

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action Chamber)

No: 500-06-001176-227

ÉLOÏSE BOIES

Plaintiff

v.

GOOGLE LLC

Respondent

**APPLICATION FOR AUTHORIZATION TO ADDUCE RELEVANT EVIDENCE
(574 CCP)**

TO THE HONOURABLE LUKASZ GRANOSIK OF THE SUPERIOR COURT, ACTING AS THE DESIGNATED JUDGE IN THE PRESENT CASE, THE RESPONDENT GOOGLE LLC RESPECTFULLY SUBMITS AS FOLLOWS:

I. INTRODUCTION

1. The Respondent Google LLC ("**Google**") hereby seeks the authorization of this Honourable Court to adduce relevant evidence pursuant to article 574, paragraph 3 of the *Code of Civil Procedure*, RLRQ c C-25.01 ("**CCP**").
2. More specifically, Google seeks authorization to adduce as relevant evidence a Sworn Statement of Raquel Small and its Annexes A to C dated May 19, 2023, a copy of which is filed herewith as **Exhibit G-1** (the "**Sworn Statement**").
3. As further detailed below, the Sworn Statement is relevant and necessary for the Court's analysis of the authorization criteria pursuant to article 575 CCP, as it serves to correct, clarify and explain certain false, incomplete and ambiguous allegations advanced by the Plaintiff.

II. THE AUTHORIZATION APPLICATION

4. On January 8, 2022, the Plaintiff Éloïse Boies filed a *Demande pour autorisation d'exercer une action collective et pour être représentant*, further amended on March 27, 2023 (the "**Authorization Application**") against Google, on behalf of the following proposed class (the "**Proposed Class**" or "**Class Members**"):

“toute personne, physique ou morale, qui a utilisé ou visité Youtube depuis le 15 mars 2020, alors qu’elle résidait au Québec ou y avait un établissement”

5. The Authorization Application alleges that the Plaintiff published three videos (Exhibits P-3, P-4 and P-6 of the Authorization Application) on her @EloVeutSavoir YouTube channel (the “**Channel**”) that were removed by Google because they propagated incorrect medical information, contradicting the World Health Organization (“**WHO**”), and in violation of YouTube’s *COVID-19 medical misinformation policy* (Exhibit P-2 of the Authorization Application) (the “**Policy**”).
6. According to the Authorization Application, the alleged removal of these videos by Google is a violation of the Plaintiff’s freedom of expression pursuant to the Québec *Charter of Human Rights and Freedoms*, CQLR c C-12 (the “**Charter**”).
7. The Plaintiff further alleges that the censorship she experienced discredited her as a person, is an affront to her dignity, and also had the effect of slowing down the growth of her Channel and, by extension, of her notoriety, which may have resulted in the loss of personal or professional opportunities.
8. The Plaintiff also advances several other causes of action in her Authorization Application in the hope of satisfying her burden to demonstrate an arguable case as required by article 575(2) CCP, all of which, as will be shown at authorization, fail to demonstrate even a *prima facie* colour of right.
9. Among other things, the Authorization Application alleges that the Policy is an external clause, that it was adopted unilaterally, without notice and that it is abusive.
10. As a result of Google’s alleged faults, the Plaintiff seeks the following damages on behalf of the Proposed Class:
 - a) \$1000.00 in compensatory damages to each Class Member having published content on YouTube which was subsequently removed because it spread incorrect medical information, contradicting the WHO;
 - b) \$1000.00 in punitive damages to each Class Member having published content on YouTube which was subsequently removed because it spread incorrect medical information, contradicting the WHO;
 - c) \$500.00 in compensatory damages to each Class Member who did not publish content on YouTube which was subsequently removed because it spread incorrect medical information, contradicting the WHO;
 - d) \$500.00 in punitive damages to each Class Member who did not publish content on YouTube which was subsequently removed because it spread incorrect medical information, contradicting the WHO.

III. THE RELEVANCE OF THE SWORN STATEMENT

11. Google seeks this Honourable Court's permission to file the Sworn Statement and its annexes in order to correct and clarify several allegations advanced in the Authorization Application.
12. Indeed, the Authorization Application makes several general, vague and/or erroneous allegations with respect to:
 - a) YouTube's Terms of Service (Exhibit P-1 of the Authorization Application) and the Policy and how they were brought to the attention and accepted by the Plaintiff; and
 - b) The slowdown of the growth of the Plaintiff's Channel.
13. Namely, the Authorization Application alleges that the Policy is unopposable to the Plaintiff because it was never brought to her attention or accepted by her.
14. The Sworn Statement serves to correct and clarify these incorrect assertions, by explaining that the Terms of Service and Policy were in fact expressly brought to the attention of the Plaintiff and accepted by her each and every time she uploaded a video to her Channel. Indeed, this was the case with respect to each one of the videos filed as Exhibits P-3, P-4 and P-5, as appears from the Sworn Statement and its Annexes A to C.
15. The Sworn Statement further serves to correct and complete the general and erroneous allegation that the removal of the videos (Exhibits P-3, P-4 and P-5) had the effect of slowing down the growth of her Channel, by demonstrating that the number of subscribers to her Channel has in fact consistently grown month-over-month from the time her Channel was created in 2013 until present.
16. The Sworn Statement and the supporting annexes thus serve to complete and correct the otherwise vague and/or erroneous allegations of the Authorization Application by providing the Court with the complete and correct factual matrix regarding the allegations advanced by the Plaintiff, which will assist this Honourable Court in its analysis of the authorization criteria, and specifically in its determination of whether the Plaintiff has established an arguable case pursuant to article 575 (2) CCP.
17. The present Application is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present application;

AUTHORIZE the Respondent Google LLC to file a Sworn Statement of Raquel Small, and its annexes A to C, dated May 19, 2023 a copy of which is filed herewith as **Exhibit G-1**;

THE WHOLE with legal costs.

Montréal, this May 19, 2023

Fasken Martineau DuMoulin LLP

Fasken Martineau DuMoulin LLP
Attorneys for Respondent Google LLC

800 Victoria Square, Suite 3500
P.O. Box 242
Montréal, Quebec H4Z 1E9
Fax number: +1 514 397 7600

Mtre Noah Boudreau
Phone number: +1 514 394 4521
Email: nboudreau@fasken.com

Mtre Mirna Kaddis
Phone number: +1 514 397 7484
Email: mkaddis@fasken.com

C A N A D A

(Class Action)

PROVINCE OF QUEBEC

SUPERIOR COURT

DISTRICT OF MONTRÉAL

No: 500-06-001176-227

ÉLOÏSE BOIES

Applicant

v.

GOOGLE LLC

Respondent

SWORN STATEMENT

I, Raquel Small, YouTube Legal Program Manager at Google LLC ("**Google**"), having my professional address at 999 Bayhill Dr San Bruno, CA 94066, do solemnly declare:

1. I make this Sworn Statement in support of the Respondent Google's *Application for Authorization to Adduce Relevant Evidence*.
2. I attach as **Annex A** to this Sworn Statement the monthly progression of the number of subscribers of the *@EloVeutSavoir* YouTube channel ("**Channel**") from October 2013 when she created her Channel until May 2023.
3. Like all YouTube creators, Eloïse Boies was required to accept YouTube's Terms of Service and Community Guidelines each time she uploaded a video to her Channel.
4. In her *Demande pour autorisation d'exercer une action collective et pour être représentante (modifiée en date du 27 mars 2023)* (the "**Authorization Application**"), Eloïse Boies alleges having published three videos on her Channel on or around January 5, 2021, on or around August 29, 2021, and in

November 2022, which are filed as Exhibits P-3, P-4 and P-6 respectively (the “Videos”).

5. I attach as **Annex B** to this Sworn Statement a screenshot of what Ms. Boies would have seen each time (i.e. on or about January 5, 2021, on or about August 29, 2021, and in November 2022) she uploaded the Videos to her Channel.
6. By clicking on “Terms of Service”, Ms. Boies would have been directed to YouTube’s Terms of Service, already filed as Exhibit P-1 of the Authorization Application.
7. By clicking on “Community Guidelines”, Ms. Boies would have been directed to YouTube’s Community Guidelines, as appears from **Annex C** to this Sworn Statement.
8. Google’s COVID-19 medical misinformation policy (filed as Exhibit P-2 of the Authorization Application), is directly accessible from the Community Guidelines webpage, as appears from **Annex C**.
9. I have personal knowledge of the facts in this Sworn Statement.

AND I HAVE SIGNED :

/s/ Raquel Small /s

Raquel Small at Google LLC

Solemnly affirmed before me,
in Montréal, on **19** May 2023




Commissioner for Oaths for Québec

Annex A

MONTH-YEAR	NUMBER OF SUBSCRIBERS
May-23	19,264
Apr-23	19,250
Mar-23	18,647
Feb-23	18,377
Jan-23	18,286
Dec-22	16,807
Nov-22	16,471
Oct-22	16,486
Sep-22	16,524
Aug-22	16,567
Jul-22	16,605
Jun-22	16,612
May-22	16,603
Apr-22	16,519
Mar-22	15,864
Feb-22	13,954
Jan-22	13,629
Dec-21	13,570
Nov-21	13,639
Oct-21	13,668
Sep-21	13,597
Aug-21	13,357
Jul-21	12,962
Jun-21	12,768
May-21	12,823
Apr-21	12,821
Mar-21	12,924
Feb-21	12,959
Jan-21	12,791
Dec-20	12,887
Nov-20	12,924
Oct-20	12,901
Sep-20	12,202
Aug-20	11,643
Jul-20	5,881
Jun-20	66
May-20	10
Apr-20	10
Mar-20	10
Feb-20	12
Jan-20	12
Dec-19	12
Nov-19	12
Oct-19	12
Sep-19	11
Aug-19	10

Jul-19	10
Jun-19	10
May-19	10
Apr-19	10
Mar-19	10
Feb-19	10
Jan-19	10
Dec-18	9
Nov-18	10
Oct-18	10
Sep-18	10
Aug-18	10
Jul-18	10
Jun-18	10
May-18	10
Apr-18	8
Mar-18	8
Feb-18	8
Jan-18	8
Dec-17	8
Nov-17	8
Oct-17	8
Sep-17	8
Aug-17	8
Jul-17	8
Jun-17	8
May-17	6
Apr-17	5
Mar-17	5
Feb-17	5
Jan-17	5
Dec-16	5
Nov-16	5
Oct-16	5
Sep-16	5
Aug-16	5
Jul-16	5
Jun-16	5
May-16	5
Apr-16	5
Mar-16	5
Feb-16	5
Jan-16	5
Dec-15	5
Nov-15	5
Oct-15	5
Sep-15	5

Aug-15	5
Jul-15	5
Jun-15	5
May-15	5
Apr-15	5
Mar-15	5
Feb-15	5
Jan-15	4
Dec-14	4
Nov-14	4
Oct-14	4
Sep-14	4
Aug-14	4
Jul-14	4
Jun-14	3
May-14	2
Apr-14	1
Mar-14	1
Feb-14	1
Jan-14	1
Dec-13	1
Nov-13	1
Oct-13	0

ANNEX B

Search across your channel

Upload videos



Drag and drop video files to upload

Your videos will be private until you publish them.

[SELECT FILES](#)

By submitting your videos to YouTube, you acknowledge that you agree to YouTube's [Terms of Service](#) and [Community Guidelines](#).

Please be sure not to violate others' copyright or privacy rights. [Learn more](#)

Téléverser des vidéos



Glissez-déposer des fichiers vidéo pour les téléverser

Vos vidéos seront privées jusqu'à ce que vous les publiiez.

SÉLECTIONNER DES FICHIERS

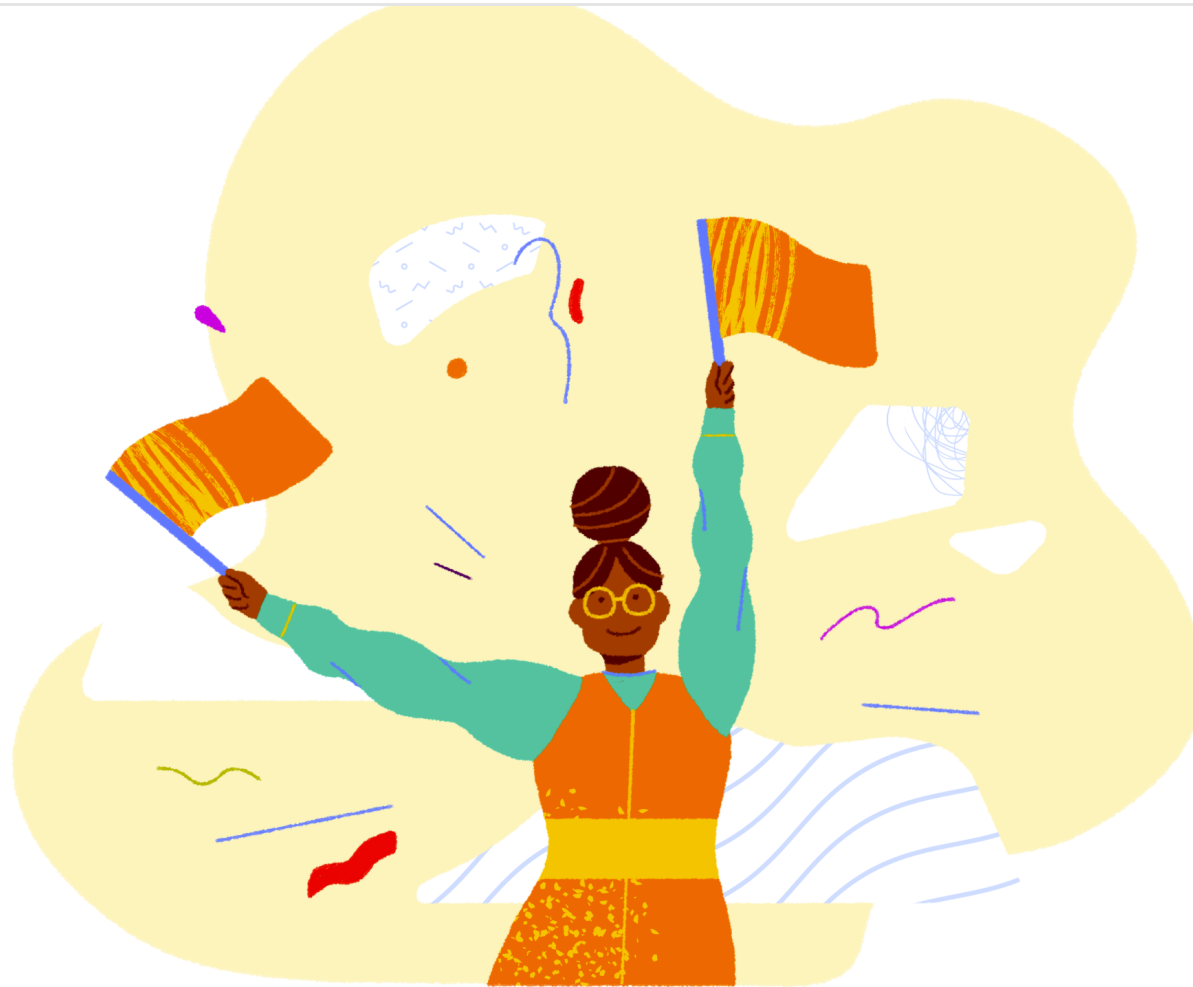
En soumettant vos vidéos sur YouTube, vous consentez aux [conditions d'utilisation](#) et au [règlement de la communauté](#) de YouTube.

Assurez-vous de ne pas enfreindre les droits d'auteur ni les droits à la vie privée d'autrui. [En savoir plus](#)

ANNEXE C

RULES AND POLICIES

Community Guidelines



Overview

YouTube has always had a set of Community Guidelines that outline what type of content isn't allowed on YouTube. These policies apply to all types of content on our platform, including videos, comments, links and thumbnails. Our Community Guidelines are a key part of our [broader suite of policies](#) and are regularly evaluated in consultation with outside experts and YouTube creators to keep pace with emerging challenges.

We enforce these Community Guidelines using a combination of human reviewers and machine learning, and apply them to everyone equally – regardless of the subject or the creator's background, political viewpoint, position or affiliation.

Our policies aim to make YouTube a safer community while still giving creators the freedom to share a broad range of experiences and perspectives.

What areas do Community Guidelines cover?

You'll find a full list of our Community Guidelines below:

Spam and deceptive practices



[Our commitments](#)

[Product features](#)

[User settings](#)

[Rules and policies](#)

[Progress and impact](#)

[Impersonation](#)

[External links](#)

[Spam, deceptive practices and scams](#)

[Playlists](#)

[Additional policies](#)

Sensitive content

[Child safety](#)

[Thumbnails](#)

[Nudity and sexual content](#)

[Suicide and self-harm](#)

[Vulgar language](#)

[Harmful or dangerous content](#) 

[Hate speech](#) 

[Violent criminal organisations](#) 

[Violent or graphic content](#) 

Regulated goods

[Firearms](#) 

[Sale of illegal or regulated goods or services](#) 

Misinformation

[Misinformation](#) 

[Elections misinformation](#) 

[COVID-19 medical misinformation](#) 

Related articles

Progress on managing harmful content

[READ MORE](#)

Managing harmful content

[READ MORE](#)

Legal removals

[READ MORE](#)

Connect





[Our commitments](#)

[Product features](#)

[User settings](#)

[Rules and policies](#)

[Progress and impact](#)

[Policies & safety](#)

[Copyright](#)

[Brand guidelines](#)

[Privacy](#)

[Terms](#)

[? Help](#)

English (Canada)



RÈGLES ET POLITIQUES

Règlement de la communauté



Règlement de la communauté

Élaboration du règlement de la communauté

Application du règlement

Aperçu

[plus large de politiques](#). Il est mis à jour régulièrement en collaboration avec des experts indépendants et des créateurs YouTube pour suivre le rythme des défis émergents.

Nous appliquons ce règlement de la communauté en utilisant une combinaison d'évaluateurs humains et d'apprentissage automatique, et nous l'appliquons à tout le monde de façon égale, peu importe le sujet ou les antécédents du créateur, son point de vue ou son affiliation politique, ainsi que sa situation financière.

Nos politiques visent à faire de YouTube une communauté plus sûre tout en donnant aux créateurs la liberté de partager une grande variété d'expériences et de perspectives.

Quels aspects sont couverts par le règlement de la communauté?

Vous trouverez notre règlement de la communauté dans son intégralité ci-dessous :

Pourriels et pratiques trompeuses

[Intérêt factice](#) 

[Usurpation d'identité](#) 

[Liens externes](#) 

[Pourriels, pratiques trompeuses et escroqueries](#) 

[Listes de lecture](#) 

[Sécurité des enfants](#)[Miniatures](#)[Nudité et contenu de nature sexuelle](#)[Suicide et automutilation](#)[Langage vulgaire](#)

Contenu violent ou dangereux

[Harcèlement et cyberintimidation](#)[Contenu pernicieux ou dangereux](#)[Discours haineux](#)[Organisations criminelles violentes](#)[Contenu violent ou explicite](#)

Produits réglementés

[Armes à feu](#)[Vente de produits ou de services illégaux ou réglementés](#)

[Mésinformation sur les élections](#) 

[Mésinformation médicale sur la COVID-19](#) 

En plus du règlement de la communauté, les créateurs qui souhaitent monétiser du contenu sur YouTube doivent respecter les [politiques de monétisation](#).

Articles connexes

Nos progrès en matière de gestion du contenu pernicieux

[LIRE LA SUITE](#)

Gestion des contenus nuisibles

[LIRE LA SUITE](#)

Suppressions en vertu de la loi

[LIRE LA SUITE](#)

Associer



[Politiques et sécurité](#)[Droits d'auteur](#)[Directives relatives aux marques](#)[Confidentialité](#)[Conditions d'utilisation](#)[? Aide](#)[français \(Canada\)](#)

De : [Katrina Burak](#)
A : wd.virtulex@gmail.com
Cc : [Mirna Kaddis](#)
Objet : NOTIFICATION - Éloïse Boies v. Google LLC - 500-06-001176-227 - Our ref.: 311868.00041
Date : 19 mai 2023 16:06:59
Pièces jointes : [2023-05-19 Google LLC's Application for Authorization to Adduce Relevant Evidence and to Examine the Plaintiff.pdf](#)

NOTIFICATION BY TECHNOLOGICAL MEANS

Fasken Martineau DuMoulin LLP
(Art. 133 - 134 of the *Code of Civil Procedure*, CQLR c. C-25.01)

Parties : Éloïse Boies v. Google LLC
Court: Superior Court
Judicial District: Montréal
Locality: Montréal
Court Number: 500-06-001176-227

Sender:	Mirna Kaddis +1 514 397 7484 mkaddis@fasken.com Our ref.: 311868.00041	Fasken Martineau DuMoulin 800 Victoria Square, Suite 3500 P.O. Box 242 Montréal, Quebec H4Z 1E9 Fax : +1 514 397 7600
----------------	---	--

Recipient(s):
Me William Desrochers Virtulex avocats wd.virtulex@gmail.com

Notified document(s):

Document's Title	Type	Nb pages	Size
Application for Authorization to Adduce Relevant Evidence	PDF	26	2 MB

Please contact the sender if you have any technical problems with the documents.

Katrina Burak
Legal Assistant
T +1 514 303 5300
kburak@fasken.com | fasken.com

FASKEN

Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
800, rue du Square-Victoria, bureau 3500, Montréal, Québec H4Z 1E9

CANADA, PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
COUR SUPÉRIEURE, RECOURS COLLECTIF
CAUSE : 500-06-001176227

HONORAIRES POUR SERVICE(S) DE COUR

v/d : 311868.00041

ELOISE BOIES
PLAINTIFF(S)
V.
GOOGLE LLC
RESPONDENT(S)

L'étude Paquette & Associés, Huissiers de justice, ayant son principal établissement d'entreprise situé au 215 RUE ST-JACQUES, bureau 600, MONTRÉAL, QC, CANADA, H2Y 1M6, vous avise, par la présente, que dans ce dossier, un débit a été porté à votre compte pour la(les) raison(s) suivante(s) :

Nous avons procédé, le 24 mai 2023 à 9:00 , à la PRODUCTION au GREFFE de CETTE COUR

de la présente "APPLICATION FOR AUTHORIZATION TO ADDUCE RELEVANT EVIDENCE (574 CCP), SWORN STATEMENT, ANNEXES A TO C, EXHIBIT G--1".

(606)

Pour toutes informations supplémentaires, veuillez communiquer avec votre responsable à la clientèle, SHAZIA GOLLER AHMAD.

Autres frais :	
(non admissible à l'état des frais)	
Vacation cour	16,00 \$ (1)
SOUS-TOTAL	16,00 \$
TPS	0,80 \$
TVQ	1,60 \$
TOTAL	18,40 \$

MONTRÉAL, le 24 mai 2023



PAQUETTE ET ASSOCIES (CPMTL), huissier de justice

a/s : ME MIRNA KADDIS
FASKEN MARTINEAU DUMOULIN, AVOCATS
(2248)

(HE CHARDA) LAPRO 4 GOLSH E0524 I0524-10:25 REF:2515087-1-1-1 ()
NB:1 FRAIS:

No Engr. T.P.S. : R122687056

No Engr. T.V.Q. : 1013245793

PAQUETTE
HUISSIERS DE JUSTICE

CANADA, PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
COUR SUPÉRIEURE, RECOURS COLLECTIF
CAUSE : 500-06-001176227

HONORAIRES POUR SERVICE(S) DE COUR

v/d : 311868.00041

ELOISE BOIES
DEMANDERESSE(S)
C
GOOGLE
DÉFENDERESSE(S)

L'étude Paquette & Associés, Huissiers de justice, ayant son principal établissement d'entreprise situé au 215 RUE ST-JACQUES, bureau 600, MONTRÉAL, QC, CANADA, H2Y 1M6, vous avise, par la présente, que dans ce dossier, un débit a été porté à votre compte pour la(les) raison(s) suivante(s) :

Nous avons procédé, le 26 mai 2023 à 13:00, à la PRODUCTION au GREFFE de CETTE COUR

du(es) présent(s) ADMISSION DE LA DEMANDERESSE.

606

Pour toutes informations supplémentaires, veuillez communiquer avec votre responsable à la clientèle, SHAZIA GOLLER AHMAD.

Autres frais :	
(non admissible à l'état des frais)	
Vacation cour	16,00 \$ (1)
SOUS-TOTAL	<u>16,00 \$</u>
TPS	0,80 \$
TVQ	<u>1,60 \$</u>
TOTAL	18,40 \$

MONTRÉAL, le 26 mai 2023



PAQUETTE ET ASSOCIES, huissier de justice

a/s : MES NOAH BOUDREAU & MIRNA KADDIS
FASKEN MARTINEAU DUMOULIN, AVOCATS
(2248)

(HE CHARDA) CARPA 4 GOLSH E0526 I0529-09:10 REF:2516213-1-1-1 ()
NB:1 FRAIS:

No Engr. T.P.S. : R122687056

No Engr. T.V.Q. : 1013245793

PAQUETTE
HUISSIERS DE JUSTICE

N° : 500-06-001176-227

PROVINCE OF QUEBEC
SUPERIOR COURT
(Class Action Chamber)
DISTRICT OF MONTRÉAL
LOCALITY OF MONTRÉAL

ÉLOÏSE BOIES

Plaintiff

v.

GOOGLE LLC

- Respondent

22328/311868.00001

BF1339

**APPLICATION FOR AUTHORIZATION TO
ADDUCE RELEVANT EVIDENCE AND
EXHIBIT G-1
(574 CCP)**

Docket number: 19

ORIGINAL

Fasken Martineau DuMoulin LLP
800 Victoria Square, Suite 3500
P.O. Box 242
Montréal, Quebec H4Z 1E9

Me Mirna Kaddis
mkaddis@fasken.com

Tél. +1 514 397 7484
Fax. +1 514 397 7600