

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

No.: 500-06-001132-212

GABRIEL BOURGEOIS

Applicant

v.

ELECTRONIC ARTS INC.  
and  
ELECTRONIC ARTS (Canada) INC.  
et al.

Respondents

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**AMENDED APPLICATION BY THE RESPONDENTS ELECTRONIC ARTS INC. AND ELECTRONIC ARTS (CANADA) INC. FOR DECLINATORY EXCEPTION IN ORDER TO LIMIT THE PROPOSED CLASS**

**(Articles 167 and 576 CCP and Article 3148 CCQ)**

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**TO THE HONOURABLE STÉPHANE LACOSTE, J.S.C., SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE RESPONDENTS ELECTRONIC ARTS INC. AND ELECTRONIC ARTS (CANADA) INC STATE AS FOLLOWS:**

**I. INTRODUCTION**

1. The Respondents Electronic Arts Inc. and Electronic Arts (Canada) Inc. (collectively referred to as “**Electronic Arts**”) intend to contest the authorization of the present class action proceedings;
2. Should this Honourable Court authorize the bringing of the Class Action, Electronic Arts submits that the proposed national class, as defined in the Amended (2) Application for Authorization to Institute a Class Action (May 27, 2022) (...) (the “**Application**”) should be limited to Quebec residents with respect to Electronic Arts, given this Court lacks jurisdiction over non-residents of Quebec, as further detailed below;

**II. PLAINTIFF’S CLAIM**

3. As appears from the Application, the Applicant seeks to represent the following National Class against Electronic Arts and three (3) other groups of Respondents:

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.

3.1 The Applicant also seeks to represent the following Québec class against seven (7) other Respondents or groups of Respondents:

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.

4. The Applicant alleges the Respondents use Loot Boxes in their games, which would be unlawful and in breach of several laws and regulations.
5. The Application seeks compensatory and punitive damages for the proposed Class members.

**III. LACK OF JURISDICTION OVER NON-RESIDENTS OF QUEBEC**

6. Electronic Arts respectfully submits that this Court lacks jurisdiction over the Class Action as regards non-residents of Quebec.
7. In order to include non-residents of Quebec in the Class Action, this Court must have jurisdiction over each claim, taken individually. Article 3148 of the *Civil Code of Quebec* ("**CCQ**") is the provision setting out the criteria which grant jurisdiction to Quebec courts, which reads as follows:

3148. In personal actions of a patrimonial nature, Québec authorities have jurisdiction in the following cases:

(1) the defendant has his domicile or his residence in Québec;

(2) the defendant is a legal person, is not domiciled in Québec but has an establishment in Québec, and the dispute relates to its activities in Québec;

(3) a fault was committed in Québec, injury was suffered in Québec, an injurious act or omission occurred in Québec or one

of the obligations arising from a contract was to be performed in Québec;

(4) the parties have by agreement submitted to them the present or future disputes between themselves arising out of a specific legal relationship;

(5) the defendant has submitted to their jurisdiction.

However, Québec authorities have no jurisdiction where the parties have chosen by agreement to submit the present or future disputes between themselves relating to a specific legal relationship to a foreign authority or to an arbitrator, unless the defendant submits to the jurisdiction of the Québec authorities.

8. Electronic Arts submits that none of the criteria contained in Article 3148 CCQ have been met as regards non-residents of Quebec.
9. The Application evidences that:
  - a) Electronic Arts Inc. is a company incorporated under the laws of Delaware, with an address for service at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, USA, 19801 (para. 6 of the Application and Exhibit P-1);
  - b) Electronic Arts (Canada) Inc. is a company incorporated pursuant to the laws of British Columbia, with an address for service at 1800-510 West Georgia St, Vancouver, BCM V6B 0M3 (para. 7 of the Application and Exhibit P-2);
10. As a result of the foregoing, none of the Electronic Arts Respondents has its head office in Québec and jurisdiction of Quebec courts is therefore not justified under Article 3148(1) CCQ.
11. In addition, (...), Electronic Arts inc. does not have any establishment in Quebec, as appears from Ms. Kerry Hopkins' Affidavit signed on July 28, 2022 (the "Hopkins Affidavit"), communicated herewith as Exhibit EA-1;
- 11.1 While Electronic Arts (Canada) inc. does have an establishment in Quebec, the present litigation is not related to its activities in Quebec.
- 11.2 As appears from the Hopkins Affidavit, Electronic Arts (Canada) inc.'s Quebec establishment was the location of primary development for only one title, Mass Effect: Andromeda. The studio which developed this title is, however, defunct since on or about August 2017.

- 11.3 The only studio currently based at Electronic Arts (Canada) inc.'s Quebec establishment is Motive, which was not involved in the development of any of the sixty (60) Electronic Arts titles involved in this case, as appears from the Hopkins Affidavit.
- 11.4 Moreover, Electronic Arts (Canada) inc. does not sell, distribute or publish any Electronic Arts games, including any of the Electronic Arts titles listed in Appendix A of the Application as "Affected Titles", as appears from the Hopkins Affidavit.
- 11.5 As a consequence of the foregoing, Plaintiff has failed to establish that Electronic Arts inc. has an establishment in Quebec and failed to establish that the litigation is related to Electronic Arts (Canada) inc.'s activities in Quebec. Therefore, jurisdiction of Quebec courts is not justified under Article 3148(2) CCQ.
12. Regarding Article 3148 (3) CCQ, the Application contains no allegation that any non-resident of Quebec suffered damages in Quebec or that the alleged faults would have been committed in Quebec.
13. Finally, the Application contains no allegation that the criteria set out in paragraphs (4) and (5) of Article 3148 CCQ are met, or even applicable, in the context of this Class Action.
14. Therefore, Article 3148 CCQ cannot justify a Proposed Class including non-residents of Quebec. Electronic Arts respectfully submits that given the lack of any real and substantial connection to Quebec this Court lacks jurisdiction against Electronic Arts over non-residents of Quebec.

**FOR THESE REASONS, MAY IT PLEASE THE COURT TO:**

- A.** **GRANT** the present *Application for Declinatory Exception in Order to Limit the Proposed Class*;
- B.** **EXCLUDE** all non-residents of the Province of Quebec from the proposed Class with respect to Electronic Arts Inc. and Electronic Arts (Canada) Inc.;

**THE WHOLE**, costs to follow.

Montréal, July 29, 2022



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**EA-1**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Class action)

No.: 500-06-001132-212

**GABRIEL BOURGEOIS**

Petitioner

v.

**ELECTRONIC ARTS INC.**  
and  
**ELECTRONIC ARTS (Canada) INC.**  
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Respondents

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## AFFIDAVIT

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I, the undersigned, I, Kerry Hopkins, businessperson, of 209 Redwood Shores Parkway, Redwood City, California, in the United States of America, declare under oath that:

1. I am employed by the defendant Electronic Arts Inc. ("**EA**"), as a Senior Vice President, Legal and Government Affairs.
2. As a result of my employment, I have personal knowledge of the matters hereinafter deposed to, except where I have obtained information from others. Where I have obtained information from others, I verily believe that information to be true.
3. I have reviewed the Applicant's *Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* (the "**Amended Authorization Application**") filed in this proceeding.
4. EA is a global leader in digital interactive entertainment based in Redwood City, California (and is a company incorporated under the laws of the State of Delaware). Among other things, EA develops and publishes games content, and online services for gaming consoles, personal computers, and mobile devices.
5. EA develops and publishes several video game series based on professional sports, including the NHL series, based on professional hockey, and the Madden NFL series, based on professional American football.
6. Electronic Arts (Canada) Inc. ("**EA Canada**") is a subsidiary of EA and is involved in the development of some of EA's video games.

7. EA Canada does not sell, distribute or publish any EA games, including any of the EA titles (including the sixty (60) titles listed in Appendix A of the Amended Authorization Application as “Affected Titles” for EA).

**EA has no establishment in Québec**

8. EA is a company incorporated under the laws of Delaware, with an address for service at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, USA, 19801.
9. EA does not have any establishment in Quebec.

**The dispute does not relate to EA Canada’s activities in its only establishment in Quebec**

10. EA Canada is a company incorporated pursuant to the laws of British Columbia, with an address for service at 1800-510 West Georgia St, Vancouver, BC V6B 0M3.
11. EA Canada provides game development services to EA pursuant to a development services agreement. All game development services are provided at EA’s request and on a work for hire basis. The agreement provides that right, title and interest in and to all proceeds from the services are the sole and exclusive property of EA.
12. EA pays EA Canada directly for the development services it provides. EA Canada does not earn revenue from public commercial sale or other in-game monetization related to the games it develops.
13. EA Canada operates multiple games studios from different locations in Canada.
14. EA Canada has only one establishment in Quebec, located at 2200 Stanley St., 6<sup>th</sup> floor, Montréal, QC H3A 1R6 and has offices in Vancouver and Victoria, British Columbia.
15. Out of the sixty (60) titles listed in Appendix A as “Affected Titles” for EA, EA Canada’s Quebec establishment was location of primary development for only one title, *Mass Effect: Andromeda*.
16. The development of *Mass Effect: Andromeda* was led by the BioWare (Montreal) studio, which was operated by EA Canada. This studio is defunct since on or about August 2017.
17. The only studio currently based at EA Canada’s Quebec establishment is Motive, which was not involved in development of any of the sixty (60) titles involved in this case.



18. EA has two other BioWare studios based in Edmonton, AB and Austin, TX, which are operated by separate EA subsidiaries and are not directly connected with EA Canada.
19. The Amended Application also relies on two (2) job postings:
  - (a) For a “Generalist Software Engineer – C ++ - EA Sports” which lists as alternative locations Montreal and Vancouver“(Exhibit P-48). That position has not been filled, but is not specific to the EA Canada’s Quebec establishment;
  - (b) For a Lead Data Engineer” job with the FIFA Analytics Team listing multiple possible locations, including Montreal, Toronto, Kitchener and Vancouver (Exhibit P-49). That position was filled, the employee being employed by another EA subsidiary, Glu Toronto Inc., which is based in Toronto. That position was not filled at EA Canada’s Quebec establishment.

AND I HAVE SIGNED in Redwood City, California, USA

E-SIGNED by Kerry Hopkins  
on 2022-07-28 14:11:36 EDT  
\_\_\_\_\_  
KERRY HOPKINS

Declared under oath remotely before me by  
technological means  
in Montréal, QC, on July 28, 2022

E-SIGNED by Nathalie Angers  
on 2022-07-28 14:12:08 EDT

\_\_\_\_\_  
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**TAKE NOTICE** that the foregoing *Amended Application By The Respondents Electronic Arts Inc. And Electronic Arts (Canada) Inc. For Declaratory Exception* in order to limit the proposed class will be presented for hearing and adjudication before the Honourable justice Stéphane Lacoste J.S.C. of the Superior Court, sitting in and for the District of Montréal, at the Montréal Courthouse, in a room and date to be determined by the Court.

**KINDLY GOVERN YOURSELF ACCORDINGLY.**

Montréal, July 29, 2022



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**Objet:** NOTIFICATION: 500-06-001132-212 // Gabriel Bourgeois v. Electronic Arts Inc. and als. // Amended Application by The Respondents Electronic Arts Inc. and Electronic Arts (Canada) Inc. for Declaratory Exception [BLG-DOCUMENTS.FID7806690]  
**Pièces jointes:** 2022-07-29 Amended Application for Declaratory Exception(125664155.4).pdf

### NOTIFICATION BY ELECTRONIC COURIER TRANSMISSION SLIP (ARTICLE 134 C.P.C.)

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**COURT FILE NUMBER AND NATURE OF THE NOTIFIED DOCUMENT:**

**Record number:** 500-06-001132-212  
**Parties:** Gabriel Bourgeois v. Electronic Arts Inc. and als.  
**Nature of the document:** **Amended Application by The Respondents Electronic Arts Inc. and Electronic Arts (Canada) Inc. for Declaratory Exception**

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**Number of pages:** -13-  
(attachments only)



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SUPERIOR COURT  
(Class action)

DISTRICT OF MONTRÉAL  
No.: 500-06-001132-212

**GABRIEL BOURGEOIS**

Applicant

v.

**ELECTRONIC ARTS INC.**

and

**ELECTRONIC ARTS (Canada) INC.**

et al.

Respondents

**AMENDED APPLICATION BY THE  
RESPONDENTS ELECTRONIC ARTS INC. AND  
ELECTRONIC ARTS (CANADA) INC. FOR  
DECLINATORY EXCEPTION IN ORDER TO LIMIT  
THE PROPOSED CLASS  
(Articles 167 and 576 CCP and Article 3148 CCQ)**

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