

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

NO: 500-06-000752-150

**SUPERIOR COURT**  
**(Class Action)**

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**SERGE SAUMUR**, resident of the City of Longueuil, Quebec herein electing domicile for purposes of these proceedings c/o 151 Bloor St. West, Suite 890, Toronto, ON M5S 1P7

*Petitioner*

v.

**AVID LIFE MEDIA INC.**, a legal person duly constituted under the laws of Ontario, having its principal place of business at 20 Eglinton Avenue West, Suite 1200, Toronto, Ontario, M4R 1K8

and

**AVID DATING LIFE INC.**, a legal person duly constituted under the laws of Ontario, having its principal place of business at 20 Eglinton Avenue West, Suite 1200, Toronto, Ontario, M4R 1K8

*Respondents*

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**PETITIONER'S MOTION TO STAY THE PETITIONER'S  
MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION  
AND TO OBTAIN THE STATUS OF REPRESENTATIVE  
(Article 3137 C.C.Q.)**

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**TO THE HONOURABLE JUSTICE GAGNON, JUDGE OF THE SUPERIOR COURT OF QUEBEC, SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER STATES AS FOLLOWS:**

Introduction

1. On consent of the Respondents, the Petitioner in this Motion seeks a stay of the Petitioner's Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative, in light of the fact that all members of the proposed class are also members of a parallel class action awaiting certification in Ontario, giving rise to a situation of *lis pendens* which warrants the exercise of this Court's discretion to stay proceedings pursuant to article 3137 C.C.Q.;

The Quebec Proceedings

2. On August 24, 2015, the Petitioner filed a Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative, which describes the proposed class as:

all persons in Quebec who registered an account on Ashley Madison and whose Personal Information was disclosed, disseminated, published and/or otherwise posted on the internet on or about August 18, 2015, and anytime thereafter...
3. This Action is based on the Respondents' alleged breach of contract, breach of s. 219 of the *Consumer Protection Act*, C.Q.L.R. c. P-40.1, intrusion upon seclusion and breach of privacy;
4. The Quebec Petitioner is represented by a joint effort of the law firms Charney Lawyers PC and Sutts, Strosberg LLP in Ontario and the law firm Legal Logik Inc. in Quebec;

The Ontario/National Proceedings

5. On August 20, 2015 a Notice of Action was filed and on September 21, 2015 a Statement of Claim was filed by the Plaintiff Eliot Shore against the same defendants as in the Quebec Proceedings in Ontario Court File Number CV-15-22622CP. A copy of the Statement of Claim is produced herein as **Exhibit R-1**. The Statement of Claim describes the proposed class as:

all persons in Canada who registered an account on Ashley Madison and whose Personal Information was disclosed, disseminated, published and/or otherwise posted on the internet on or about August 18, 2015, and anytime thereafter...
6. The same breach of contract, breach of consumer protection legislation, intrusion upon seclusion and breach of privacy are alleged in the Ontario Action, as well as an additional claim in negligence;

7. The Ontario Plaintiff is represented by a joint effort of the law firms Charney Lawyers PC and Sutts, Strosberg LLP;
8. The Quebec Petitioner is to be added as a proposed Representative Plaintiff in the Ontario action to represent Quebec class members;
9. The Ontario Action is proceeding forward judiciously;

Lis Pendence and Stay of Proceedings

10. Article 3137 C.C.Q. states that five criteria for *lis pendens*:

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it 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, or if such a decision has already been rendered by a foreign authority. [emphasis added]

11. It is respectfully submitted that these criteria are met. Nevertheless, the case law, including *Lebrasseur c. Hoffman-La Roch Ltée*, 2011 QCCS 5457, makes clear that the Court has an abundant discretion in this area and that the “interests of the class” should be the guiding criteria for the exercise of this discretion;
12. Class counsel consists of the same law firms in Ontario and Quebec. All class counsel are determined to have the Ontario Action advanced judiciously and for the benefit of the class members;
13. The Quebec class members will not be prejudiced. By participating in a single, national class action, the efforts of class counsel will be unified and focused on one central action rather than spread across multiple actions;
14. The Petitioner will not be prejudiced because he will participate as a proposed representative plaintiff in the Ontario action;
15. The Petitioner submits that it is in the interest of justice and in its own interest to avoid a multiplicity of Court proceedings which would run contrary to the “spirit of mutual comity that is required between the courts of different provinces in the Canadian legal space” as per *Canada Post Corp v. Lepine*, [2009] 1 S.C.R. 549;
16. The Petitioner believes that it is in the interest of justice to proceed in an orderly fashion and submits that the present case should be stayed until a final resolution of the Ontario Action;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

**GRANT** the present Motion;

**STAY** the Petitioner's Motion to Authorize the Bringing of a Class Action and to Obtain the Status of Representative until a final judgement on the certification of the class proceedings brought before the Ontario Superior Court of Justice in Ontario Court File Number CV-15-22622CP;

**TAKE NOTICE** of the undertaking by the Petitioner to advise the Court promptly of any decision by the Ontario Superior Court of Justice regarding the certification of said class proceedings;

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

Montreal, February 8, 2016



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**LEGAL LOGIK INC**

**Attorneys for the Petitioner**

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**Me Jeffrey Dalfen**

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**AFFIDAVIT**


I, the undersigned, **JEFFREY DALFEN**, attorney, exercising my profession at the offices of Legal Logik Inc, situated at 7575 Route Transcanadienne, Bureau 407, in the City of Montreal, Province of Quebec, do hereby solemnly affirm as follows:

1. I am one of the attorneys representing the Petitioner herein;
2. I have read the attached motion and all the facts alleged therein are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
**JEFFREY DALFEN**

Solemnly affirmed before me,  
in Montreal, this 8 day of February, 2016

  
**Commissioner of oaths for the District  
of Montréal**




**NOTICE OF PRESENTATION**

**TO: Yves Martineau and David R Byers**  
STIKEMAN ELLIOTT LLP  
1155 René-Lévesque Blvd. West, 40<sup>th</sup> Floor  
Montreal (Québec) H3B 3V2  
Attorneys for the Respondents

**TAKE NOTICE** that the present motion will be presentable for adjudication before the Honourable Justice Gagnon of the Superior Court of Quebec, at the Palais de Justice in Montreal, located at 1 Notre Dame East, on the **TBA** in the morning, or as soon as the Court so decides.

Montreal, February 8, 2016

  
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NO: 500-06-000752-150

**SUPERIOR COURT**  
(Class Action)

**SERGE SAUMUR**

Petitioner

-vs-

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and  
**AVID DATING LIFE INC.**

Respondents

**PETITIONER'S MOTION TO STAY THE  
PETITIONER'S MOTION TO AUTHORIZE  
THE BRINGING OF A CLASS ACTION AND  
TO OBTAIN THE STATUS OF  
REPRESENTATIVE**

**ORIGINAL**

Mon dossier :

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**DOMICILE ÉLU**

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