

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001073-200

SUPERIOR COURT
(Class Actions)

ELISABETTA BERTUCCI, [REDACTED]
[REDACTED]

Applicant

-vs-

SOCIÉTÉ DES LOTTERIES DU QUÉBEC INC. (LOTO-QUÉBEC), having its head office at 500 Sherbrooke Street West, district of Montreal, Province of Quebec, H3A 3G6

and

SOCIÉTÉ DU JEU VIRTUEL DU QUÉBEC INC. (a.d.b.a. ESPACEJEUX), legal person having its head office at 500 Sherbrooke Street West, 22nd floor, district of Montreal, Province of Quebec, H3A 3G6

Defendants

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks authorization to institute a class action on behalf of the following class of which she is a member, namely:

Class:

All persons, who, up until May 18, 2020 (inclusive) paid any sum of money to play Texas Hold'em Poker on the espacejeux and/or the OK POKER platforms.

(hereinafter referred to as the "**Class**")

or any other Class to be determined by the Court;

2. The Defendant, the *Société des lotteries du Québec* (also designated under the name “Loto-Québec”), is a joint-stock company constituted pursuant to the *Act respecting the Société des loteries du Québec*, chapter S-13.1;
3. The Defendant, the *Société du jeu virtuel du Québec Inc.* (a.d.b.a. Espacejeux), is a subsidiary owned by Loto-Québec. As of April 1, 2011, the management of online games offered by Loto-Québec, including <http://www.espacejeux.com/>, has been entrusted to the *Société du jeu virtuel du Québec Inc.* “Espacejeux” is a trademark owned by Loto-Québec (see *Loto-Québec c. Poker Trail Management Inc.*, 2016 QCCS 474, paras. 20, 269 and 291);
4. The website www.espacejeux.com operated by the Defendants enables their customers to gamble online, including in a poker game known as “Texas Hold’em”;
5. According to the Defendants website, Texas Hold’em is “the most widely-played poker game in the world”, Applicant disclosing **Exhibit P-1**;
6. The Defendants generate substantial revenues (which they qualify as “commissions” on their website) from their customers by collecting a “rake” from “Real-Play” Texas Hold’em (also known as “cash” games) and by charging a registration fee to “buy-in” to Texas Hold’em “tournaments”, Applicant disclosing an extract of the espacejeux website’s “commissions” section as **Exhibit P-2** (<https://m.espacejeux.com/en/ok-poker/how-to-play/rake>);
7. On its website, Loto-Québec describes the object of Texas Hold’em as follows, as it appears from an extract disclosed herewith as **Exhibit P-3**:

“Using two of your own cards and five shared cards, form a five-card hand whose value is ranked higher than the hands of the other players in the game...

Starting with the first active player next to the puck, the dealer deals **two face down cards** one at a time to each player (the “pocket” cards)

<https://www.espacejeux.com/en/ok-poker/how-to-play/games/texas-holdem#object-of-the-game>
8. One of the rules of Texas Hold’em is that each player’s two “pocket” cards are dealt **face down** and are “for their eyes only”, as it appears from the “Rules of Texas Hold’em” page of the Pokerstars.com website disclosed herewith as **Exhibit P-4**;
9. The Defendants apply the same rules, that is that each user’s “pocket” cards are for their eyes only and should never be shown to other players (even after a hand, unless a user voluntarily decides to show his/her pocket cards which is very rare);

10. The reason for this rule relates to the skilful element of the game and that a player who is “bluffing” in a given hand (or not), does not want the other players knowing whether he had bluffed (or not);
11. In other words, seeing a player’s “pocket” cards at the end of a hand can allow other players to take notes and track playing patterns/strategies and may give them an advantage against these players in future hands;
12. The Federal Court of Canada has already recognized that Texas Hold’em is a game in which skill clearly predominates over chance, where higher skilled players may come ahead at least 60% of the time as a result of variables related to strategy and game tactics (*Cohen v. Canada (Citizenship and Immigration)*, 2015 FC 1192, para. 16);
13. Players who are registered to the Defendants platform called “OK POKER” (previously “espacejeux”) are identified by usernames, which they are unable to change (and which remained the same as when they were imported from the espacejeux platform to the OK Poker platform in July 2019);
14. Up until the evening of May 18, 2020, the Defendants’ Texas Hold’em platform contained a serious flaw unknown to the vast majority of Class members. The flaw was that users using iPads (and presumably any iOS device) could see the two “pocket” cards of their opponent after a hand was over (even though the opponent did not want to show his/her cards). These users were acquiring information about other players without their knowledge and therefore gained an unfair advantage over users using non-iOS devices (such as a laptop or desktop computer). In brief, not everyone had access to the same information when looking at the “hand history” on the Defendants’ platforms;
15. The information in the “hand history” is important because more experienced poker players will take notes on their opponents, which helps them remember their opponent’s profile (i.e. whether they are aggressive, passive, do they bluff, do they really know how to play, etc.). In fact, the Defendants’ platform has a “note” component that allows players to take notes as they play. This aspect of the game has a significant impact on the strategy that a player will use to defeat his/her opponent;
16. During the class period ending May 18, 2020 inclusively, any player using an iPad on the Defendants’ platforms was able to see the winner’s “pocket” cards by clicking on “hand history” at the end of the hand (unbeknownst to the user);
17. The Applicant first discovered this major system flaw on May 13, 2020, when, for the first time, she used an iPad to play on the Defendants’ platform (she had previously been playing Texas Hold’em on the Defendants’ platforms using her computer for years and therefore could not have known of this flaw before this date);
18. The Applicant discloses herewith *en liasse* as **Exhibit P-5** the pictures she took on

May 13, 2020, showing the problem on the Defendants' OK Poker platform in the context of a "tournament" game;

19. The Applicant's username is "██████████" and Exhibit P-5 shows that she chose to fold on that hand. Exhibit P-5 also shows that the winner of that hand (username: Greenlight) had the following two "pocket" cards: ace of spades and king of hearts;
20. The issue underpinning the present class action is that the user going by the name "Greenlight" (and all other users similarly situated, including the Plaintiff when she was playing on her computer) have no idea that users using iPads can see his/her "pocket" cards. In fact, customers are gambling and spending money and time on the Defendants' platforms under the false belief that the regular rules of Texas Hold'em apply and that nobody can see their cards;
21. Immediately upon noticing the issue in tournament games, the Applicant wanted to see if the same flaw exists in "Real-Play" ("cash") games, and she was able to confirm that this was the case, as it appears from the pictures she took on May 13, 2020 communicated herewith *en liasse* as **Exhibit P-6**;
22. Exhibit P-6 shows that the winner of that hand, an individual going by the username "MW1267", had the following two pocket cards: ace of diamonds and queen of diamonds. Once again, the user MW1267 has no idea that other users can see his/her cards (which in turn can allow them to gain an unfair advantage over him/her in future hands, which no reasonable poker player would tolerate or agree to);
23. That same day (May 13), the Applicant contacted espacejeux by calling 1-866-611-5686 to report the problem to the company. The phone call lasted for more than 25 minutes. A technician followed-up by calling the Applicant a few hours later and confirming that the problem in question exists (i.e. that players using iPads can see the "pocket" cards of other players without their knowledge);
24. Seeing that the problem had not been fixed by May 18, 2020, the Applicant called espacejeux again and asked to be transferred to a supervisor. The call lasted more than 58 minutes and an agent named "Carlos" gave her the reference #1373475;
25. The Applicant noticed that the Defendants fixed the flaw by the evening of May 18, 2020 (but the Defendants refused to allow Applicant and all Class members to change their usernames, after the fix, so that any notes that other players already took on her based on the flaw would no longer put her at a disadvantage);
26. On May 21, 2020, an agent of Loto-Quebec sent an email to the Applicant admitting that there was a flaw on its platform, confirming that it had been fixed and offering the Applicant a compensation of a \$15 credit to her account (which she refused because she does not believe that this amount is adequate given the importance of the issue, her actual losses and the time she wasted playing on a faulty and deceptive platform), Applicant disclosing the email as **Exhibit P-7**:

“We wish to inform you that the **incident affecting the poker hand history on OK Poker** is now resolved.

As you can see in your Online Games account, we offered you \$15,00.

Thank you for having taken the time to inform us.

If ever you still encounter technical difficulties, we invite you to contact us.

We apologize for any inconvenience this issue may have caused and appreciate your understanding.”

27. Contrary to the agent’s assertion, the issue is not merely an “*incident affecting the poker hand history on OK Poker*”, rather a serious systemic flaw in the Defendants’ OK Poker platform (that has been active since July 2019) and that likely also existed in the Defendants’ espacejeux poker platform (that was active prior to July 2019);
28. As such, the consent given by Class members when contracting with the Defendants (i.e. by paying them to enter into Texas Hold’em tournaments and/or “Real-Play” games on their platforms) was vitiated by error relating to an essential element of the contract (an essential element being the integrity, security and privacy of the platform);
29. Not only did all users have a reasonable expectation of the integrity of the Defendants’ platform where they spend and risk their money (especially since it is run by a state-owned enterprise), but the Defendants boast as follows in their advertising for their “OK Poker” platform on their website, Applicant disclosing **Exhibit P-8:**

5 reasons you should play OK POKER

1. Compatible with all devices
2. Casino-bound tournaments, and many other events
3. English-speaking customer service available 24 hours
- 4. Priorities: Integrity, security and privacy protection**
5. Only online poker software legal in Quebec

(<https://m.espacejeux.com/en/ok-poker/download>)

30. The above confirms that the Defendants acknowledge that “*integrity, security and privacy protection*” are important elements for poker players who they are trying to

attract as customers and who they are contracting with (and in turn profiting from);

31. By failing to provide Class members with a secure platform that respects the integrity and rules of Texas Hold'em Poker, the Class members were deceived and their consent at the time they agreed to contract with the Defendants was vitiated. As such, they have a right to claim damages collectively pursuant to article 1407 C.C.Q (i.e. had Class members known that other players can see their two "pocket" cards they would have never contracted, or, alternatively, would have used an iPad so that all players are on an equal playing field);
32. Moreover, by failing to inform all of the Class members of the serious platform flaw and by not changing all of their usernames (thereby causing the damages to be ongoing since some users have taken notes of the strategies of other users who are still identified by the same username), the Defendants continue to deceive Class members and also continue to violate sections 41, 221(g) and 228 of the *Consumer Protection Act* ("CPA");
33. For clarity, the reason why the prejudice to Class members is ongoing – until such time that all usernames on OK Poker are changed – is because users that took notes on Class members while the flaw existed on the platform still have access to these notes, which in poker is valuable information about the other player's style of play. The players who have this information on other players are more likely to defeat their opponents than if they did not have access to this information (which they would not have once all the usernames are changed). Applicant discloses herewith as **Exhibit P-9** an article titled "*The importance of Taking Notes in Poker*" to demonstrate, at this stage, how crucial the ongoing issue of unfairness is;
34. As of the filing of this Application, the Defendants have failed to advise all Class members of the ongoing disadvantage they are playing at on their platform and refuse to allow them to change their usernames;
35. This class action seeks: i) the reimbursement of the aggregate of the sums paid to play Texas Hold'em poker on the Defendants platforms up until the flaw was fixed on May 18, 2020 (inclusively), as well as punitive damages; and ii) an order forcing the Defendants to change the usernames of all Class members so that everyone is on the same playing field;

I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

36. The Applicant has been playing Texas Hold'em poker on the Defendants' espacejeux and OK Poker platforms under the username "████████" since November 30, 2010. In July 2019, the Defendants transferred all of their customers from the espacejeux platform to their new OK Poker platform (they

- forced players, including the Applicant, to keep the same usernames);
37. The Applicant considers that Texas Hold'em poker is primarily a game of skill, of course with some element of chance involved;
 38. The reason that the Applicant contracted with the Defendants is so that she can play Texas Hold'em poker on a "safe", reliable and fair platform, with the objective of winning money;
 39. Each time that she contracted with the Defendants and added funds to her account with them, the Applicant was under the impression that the playing field was equal for all users;
 40. Had she been aware that some players using iPads can see her two "pocket" cards, she would have never used the Defendants' platforms;
 41. Prior to May 13, 2020, the Applicant always used a computer to play Texas Hold'em poker on the Defendants' platforms;
 42. On May 13, 2020, the Applicant used an iPad to play Texas Hold'em poker on the Defendants' OK Poker platform and discovered that iPad users can see the two "pocket" cards of all Class members without them ever knowing about it;
 43. The Applicant is aware and is certain that other Class members were also able to see her two "pocket" cards (without her knowledge);
 44. This means that, for years, the Applicant was deceived because other players had an advantage over her when playing Texas Hold'em poker on the Defendants' platforms, which was completely unknown to her;
 45. Knowing one's opponent is an important element of playing poker, since the more one plays against another, the more one learns about the other's strategies, reactions and playing styles. In fact, this is precisely the reason why the Defendants do not let their customers ever change their usernames (because other players have taken notes and acquired knowledge about their opponents that becomes an asset to them over time);
 46. Since the Applicant always played on the computer, her opponents using iPads were able to see the Applicant's "pocket" cards, which gave them an advantage over her, because they gained knowledge about her strategies and playing styles (for instance, these players could know that the Applicant may have a tendency to go "all-in" even though she does not have a good hand, which means that the next time the Applicant goes "all-in" the other player – having acquired this knowledge – would "call" (i.e. match) her bet instead of fold, causing the Applicant to lose a hand she would have won had her opponent not acquired this knowledge as result of the faulty platform);
 47. The Applicant estimates that she has lost \$17,945.86 during the Class period

playing on the Defendants' platforms;

48. Had the Applicant been aware that other users can see her two "pocket" cards and that they had obtained an unfair advantage over her, she would have never used the Defendants' platforms to play Texas Hold'em poker;

Remedies Sought:

Arts. 1399, 1400 and 1407 C.C.Q.

49. Given that her consent was vitiated due to error relating to an essential element of the contract (i.e. the Defendants platform did not offer a fair and level playing field to all customers), the Applicant claims damages in the amount of \$17,945.86 pursuant to article 1407 C.C.Q.;

Ss. 41, 221(g), 228 and 272 CPA

50. Furthermore, the Applicant relied on the representations and statements made by the Defendants (including the statements made on their website concerning the "integrity, security and privacy protection" of their platform, Exhibit P-8), which turned out to be false;
51. Consequently, the Applicant claims punitive damages in the amount of \$300.00 per Class member pursuant to s. 272 CPA, for breaches of ss. 41, 221(g) and 228. This amount is appropriate considering the Defendants' patrimonial situations;

Injunctive relief (art. 509 C.C.P.)

52. Given that the damage is ongoing because certain players were able to take notes on the playing patterns/strategies of other players, the Applicant respectfully asks the Court to order the Defendants to allow all Class members to change their usernames;
53. To date, the Defendants have refused the Applicant's multiple request to change her username;
54. This order is the only remedy that will ensure that all Class members are playing on an equal field and that the Defendants can offer a fair platform;
55. This order is also necessary because the Defendants claim that their OK Poker platform is the "only online poker software legal in Quebec" (Exhibit P-8, point #5 under the heading "5 reasons you should play OK POKER");
56. In fact, the Defendants' position is that all online gambling sites accessible in Quebec are illegal and that Loto-Quebec's platform protects the security and integrity of the game (see *Association canadienne des télécommunications sans fil c. Procureure générale du Québec*, 2018 QCCS 3159, notably at paras. 33 & 88, under appeal), Applicant disclosing the "Nadeau Report" as **Exhibit P-10**;

57. Yet, when “PartyPoker” (one of the websites mentioned in the Nadeau Report, Exhibit P-10) recently had an issue compromising the integrity of its poker platform, it immediately remedied the situation by changing the usernames of all its users, Applicant disclosing the notice on PartyPoker’s website titled “*partypoker enforces player name change with latest software update*” **Exhibit P-11**:

“...All the changes are designed to **level the playing field** at partypoker following player feedback, allowing players of all levels to start afresh with a ‘clean slate’ in an effort to make the site a **safer, fairer place to play**.

partypoker Player Panel member Patrick Leonard said: “partypoker is constantly listening to the poker community and continues to act upon feedback provided by its players. I welcome the latest changes, which serve to underscore partypoker’s commitment to improving the playing experience and will help to **make the site a fairer** and more enjoyable place to play poker.”

partypoker managing director, Tom Waters, said: “This client update is one of a number of initiatives that we are working on in order to provide players with a safe environment where they can play online poker.

“With this release, we are making changes to our software that will prevent third-party tracking tools from working. **We want our players to have a fresh start and therefore we are asking all players to select a new alias so that all third-party tool tracking is lost for all our players...**

[our emphasis in bold]

58. As it appears from the above, there is a precedent and solution easily available to the Defendants to remedy the problem and to ensure that their OK Poker platform is treating all of their users fairly and equally and that some users do not have an unfair advantage over others;
59. This matter is all the more pressing given that Loto-Quebec’s online platform has generated \$105 million of revenue last year and it is reported that 30% of Loto-Quebec’s clients are using a mobile device, Applicant disclosing **Exhibit P-12**;
60. The only way to ensure the integrity of the Defendants’ OK Poker platform is to order the Defendants to change the usernames of all Class members, which the Defendants have refused to do, despite multiple requests by the Applicant;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

61. The recourses of the Class members raise identical, similar or related questions of fact or law, namely:
- a) Did the Defendants' espacejeux and/or OK Poker platforms contain a system flaw whereby certain users were able to see the two "pocket" cards of others users, unbeknownst to them, when playing Texas Hold'em poker?
 - b) If so, are the Class members entitled to claim damages and in what amount?
 - c) Did the Defendants violate sections 41, 221(g) or 228 CPA, and, if so, are Class members entitled to claim compensatory and punitive damages pursuant to section 272 CPA?
 - d) Is the flaw in the Defendants' platform still causing a prejudice to Class members whose usernames have not yet been changed?
 - e) If so, should an injunctive remedy be ordered to force the Defendants to change the usernames of all Class members?
 - f) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?
62. All Class members are in the same position as the Applicant vis-à-vis the Defendants;
63. The Applicant's and Class members' damages are a direct and proximate result of the serious flaw in the Defendants platform (which the Defendants profit from and which they are ultimately responsible for);
64. As such, all Class members have a common interest both in proving that there was a serious flaw in the Defendants' Texas Hold'em platform that gave other players a serious advantage and in claiming the aggregate of the amounts that they paid to the Defendants up until the date that this flaw was fixed on May 18, 2020;

C) THE COMPOSITION OF THE CLASS

65. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
66. The Applicant conservatively estimates the number of persons included in the Class in the thousands during the Class Period;

67. For instance, on May 27, 2020 at approximately 6:30 p.m., the Applicant was able to see that there were more than 500 Class members on the Defendants' OK Poker platform;
68. The OK Poker platform enables Class members to play both Real-Play and tournament pokers games, so the number of players is continuously fluctuating;
69. Loto-Quebec generated more than \$105 million in revenue last year from online games (Exhibit P-12);
70. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of the Defendants since they must provide their information before betting on the Defendants' platforms;
71. Class members are very numerous and are dispersed across the province and Canada;
72. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
73. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

74. The Applicant requests that she be appointed the status of representative plaintiff for the following main reasons:
 - a) She is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) She is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) Her interests are not antagonistic to those of other Class members;
75. Additionally, the Applicant respectfully adds that:
 - a) She contacted and mandated her attorneys to file the present application for the sole purpose of having her rights, as well as the rights of other Class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the flaw on the Defendants' platforms and so that the Defendants can be held accountable;
 - b) It was only thanks to her initiative and efforts in between May 13-18, 2020,

that the Defendants were made aware of the issue and were able to repair it (see Exhibit P-5);

- c) She has the time, energy, will and determination to assume all the responsibilities incumbent upon her in order to diligently carry out the action;
- d) She cooperates and will continue to fully cooperate with her attorneys, who have experience in consumer protection-related class actions;
- e) She has read this Application prior to its court filing and reviewed the exhibits in support thereof;
- f) She understands the nature of the action;

II. DAMAGES

- 76. During the Class period, it appears that the flaw in the Defendants' Texas Hold'em platform has caused financial losses to consumers;
- 77. In light of the foregoing, the following damages may be claimed solidarily against the Defendants:
 - a) Damages pursuant to articles 1399, 1400, and 1407 C.C.Q., in an amount to be determined; and
 - b) punitive damages of \$300 per Class member for violations of ss. 41, 221(g) and 228 CPA, pursuant to section 272 CPA.

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 78. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages and injunctive relief;
- 79. The conclusions that the Applicant wishes to introduce by way of an originating application are:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendants;

ORDER the Defendants to enable the Class members to change their usernames on their OK Poker platform;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff damages in the amount of \$17,945.86;

CONDEMN the Defendants, solidarily, to pay the Class members the amounts that they paid to play Texas Hold'em poker on the Defendants espacejeux and OK Poker platforms until and including May 18, 2020 and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and Class members the sum of \$300 each, subject to adjustment, in punitive damages and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

IV. PRESCRIPTION AND IMPOSSIBILITY TO ACT

80. Prescription should not run against Class members because it is impossible in fact for them to act;
81. Indeed, Class members could not have acted previously as they had no reason to suspect that the Defendants' Texas Hold'em platforms contained a flaw whereby only users playing on iPads can see the "pocket" cards of other users (who up until this day are not aware that other players had access to their cards and playing habits);
82. Additionally, even the Defendants were unaware of the flaw (which was confirmed to the Applicant by the Defendants' agents by phone on May 13 and May 18, 2020 and by email on May 21, 2020). Therefore, it is not reasonable to impute knowledge of fact on the Class members until at least May 18, 2020 (being the day that the Defendants repaired the flaw);

V. JURISDICTION

83. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the head office of both Defendants is in Montreal (**Exhibit P-13**) and the Applicant and many Class members reside in Montreal;

84. Pursuant to article 3148(1) C.C.Q., the Applicant has standing to represent an international class and the Superior Court of Quebec is the appropriate forum;

VI. NOTICE TO DEFENDANTS TO PRESERVE “RELEVANT EVIDENCE”

85. In order to ensure that evidence that is relevant the present action is preserved, the Applicant hereby requests that the Defendants preserve and make copies of the following:
- a) Any information or records concerning when the flaw first appeared in either their espacejeux platform (prior to July 10, 2019) and on the OK Poker platform (after the transition from espacejeux to OK Poker on July 10, 2019), up until it was fixed on May 18, 2020;
 - b) Records or logs that identify what type of device (i.e. computer, iPad, etc.) each user used for every session on the OK Platform for the period of July 10, 2019 to May 18, 2020; as well as the same information for the espacejeux platform for the period prior to July 10, 2019; This information is essential to know who was using an iPad (or other iOS device) and when and whether there is a correlation between the use of iPads and winnings;
 - c) Records or logs showing whether players using iPads viewed the “hand history” of other players and when (up until May 18, 2020 inclusively). For clarity, the Defendants are being asked to preserve records/logs for all hands played with an iPad by every player until May 18, 2020; This information is essential because the system flaw enabled a player using an iPad (or other iOS device), at the end of each hand, to see the two “pocket cards” of the other players of the most recent hand and take notes on those players without their knowledge (this information will show that players using iPads or iOS devices were systematically looking at the “hand history”, which other players could not do);
 - d) All data and logs related to the type of devices used by tournament winners in relation to all other users; this information is relevant because tournaments generally involve higher stakes and if Class members were aware that iPad users had an advantage over them, they would have never paid to participate in tournaments.
86. The interests of justice favour that this Application be granted in accordance with its conclusions.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

AUTHORIZE the bringing of a class action in the form of an originating application in damages and injunctive relief;

APPOINT the Applicant the status of Representative Plaintiff of the persons

included in the Class herein described as:

Class:

All persons, who, up until May 18, 2020 (inclusive) paid any sum of money to play Texas Hold'em Poker on the espacejeux and/or the OK POKER platforms.

or any other Class to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did the Defendants' espacejeux and/or OK Poker platforms contain a system flaw whereby certain users were able to see the two "pocket" cards of others users, unbeknownst to them, when playing Texas Hold'em poker?
- b) If so, are the Class members entitled to claim damages and in what amount?
- c) Did the Defendants violate sections 41, 221(g) or 228 CPA, and, if so, are Class members entitled to claim compensatory and punitive damages pursuant to section 272 CPA?
- d) Is the flaw in the Defendants' platform still causing a prejudice to Class members whose usernames have not yet been changed?
- e) If so, should an injunctive remedy be ordered to force the Defendants to change the usernames of all Class members?
- f) When does prescription start for Class members and what are the factors common to the Class members regarding the impossibility in fact to act?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendants;

ORDER the Defendants to enable the Class members to change their usernames on their OK Poker platform;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff damages in the amount of \$17,945.86;

CONDEMN the Defendants, solidarily, to pay the Class members the

amounts that they paid to play Texas Hold'em poker on the Defendants espacejeux and OK Poker platforms until and including May 18, 2020 and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and Class members the sum of \$300 each, subject to adjustment, in punitive damages and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendants, solidarily, to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendants, solidarily, to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants, solidarily, to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

RENDER any other order that this Honourable Court shall determine;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the "News" sections of the Saturday editions of La Presse, the Journal de Montréal and the Montreal Gazette;

ORDER that said notice be published on the Defendants' website, Facebook page and Twitter account, in a conspicuous place, with a link stating "Notice of a Class Action";

ORDER the Defendants to send an Abbreviated Notice by e-mail to each Class

member, to their last known e-mail address, with the subject line "Notice of a Class Action";

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, June 1, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Screen capture of the Defendants' website;
- Exhibit P-2:** Extract of the espacejeux website's "commissions" section;
- Exhibit P-3:** Extract of the Defendants' website:
<https://www.espacejeux.com/en/ok-poker/how-to-play/games/texas-holdem#object-of-the-game>;
- Exhibit P-4:** Copy of the Rules of Texas Hold'em" page from the Pokerstars.com website;
- Exhibit P-5:** *En liasse*, copies of pictures taken by Applicant on May 13, 2020, showing the problem on the Defendants' OK Poker platform in the context of a "tournament" game;
- Exhibit P-6:** *En liasse*, copies of pictures taken by Applicant on May 13, 2020, showing the problem on the Defendants' OK Poker platform in the context of a "Real-Play" game;

- Exhibit P-7:** Copy of email sent to Applicant by Loto-Quebec on May 21, 2020;
- Exhibit P-8:** Extract of the website: <https://m.espacejeux.com/en/ok-poker/download>;
- Exhibit P-9:** Copy of the article titled “*The importance of Taking Notes in Poker*”;
- Exhibit P-10:** Copy of the Nadeau Report;
- Exhibit P-11:** Copy of notice on PartyPoker’s website titled “*partypoker enforces player name change with latest software update*”;
- Exhibit P-12:** Copy of May 7, 2019, article titled “Jeux en ligne: des revenus de 300 M\$ qui échappent à Loto-Québec”;
- Exhibit P-13:** CIDREQ for Société du jeu virtuel du Québec inc.;

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, June 1, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO: SOCIÉTÉ DES LOTTERIES DU QUÉBEC INC. (LOTO-QUÉBEC)

500 Sherbrooke Street West
Montreal, Quebec, H3A 3G6

SOCIÉTÉ DU JEU VIRTUEL DU QUÉBEC INC. (a.d.b.a. ESPACEJEUX)

500 Sherbrooke Street West, 22nd floor
Montreal, Quebec, H3A 3G6

Defendants

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Québec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, June 1, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran
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500-06-001073-200

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

ELISABETTA BERTUCCI

Applicant

-vs.-

SOCIÉTÉ DES LOTTERIES DU QUÉBEC INC.
(LOTO-QUÉBEC)

and

SOCIÉTÉ DU JEU VIRTUEL DU QUÉBEC INC.
(a.d.b.a. ESPACEJEUX)

Defendants

APPLICATION TO AUTHORIZE THE BRINGING OF A
CLASS ACTION AND TO APPOINT THE STATUS OF
REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)

COPY

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