

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No.: 500-06-000965-182

SUPERIOR COURT
(Class Action Chambers)

NICHOLAS PAPADATOS

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 and 3155 (4) of the *Civil Code of Québec* (“CCQ”))**

**TO THE HONOURABLE JUSTICE CHANTAL CHATELAIN, J.S.C, COORDINATING
JUDGE FOR THE CLASS ACTION DIVISION, 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 December 21, 2018, (the “Québec Action”) pending a final judgment on the putative class action before the British Columbia Supreme Court, in *Moretti et al. v. Facebook, Inc. et al.*, court docket number VLC-S-S-1813727 (the “BC Action”) filed on December 20, 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 national 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, Nicholas Papadatos, seeks to represent the following class in the Québec Action:

“All persons residing in Québec who used Facebook on internet-enabled devices manufactured by the Defendants (“Class Members”), or any other group to be determined by the Court, between 2007 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. shared users’ personal information with third-party device manufacturers 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 proposes the following putative class:

“All users of Facebook in Canada (“Class Members”, to be defined in the Plaintiffs’ application for class certification) between 2007 and 2018 (“Class Period”, to be refined in the Plaintiffs’ application for class certification”).

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

8. As appears from the foregoing, the proposed class in the Québec Action is included in the proposed national class in the BC Action and relates to the same Defendant, Facebook Inc.
9. Moreover, the BC Action asserts the same allegations of fault and similar causes of action.
10. In addition, the BC Action names additional third-party device-manufacturers as defendants.
11. The defence to those allegations will also be similar.

III. STATUS OF THE PARALLEL CLASS ACTIONS

a. The Québec Action

12. The Québec Action has not yet been assigned to a case management judge;
13. No procedural steps have been carried out to date in the Québec Action.

b. The BC Action

14. On March 21, 2019, the BC Action was assigned to be case managed by Mr. Justice Masuhara.
15. The BC Action is further advanced than the Québec Action. Plaintiffs' counsel in British Columbia has filed two representative affidavits and two expert affidavits.
16. A Judicial Management Conference is scheduled to take place on May 14, 2019.

IV. LIS PENDENS AND STAY OF PROCEEDINGS

17. 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.
18. 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

19. 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

20. 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. shared users' personal information with third-party device manufacturers

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

21. The Defendant refutes these allegations in both jurisdictions.

c. Same Object

22. 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

23. 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.
24. 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.
25. 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.
26. 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.
27. 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

28. 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.
29. 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. The presence of additional defendants in the BC Action is also to the benefit of the putative Québec class members.

30. 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.
31. 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 can attend the certification hearing in order to ensure that the putative Québec class members' rights and interests are taken into account and protected.
32. 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.
33. Moreover, the Applicant agrees that the Québec Action should be temporarily stayed in favour of the BC Action.
34. The Defendant consents to the present application.

VI. CONCLUSION

35. For the reasons stated above, the Applicant seeks a stay of the Québec Action pending a final certification judgment in the BC Action.
36. 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 thirty (30) days of any significant development in the BC Action that may affect the course of the Québec Action.
37. 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-1813727);

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 thirty (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 26, 2019

(sgd) Klein Avocats Plaideurs Inc.

Me Careen Hannouche
Klein Avocats Plaideurs Inc.
500, Place d'Armes, suite 1800
Montréal, Québec
H2Y 2W2
Attorneys 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 the attorney 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:

(sgd) Careen Hannouche

Careen Hannouche

Solemnly declared before me
in Montréal, on this 26th day of April 2019

(sgd) Emmanuelle Duclos, 213149

Commissioner for the taking of oaths
for the province of Québec

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

TO: Me Éric Préfontaine, Me Jessica Harding and Me Yasmine Sentissi
Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière Street West, Suite 2100
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Attorneys for the Defendant Facebook, Inc.

TAKE NOTICE that the *Application to Temporarily Stay the Class Action* will be presented before the honourable Justice Chantal Chatelain 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 26, 2019

(sgd) *Klein Avocats Plaideurs Inc.*

Klein Avocats Plaideurs Inc.
Attorneys 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 Civil Claim in *Moretti et al. v. Facebook, Inc. et al.*, court docket number VLC-S-S-1813727.

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

COPY FOR THE COURT

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