

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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***DE BENE ESSE*** APPLICATION BY RESPONDENTS ACTIVISION BLIZZARD  
INC., ACTIVISION PUBLISHING INC., BLIZZARD ENTERTAINMENT INC.,  
KING DIGITAL ENTERTAINMENT GROUP INC., AND KING.COM LTD. FOR  
PARTIAL REFERRAL TO ARBITRATION  
(*Art. 622 CCP and Art 3148 para 2 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., BLIZZARD ENTERTAINMENT INC., KING DIGITAL ENTERTAINMENT GROUP INC., AND KING.COM LTD. RESPECTFULLY SUBMIT THE FOLLOWING:

## I. INTRODUCTION

1. On December 3, 2021, this Court ordered the Respondents to file all their applications for declaratory exception, including in relation to arbitration clauses, by December 23, 2021.
2. On December 23, 2021, the Respondents, Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd. (collectively, **Activision**), filed an *Application by Activision Respondents for Declaratory Exception to Partially Dismiss the Application for Authorization to Institute a Class Action for Lack of Jurisdiction* (the **Application for Lack of Jurisdiction**) on the basis that the claims of the members of the proposed class who do not reside in Quebec should be dismissed given the Quebec courts' lack of jurisdiction over same pursuant to paragraph 1 of article 3148 of the *Civil Code of Quebec* (**CCQ**).
3. Should this Court reject the Application for Lack of Jurisdiction, Activision hereby submits that the claims of the members of the proposed class who do not reside in Quebec are subject to a valid, enforceable and binding arbitration agreement.
4. Accordingly, Activision seeks that:
  - a) the claims of non-residents of Quebec be referred to arbitration; and
  - b) the Amended Application as against the Activision Respondents be partially dismissed as it pertains to these claims.

## II. THE APPLICANT'S CLAIM

5. 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.
6. 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 (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.

7. 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.

8. 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. ABSENCE OF JURISDICTION OF THE QUEBEC COURTS DUE TO VALID AND ENFORCEABLE ARBITRATION AGREEMENTS**

9. Activision submits that the Quebec courts lack jurisdiction over this case with respect to the claims of non-residents of Quebec, as these claims are subject to a binding and mandatory arbitration agreement.
10. All Activision games and related features, including Loot Boxes, are subject to the players accepting the relevant terms of use. While each of Activision’s game titles and platforms have their own terms of use, which are updated from time to time, they all include an arbitration agreement.
11. Said otherwise, in order to access the online features offered in the Activision games, including Loot Boxes, the players must accept the terms of use, which contain an arbitration agreement.
12. If a player does not accept the terms of use, access to the Activision online features, including Loot Boxes, if any, is refused.
13. Thus, a player of the Activision games cannot access Loot Boxes without prior acceptance to the arbitration agreement.
14. Although the arbitration agreements vary slightly depending on the video game title and platform, they are structured in a similar manner and essentially contain the same provisions.
15. For example, the terms governing the use of *Hearthstone* and *Overwatch*, and their related online features, include the following arbitration agreement:

#### **1. APPLICABILITY OF THIS DISPUTE RESOLUTION POLICY.**

This Dispute Resolution Policy (“Agreement”) is a part of the contracts between you and Blizzard Entertainment, Inc., and/or Activision Blizzard, Inc. (collectively, “Blizzard”), which governs the resolution of any dispute, controversy, or claim, whether based on contract, tort, fraudulent misrepresentation, statute, regulation, constitution, common law, equity, or any other matter that arises out of or relates to the North American Battle.net End User License Agreement (“Dispute”). By agreeing to the North American Battle.net End User License Agreement, you hereby consent to this Agreement.

#### **2. DISPUTES.**

In an effort to accelerate resolution and reduce the cost of any Dispute related to, or arising out of, the North American Battle.net End user License Agreement, which is incorporated into this policy, you and Blizzard agree to first attempt to negotiate any Dispute (except as set forth in Section 5 below) informally for at least thirty (30) days before either party initiates any arbitration or court proceeding.

A. Negotiations will begin upon receipt of written notice by the party raising the Dispute. Blizzard will send its notice to your billing address and e-mail you a

copy to the e-mail address you have provided to us.

B. You will send your notice to Blizzard at Blizzard Entertainment, Inc., 16215 Alton Parkway, Irvine, CA 92618, Attn.: General Counsel.

### 3. BINDING ARBITRATION.

If a Dispute cannot be resolved through negotiations, either you or Blizzard may elect to have the Dispute (except as set forth in Section 5 below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. You should review this provision carefully. This arbitration provision limits your and Blizzard's ability to litigate claims in court and you and Blizzard each agree to waive your respective rights to a jury trial.

A. The arbitration shall be commenced and conducted by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, which are available at the JAMS website ( <http://www.jamsadr.com/> ). This arbitration provision is made pursuant to a transaction involving interstate commerce, and the Federal Arbitration Act (the "FAA") shall apply to the construction, interpretation, and enforceability of this Agreement notwithstanding any other choice of law provision contained in this Agreement.

B. If, for any reason, JAMS is unable to provide the arbitration, you may file your Dispute with any national arbitration company under the Commercial Arbitration Rules of the American Arbitration Association.

C. The arbitrator shall determine the scope and enforceability of this arbitration agreement, including whether a Dispute is subject to arbitration. The arbitrator has authority to decide all issues of arbitrability, including where a party raises as a defense to arbitration that the claims in question are subject to one or more Exceptions to Negotiations and Arbitration in Section 5, below.

D. Where any action includes claims that are arbitrable and claims that are not, the entire action shall be stayed, absent a showing of prejudice to the complaining party, pending the completion of the arbitration of the arbitrable issues. You or Blizzard can request the stay be lifted upon a showing of prejudice.

E. Your arbitration fees and your share of arbitrator compensation shall be governed by the JAMS Comprehensive Arbitration Rules and Procedures.

F. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law. The decision of the arbitrator shall be final and binding on you and Blizzard, and any award of the arbitrator may be entered in any court of competent jurisdiction.

G. THE PARTIES UNDERSTAND THAT, ABSENT THIS MANDATORY PROVISION, THEY WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation. However, the arbitrator shall shift such fees and costs to ensure that you do not pay significant forum fees. In addition, you shall not be required to pay any type of fee or cost in

arbitration that you would not have had to pay had you been free to file your claim in court. The parties understand that the right to discovery may be more limited in arbitration than in court. However, each side will be permitted discovery sufficient to allow that side a fair opportunity to present or defend their claims.

as appears from the arbitration agreement contained in the Blizzard Entertainment Dispute Resolution Policy, communicated herewith as **Exhibit RA-1**.

16. All disputes with respect to the Activision games and/or their online features are thus subject to a binding and mandatory arbitration governed by the JAMS rules.
17. In light of the binding and mandatory arbitration agreements contained in the terms and conditions governing the Activision games and their related online features, this Court is required to refer to arbitration the members of the Proposed Class who do not reside in Quebec pursuant to article 622 of the *Code of Civil Procedure* and paragraph 2 of article 3148 CCQ.

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

**GRANT** the present *De Bene Esse* Application;

**REFER** to arbitration the claims of the members of the Proposed Class who do not reside in Quebec;

**PARTIALLY DISMISS** the *Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* as against Activision Blizzard Inc., Activision Publishing Inc., Blizzard Entertainment Inc., King Digital Entertainment Group Inc. and King.com Ltd. with respect of the claims of the members of the Proposed Class who do not reside in Quebec;

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

Montréal, December 23, 2021

*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.,  
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Our reference: 1001161127

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**LIST OF EXHIBIT**

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**Exhibit RA-1:** Blizzard Entertainment dispute resolution policy.

Montréal, December 23, 2021

*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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**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 23, 2021

*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.,  
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Our reference: 1001161127



**RA-1**



 Legal

NORTH AMERICA

# BLIZZARD ENTERTAINMENT DISPUTE RESOLUTION POLICY

LAST REVISED: MAY 19, 2015

## 1. APPLICABILITY OF THIS DISPUTE RESOLUTION POLICY.

This Dispute Resolution Policy (“Agreement”) is a part of the contracts between you and Blizzard Entertainment, Inc., and/or Activision Blizzard, Inc. (collectively, “Blizzard”), which governs the resolution of any dispute, controversy, or claim, whether based on contract, tort, fraudulent misrepresentation, statute, regulation, constitution, common law, equity, or any other matter that arises out of or relates to the North American Battle.net End User License Agreement (“Dispute”). By agreeing to the North American Battle.net End User License Agreement, you hereby consent to this Agreement.

## 2. DISPUTES.

In an effort to accelerate resolution and reduce the cost of any Dispute related to, or arising out of, the North American Battle.net End User License Agreement, which is incorporated into this policy, you and Blizzard agree to first attempt to negotiate any Dispute (except as set forth in Section 5 below) informally for at least thirty (30) days before either party initiates any arbitration or court proceeding.

A. Negotiations will begin upon receipt of written notice by the party raising the Dispute.

Blizzard will send its notice to your billing address and e-mail you a copy to the e-mail address you have provided to us.

B. You will send your notice to Blizzard at Blizzard Entertainment, Inc., 16215 Alton Parkway, Irvine, CA 92618, Attn.: General Counsel.

### 3. **BINDING ARBITRATION.**

If a Dispute cannot be resolved through negotiations, either you or Blizzard may elect to have the Dispute (except as set forth in Section 5 below) finally and exclusively resolved by binding arbitration. Any election to arbitrate by one party shall be final and binding on the other. You should review this provision carefully. This arbitration provision limits your and Blizzard's ability to litigate claims in court and you and Blizzard each agree to waive your respective rights to a jury trial.

- A. The arbitration shall be commenced and conducted by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, which are available at the JAMS website ( <http://www.jamsadr.com/> ). This arbitration provision is made pursuant to a transaction involving interstate commerce, and the Federal Arbitration Act (the "FAA") shall apply to the construction, interpretation, and enforceability of this Agreement notwithstanding any other choice of law provision contained in this Agreement.
- B. If, for any reason, JAMS is unable to provide the arbitration, you may file your Dispute with any national arbitration company under the Commercial Arbitration Rules of the American Arbitration Association.
- C. The arbitrator shall determine the scope and enforceability of this arbitration agreement, including whether a Dispute is subject to arbitration. The arbitrator has authority to decide all issues of arbitrability, including where a party raises as a defense to arbitration that the claims in question are subject to one or more Exceptions to Negotiations and Arbitration in Section 5, below.
- D. Where any action includes claims that are arbitrable and claims that are not, the entire action shall be stayed, absent a showing of prejudice to the complaining party, pending the completion of the arbitration of the arbitrable issues. You or Blizzard can request the stay be lifted upon a showing of prejudice.
- E. Your arbitration fees and your share of arbitrator compensation shall be governed by the JAMS Comprehensive Arbitration Rules and Procedures.

F. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law. The decision of the arbitrator shall be final and binding on you and Blizzard, and any award of the arbitrator may be entered in any court of competent jurisdiction.

G. THE PARTIES UNDERSTAND THAT, ABSENT THIS MANDATORY PROVISION, THEY WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. They further understand that, in some instances, the costs of arbitration could exceed the costs of litigation. However, the arbitrator shall shift such fees and costs to ensure that you do not pay significant forum fees. In addition, you shall not be required to pay any type of fee or cost in arbitration that you would not have had to pay had you been free to file your claim in court. The parties understand that the right to discovery may be more limited in arbitration than in court. However, each side will be permitted discovery sufficient to allow that side a fair opportunity to present or defend their claims.

#### 4. CLASS AND COLLECTIVE ACTION WAIVER.

You and Blizzard agree that any arbitration or court proceeding shall be limited to the Dispute between Blizzard and you individually. YOU ACKNOWLEDGE AND AGREE THAT:

- A. A CLAIM BY, OR ON BEHALF OF, OTHER PERSONS, WILL NOT BE CONSIDERED IN, JOINED WITH, OR CONSOLIDATED WITH, THE ARBITRATION PROCEEDINGS OR ANY COURT PROCEEDINGS BETWEEN YOU AND BLIZZARD;
- B. THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED, ADJUDICATED, OR RESOLVED THROUGH COURT PROCEEDINGS ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; AND
- C. YOU WILL NOT HAVE THE RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE, PRIVATE ATTORNEY GENERAL, OR AS A MEMBER OF ANY CLASS OF CLAIMANTS FOR ANY DISPUTE SUBJECT TO ARBITRATION OR ANY DISPUTE BROUGHT IN COURT.

Any Dispute regarding the prohibitions in the prior sections shall be resolved by the arbitrator in accordance with this Agreement. If, for any reason, this class or collective action waiver is deemed unenforceable by a court or arbitrator, you agree that the parties' contract to arbitrate is then void, and any ongoing or future Dispute will be

submitted to a court of competent jurisdiction within the County of Orange, State of California, United States of America, to the exclusion of arbitration. Any Dispute at that time in arbitration will be dismissed without prejudice and refiled in a court. Under no circumstances do you or Blizzard agree to class or collective procedures in arbitration or court proceedings or the joinder of claims in arbitration or court proceedings.

## 5. EXCEPTIONS TO NEGOTIATIONS AND ARBITRATION.

You and Blizzard agree that the following Disputes are not subject to the above provisions concerning negotiations and binding arbitration:

- A. any Dispute seeking to enforce or protect, or concerning the validity of, any of Blizzard's intellectual property rights;
- B. any Dispute related to, or arising from, claims that the other party has committed piracy, or tortious interference; and
- C. any claim within the jurisdictional limits of the small claims courts.

## 6. LOCATION OF ARBITRATION.

If you are a resident of the United States, any arbitration will take place in your county of residence, to the exclusion of all other venues. For residents outside the United States, any arbitration shall be initiated in the County of Los Angeles, State of California, United States of America. Any Dispute not subject to arbitration shall be decided by a court of competent jurisdiction within the County of Orange, State of California, United States of America, and you and Blizzard agree to submit to the personal jurisdiction of that court.

## 7. GOVERNING LAW.

- A. Except as expressly provided otherwise, all Disputes shall be governed by and construed under the laws of the United States of America and the law of the State of Delaware, without regard to choice of law principles.
- B. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

## 8. SEVERABILITY.

You and Blizzard agree that if any portion of this Agreement is found illegal or unenforceable, such portion shall be severed and the remainder of this Agreement shall

be given full force and effect. Any Dispute subject to any such portion of this Agreement shall be decided by the arbitrator.

## 9. RULES OF CONSTRUCTION.

A court shall construe the agreement to arbitrate and the agreement to waive class or collective actions in any manner that will render them enforceable and give them effect.

## 10. REJECTION OF THIS AGREEMENT.

If you desire to reject this Agreement, do not complete installation and return your product to its place of purchase for a full refund. Completion of the installation process shall indicate your acceptance of this Agreement.

[Back To Directory](#)

 [English \(US\)](#)



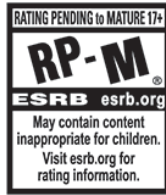
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All games, one app:  [Battle.net Desktop App](#)

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## Delcid, Marcela

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**Cc:** Lefebvre, Eric; Nguyen, Olivier V.  
**Objet:** NOTIFICATION De Bene Esse Application by Activision and King Respondents for Declinatory Exception - Arbitration Clause / Gabriel Bougeois v. Electronics Arts Inc. and al. / No: 500-06-001132-212 [NRFC-EDMRS.FID12710805]  
**Pièces jointes:** De Bene Esse Application by Activision and King Respondents for Declinatory Exception - Arbitration Clause.pdf

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Remis: 2021-12-23 14:32

Nguyen, Olivier V.

Remis: 2021-12-23 14:32

'Activision Blizzard Inc\_ \_ Gabriel Bourgeois Class Action \_Québec\_ \_1001161127\_ Court Document'



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

| <b>EXPÉDITEUR / SENDER</b>  |  |
|---|--|
| <p><b>NORTON ROSE FULBRIGHT CANADA S.E.N.C.R.L., s.r.l. / LLP</b><br/> Mtres. Eric C. Lefebvre and Olivier V. Nguyen<br/> 1, Place Ville Marie, # 2500<br/> Montréal (Québec) H3B 1R1<br/> Tel. : (514) 847-4747 – Fax : (514) 286-5474<br/> <a href="mailto:Notifications-mtl@nortonrosefulbright.com">Notifications-mtl@nortonrosefulbright.com</a></p> |  |
| <b>Date :</b>   | Montreal, December 23, 2021  |
| <b>Nature du document / Nature of the document :</b>  | De Bene Esse Application by Activision and King Respondents for Declaratory Exception - Arbitration Clause and Exhibit RA-1  |
| <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.  |
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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

***DE BENE ESSE APPLICATION BY RESPONDENTS  
ACTIVISION BLIZZARD INC., ACTIVISION PUBLISHING  
INC., BLIZZARD ENTERTAINMENT INC., KING DIGITAL  
ENTERTAINMENT GROUP INC., AND KING.COM LTD. FOR  
PARTIAL REFERRAL TO ARBITRATION  
(Art. 622 CCP and Art 3148 para 2 CCQ)***

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