

# SUPERIOR COURT

(Class Action)

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTREAL

N° : 500-06-000815-163

DATE : February 23, 2021

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**BY THE HONOURABLE CHANTAL CHATELAIN, J.S.C.**

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**SYLVAIN GAUDETTE**

Applicant

v.

**APPLE INC.**

**APPLE CANADA INC.**

Defendants

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## JUDGMENT

(Application for leave to discontinue the Quebec Proceedings)

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[1] The Court is seized with the applicant's "Application for leave for discontinuance", pursuant to Article 585 of the *Code of Civil Procedure*;

[2] **CONSIDERING** that on November 30th, 2016, the applicant filed an Application for authorization to institute a class action and to appoint a representative plaintiff (the "Application for Authorization"), the whole as more fully appears from Court Record;

[3] **CONSIDERING** that the proposed group members in the Application for Authorization are defined as being "*all persons in Quebec, who own or have owned an iPhone 6 or iPhone 6 Plus smartphone that suffers from a defect rendering the screen partly or completely unresponsive to touch*";

[4] **CONSIDERING** that there are four parallel national class actions instituted in other Canadian provinces:

- Ontario: *Feng Li, Blair Ferren, and Leslie Howie v. Apple Inc. and Apple Canada Inc.*, Court file N° CV-16-561938 and *Ayda Dabiri v. Apple Inc. and Apple Canada Inc.*, Court file N° 21-17 CP;
- British Columbia: *Travis Dean v. Apple Inc and Apple Canada Inc.*, Court file N° 185133;
- Saskatchewan: *Trina Rae Wieggers v. Apple Inc. and Apple Canada Inc.*, Court file N° QBG 2236 of 2016;

[5] **CONSIDERING** that the Plaintiffs in all these class action proceedings allege that iPhone 6 or iPhone 6 Plus smartphones have design defect that causes their touch screens to be unresponsive to users' touch inputs;

[6] **CONSIDERING** that on April 6, 2017, the parties in the present action filed a Joint application to stay the class action temporarily in favour of the "Saskatchewan proceedings" in *Trina Rae Wieggers v. Apple Inc. and Apple Canada Inc.*;

[7] **CONSIDERING** that on January 18, 2018, the Honourable Justice Gagnon stayed the Quebec proceedings awaiting the outcome of *Wieggers* action, the whole as more fully appears from Court Record;

[8] **CONSIDERING** that in the Saskatchewan proceedings, on January 27, 2020, Justice J. R. W. Elson granted the defendants' Applications to strike the expert opinions filed by Plaintiff;

[9] **CONSIDERING** that in light of the inability of the Plaintiff Wieggers to secure expert testimony validating her complaint, she discontinued the action (on a "without costs" basis, with the agreement of the defendants) on October 5, 2020;

[10] **CONSIDERING** that in the light of the outcome of the Saskatchewan proceedings, the applicant in the present action, who would have been relying on similar evidence to establish the claim in this action at trial, seeks leave to discontinue the Quebec proceedings;

[11] **CONSIDERING** that in the absence of supporting expert evidence, the applicant believes that he cannot meet the criteria of article 575 CCP and that it is unlikely that this class action will be granted authorization or, if authorized, that the likelihood of success at trial is so reduced that it would not be in the best interest of the Quebec class, the Court, or the defendants to continue pursuing the case;

[12] **CONSIDERING** that the present proposed class action has not been authorized, and no notice has been given to the proposed class;

[13] **CONSIDERING** that, out of an abundance of caution, the applicant proposes to provide notice of discontinuance to the class, substantially in the form presented as **Exhibit-1**, by:

- Publishing a copy of the notice on the Quebec class action and the Canadian Bar Association registries; and
- Posting the notice on the Merchant Law Group LLP web page for this class action;

[14] **CONSIDERING** that it is in the interest of a proper administration of justice and a judicial economy to discontinue the Quebec class action;

[15] **CONSIDERING** that the defendants do not oppose the present Application present;

**POUR CES MOTIFS, LE TRIBUNAL :**

**FOR THESE REASONS, THE COURT:**

[16] **ACCUEILLE** la demande en désistement;

[16] **GRANTS** the Application for leave for discontinuance;

[17] **AUTORISE** au demandeur à se désister de sa demande en autorisation d'exercer une action collective en la présente instance;

[17] **AUTHORIZES** the applicant to discontinue his *Application for authorization to institute a class action and to appoint a representative applicant*;

[18] **AUTORISE** le dépôt d'un avis de désistement au dossier de la Cour;

[18] **AUTHORIZES** the filing in the court record of a Notice of Discontinuance;

[19] **ORDONNE** que l'avis aux membres tel que proposé à la pièce-1 de la demande de désistement soit publié par le demandeur au Registre des actions collectives du Québec et au Registre des actions collectives de l'Association du Barreau Canadien;

[19] **ORDERS** that Notice in the form as presented at **Exhibit-1** to the Application for leave for discontinuance be published by the applicant to the Quebec class action and the Canadian Bar Association class action registries;

[20] **ORDONNE** que l'avis aux membres tel que proposé à la pièce-1 de la demande de désistement soit publié sur le site internet des avocats du demandeur pour une période de 120 jours de la date du présent jugement;

[20] **ORDERS** that Notice in the form as presented at **Exhibit-1** to the Application for leave for discontinuance be posted on the applicant's attorneys' web site for a period of at least 120 days from the date of this Order;

[21] **SANS FRAIS DE JUSTICE.**

[21] **WITHOUT LEGAL COSTS.**

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CHANTAL CHATELAIN, J.S.C.

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Hearing on File : February 23, 2021