



Court File No.:

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BORIS GROSSMAN

Plaintiff

and

APPLE CANADA INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*, SO 1992, c 6.

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 16, 2023 Issued by \_\_\_\_\_  
Local Registrar

Address of court office: Toronto Courthouse  
330 University Avenue  
Toronto, Ontario M5G 1E8

**TO:** **APPLE CANADA INC.**  
120 Bremner Blvd., Suite 1600  
Toronto, ON M5J 0A8

## CLAIM

1. The Plaintiff, on his own behalf and on behalf of all Class Members, seeks:
  - (a) an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff of the proposed national class pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6;
  - (b) a declaration that the Defendant's actions (as hereinafter described) were contrary to Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15;
  - (c) a declaration that the Defendant's actions were false, misleading, and deceptive contrary to Part III of the *Consumer Protection Act, 2002*, SO 2002, c 30, Schedule A and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (d) a declaration that it is in the interests of justice to disregard the requirement to give notice pursuant to section 18(5) and section 101 of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (e) damages, in an amount to be determined, pursuant to section 18(2) of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto;
  - (f) a declaration that the Defendant's actions were false and misleading contrary to section 52 of the *Competition Act*, RSC 1985, c C-34;

- (g) a declaration that the Defendant breached their contracts with the Plaintiff and Class Members and are consequently liable for damages;
- (h) a declaration that the Defendant breached their duty of care to the Plaintiff and Class Members;
- (i) a declaration that the Defendant interfered with and improperly converted property owned by the Plaintiff and Class Members;
- (j) pecuniary and special damages in the amount of \$100,000,000 or as aggregated following a trial of the common issues;
- (k) exemplary, punitive, and aggravated damages in the amount of \$20,000,000;
- (l) a declaration that any Sales Tax Overcharge (as hereinafter described) received by the Defendant through the Apple Trade in Program (as hereinafter defined) is held in trust for the benefit of the Plaintiff and Class Members;
- (m) a reference to decide any issues not decided at the trial of the common issues;
- (n) costs of administration and notice, plus applicable taxes, pursuant to section 26(9) of the *Class Proceedings Act, 1992*, SO 1992, c 6;
- (o) costs of this action pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, the *Courts of Justice Act*, RSO 1990, c. 43, and the *Rules of Civil Procedure*, RRO 1990, Reg 194;
- (p) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c 43, as amended;

- (q) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, RSO 1990, c 43, as amended; and,
- (r) such further and other relief as to this Honourable Court may seem just.

## **THE PARTIES**

### **The Plaintiff**

2. The Plaintiff, Boris Grossman, is an individual and a resident of Thornhill, Ontario.

### **The Plaintiff's Experiences**

3. On or about February 19, 2020, the Plaintiff opted to participate in the Defendant's Apple Trade In Program (as hereinafter defined) and traded-in his iPhone 7 Plus at the Apple Store located at the Square One shopping centre in Mississauga, Ontario.
4. In exchange for his iPhone 7 Plus, the Plaintiff received an Apple Store Gift Card in the amount of \$230.00. An Apple Store Gift Card may only be applied in the purchase of Apple products and/or services.
5. Despite the Plaintiff having provided his previous iPhone in furtherance of the eventual purchase of an Apple product and/or service, the Defendant had failed to credit him the appropriate Goods and Services Tax and/or Harmonized Sales Tax ("GST/HST") for when he eventually decided to purchase another Apple product.
6. On that same day, the Plaintiff applied the \$230.00 credit he received through the Apple Trade In Program to purchase a new iPhone XR, AppleCare + and an iPhone XR Clear Case from the Defendant in the amount of \$1,123.00.

7. The Plaintiff was charged GST/HST on the full value of the transaction, that being \$1,123.00, for a total sum of \$1,268.99, after which the \$230 credit was applied, reducing the amount owing to \$1,038.99.
8. However, Plaintiff, having participated in a trade-in program offered by the Defendant, should have only been charged GST/HST on the net value of the transaction after the \$230.00 credit had been applied, that being \$893.00.
9. The Plaintiff was not aware and/or advised that he would not be appropriately credited for the GST/HST he had already paid for when he opted to participate in the Apple Trade In Program. Had the Plaintiff been aware that the Defendant would withhold the GST/HST owing, he would not have traded-in his iPhone 7 Plus through the Defendant's Apple Trade In Program.

### **The Class**

10. The Plaintiff seeks to represent the following class (the "Class") of which the Plaintiff is a Class Member:

All persons, corporations, and other entities resident in Canada who participated in the Apple Trade In Program by providing the Defendant with an Eligible Used Apple Device (as hereinafter described) manufactured, sold, or distributed by the Defendant or any one of them, in exchange for credit to be used immediately for the purchase of a New Apple Device (as hereinafter described), or in the form of an Apple Store Gift Card in furtherance of purchasing a New Apple Device.

11. “Apple Trade In Program” is hereinafter used to describe the Defendant’s trade-in program whereby Class Members provide their Eligible Used Apple Device in exchange for credit to be applied to a New Apple Device, or to be applied to an Apple Store Gift Card for future use.
12. “Eligible Used Apple Device” is hereinafter used to describe a Class Member’s previously owned Apple product that was eligible for credit at the time the Class Member participated in the Apple Trade In Program.
13. “New Apple Device” is hereinafter used to describe a new Apple product, not previously owned by the Class Member, that was sold by the Defendant to the Class Member using credit the Class Member gained through their participation in the Apple Trade In Program.
14. “Sales Tax” is hereinafter used to collectively refer to the Harmonized Sales Tax (“HST”) and the Good and Services Tax (“GST”).
15. “Sales Tax Overcharge” is hereinafter used to describe the surplus of GST/HST the Class Member paid as a result of their participation in the Apple Trade In Program.

### **The Defendant**

16. The Defendant, Apple Canada Inc., is an Ontario corporation with its principal place of business located in Toronto, Ontario.

### **THE DEFENDANT’S TRADE-IN PROGRAM**

17. The Defendant operates a trade-in and recycling program (the “Apple Trade In Program”) in which a consumer may trade-in their Eligible Used Apple Device in exchange for store

credit to be applied against the full value of a New Apple Device on a subsequent Apple purchase.

18. Alternatively, if the consumer decides against the immediate purchase of a New Apple Device, they will receive an Apple Store Gift Card containing the equivalent value of their Eligible Used Apple Device. An Apple Store Gift Card may only be used towards the Defendant's merchandise, including but not limited to, Apple products, accessories, services, subscriptions and applications.
19. Consumers may access the Apple Trade In Program online by mailing their Eligible Used Apple Device, or in-person at Apple retail stores.

#### **THE DEFENDANT IS OVERCHARGING CLASS MEMBERS ON SALES TAX**

20. The Defendant, through the Apple website, has expressly stated that consumers participating in the Apple Trade In Program shall be subject to Sales Tax on the full value of their New Apple Device.
21. As such, the Defendant is not crediting consumers participating in the Apple Trade In Program with a deduction in Sales Tax when they purchase a New Apple Device with the credit received from their Eligible Used Apple Device.
22. As a supplier, the Defendant has an obligation to collect tax on the sale of taxable supplies and to remit this tax to the federal and/or provincial governments in accordance with the provisions set out in the *Excise Tax Act*.



23. The law is clear and unambiguous with respect to the collection of tax when concerning “used tangible personal property trade-ins” as described under *Part IX of the Excise Tax Act*. Under the *Excise Tax Act*, a supplier providing full or partial consideration through “used tangible personal property trade-ins” must only collect Sales Tax on the net value of the transaction, that being the value of the new taxable supply minus the value of the used tangible personal property that is being traded-in.
24. The Defendant made false, misleading and/or deceptive representations to Class Members that it had a right to charge consumers Sales Tax on the full value of New Apple Devices after they had participated in the Trade In Program with an Eligible Used Apple Device, thus subjecting the Plaintiff and Class Members to the Sales Tax Overcharge.
25. At its core, the Defendant’s tax collection practices are at odds with the *Excise Tax Act* and the Sales Tax Overcharge was made under *colore officii*.
26. The Defendant is not following their own policy which states: “If you paid in full and the value of your trade-in was more than the cost of your new iPhone, you’ll receive an Apple Gift Card by email with the remaining amount.” Instead the Defendant is issuing a gift card in instances where the trade-in is less than the cost of the new device, but charging HST on the full cost of the new device without providing any credit to the value of the trade-in with respect to taxes.

## **CAUSES OF ACTION**

### **(a) Breach of the *Consumer Protection Act, 2002* and the *Competition Act***

27. The Defendant's actions are false, misleading or deceptive representations under section 14 of the *Consumer Protection Act, 2002*, SO 2002, c 30 and an unfair practice under section 17 of the *Consumer Protection Act, 2002*, SO 2002, c 30. In particular, without limiting the scope of the Defendant's representations contrary to sections 14 and 17 of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of other provincial legislation as described in Appendix 1 hereto and section 52 of the *Competition Act*, RSC 1985, c C-34, the Defendant falsely, misleadingly or deceptively made:
- (a) representations that it had a right to collect the Sales Tax Overcharge from Class Members participating in the Apple Trade In Program, when in fact, it did not;
  - (b) representations that it was legally obligated to collect the Sales Tax Overcharge from Class Members participating in the Apple Trade In Program, when in fact, it was not;
  - (c) representations that the Sales Tax Overcharge was for the purpose of legitimate tax collection under federal and/or provincial legislation, when in fact, it was not; and
  - (d) representations using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact, where such use or failure tended to deceive the Plaintiff and Class Members.
28. These representations were unconscionable because the Defendant knew or ought to have known that Class Members would rely, to their detriment, on the Defendant's misleading statements with respect to the collection of the Sales Tax Overcharge.

29. As such, the Defendant made misleading omissions of facts within its knowledge to the Plaintiff and Class Members, namely that the Plaintiff and Class Members were entitled to reduced Sales Tax as a result of their participation in the Apple Trade In Program.
30. Further, the Defendant's false, misleading, deceptive and/or unconscionable representations constitute unfair practices and thus Class Members are entitled to damages pursuant to the *Consumer Protection Act* and the *Competition Act*.
31. The Plaintiff pleads and relies on the provisions of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of the consumer protection legislation in other Canadian provinces as described in Appendix 1 hereto.
32. The Plaintiff pleads and relies on the provisions of the *Competition Act*, RSC 1985, c C-34.

**(b) Breach of the *Excise Tax Act***

33. As a "supplier", the Defendant has an obligation to collect tax on the sale of taxable supplies and to remit this tax to the federal and/or provincial governments in accordance with the provisions set out in the *Excise Tax Act*.
34. At all times relevant to this action, the law is clear and unambiguous with respect to the collection of Sales Tax when concerning "used tangible personal property trade-ins" as described under *Part IX* of the *Excise Tax Act*.
35. Under section 153(4) of the *Excise Tax Act*, a supplier providing full or partial consideration to a recipient trading-in "used tangible personal property" must only collect

Sales Tax on the net value of the transaction, that being the value of the new taxable supply, minus the value of the used tangible personal property that is being traded-in.

36. In collecting and remitting the Sales Tax Overcharge, the Defendant is in breach of the *Excise Tax Act*.
37. The Plaintiff repeats and relies upon the allegations made in the preceding paragraphs.
38. The Plaintiff pleads and relies on the provisions of the *Excise Tax Act*, R.S.C., 1985, c. E-15.

**(c) Breach of Contract**

39. As part of their participation in the Apple Trade In Program, the Plaintiff and Class Members entered into agreements with the Defendant that consisted of both implied and express terms and warranties, including the implied term that Class Members were being charged the appropriate amount of Sales Tax when purchasing a New Apple Device with credit obtained through the Apple Trade In Program.
40. The Defendant breached express and implied terms and warranties of these agreements by collecting the Sales Tax Overcharge from the Plaintiff and Class Members.
41. Even if the Defendant properly disclosed the Sales Tax Overcharge prior to formation of contract and obtained the Plaintiff's and the Class members' consent thereto, such a consent would have been misinformed based on the Defendant's misrepresentations that the Sales Tax Overcharge was a legitimate charge of tax to be collected and remitted to the applicable authorities.

42. As a result of the Defendant's breach of contract, the Plaintiff and Class Members sustained foreseeable damages.

**(d) Negligence**

43. The Defendant was negligent as it knew or ought to have known that its unlawful acts committed by way of collecting the Sales Tax Overcharge would result in harm to the Plaintiff and Class Members.

44. As previously stated, the law with respect to "used tangible personal property trade-ins" under the *Excise Tax Act* is clear and unambiguous. This unambiguity is further exemplified through various Technical Service Bulletins published by the Canada Revenue Agency that are available to the public, and by extension, the Defendant.

45. At all material times, the Defendant owed a duty of care to the Plaintiff and Class Members to ensure that its tax collections practices did not result in an overcharge to consumers when supplying New Apple Devices that were subject to credit through the Apple Trade In Program.

46. The Defendant negligently breached its duty of care.

47. The Plaintiff states that his damages and the Class Members' damages were caused by the negligence of the Defendant. Such negligence includes, but is not limited to, the following:

(a) the Defendant failed to ensure that the Sales Tax charged on New Apple Devices subject to credit provided in exchange for Eligible Used Apple Devices through the

Apple Trade In Program reflected applicable tax legislation, including the *Excise Tax Act*;

- (b) the Defendant made negligent misrepresentations that it was properly assessing, charging and collecting the appropriate amount of Sales Tax charged on New Apple Devices that were subject to credit obtained through the Apple Trade In Program, and that such Sales Tax reflected applicable tax legislation, including the *Excise Tax Act*;
- (c) the Defendant failed to adequately consult with the Canada Revenue Agency on its tax collection obligations with respect to the Apple Trade In Program;
- (d) the Defendant failed to adequately consult various publicly available Technical Service Bulletins published by the Canada Revenue Agency with respect to “used personal property trade-ins” and how such directives may impact its tax collection practices with respect to the Apple Trade In Program;
- (e) the Defendant made misrepresentations that were unreasonable given that the applicable laws with respect to “used tangible personal property trade-ins” were clear and unambiguous and that the Defendant knew or ought to have known that these representations were false.

48. As a result of the Defendant breaching its duty of care owed to the Plaintiff and Class Members, the Plaintiff and Class Members suffered damages.

49. The Plaintiff pleads and relies on the provisions of the *Negligence Act*, RSO 1990, c N 1 and the parallel provisions of other provincial legislation as described in Appendix 2 hereto.

**(e) Conversion**

50. Through its conduct, the Defendant has converted and/or misappropriated funds belonging to the Plaintiff and Class Members.

51. The Defendant had no legal right to collect the Sales Tax Overcharge, considering that it was providing the Plaintiff and Class Members with a trade-in program for used tangible personal property and as such was only obligated to collect the net value of the transaction, that being the full value of the New Apple Device, minus the deemed value of the Eligible Used Apple Device.

52. The conversion and misappropriation of the funds consisting of the Sales Tax Overcharge are prohibited and intentional, insofar that the Defendant knew or ought to have known of its tax collection obligations under the *Excise Tax Act*.

53. The Defendant's conduct in its intentional interference with the Plaintiff's and the Class Members' property unjustifiably deprived the Plaintiff and the Class Members' of their rightful possession and use of their monetary funds. As such, the Defendant's conduct constitutes an unlawful conversion of the Plaintiff's and the Class Members' personal property.

## DAMAGES

54. The Plaintiff's and Class Members' damages were caused by the actions of the Defendant. As a result of the Defendant's misrepresentations, deceit, unfair business practices, breaches of contract, negligence, and conversion, the Plaintiff and Class Members have suffered and will continue to suffer damages.
55. Rescission of the agreement between the Plaintiff/Class Members and the Defendant pursuant to section 18(1) of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of other provincial legislation as described in Appendix 1 hereto is not possible in the circumstances. The Plaintiff and Class Members are therefore entitled to recover damages pursuant to section 18(2) of the *Consumer Protection Act, 2002*, SO 2002, c 30 and the parallel provisions of other provincial legislation as described in Appendix 1 hereto.
56. The Plaintiff claims pecuniary and special damages for costs, time, and expenses incurred.
57. The Plaintiff claims punitive, aggravated, and exemplary damages for the reckless and unlawful conduct of the Defendant. The Defendant's acts, wrongdoings, and breaches of duties constitute unlawful business practices, the effects of which were and are borne by the Plaintiff and Class Members.



**PLACE OF TRIAL**

58. The Plaintiff proposes that this action be tried in the City of Toronto.

Date of Issue: June 16, 2023

**LANDY MARR KATS LLP**  
Barristers and Solicitors  
2 Sheppard Avenue East, Suite 900  
Toronto, Ontario, M2N 5Y7

**Vadim Kats** (LSUC # 43095K)  
[vkats@lmklawyers.com](mailto:vkats@lmklawyers.com)

Tel: 416-221-9343, ext 228

Fax: 416-221-8928

Lawyers for the Plaintiff

## APPENDIX 1

Alberta: *Consumer Protection Act*, RSA 2000, c C-26.3

British Columbia: *Business Practices and Consumer Protection Act*, SBC 2004, c 2

Manitoba: *The Business Practices Act*, CCSM c B120, c 2 and *The Consumer Protection Act*, CCSM c C200

New Brunswick: *Consumer Product Warranty and Liability Act*, SNB 1978, c C-18.1

Newfoundland and Labrador: *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1

Northwest Territories: *Consumer Protection Act*, RSNWT 1988, c C-17

Nova Scotia: *Consumer Protection Act*, RSNS 1989, c 92

Nunavut: *Consumer Protection Act*, RSNWT (Nu) 1988, c C-17

Prince Edward Island: *Consumer Protection Act*, RSPEI 1988, c C-19 and the *Business Practices Act*, RSPEI 1988, c B-7

Saskatchewan: *The Consumer Protection and Business Practices Act*, SS 2014, c C-30.2

Yukon: *Consumers Protection Act*, RSY 2002, c 40

## **APPENDIX 2**

British Columbia: *Negligence Act*, RSBC 1996, c 333

BORIS GROSSMAN  
Plaintiff

-and- APPLE CANADA INC  
Defendant

Court File No.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

**LANDY MARR KATS LLP**  
Barristers and Solicitors  
2 Sheppard Avenue East, Suite 900  
Toronto, Ontario, M2N 5Y7

**Vadim Kats** (LSUC # 43095K)  
[vkats@lmklawyers.com](mailto:vkats@lmklawyers.com)

Tel: 416-221-9343, ext 228  
Fax: 416-221-8928

Lawyers for the Plaintiff