'autorisation d'exercer le recours collectif (tel qu'il était désigné alors), se prononçait ainsi :

> [73] Je ne vois aucune erreur de principe dans l'énoncé qui précède qui justifierait l'intervention de la Cour. Il est possible que les nuisances vécues par les membres du groupe le soient à des degrés divers. Il faut cependant se garder de mettre sur le même pied l'autorisation d'un recours collectif et son exécution finale. Il appartiendra au juge du fond de distinguer les questions individuelles que soulève le recours. À cet égard, celui-ci jouit de la discrétion suffisante afin de modifier le groupe en cours d'instance de sorte à prendre en compte certaines caractéristiques révélées par la preuve et ainsi être en mesure de mieux traiter la diversité des réclamations individuelles dont il est saisi. La description définitive du groupe sera également l'une des considérations du jugement final, sans compter que la loi prévoit des modalités particulières concernant l'analyse des réclamations individuelles lorsque le jugement acquiert l'autorité de la chose jugée (articles 1037 et s. *C.p.c.*).
>
> [Référence omise]

[81] C'est le propre des dommages corporels et moraux que leur nature et leur intensité soient évaluées de façon à tenir compte de l'individu qui les subit. Est-ce que la proposition de la demanderesse d'uniformiser la valeur de ces dommages en fonction de la zone occupée par le membre sera retenue par le juge du fond? Les parties auront la prérogative de soumettre davantage d'arguments sur le fond du litige pour mieux orienter sa décision, s'il l'estimait nécessaire.

CLASS ACTION

The Apple Plaintiffs bring this alternative Count against Apple, individually, and on behalf of all similarly situated residents of each of the 50 states for violations of the state consumer protection legislation including:

a. Quebec Consumer Protection Act
b. Quebec Civil Code
c. Quebec Charter
d. Canadian Charter
e. Radiation Emitting Devices Act

The acts, practices, misrepresentations and omissions by Defendant described above, and Defendant's dissemination of deceptive and misleading advertising and marketing materials in connection therewith, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes.

Defendant's acts and practices created a likelihood of confusion or of misunderstanding and misled, deceived or damaged Plaintiffs and members of the Class in connection with the sale or advertisement of the Affected iPhones. Defendant's conduct also constituted the use or employment of deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged in violation of each of the above-enumerated statutes.

Plaintiffs, on behalf of themselves and the other Class members, seek monetary damages, treble damages and such other and further relief as set forth in each of the above enumerated statutes.

VIOLATION OF QUEBEC CONSUMER PROTECTIONACT AGAINST SAMSUNG

Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully set forth herein.

The Samsung Plaintiffs bring this alternative Count against Samsung, individually, and on behalf of all similarly situated residents of Quebec for violations of the Consumer Protection legislation including:

Quebec Consumer Protection Act
Quebec Civil Code
Quebec Charter
Canadian Charter
Radiation Emitting Devices Act

The acts, practices, misrepresentations and omissions by Defendant described above, and Defendant's dissemination of deceptive and misleading advertising and marketing materials in connection therewith, occurring in the course of conduct involving trade or commerce, constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of each of the above-enumerated statutes.

Defendant's acts and practices created a likelihood of confusion or of misunderstanding and misled, deceived or damaged Plaintiffs and members of the Class in connection with the sale or advertisement of the Affected Galaxy Phones. Defendant's conduct also constituted the use or employment of deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged in violation of each of the above enumerated statutes.

Plaintiffs, on behalf of themselves and the other Class members, seek monetary damages, treble damages and such other and further relief as set forth in each of the above enumerated statutes.

UNJUST ENRICHMENT AGAINST APPLE

Plaintiffs repeat and re-allege all preceding paragraphs as if fully set forth herein. The Apple Plaintiffs bring this Count against Apple on behalf of the Apple Class.

At all times relevant hereto, Defendant designed, manufactured, produced, marketed and/or sold the Affected iPhones.

Apple has benefitted from its unlawful acts by receiving payments for the sale of the Affected iPhones.

Plaintiffs and members of the Class conferred upon Defendant, without knowledge that the Affected Phones emitted RF radiation exposure at unsafe levels when used or carried or in close proximity to the human body, benefits that were non-gratuitous.

Defendant appreciated, or had knowledge of, the non-gratuitous benefits conferred upon it by Plaintiffs and members of the Class. Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class, with full knowledge and awareness that, as a result of Defendant's unconscionable wrongdoing, Plaintiffs and members of the Class were not receiving product of high quality, nature, fitness or value that had been represented by Defendant and reasonable consumers would have expected.

Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and members of the Class under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable.

Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiffs and members of the Class is unjust and inequitable, Plaintiffs and members of the Class are entitled to, and hereby seek disgorgement and restitution of Defendant's wrongful profits, revenue, and benefits in a manner established by the Court.

UNJUST ENRICHMENT AGAINST SAMSUNG

Plaintiffs repeat and re-allege all preceding paragraphs as if fully set forth herein. The Samsung Plaintiffs bring this Count against Samsung on behalf of the Samsung Class.

At all times relevant hereto, Defendant designed, manufactured, produced, marketed and/or sold the Affected Galaxy Phones.

Samsung has benefitted from its unlawful acts by receiving payments for the sale of the Affected Galaxy Phones.

Plaintiffs and members of the Class conferred upon Defendant, without knowledge that the Affected Phones emitted RF radiation exposure at unsafe levels when used or carried or in closeproximity to the human body, benefits that were non-gratuitous.

Defendant appreciated, or had knowledge of, the non-gratuitous benefits conferred upon it by Plaintiffs and members of the Class.

Defendant accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class, with full knowledge and awareness that, as a result of Defendant's unconscionable wrongdoing, Plaintiffs and members of the Class were not receiving product of high quality, nature, fitness or value that had been represented by Defendant and reasonable consumers would have expected.

Retaining the non-gratuitous benefits conferred upon Defendant by Plaintiffs and members of the Class under these circumstances made Defendant's retention of the non-gratuitous benefits unjust and inequitable.

These intentional breaches of the Quebec Consumer Protection Act, the Civil Code of Quebec, the Radiation Emitting Devices Act and the provincial and Federal Charters justify the award of punitive damages.

Because Defendant's retention of the non-gratuitous benefits conferred by Plaintiffs and members of the Class is unjust and inequitable, Plaintiffs and members of the Class are entitled to, and hereby seek disgorgement and restitution of Defendant's wrongful profits, revenue, and benefits in a manner established by the Court.

WHEREFORE, Plaintiffs and members of the Classes seek Authorization against Defendants, as follows:

(a) Certifying the classes and subclasses and recognizing them as Representatives

(b) Finding against Defendants as concerns the injunctive relief sought;

(c) Awarding Plaintiffs and the Class the costs of medical monitoring, damages suffered by Plaintiffs and the Class, restitution to Plaintiffs and the Class of all monies wrongfully obtained by Defendant;

(d) Award of Punitive damages pursuant to the Quebec Consumer Protection Act;

(e) Replacement of all models referred to with safe telephones of equivalent value and functionality and

(g) Such other and further relief that the Court deems just and proper.

Respectfully submitted,

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