

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class Action Chamber)

N° : 500-06-001132-212

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GABRIEL BOURGEOIS,

Applicant

v.

ELECTRONICS ARTS INC.,  
ELECTRONICS ARTS (Canada) INC.,  
ACTIVISION BLIZZARD INC.,  
ACTIVISION PUBLISHING INC.,  
BLIZZARD ENTERTAINMENT INC.,  
TAKE TWO INTERACTIVE SOFTWARE INC.,  
TAKE TWO INTERACTIVE CANADA  
HOLDINGS INC.,  
2K GAMES INC.,  
ROCKSTAR GAMES INC.,  
WARNER BROS. ENTERTAINMENT INC.,  
WARNER BROS ENTERTAINMENT CANADA  
INC.,  
WARNER BROS. HOME ENTERTAINMENT  
INC.,  
UBISOFT ENTERTAINMENT SA,  
UBISOFT INC.,  
UBISOFT ENTERTAINMENT INC./UBISOFT  
DIVERTISSEMENTS INC.,  
MICROSOFT CORPORATION,  
MICROSOFT CANADA INC.,  
EPIC GAMES INC.,  
EPIC GAMES CANADA ULC,  
SCOPELY INC.,  
NIANTIC INC.,  
KING DIGITAL ENTERTAINMENT GROUP INC.,  
KING.COM LTD.,  
ZYNGA INC.,  
ZYNGA GAME CANADA LTD.,

Respondents

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**AMENDED APPLICATION BY RESPONDENTS ACTIVISION BLIZZARD  
INC., ACTIVISION PUBLISHING INC., AND BLIZZARD  
ENTERTAINMENT INC. [...] FOR DECLINATORY EXCEPTION IN  
ORDER TO PARTIALLY DISMISS THE RE-AMENDED APPLICATION  
FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
(*Art. 166 and 167 CCP and Art. 3148 CCQ.*)**

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TO THE HONOURABLE JUSTICE STÉPHANE LACOSTE, OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE RESPONDENTS ACTIVISION BLIZZARD INC, ACTIVISION PUBLISHING INC., AND BLIZZARD ENTERTAINMENT INC. [...] RESPECTFULLY SUBMIT THE FOLLOWING:

## I. INTRODUCTION

1. The Respondents, Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment Inc. [...] (collectively, **Activision**), respectfully seek:
  - a) An order partially dismissing the *Amended (2) Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff (May 27, 2022)* (**the Re-Amended Application**) as against them with respect to the claims of non-residents of Quebec, given the Quebec courts' lack of jurisdiction over these claims in the present proceedings; and
  - b) As a result, an order excluding non-residents of Quebec from the class proposed in the Amended Application.

## II. THE APPLICANT'S CLAIM

2. On or about March 2, 2021, the Applicant filed an application to authorize the bringing of a class action against twenty-five (25) Respondents operating in the video game industry and to obtain the status of representative plaintiff.
3. On or about October 15, 2021, the Applicant filed [...] an amended application and, on December 7, 2021, this Court partially authorized the amendments sought, but replaced the Applicant's proposed class by the following class definition (the **Proposed Class**):

All Canadian customers of the Lootbox Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al*, SCBC S-2013414, *Lussier et al v. Scopely Inc.*, SCBC S-2013510, *Pechnik et al v. Take Two Interactive Software Inc. et al*. SCBC S-211073, *Sutherland v. Electronic Arts Inc. et al*, SCBC S-209803, *Petty et al v. Niantic Inc. et al*, SCBC S-213723.

4. On or about May 27, 2022, the Applicant filed its Re-Amended Application and on June 8, 2022, this Court authorized the amendments sought, which modified the Proposed Class to remove individuals who are not residents of the province of Quebec for claims made against the Respondents, except the Activision Respondents, the Electronic Arts Respondents, the Warner Bros Respondents, and the Ubisoft Respondents.
5. Further to this amendment, the Proposed Class is now divided into two sub-classes and reads as follows:

All Canadian customers of the National-class Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Amended (2) Application for Authorization between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al* SCBC S-2013414, *Lussier et al v. Scopely Inc.*,

SCBC S- 2013510, Pechnik et al v. Take-Two Interactive Software Inc. et al, SCBC S- 211073, Sutherland v. Electronic Arts Inc. et al, SCBC S-209803, Petty et al v. Ninantic Inc. et al, SCBC S-213723.

**(the “National Class”, “National-class Members” and “Class Period”)**

And

All Quebec customers of the Quebec-class Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Amended (2) Application for Authorization between 2008 and the date this action is authorized as a class proceeding.

**(the “Quebec Class,” “Quebec Class Members” and “Class Period”)**

6. In its Re-Amended Application, the Applicant defines the National-class Loot Box Respondents as follows:

4.1. The following Respondents will be defined collectively as the National-class Loot Box Respondents:

a) Ubisoft (Ubisoft Entertainment SA., Ubisoft Inc., Ubisoft Entertainment Inc. / Ubisoft Divertissements Inc.)

b) Activision and Blizzard (Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment Inc.)

c) Electronic Arts (Electronic Arts Inc. and Electronic Arts (Canada) Inc.)

d) WB Games (Warner Bros. Entertainment Inc., Warner Bros Entertainment Canada Inc. et Warner Bros. Home Entertainment Inc.).

7. As for the Quebec-class Loot Box Respondents, the definition is the following:

4.2. The following Respondents will be defined collectively as the Quebec-class Loot Box Respondents:

a) Epic Games Inc. et Epic Games Canada ULC

b) King Digital Entertainment Group Inc. and King.com Ltd

c) Microsoft Corporation et Microsoft Canada Inc.

d) Niantic Inc.

e) Scopely, Inc.

f) Take Two Interactive Software Inc., Take Two Interactive Canada Holdings Inc., 2K Games Inc. and Rockstar Games Inc.

g) Zynga Inc. et Zynga Game Canada Ltd

8. The Applicant asserts that the members of the Proposed Class are entitled to restitution, compensatory, and punitive damages resulting from the Respondents' offering and operating "loot boxes" in their respective video games in violation of the *Criminal Code*, RSC 1985, c C-46.
9. The Applicant describes "loot boxes" as "a consumable virtual item which can be redeemed (or "opened") to receive a randomized selection of further virtual items, ranging from simple customization options for a player's avatar or character, to game-changing equipment or additional avatars/characters (with effects on gameplay, including relative to other players)" (**Loot Boxes**).

### III. LACK OF JURISDICTION OVER THE CLAIMS OF NON-RESIDENTS OF QUEBEC

10. Activision respectfully submits that the Quebec courts lack jurisdiction over this case with respect to the claims of non-residents of Quebec, as none of the connecting factors provided by article 3148 CCQ apply for these members of the Proposed Class.
11. First, with respect to the criterion of domicile under paragraph 1(1) of article 3148 CCQ, the Re-Amended Application does not establish that the Activision Respondents have their domicile or residence in Quebec. On the contrary, the Re-Amended Application asserts that:
  - a) The Respondent Activision Blizzard Inc. is "a company incorporated under the laws of Delaware, with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808" (Exhibit P-3);
  - b) The Respondent Activision Publishing Inc. is "a company incorporated pursuant to the laws of Delaware, with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808" (Exhibit P-4) and "a business address at 3100 Ocean Park Blvd, Santa Monica, California, 90405"; and
  - c) The Respondent Blizzard Entertainment Inc. is "a company incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808" (Exhibit P-5) and "a business address at 16251 Alton Parkway, Irvine, California, 92618" .
  - d) [...]
  - e) [...]
12. Secondly, the [...] jurisdiction of the Quebec courts is [...] not justified under paragraph 1(2) of article 3148 CCQ as, contrary to the Applicant's allegations, the Activision Respondents do not have any establishment in the province of Quebec, as appear from the Sworn Declaration of James Lodato, IV dated July 29, 2022, communicated herewith as **Exhibit RA-1**.
13. Further, the address of Beenox Inc. (**Beenox**) at 700-305 boulevard Charest Est, Quebec (Quebec) referred to in the Amended Application is not an establishment of Activision Publishing inc, as this Respondent and Beenox are two separate legal entities (Exhibit RA-1).
14. With respect to its activities, Beenox provided services to Activision Publishing Inc. solely in relation to the following games listed in Appendix A to the Re-Amended Application (Exhibit RA-1):
  - a) Call of Duty: Black Ops III,
  - b) Call of Duty: Modern Warfare Remastered, and
  - c) Call of Duty: Black Ops 4,

(collectively referenced as the Games).

Call of Duty: Black Ops III

15. With respect to Call of Duty: Black Ops III, Beenox was simply tasked with adapting the software to allow this game to be played on the Playstation 4 console (known as "porting") (Exhibit RA-1).
16. The work done by Beenox was akin to the translation of a book to a foreign language (Exhibit RA-1).

Call of Duty: Modern Warfare Remastered

17. Beenox was simply tasked with upgrading the visuals of this game which had been originally published in 2007 (Exhibit RA-1).
18. The work done by Beenox was akin to the restoration and colorization of an old movie (Exhibit RA-1).

Call of Duty: Black Ops 4

19. Beenox was tasked with two things.
20. First, Beenox was asked to develop code for portions of this game in accordance with the script that it was provided. This is akin to a movie director following the movie script that he/she was hired to film (Exhibit RA-1).
21. Second, Beenox was asked to adapt the existing software to allow this game to be played on PC (personal computer) using a keyboard and mouse (Exhibit RA-1).
22. Beenox has never been involved with the design, manufacturing, marketing, distribution or publishing of the Games (Exhibit RA-1).
23. At no time has Beenox been involved with the following decisions regarding the Games (Exhibit RA-1):
  - a) Regarding how to monetize the Games,
  - b) Whether to include loot boxes in the Games,
  - c) Whether to make the loot boxes free to play or not,
  - d) Determining the odds of receiving the loot box items,
  - e) Placing safeguards to prevent minors from purchasing loot boxes,
  - f) Making items exclusively available in loot boxes.
24. Beenox was never involved in the operation of loot boxes found in the Games (Exhibit RA-1).
25. Beenox did not earn any revenue from the sale of Games, much less the sales of loot boxes offered in the Games (Exhibit RA-1).
26. In short, Beenox has had no control whatsoever over the Games, including their systems, mechanics, monetization methods and features referenced in the Re-Amended Application (Direct

Gambling Mechanics, Matchmaking Optimization, Dynamic Pricing and Dynamic Difficulty Adjustment) (Exhibit RA-1).

27. Thirdly, regarding paragraph 1(3) of article 3148 CCQ, the Re-Amended Application contains no allegation to the effect that the members of the Proposed Class residing outside Quebec suffered an injury in Quebec, that a fault affecting these non-residents of Quebec was committed in Quebec, or that a contractual obligation owed to these non-residents of Quebec was to be performed in Quebec.
28. Fourth, the Re-Amended Application does not establish any agreement by which the parties would have directed any disputes to the jurisdiction of Quebec courts under paragraph 1(4) of article 3148 CCQ.
29. Finally, the Activision Respondents never submitted to the jurisdiction of the Quebec courts in regard of the claims of non-residents of Quebec (paragraph 1(5) of article 3148 CCQ) and have reserved their rights to contest the jurisdiction of Quebec courts from the outset of the present proceedings.
30. In short, the claims brought by members of the Proposed Class residing outside Quebec do not qualify under any of the connecting factors of article 3148 CCQ required to ground jurisdiction in Quebec.
31. The Activision Respondents thereby seek that this case against them be partially dismissed in respect of non-residents of Quebec and that the Proposed Class be limited to members residing in Quebec.

**WHEREFORE MAY IT PLEASE THIS COURT TO:**

**GRANT** the present Amended Application;

**PARTIALLY DISMISS** the Amended (2) Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff (May 27, 2022) as against Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment Inc. [...] in respect of the claims of the members of the Proposed Class who do not reside in Quebec;

**EXCLUDE** the members residing outside Quebec from the Proposed Class;

**THE WHOLE** without costs, except in the event of contestation.

Montréal, July 29, 2022

*Norton Rose Fulbright  
Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**  
(Mtres. Eric C. Lefebvre and Olivier V. Nguyen)  
Attorneys for Respondents

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Our reference: 1001161127

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**NOTICE OF PRESENTATION**

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*Attorneys for Respondent Niantic Inc.*

**TAKE NOTICE** that the present *Amended Application by Respondents Activision Blizzard Inc., Activision Publishing inc., and Blizzard Entertainment inc. for Declaratory Exception in Order to Partially Dismiss the Re-Amended Application for Authorization to Institute a Class Action* will be presented for hearing and allowance on a date and time and place to be determined by the Honorable Justice Stéphane Lacoste of the Superior Court of Québec.

**DO GOVERN YOURSELVES ACCORDINGLY.**

Montréal, July 29, 2022

*Norton Rose Fulbright  
Canada LLP*

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**NORTON ROSE FULBRIGHT CANADA LLP**

(Mtres. Eric C. Lefebvre and Olivier V. Nguyen)

Attorneys for Respondents

**ACTIVISION BLIZZARD INC., ACTIVISION PUBLISHING INC.,  
BLIZZARD ENTERTAINMENT INC., KING DIGITAL ENTERTAINMENT  
GROUP INC., AND KING.COM LTD.**

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Our reference: 1001161127

# **EXHIBIT RA-1**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Class Action Chamber)

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NO.: 500-06-001132-212

GABRIEL BOURGEOIS,

Plaintiff

v.

ELECTRONICS ARTS INC.,  
ELECTRONICS ARTS (Canada) INC.,  
ACTIVISION BLIZZARD INC.,  
ACTIVISION PUBLISHING INC.,  
BLIZZARD ENTERTAINMENT INC.,  
TAKE TWO INTERACTIVE SOFTWARE INC.,  
TAKE TWO INTERACTIVE CANADA  
HOLDINGS INC.,  
2K GAMES INC.,  
ROCKSTAR GAMES INC.,  
WARNER BROS. ENTERTAINMENT INC.,  
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WARNER BROS. HOME ENTERTAINMENT  
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EPIC GAMES CANADA ULC,  
SCOPELY INC.,  
NIANTIC INC.,  
KING DIGITAL ENTERTAINMENT GROUP  
INC.,  
KING.COM LTD.,  
ZYNGA INC.,  
ZYNGA GAME CANADA LTD.,

Defendants

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**SWORN DECLARATION OF JAMES LODATO,  
IV**

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I, the undersigned, James Lodato, IV, performing my employment duties at Activision Publishing Inc. (**Activision Publishing**), having a place of business at 3100 Ocean Park Boulevard, in the City of Santa Monica, California, 90405, United States, solemnly declare the following:

1. I am over the age 18 and a resident of the state of California. I have personal knowledge of the facts of this affidavit, and, if called as a witness, could competently testify about them.
2. I currently live at 14515 Cordary Ave, Hawthorne, California 90250.
3. I have been employed by Activision Publishing since 2004 and currently hold the position of Director of Production.
4. As Director of Production, I am tasked with working with and overseeing studios to oversee game quality and schedule.
5. I have reviewed the *Amended (2) Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff (May 27, 2022)* and the supporting exhibits relating to this matter (the **Authorization Application**).

**A. THE ABSENCE OF ESTABLISHMENT(S) IN THE PROVINCE OF QUEBEC**

6. The allegations contained at paragraphs 12.1 and 90.1 of Authorization Application are incorrect and false.
7. Activision Publishing, Activision Blizzard Inc. and Blizzard Entertainment Inc. do not have any establishment in the province of Quebec.

**B. BEENOX INC.**

8. Beenox Inc. (**Beenox**) was incorporated under the Québec *Business Corporations Act*, CQLR c S-31.1.
9. In 2005, Activision Publishing acquired the share capital of Beenox.
10. Beenox has its head office at 700-305 boul. Charest E., in the City and District of Quebec, G1K 3H3.
11. Beenox provides services to Activision Publishing, acting as a separate legal entity.
12. Beenox provided services to Activision Publishing solely in relation to the following games listed in Appendix A to the Authorization Application:
  - (a) Call of Duty: Black Ops III,
  - (b) Call of Duty: Modern Warfare Remastered, and
  - (c) Call of Duty: Black Ops 4.

(collectively referenced as the **Games**)

*Call of Duty: Black Ops III*

13. With respect to Call of Duty: Black Ops III, Beenox was simply tasked with adapting the software to allow this game to be played on the Playstation 4 console (known as “porting”).
14. The work done by Beenox was akin to the translation of a book to a foreign language.

*Call of Duty: Modern Warfare Remastered*

15. Beenox was simply tasked with upgrading the visuals of this game which had been originally published in 2007.
16. The work done by Beenox was akin to the restoration and colorization of an old movie.

*Call of Duty: Black Ops 4*

17. Beenox was tasked with two things.
18. First, Beenox was asked to develop code for portions of this game in accordance with the script that it was provided. This is akin to a movie director following the movie script that he/she was hired to film.
19. Second, Beenox was asked to adapt the existing software to allow this game to be played on PC (personal computer) using a keyboard and mouse.
20. Beenox has never been involved with the design, manufacturing, marketing, distribution or publishing of the Games.
21. At no time has Beenox been involved with the following decisions regarding the Games:
  - (a) Regarding how to monetize the Games,
  - (b) Whether to include loot boxes in the Games,
  - (c) Whether to make the loot boxes free to play or not,
  - (d) Determining the odds of receiving the loot box items,
  - (e) Placing safeguards to prevent minors from purchasing loot boxes,
  - (f) Making items exclusively available in loot boxes.
22. Beenox was never involved in the operation of loot boxes found in the Games.
23. Beenox did not earn any revenue from the sale of Games, much less the sales of loot boxes offered in the Games.
24. In short, Beenox has had no control whatsoever over the Games, including their systems, mechanics, monetization methods and features referenced in the Authorization Application (Direct Gambling Mechanics, Matchmaking Optimization, Dynamic Pricing and Dynamic Difficulty Adjustment)
25. I declare under penalty of perjury that the foregoing is true and correct.

AND I HAVE SIGNED, in the State of California  
on July 29, 2022

*James Lodato IV*  
\_\_\_\_\_  
JAMES LODATO, IV

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

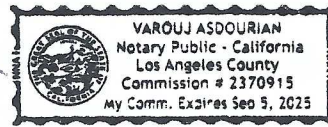
State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 29th  
day of July, 2022, by \_\_\_\_\_  
James Lodato, IV

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

Signature *[Handwritten Signature]*



**NO: 500-06-001132-212**

**SUPERIOR COURT  
(Class Action Chamber)  
DISTRICT OF MONTRÉAL**

**GABRIEL BOUGEOIS,**

Applicant

- v. -

**ELECTRONICS ARTS INC. ET ALS.,**

Respondents

**EXHIBIT RA-1**

**ORIGINAL**

BO-0042

#1001161127

**Mtres. Eric C. Lefebvre and Olivier V. Nguyen  
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## Marie-Chantal Casey

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**Cc:** Eric Lefebvre; Olivier V. Nguyen  
**Objet:** NOTIFICATION / Gabriel Bourgeois vs. Electronic Arts Inc. et als. / C.S.M.: 500-06-001132-212  
**Pièces jointes:** Amended Application by Activision for Declaratory Exception(CAN\_DMS\_147162149.1).pdf; Sworn Declaration - Lodato (Exhibit RA-1)(CAN\_DMS\_147162489.1).pdf

**NOTIFICATION PAR COURRIEL / NOTIFICATION BY EMAIL  
(Articles 133 et/and 134 C.p.c. / C.C.P.)**

EXPÉDITEUR / SENDER	
<b>NORTON ROSE FULBRIGHT CANADA</b> S.E.N.C.R.L., s.r.l. / LLP Mtres. Eric C. Lefebvre and Olivier V. Nguyen 1, Place Ville Marie, # 2500 Montréal (Québec) H3B 1R1 Tel. : (514) 847-4747 – Fax : (514) 286-5474 <a href="mailto:Notifications-mtl@nortonrosefulbright.com">Notifications-mtl@nortonrosefulbright.com</a>	
<b>Date :</b>	Montreal, July 29, 2022
<b>Nature du document / Nature of the document :</b>	<b>AMENDED APPLICATION BY RESPONDENTS ACTIVISION BLIZZARD INC., ACTIVISION PUBLISHING INC., AND BLIZZARD ENTERTAINMENT INC. [...] FOR DECLINATORY EXCEPTION IN ORDER TO PARTIALLY DISMISS THE <u>RE-AMENDED APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION</u> (<i>Art. 166 and 167 CCP</i> and <b>Art. 3148 CCQ.</b>)  and <b>Exhibit RA-1: Sworn Declaration of James Lodato, IV dated July 29, 2022</b></b>
<b>N° du dossier de Cour / Court File # :</b>	500-06-001132-212
<b>Nom des parties / Name of the parties :</b>	Gabriel Bourgeois v. Electronics Arts Inc. and al.
<b>Nombre de pages / Number of the pages :</b>	<b>10 + 5</b>
<b>Heure de transmission / Time of transmission :</b>	(See present email)



Notre référence / Our reference :

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**NO: 500-06-001132-212**

**SUPERIOR COURT  
(Class Action Chamber)  
DISTRICT OF MONTRÉAL**

**GABRIEL BOUGEOIS,**

Applicant

- v. -

**ELECTRONICS ARTS INC. ET ALS.,**

Respondents

**AMENDED APPLICATION BY RESPONDENTS  
ACTIVISION BLIZZARD INC., ACTIVISION  
PUBLISHING INC., AND BLIZZARD  
ENTERTAINMENT INC. [...] FOR  
DECLINATORY EXCEPTION IN ORDER TO  
PARTIALLY DISMISS THE RE-AMENDED  
APPLICATION FOR AUTHORIZATION TO  
INSTITUTE A CLASS ACTION**

**ORIGINAL**

BO-0042

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