

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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**APPLICATION BY RESPONDENTS ACTIVISION BLIZZARD INC.,  
ACTIVISION PUBLISHING INC., BLIZZARD ENTERTAINMENT  
INC., KING DIGITAL ENTERTAINMENT GROUP INC., AND  
KING.COM LTD. FOR LEAVE TO SUBMIT RELEVANT  
EVIDENCE  
(Art. 574 CCP.)**

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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., BLIZZARD ENTERTAINMENT INC., KING DIGITAL ENTERTAINMENT GROUP INC., AND KING.COM LTD. RESPECTFULLY SUBMIT THE FOLLOWING:**

## **I. INTRODUCTION**

1. The Respondents, Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd (collectively, **Activision**), seek leave to submit relevant evidence in order to establish facts that are necessary to enable this Court to undertake an informed analysis, in light of the criteria set out in article 575 of the *Code of Civil Procedure* (the **CCP**), regarding the *Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* (**Amended Application**) of the Applicant, Gabriel Bourgeois.

## **II. BACKGROUND**

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 its 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:

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. The Amended Application is grounded on the proposition that "loot boxes" purportedly offered in the Respondents' video games constitute unlawful gambling games prohibited under the *Criminal Code*, RSC 1985, c C-46, and that the Respondents operated these gambling games without proper provincial licences.
5. At paragraph 61 of the Amended Application, 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**).
6. The Amended Application also alleges that Respondents contravened the *Civil Code of Quebec*, the *Consumer Protection Act*, CQLR c P-40.1 and, for residents outside Quebec, related consumer protection statutes in other provinces by:
  - a) Offering and operating Loot Boxes in breach of the *Criminal Code*;
  - b) Concealing the odds for their Loot Boxes;
  - c) Failing to place safeguards to prevent minors from playing their Loot Boxes;

- d) Making high-value items that affect game play available exclusively from Loot Boxes, thereby forcing playing to obtain Loot Boxes.
- 7. The Amended Application further alleges that the Respondents' conduct constitute a violation of the *Competition Act*, RSC 1985, c C-35 as, they offered unlawful Loot Boxes games to the proposed class members as they were legal, they advertised an illegal internet gaming site, and they failed to disclose odds of winning, take appropriate steps to protect minors, and promote responsible gaming.
- 8. As a result, the Applicant asserts that the members of the proposed Class are entitled to restitution, compensatory or other damages, and punitive damages.

### **III. EVIDENCE TO BE ADDUCED PRIOR TO THE AUTHORIZATION HEARING**

- 9. Activision seeks leave to adduce evidence prior to the authorization hearing in order to rectify incorrect allegations and to provide the Court with indispensable evidence with respect to the criteria set forth in article 575 CCP.
- 10. In particular, the evidence that Activision seeks to adduce will provide the Court with correct information regarding:
  - a) the Activision games that actually contain Loot Boxes;
  - b) the fundamental features of the Activision Loot Boxes; and
  - c) the terms of service applicable to the Activision Loot Boxes.
- 11. The evidence will relate directly to the issue of the claim raising identical, similar or related issues of law or fact (art. 575(1) CCP) and to the issue of whether the facts alleged by the Applicant appear to justify the conclusions sought (art. 575(2) CCP). It will fill the void left by the Applicant in the record currently before the Court.
- 12. The evidence will be neutral, objective and limited to what is essential to demonstrate that, on its face, the proposed legal syllogism associating Activision Loot Boxes to unlawful gambling games is ill founded and doomed to fail.
- 13. Activision respectfully submits that it would be contrary to the interests of justice to refuse the evidence in respect of which leave is sought, which evidence is directly relevant to the analysis of the proposed class action authorization criteria.

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

**GRANT** the present Application;

**AUTHORIZE** the Respondents Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd to submit relevant evidence in respect of:

- i. which Activision games actually contain Loot Boxes ;
- ii. the fundamental features of the Activision Loot Boxes; and
- iii. the terms of service applicable to the Activision Loot Boxes.

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

Montréal, December 22, 2021

*Norton Rose Fulbright  
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**NOTICE OF PRESENTATION**

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**TAKE NOTICE** that the present *Application for Leave to Submit Relevant Evidence* 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, December 22, 2021

*Norton Rose Fulbright  
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**Pièces jointes:** Application by Activision and King Respondents for Leave to Submit Relevant  
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<b>Date :</b>	Montreal, December 22, 2021
<b>Nature du document / Nature of the document :</b>	Application by respondents Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd. for leave to submit relevant evidence *
<b>N° du dossier de Cour / Court File # :</b>	500-06-001132-212
<b>Nom des parties / Name of the parties :</b>	Gabriel Bougeois v. Electronics Arts Inc. and al.
<b>Nombre de pages / Number of the pages :</b>	7
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\* Veuillez noter que la présente *Application by Respondents Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd. for Leave to Submit Relevant Evidence* vous est notifiée avant le 22 décembre 2021 conformément à l'ordonnance du juge Lacoste du 3 décembre 2021 et sous réserve des droits de nos clientes quant à leurs demandes en exception déclinatoire contestant la compétence des tribunaux québécois dans le présent dossier. Ces demandes vous seront notifiées d'ici le 23 décembre 2021 conformément à ladite ordonnance du juge Lacoste.

**Marcela Delcid**

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**Envoyé:** 22 décembre 2021 16:08

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# Confirmation de la transmission des documents



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Titre : Application by Activision and King Respondents for Leave to Submit Relevant Evidence (500-06-001132-212)

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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

**APPLICATION BY RESPONDENTS ACTIVISION  
BLIZZARD INC., ACTIVISION PUBLISHING INC.,  
BLIZZARD ENTERTAINMENT INC., KING  
DIGITAL ENTERTAINMENT GROUP INC., AND  
KING.COM LTD. FOR LEAVE TO SUBMIT  
RELEVANT EVIDENCE  
(Article 574 C.C.P.)**

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