

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000938-189

SUPERIOR COURT
(Class Action Chambers)

PANAGIOTIS LEVENTAKIS

Applicant

v.

FACEBOOK, INC.

Defendant

**APPLICATION TO TEMPORARILY STAY THE CLASS ACTION
(Articles 18, 49 and 577 of the *Code of Civil Procedure* ("CCP")
and Article 3137 of the *Civil Code of Québec* ("CCQ"))**

**TO THE HONOURABLE JUSTICE THOMAS M. DAVIS, J.S.C, SITTING IN AND FOR
THE DISTRICT OF MONTRÉAL, THE APPLICANT RESPECTFULLY SUBMITS THE
FOLLOWING:**

I. INTRODUCTION

1. The Applicant seeks a stay of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* which was filed on July 31, 2018 (the "Québec Action") pending a final judgment on the putative class action before the British Columbia Supreme Court, in *Chow et al. v. Facebook, Inc.*, court docket number VLC-S-S-188374 (the "BC Action") filed on July 31, 2018.
2. This application for a stay is predicated upon the existence of a proposed parallel class action filed in British Columbia which raises the same issues and which is brought on behalf of a proposed class that includes the members of the Québec Action, and thus seeks to avoid the possibility of contradictory judgments and to ensure a sound and efficient use of judicial resources, all the while protecting the interests of the putative class members who are Québec residents.
3. For the reasons further detailed below, the Applicant submits that it is in the interests of justice and consistent with the principles of proportionality and judicial economy that the overlapping issues raised in the Québec Action and the BC Action be adjudicated by a single court, which the Applicant proposes to be the Supreme Court of British Columbia.

II. THE PARALLEL CLASS ACTIONS

a. The Québec Action

4. The Québec Applicant, Panagiotis Leventakis, seeks to represent the following class in the Québec Action:

“All persons residing in Québec who used Facebook mobile applications on a smartphone running the Android operating system (“Class Members”), or any other class to be determined by the Court, between 2011 and 2018 (“Class Period”).”

As appears from a copy of the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* communicated herewith as **Exhibit P-1**.

5. The Québec Action alleges that the Defendant Facebook, Inc., by exploiting a software vulnerability in the permission settings of the Android OS, collected and used class members' call and text message data without their knowledge or consent, which actions caused compensatory, moral and/or punitive damages to the class members.
6. These allegations are refuted by the Defendant.

b. The BC Action

7. The BC Action, by way of its recently delivered Notice of Application, further defining the class definition sought, proposes the following putative class:

“All persons in Canada (or subsidiarily British Columbia) who used Facebook mobiles applications on smartphones running the Android operation system, between 2011 and 2018.”

As appears from a copy of the *Notice of Application* communicated herewith as **Exhibit P-2**.

8. As appears from the foregoing, the proposed class in the Québec Action is included in the proposed class in the BC Action and relates to the same Defendant.
9. Moreover, the BC Action asserts the same allegations of fault and similar causes of action.
10. The defence to those allegations will also be similar.

c. The Ontario Action

11. Another putative class action is pending in Canada in *Dockrill v. Facebook, Inc.*, court file number CV-18-00602694-00CP, which was issued on August 2, 2018 before the Ontario Superior Court of Justice (the “**Ontario Action**”). The Ontario Action proposes the following putative class:

“Users of Facebook who during the Class Period used Facebook mobile applications on smartphones running the Android OS.”

As appears from a copy of the *Statement of Claim* communicated herewith as **Exhibit P-3**.

12. While otherwise drafted in similar terms to the Québec Action and the BC Action, the parties to the Ontario Action have not taken any steps to move the case forward since the filing of the class action as the plaintiff in the Ontario Action is prepared to await the outcome of the BC Action.

III. STATUS OF THE PARALLEL CLASS ACTIONS

a. The Québec Action

13. On November 20, 2018, the Québec Action was assigned to be case managed by Mr. Justice Thomas M. Davis;
14. On February 22, 2019, the Defendant filed an *Application for Leave to Examine Petitioner and for Leave to Adduce Relevant Evidence*. This application has not yet been heard.
15. Though not the primary reason for the Applicant’s application for a temporary stay, as the Applicant stated his intention to request a stay prior to the filing of the Defendant’s application, in light of said application the granting of a temporary stay would provide the Applicant with the opportunity to assess whether substituting the Applicant would be in the best interests of the Quebec class members.

b. The BC Action

16. On January 9, 2019, the BC Action was assigned to be case managed by Mr. Justice Skolrood.
17. The BC Action is further advanced than the Ontario and Quebec Action. Plaintiffs’ counsel in British Columbia has delivered their certification materials and filed two representative affidavits and two expert affidavits.

18. A Judicial Management Conference took place on February 28, 2019 at which time another conference had been set for March 26, 2019 to set a schedule for certification.
19. However, the parties have reached a certification schedule by consent and do not believe another Judicial Management Conference is necessary at this time. The parties will request that the consent schedule be adopted as an order and that the hearing of the Plaintiff's Notice of Application for certification be set for October 23, 24 and 25, 2019.

c. The Ontario Action

20. A request for assignment of a case management judge has not been made in the Ontario Action.
21. The plaintiff in the Ontario Action is prepared to await the outcome of the BC Action.

IV. LIS PENDENS AND STAY OF PROCEEDINGS

22. It is trite law that this Court has inherent jurisdiction to stay any action brought before it if such a stay is consistent with the principles of proportionality and judicial economy, or when there is a risk of contradictory judgments in related matters before different courts.
23. Article 3137 CCQ also specifically provides that this Court may stay its ruling on an action brought before it if there is a situation of "international" *lis pendens*, namely "if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec".

A. Lis Pendens

a. Same Parties

24. There is juridical identity of the parties by representation. The class membership in the BC Action includes the class members in the Québec Action, whereas the Québec Action proposes a provincial class composed of Québec residents only.

b. Same Cause

25. The Québec Action and the BC Action are based on the same key allegations of fact and assert the same causes of action, namely that the Defendant Facebook, Inc., by exploiting a software vulnerability in the permission settings of the Android OS, collected and used class members' call and text message data

without their knowledge or consent, which actions caused compensatory, moral and/or punitive damages to the class members.

26. These alleged actions caused compensatory, moral and/or punitive damages to the class members.
27. The Defendant refutes these allegations in both jurisdictions.

c. Same Object

28. The object of the Québec Action and the BC Action is the same: both seek the recovery of damages, compensatory, moral and punitive, allegedly suffered as a result of the Defendant's alleged impugned conduct. This object is being contested in both jurisdictions.

B. Stay of Proceedings

29. The Applicant herein seeks a stay of the Québec Action for a period ending sixty (60) days after the final certification judgment to be rendered in the BC Action.
30. The stay sought is consistent with the principles of proportionality and judicial economy. It serves to avoid a multiplicity of parallel proceedings progressing at once, which would result in significant and avoidable costs for all parties involved and be unnecessarily demanding on limited judicial resources.
31. It is also consistent with the "spirit of mutual comity" between courts of different provinces recognized by the Supreme Court of Canada in the landmark decision *Canada Post Corp. v. Lépine*, 2009 1 SCR 549, at para. 57.
32. In fact, by using a single proceeding, Québec residents will benefit from judicial economy and their counsel will not expend time and costs simultaneously in more than one jurisdiction.
33. In light of the foregoing, the Applicant herein respectfully submits that this Court should use its discretion to stay the Québec Action, as it is in the interest of justice and of the putative class members.

V. THE RIGHTS AND INTERESTS OF QUÉBEC CLASS MEMBERS IN THE CONTEXT OF A TEMPORARY STAY

34. The temporary stay of the Québec Action in favour of the BC Action would serve the rights and interests of Québec residents, in accordance with article 577 CCP.
35. Indeed, the causes of action asserted in the BC Action duplicate the causes of action asserted in the Québec Action, such that the rights of the putative class

members in the Québec Action will be asserted in a similar fashion in the BC Action.

36. The Courts of British Columbia will protect the rights and interests of Québec putative class members in the same fashion as a Québec Court would, given the experience of the class action bench in both jurisdictions. Moreover, Québec residents will benefit from judicial economy and will save time and legal costs by having British Columbia counsel pursue the certification stage in British Columbia.
37. The parties are represented by the same counsel in British Columbia and Québec. If the temporary stay were to be granted by this Court, counsel for the Applicants and for the Defendant, both in British Columbia and Québec, would cooperate to ensure an efficient conduct of the proceedings and the coordination of the Québec and the BC Action. Indeed, counsel for the Applicant in Québec will attend the certification hearing in order to ensure that the putative Québec class members' rights and interests are taken into account and protected.
38. In the event that a national class is not certified in the BC Action, the Applicant will be able to defend the rights and interests of Québec class members by seeking a lift of the temporary stay of proceedings in the Québec Action.
39. Moreover, the Applicant agrees that the Québec Action should be temporarily stayed in favour of the BC Action.
40. The Defendant does not object to the present application.

VI. CONCLUSION

41. For the reasons stated above, the Applicant seeks a stay of the Québec Action pending a final certification judgment in the BC Action.
42. If the stay is granted, the Applicant undertakes to provide this Court with an update on the status of the BC Action on a semi-annual basis, and to advise this Court within 30 days of any significant development in the BC Action that may affect the course of the Québec Action.
43. The Applicant agrees that this application and statements herein are not intended to be used and will not be used in any motion to certify or authorize any other class proceeding, including the BC Action, as evidence that the authorization or certification criteria are or are not satisfied.

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the *Application to Temporarily Stay the Class Action*;

STAY any and all proceedings related to the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* for a period ending sixty (60) days after the final certification judgment to be rendered in the BC Action (court docket number VLC-S-S-188374);

PRAY ACT of the Applicant's undertaking to provide this Court with an update on the status of the BC Action on a semiannual basis, and to advise this Court within 30 days of any significant development in the BC Action that may affect the course of the Québec Action, and **ORDER** the Applicant to comply with said undertaking;

THE WHOLE, without costs.

Montréal, April 2, 2019



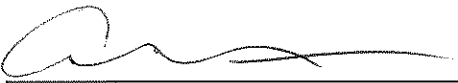
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Counsel for the Applicant

AFFIDAVIT

I, the undersigned, Careen Hannouche, lawyer, having my professional domicile at 500, Place d'Armes, suite 1800, in the city and district of Montréal, solemnly declare the following:


1. I am counsel for the Applicant for the present *Application to Temporarily Stay the Class Action*;
2. All the facts alleged in the present application are true;

And I have signed:



Careen Hannouche

Solemnly declared before me
in Montréal, on this 2nd day of April 2019



Commissioner for the taking of oaths
for the province of Québec



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v.

FACEBOOK, INC.

Defendant

**NOTICE OF PRESENTATION
(ART. 146 and 574 al. 2 C.C.P.)**

TO: Me Éric Préfontaine, Me Jessica Harding and Me Yasmine Sentissi
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Counsel for the Defendant Facebook, Inc.

TAKE NOTICE that the *Application to Temporarily Stay the Class Action* will be presented before the honourable Justice Thomas M. Davis of the Superior Court at the Montreal Courthouse located at 1, Notre-Dame Est, at a date and time to be determined by this honorable judge.

GOVERN YOURSELVES ACCORDINGLY.

Montréal, April 2, 2019


Klein Avocats Plaideurs Inc.
Counsel for the Applicant

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LIST OF EXHIBITS

- EXHIBIT P-1:** Application for Authorization to Institute a Class Action and to Obtain the Status of Representative.
- EXHIBIT P-2:** Notice of Application in *Chow et al. v. Facebook, Inc.*, court docket number VLC-S-S-188374.
- EXHIBIT P-3:** Statement of Claim in *Dockrill v. Facebook, Inc.*, court docket number CV-18-00602694-00CP.

N° 500-06-000938-189

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**APPLICATION TO TEMPORARILY
STAY THE CLASS ACTION
LIST OF EXHIBITS AND
EXHIBITS P-1, P-2 AND P-3**

ORIGINAL

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