

# SETTLEMENT AGREEMENT

Made as of March 1, 2021

**Between:**

**René Charbonneau**

(the Plaintiff)

**-and-**

**APPLE INC. and APPLE CANADA INC.**

(the Defendants)

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## RECITALS

- A. WHEREAS the Plaintiff René Charbonneau commenced a proposed class action in the Quebec Superior Court on December 3, 2014, bearing Court file no. 500-06-000722-146 as against the Defendants and the Rectified Authorization Judgment was rendered on December 22, 2016, and the Revised Rectified Authorization Judgment was rendered on October 5, 2018 (the “**Class Action**”);
- B. WHEREAS the Class Action asserts claims against the Defendants on behalf of the Class in relation to the 15” and 17” 2011 MacBook Pro laptop (“**Device(s)**”) manufactured and sold by the Defendants;
- C. WHEREAS the Plaintiff maintains that the claims in the Class Action are valid; the Defendants deny all of the allegations asserted by the Plaintiff in the Class Action, and maintain that they have good and valid defences to the claims asserted therein;
- D. WHEREAS the Parties estimate that a further two years of litigation could be required to litigate this matter through trial (excluding appeals);
- E. WHEREAS the Defendants have communicated confidentially over 12,000 documents to Class Counsel in the context of the discoveries conducted in the Class Action;
- F. WHEREAS the Parties participated in a mediation with Me Doug Mitchell on October 13, 2020, at the end of which they agreed to a binding agreement in principle to settle the Class Action, subject to approval by the Superior Court of Québec, and have continued arm’s-length settlement discussions since the mediation to reach this Settlement Agreement;
- G. WHEREAS the Parties have agreed to enter into this Settlement Agreement in order to achieve an early full and final resolution of the Class Action and to avoid further expense, inconvenience and burdens of protracted litigation, the whole subject to approval by the Superior Court of Québec;
- H. WHEREAS the Parties and their respective counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their respective analyses of the facts and law applicable to the Plaintiff’s claims asserted in the Class Action, and having regard to the burdens and expense of prosecuting the Class Action, including, in particular, the risks and uncertainties associated with trials and appeals, and taking into account the maximum recovery for the Class weighed against those costs, risks, uncertainties and delays, the Parties and their respective counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interest of the Class;
- I. WHEREAS the Plaintiff and Class Counsel agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Defendants, or evidence of the truth of any of the Plaintiff’s allegations against the Defendants, and the Defendants and Defense Counsel

agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by, or evidence against the Plaintiff or the Class, or evidence of the truth or validity of any of the Defendants' defences or arguments against the Plaintiff's claims; and

- J. WHEREAS the Parties therefore wish to, and hereby do, finally resolve the Class Action and all Released Claims, as defined below, subject to the approval of this Settlement Agreement by the Superior Court of Québec;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that this class action shall be settled on the following terms and conditions:

## ARTICLE I - DEFINITIONS

### 1.1 Definitions

The following terms, as used in this Agreement, including the Recitals, mean:

- (a) **Account** means an interest-bearing trust account with a Canadian financial institution under the control of the Claims Administrator in which the Settlement Amount will be held in trust, including the Total Settlement Fund, which will be held until distributed pursuant to the Distribution Protocol or as detailed in this Settlement Agreement.
- (b) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred by, payable by, or chargeable by the Claims Administrator, for the approval, implementation and operation of this Settlement Agreement including the costs of distribution of the Total Settlement Fund and the costs of notices to the Class, and this does not include the: (i) internal fees, costs or expenses of the Defendants to provide information to the Claims Administrator in order to provide notices to the Class as provided in the Notice Plan; (ii) fees, costs and disbursements payable to Defence Counsel; and (iii) Class Counsel Fees.
- (c) **Apple** refers collectively to Apple Canada Inc. and Apple Inc., Defendants in the Class Action.
- (d) **Claims Administrator** means RicePoint Administration Inc. or such other entity or person designated by the Parties and appointed by the Court to administer this Settlement.
- (e) **Class** means the members of the class as defined in the Revised Rectified Authorization Judgment dated October 5, 2018, but excludes any person who validly opted out following the Revised Rectified Authorization Judgment,

according to the procedure set out in the Email Notification Order dated July 17, 2019, and **Class Member** means any one thereof.

- (f) **Class Action** means the class proceeding commenced by the Plaintiff René Charbonneau in the Quebec Superior Court of Justice bearing Court File No. 500-06-000722-146 which was authorized by the Rectified Authorization Judgment rendered on December 22, 2016 and the Revised Rectified Authorization Judgment rendered on October 5, 2018.
- (g) **Class Counsel** means Lex Group Inc.
- (h) **Class Counsel Fees** means the amount payable to Class Counsel in fees, disbursements, costs, interest, GST, QST, and other applicable taxes or charges of Class Counsel in respect of the prosecution of the Class Action, as approved by the Court.
- (i) **Court** means the Superior Court of Québec.
- (j) **Defence Counsel** means McCarthy Tétrault LLP.
- (k) **Defendants** means Apple Inc. and Apple Canada Inc., and **Defendant** means any one thereof.
- (l) **Devices** means 15" and 17" 2011 MacBook Pro laptops manufactured by Apple, and **Device** means any one thereof.
- (m) **Distribution Protocol** means the plan for distributing the Total Settlement Fund and accrued interest to the Class as approved by the Court, in the form of **Schedule F** hereto.
- (n) **Effective Date** means (i) the date upon which the ability to appeal from the last-rendered anticipated Second Order expires; or (ii) if any appeal is taken from the Second Order, then the Effective Date shall be the date upon which any such appeal is concluded by way of a Final order.
- (o) **Final** when used in relation to a Court order means all rights of appeal from such order or judgment have expired or have been exhausted and that the ultimate court of appeal (or court of last resort) to which an appeal (if any) was taken has upheld such order.
- (p) **First Order** means the proposed order of the Court granting: (1) the Court's approval of the Notice of Hearing; and (2) the appointment of the Claims Administrator, which will be substantially in the form of **Schedule A** hereto or as modified by the Court.
- (q) **Fonds d'aide** means the *Fonds d'aide aux actions collective* created pursuant to the *Act respecting the Fonds d'aide aux actions collectives* (CQLR c F-3.2.0.1.1);

- (r) **Notice of Hearing** means (as applicable) the French and English short and long form notices of the hearing for settlement approval, approved by the Court, to inform the Class of *inter alia*: (1) the date of the hearing to approve this Settlement Agreement; and (2) the key terms of this Settlement Agreement, which will be substantially in the form of **Schedule B** hereto, or as modified by the Court.
- (s) **Notice of Court Order** means (as applicable) the various iterations of the notices of the order approving the settlement and Class Counsel Fees, as approved by the Court, to inform the Class Members of *inter alia*: (1) the approval of this Settlement Agreement and (2) the process by which the Total Settlement Fund will be distributed, which will be substantially in the form of **Schedule C** hereto, or as modified by the Court.
- (t) **Parties**, when capitalized, means the Plaintiff and the Defendants, and **Party** means any one thereof.
- (u) **Released Claims** means any and all manner of claims, complaints, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages of any kind whenever incurred, declaratory relief, liabilities of any nature whatsoever, including assigned claims, claims for injunction, contribution, indemnity, interest, costs, expenses, class administration expenses (including Administration Expenses), and lawyers' fees (excluding Class Counsel Fees, which are addressed at Article 10.1 of the present Settlement Agreement), known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity, that the Releasors, or any of them, whether directly or indirectly, ever had, could have had, or now have relating to the Devices manufactured and sold by the Defendants that were the subject matter of allegations in the Class Action or that could have been the subject matter of allegations by or on behalf of the Releasors, or any of them, in the Class Action.
- (v) **Releasees** means the Defendants and their respective predecessors, successors, parents, subsidiaries, affiliates, divisions, partners, insurers and past and current officers, directors, employees, agents, shareholders and beneficiaries of any kind.
- (w) **Releasors** means, individually and collectively, the Plaintiff and the Class Members, and their respective successors, heirs, executors, administrators, trustees, assigns, devisees or representatives of any kind (excluding Class Counsel, whose release is addressed at Article 10.1 of the present Settlement Agreement).
- (x) **Second Order** means the anticipated order of the Court approving the terms of this Settlement Agreement and approving Class Counsel Fees, which will be substantially in the form of **Schedule E** hereto or as modified by the Court.

- (y) **Settlement Agreement** means this agreement, including the recitals and Schedules.
- (z) **Settlement Amount** means the all-inclusive amount of seven million sixty-nine thousand two hundred Canadian Dollars (CAD \$7,069,200), payable by the Defendants, plus any interest earned on any portion of the Settlement Amount after it has been transferred to the Account pursuant to Article IV of this Settlement Agreement until the last payment is made pursuant to the Distribution Protocol (**Schedule F**). The Total Settlement Fund and Class Counsel Fees are included in the Settlement Amount.
- (aa) **Total Settlement Fund** means the all-inclusive amount of five million three hundred and forty-four thousand five hundred and seventy-five Canadian Dollars (CAD \$5,344,575.00), payable by the Defendants, plus any interest earned on the Settlement Amount after it has been transferred to the Account pursuant to Article IV of this Settlement Agreement, and is inclusive of any and all Class Member claims, interest, all costs, including but not limited to settlement administration costs, class notice publication costs, distribution costs, third party costs, out of pocket costs, and taxes. It excludes Class Counsel Fees.

## **ARTICLE II - BEST EFFORTS TO SECURE COURT APPROVAL**

### **2.1 Best Efforts**

The Parties shall use their best efforts to effectuate this Settlement Agreement and shall cooperate to seek and obtain the Court's approval of this Settlement Agreement and all other matters addressed herein.

If the Defendants intend to seek a sealing order in respect of commercially-sensitive information to be included in the materials submitted on any of the applications contemplated under this Settlement Agreement, they will notify the Class Counsel in advance. The Plaintiff will take no position as to such Application for a sealing order.

The Defendants will cooperate to provide information to Class Counsel and the Court that is reasonable and necessary for the Plaintiff to seek and obtain Court approval of this Settlement Agreement, including without limitation the total number of Devices included in the Class, the total number of Class Members, and the figures and calculations on which the Total Settlement Fund has been calculated and determined by the Parties, regarding the different groups detailed in the Distribution Protocol.

### **2.2 Court Approval Required for Enforceable Agreement**

With the exception of those Articles expressly stated to survive termination of this Settlement Agreement, this Settlement Agreement shall be of no force or effect unless it is approved by the Court.



### ARTICLE III - SETTLEMENT APPROVAL

Subject to the direction of the Court regarding the approval process, the Parties propose to seek the orders contemplated in this Settlement Agreement as follows. The Parties agree that the applications contemplated in this article may be conducted by videoconference, or by teleconference, as directed by the Court, in consideration *inter alia* of the COVID-19 pandemic.

#### **3.1 Applications for Approval of Notice of Hearing**

As soon as practicable after this Settlement Agreement is executed, Plaintiff shall bring an application by way of letter asking the Court to issue an order substantially in the form of the draft First Order at **Schedule A** (being the draft order approving the Notice of Hearing and the Appointment of Claims Administrator). The Defendants will consent to this application.

Until the application for the Court's approval of an order substantially in the form of the draft First Order at **Schedule A** is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without prior written consent of the Parties, except as required for the purposes of financial reporting, communications with insurer and auditors, and/or the preparation of financial records (including tax returns and financial statements), as necessary to give effect to its terms or as otherwise required by law.

#### **3.2 Applications for Approval**

- (a) As soon as practicable after an order substantially in the form of the First Order is made, and the Notice of Hearing published as detailed in the Notice Plan (Schedule D), the Plaintiff shall bring an application for the Court's issuance of an order substantially in the form of the draft Second Order at **Schedule E** (being the draft order approving this Settlement and Class Counsel Fees). The Defendants will consent to this application, and the Fonds d'aide will be served with the application. The Defendants will take no position on the aspects of such application that concern Class Counsel Fees although the Defendants hereby confirm that they agree to pay the Class Counsel fees. The Parties waive any rights of appeal if the Second Order substantially in the form of Schedule E is granted by the Court.
- (b) The Defendants will review and approve all application materials before they are filed.
- (c) If the Plaintiff, Class Counsel, the Defendants, or Defence Counsel become aware that a Class Member or other person intends to object to those applications, they will advise the Parties in writing as soon as practicable and in any event no later than 2 business days before the hearing of the application in Article 3.2 (a).

## ARTICLE IV - SETTLEMENT BENEFITS

### 4.1 Payment of Settlement Amount and Total Settlement Fund

- (a) Within thirty (30) days of the execution of this Settlement Agreement, the Defendants shall pay a first tranche of CAD \$400,000 from the Total Settlement Fund, and CAD \$1,724,625.00 representing the Class Counsel Fees, both to the Account in trust. The transfer of the first tranche of \$400,000 is so that money is available to the Claims Administrator to cover and pay for any Administration Expenses incurred or to be incurred before the Effective Date.
- (b) Within twenty-one (21) days of the Effective Date, the Defendants shall pay the remainder of the Settlement Amount to the Account in trust.
- (c) The Defendants' payment of those portions of the Settlement Amount comprising the Total Settlement Fund will be in full satisfaction of the Released Claims against the Releasees, subject to approval of the Court.
- (d) None of the Defendants shall have any obligation to pay to the Plaintiff, the Class or the Claims Administrator any amount in addition to the Settlement Amount unless otherwise expressly provided for in this Agreement.
- (e) The Claims Administrator shall hold the Settlement Amount in trust in the Account and maintain the Account as provided for in this Settlement Agreement.
- (f) Within five (5) days of the Effective Date, the Claims Administrator shall transfer to Class Counsel payment in the amount of the Class Counsel Fees approved by the Court, in full satisfaction of any claims for fees, costs and/or disbursements related to the Class Action (as described more fully at Article 10.1 of the present Settlement Agreement).
- (g) The Claims Administrator will provide invoices to the Defendants (with copies of which to be sent to Class Counsel) for payment of the Administration Expenses on a monthly basis beginning after the appointment of the Claims Administrator by the Court. All Administration Expenses will be paid from the Settlement Amount, within 30 days of the invoice provided. All Parties will have full access to any and all information or documents held by the Claims Administrator and relating to the Class Action and/or this Settlement Agreement except for personally identifiable information, unless otherwise ordered by the Court.
- (h) The Total Settlement Fund will be used first to pay for the Administration Expenses. Thereafter, the remainder of the Total Settlement Fund will be used to pay Class Members pursuant to the Distribution Protocol (**Schedule F**).

#### 4.2 Taxes and Interest

- (a) Except in the event of termination of this Settlement Agreement, all interest earned on the Settlement Amount after it is transferred to the Account, shall accrue to the benefit of the Class and shall become and remain part of the Total Settlement Fund.
- (b) Subject to Article 4.2(c), all taxes payable on any interest that accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount, which becomes part of the Total Settlement Fund, shall be the sole responsibility of the Account. The Defendants shall provide the Claims Administrator with all information reasonably required in order to fulfill all tax reporting and payment requirements arising from the Total Settlement Fund in the Account, including any obligation to report taxable income and make tax payments, and the Claims Administrator will make such payments and prepare such reports as required. All taxes (including interest and penalties) due with respect to the income earned on the Settlement Amount shall be paid from the Account and deducted from the Total Settlement Fund.
- (c) The Parties agree that the Parties, Class Counsel, and Defense Counsel are in no way liable for any taxes any Class Members may be required to pay as a result of receiving any benefits under this Settlement Agreement. No opinion concerning the tax consequences of this Settlement Agreement to any Class Member is given or will be given by the Parties or their respective counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of this Settlement Agreement as to any Class Member. Each Class Member is responsible for his/her/its tax reporting and other obligations respecting this Settlement Agreement, if any.

### ARTICLE V - DISTRIBUTION OF THE SETTLEMENT FUND

#### 5.1 Distribution Protocol

The Distribution Protocol is part of this Settlement Agreement and will be subject to approval by the Court, as part of the application seeking Court approval of this Settlement Agreement (the Second Order). The Distribution Protocol is set out at **Schedule F** hereto.

#### 5.2 No responsibility for External Administration Fees

The Defendants acknowledge that they may incur internal costs to provide information to the Claims Administrator in order to provide notices to Class Members pursuant to the Notice Plan. However, the Defendants will not be required to incur any external Administration Fees in connection with the Distribution Protocol.

### 5.3 Fonds d'aide aux actions collectives ("Fonds d'aide")

The Parties agree that the Settlement Agreement is subject to the *Act respecting the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1, the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, C.Q.L.R., c. F-3.2.0.1.1.r.2 and the *Code of Civil Procedure*, C.Q.L.R., c. C-25.01.

### 5.4 Rendering of Account and Closing Judgment

- (a) Within eight (8) months following the completion of the distribution of the Total Settlement Fund in accordance with the Distribution Protocol, the Claims Administrator will provide a "Rendering of Account" in a detailed report of its administration in conformity with the *Regulation of the Superior Court of Québec in civil matters, C-25.01, r. 0.2.1*, (the "Regulation") which will be sent to the Parties, the Fonds d'aide, and the Court. In addition, if not already required by the Regulation, the Rendering of Account will include the following:
- (i) The number of email notices and letter notices sent to Class Members;
  - (ii) The total number of Class Members who were paid out of the Total Settlement Fund, subdivided by Group (as defined in the Distribution Protocol);
  - (iii) The total amount distributed in general and subdivided by Group (as defined in the Distribution Protocol);
  - (iv) The number of cancelled cheques and the total dollar value in this regard (to be included in the balance); and
  - (v) The balance, if any, remaining from the Settlement Amount, and the totals to be distributed pursuant to Article 5.4 (b) below.
- (b) If any balance pursuant to Article 5.4(a)(iv) and (v) remains, it will be returned to the Account. Within 30 days after the Rendering of Account, the Fonds d'aide will receive the share of the balance to which it is entitled by law. The remainder of the balance will be paid cy-près to the charity/charities chosen by Class Counsel and agreed to by Defendants, which must be approved by the Court in the Second Order. If the Parties are not able to agree on the identity of the charity/charities, they will submit this question to the Court.
- (c) Within 60 days after the Rendering of Account, the Plaintiff with the assistance of the Claims Administrator shall make an application to obtain a closing judgment, by way of letter to the Court. The said letter will be sent to the Defendants and the Fonds d'aide.

## ARTICLE VI - TERMINATION OF SETTLEMENT AGREEMENT

### 6.1 Right of Termination

- (a) The Defendants shall have the option to terminate this Settlement Agreement in the event that:
  - (i) the Plaintiff breaches any material term of this Settlement Agreement;
  - (ii) The Court declines to issue an order substantially in the form of the Second Order, to approve any material part of the Settlement Agreement (excluding Class Counsel Fees), or requires a material change to the Settlement Agreement as a pre-condition to approval; or
  - (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (b) The Plaintiff and Class Counsel, collectively but not separately, shall have the option to terminate the Settlement Agreement in the event that:
  - (i) The Defendants breach any material terms of this Settlement Agreement;
  - (ii) The Court declines to issue an order substantially in the form of the Second Order, or to approve of any material part of the Settlement Agreement (excluding Class Counsel Fees) or requires a material change to the Settlement Agreement as a pre-condition to approval; or
  - (iii) The Court issues an order substantially in the form of the Second Order, but it does not become Final or is materially altered on appeal.
- (c) If the Defendants elect to terminate the Settlement Agreement pursuant to Article 6.1(a), or the Plaintiff together with Class Counsel elect to terminate the Settlement Agreement pursuant to Article 6.1(b), a written notice of termination shall be provided by the terminating Party(s) to the other Party(s) forthwith, and, in any event, no later than 10 business days after the event upon which the terminating Party relies. Upon delivery of such written notice, this Settlement Agreement shall be terminated and, except as provided for in Articles 6.2 and 6.3, and the related Definitions in Article I, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any Released Claims, including but not limited to any trial on the merits, except with the written consent of all Parties or as otherwise required by a Court.
- (d) Any order, ruling or determination made by the Court with respect to the Class Counsel's Fees shall not be a material modification of this Settlement Agreement and shall not constitute a basis for the termination of this Settlement Agreement.

## **6.2 If Settlement Agreement is Terminated**

If this Settlement Agreement is terminated:

- (a) The Parties will be restored to their respective positions prior to the execution of this Settlement Agreement and prior to confidential mediation session conducted on October 13, 2020, except as expressly provided for herein;
- (b) Any step taken by the Defendants or the Plaintiff in relation to this Settlement Agreement shall be without prejudice to any position that the Parties may later take in respect of any procedural or substantive issues in the Class Action;
- (c) Any order or judgment rendered by the Court pursuant to this Settlement Agreement shall be set aside or vacated. The Parties consent and will cooperate in seeking to have all prior orders or judgments sought from and rendered by the Court, in accordance with this Settlement Agreement, set aside and declared null and void and of no force or effect, and any Party shall be estopped from asserting otherwise; and
- (d) All documents and information exchanged by the Parties during the settlement process are subject to settlement privilege, except to the extent that the documents or information were, are or become publicly available. Within thirty (30) days of such termination having occurred, Class Counsel shall destroy all documents and other materials provided by the Defendants or containing or reflecting information derived from such documents for the purposes of implementing this Settlement. Class Counsel shall provide Defence Counsel with a written certification by Class Counsel of such destruction.

## **6.3 Allocation of Monies in the Account Following Termination**

If the Settlement Agreement is terminated after the Settlement Amount (or any portion thereof) has been transferred to the Account, the Settlement Amount shall be returned to the Defendants, including accrued interest, but less:

- (a) The amount of any income taxes paid or owing in respect of any interest earned on the Settlement Amount while on deposit in the Account; and
- (b) Any Administration Expenses that have actually been incurred as at the date of termination, including costs associated with any Notices, including translation expenses, and the estimated costs of Administration Expenses to be incurred to provide notice to the Class that the Settlement Agreement has been terminated, if such notice is required by the Court, as well as costs associated with the Claims Administrator. In this regard, the Parties hereby agree and acknowledge that the Plaintiff, the Class Members and Class Counsel will never be liable or responsible to pay for any portion of the Administration Expenses, including without limitation and costs associated with any Notices. The Defendants will therefore solely be responsible to pay for any and all such Administration Expenses and Notice costs.

## ARTICLE VII - RELEASES AND DISMISSALS

### **7.1 Release of Releasees**

Except in the case of the termination of this Settlement Agreement, and conditional upon the approval of this Settlement Agreement by the Court, upon transfer of the remainder of the Settlement Amount into the Account pursuant to Article 4.1(b) and in consideration of the payment of the Settlement Amount into the Account and for other valuable consideration set forth in this Settlement Agreement, the Releasors shall forever and absolutely release the Releasees from the Released Claims. The Plaintiff acknowledges that he may thereafter discover facts in addition to, or different from, the facts which they know or believe to be true regarding the Released Claims, and it is his intention to release fully, finally and forever all Released Claims and, in furtherance of such intention, this release shall be and remain in effect notwithstanding the discovery or existence of new or different facts.

### **7.2 No Further Claims**

The Releasors shall not now, nor hereafter institute, continue, maintain, or assert, either directly or indirectly, on their own behalf or on behalf of any class or any other person, any Released Claim against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim.

## ARTICLE VIII - EFFECT OF SETTLEMENT

### **8.1 No Admission of Liability**

Whether or not this Settlement Agreement is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any fault, wrongdoing or liability by any of the Releasees, or of the truth of any claims or allegations contained in the Class Action or any other allegation made by the Plaintiff or the Class in any forum or context. The Releasees deny any liability and deny the truth of the allegations made against them. If the Settlement Agreement is not approved, they will defend the Class Action at trial.

The Defendants reserve their rights and defences with respect to anyone who validly opted out of the Class Action, and no term of this Settlement Agreement shall be tendered as evidence in any subsequent litigation by any such person against the Defendants.

### **8.2 This Agreement Not Evidence**

The Parties agree that, whether or not it is approved or terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or other proceeding, except in a

proceeding to approve or enforce this Settlement Agreement or in connection with the other applications contemplated in this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law, or with the written consent of all Parties.

## **ARTICLE IX- NOTICE TO CLASS**

### **9.1 Notice Required**

The Class shall be given the following notices, subject to approval by the Court:

- (a) Notice of Hearing (**Schedule B**);
- (b) Notices of Court Order (**Schedule C**);
- (c) Notice of termination of this Settlement Agreement if it is terminated pursuant to this Settlement Agreement, or as otherwise ordered by a Court, in a form to be agreed upon by the Parties and approved by the Court or, if the Parties cannot agree on the form of the notice of termination of the Settlement Agreement, then in the form ordered by the Court.

### **9.2 Costs of Disseminating Notice**

The costs of disseminating each Notice shall be paid from the Total Settlement Fund, regardless of whether the Settlement is approved by the Court or the Settlement Agreement is terminated. The Plaintiff, the Class and the Class Counsel are not liable to pay for such costs.

### **9.3 Method of Disseminating Notices**

The Notices required under Article 9.1 shall be disseminated pursuant to the Notice Plan attached as **Schedule D** as approved by the Court or in a manner otherwise ordered by the Court.

## **ARTICLE X- CLASS COUNSEL AND ADMINISTRATION FEES**

### **10.1 Class Counsel Fees and Release**

- (a) As part of the application for approval detailed at Article 3.2 (a), Class Counsel will seek the Court's approval of Class Counsel Fees in the amount of CAD \$1,724,625.00 and an order that the Class Counsel Fees shall be paid from the Settlement Amount as outlined in Article 4.1(f). The Defendants will take no position as to the justification or justifiability of the Class Counsel Fees although the Defendants hereby confirm and will confirm to the Court at the approval hearing that they agree to pay Class Counsel Fees in the amount of CAD \$1,724,625.00.
- (b) Upon full payment of the Class Counsel Fees approved by the Court to Class Counsel pursuant to the order to be rendered by the Court, Class Counsel forever releases the Releasees of and from any and all claims or demands for fees, costs, expenses and/or disbursements, known or unknown, that Class Counsel



ever had, could have had, or now has, whether directly or indirectly related to the Class Action.

#### **10.2 Administration Expenses**

The Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives of Class Counsel, the Plaintiff or the Class, all of which shall be paid from the Settlement Amount, as approved by the Court.

### **ARTICLE XI- MISCELLANEOUS**

#### **11.1 Applications for Directions**

- (a) The Plaintiff, Defendants, or the Claims Administrator may bring applications to the Court for directions in respect of the implementation and administration of this Settlement Agreement at any time.
- (b) All applications contemplated by this Settlement Agreement shall be on reasonable notice to the Parties.

#### **11.2 Headings, etc.**

In this Settlement Agreement:

- (a) The division of the Settlement Agreement into articles and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) The terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular article or other portion of this Settlement Agreement.

#### **11.3 Computation of Time**

In the computation of time in this Settlement Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a holiday or a weekend, the act may be done on the next day that is a business day.

#### **11.4 Governing Law**

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Québec and Canada.

#### **11.5 Entire Agreement**

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding or agreement in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **11.6 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of the Plaintiff and the Defendants, subject approval by the Court where required.

#### **11.7 No Waiver**

No waiver of any provision of this Settlement Agreement will be binding unless consented to in writing by the Parties. No waiver of any provision of this Settlement Agreement will constitute a waiver of any other provision.

#### **11.8 Binding Effect**

This Settlement Agreement shall be binding upon and inure to the benefit of the Plaintiff, the Class Members, the Defendants, the Releasors, and the Releasees once it is approved by a Final order of the Court, except that the Parties are required to perform their obligations under this Settlement Agreement prior to the application for approval of this Settlement Agreement. Without limiting the generality of the foregoing, each and every covenant and agreement made by the Plaintiff shall be binding upon all Releasors, once it is approved by Final order of the Court.

#### **11.9 Counterparts**

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

#### **11.10 Negotiated Agreement**

This Settlement Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous

drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

#### **11.11 Language**

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; *les parties reconnaissent avoir exigé que la présente convention de règlement et tous les documents connexes soient rédigés en anglais*. Nevertheless, a French translation of this Settlement Agreement, has been prepared, the cost of which shall be paid for from the Settlement Amount, for the convenience of French speaking Class Members.

#### **11.12 Transaction**

The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*.

#### **11.13 Recitals**

The Recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

#### **11.14 Schedules**

The Schedules annexed hereto form part of this Settlement Agreement and are:

- (a) **Schedule A** – Draft First Order (the draft order approving the Notice of Hearing and appointing the Claims Administrator).
- (b) **Schedule B** – Notice of Hearing.
- (c) **Schedule C** - Notice of Court Order.
- (d) **Schedule D** – Notice Plan.
- (e) **Schedule E** - Draft Second Order (the draft order approving this Settlement Agreement and approving Class Counsel Fees).
- (f) **Schedule F** – Distribution Protocol.

#### **11.15 Acknowledgements**

Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;

- (c) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

#### **11.16 Authorized Signatures**

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

#### **11.17 Notice**

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel:

**Lex Group Inc.**  
4101 Sherbrooke Street West  
Westmount, QC H3Z 1A7

**David Assor**  
Telephone: 514-451-5500  
Fax: 514-940-1605  
Email: [davidassor@lexgroup.ca](mailto:davidassor@lexgroup.ca)

For the Defendants and Defence Counsel:

**McCarthy Tétrault LLP**  
1000 Gauchetière Street West, suite 2500  
Montreal, QC H3B 0A2

**J.R. Kristian Brabander**  
Telephone: 514-397-4273  
Facsimile: 514-875-6246  
Email: [kbrabander@mccarthy.ca](mailto:kbrabander@mccarthy.ca)

**Date of Execution**

The Parties have executed this Settlement Agreement effective as of the date on the cover page.

Dated at Montreal, Quebec, Canada, this 23<sup>rd</sup> day of February, 2021

René Charbonneau

**RENÉ CHARBONNEAU**

Plaintiff

Dated at Montreal, Quebec, Canada, this 23<sup>rd</sup> day of February, 2021


[Signature]

**LEX GROUP INC.**

Per: David Assor

Class Counsel - Attorneys for the Plaintiff and the Class

Dated at Morgan Hill, California, USA, this \_\_\_\_\_ day of \_\_\_\_\_, 2021

  
\_\_\_\_\_

**APPLE INC. AND APPLE CANADA INC.**

**Per: Noreen Krall, VP & Chief Litigation Counsel**

Defendants