

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

NO: 500-06-001064-209

SUPERIOR COURT
(Class Actions)

PHILIPPE THERRIEN, [REDACTED]
[REDACTED]

Applicant

-vs-

**SONY INTERACTIVE ENTERTAINMENT
LLC**, legal person having its head office at
2207 Bridgepointe Parkway, San Mateo,
California, 94404, United States of America

and

SONY OF CANADA LTD., legal person
having its head office at 2235 Sheppard
Avenue East, Suite 700, Toronto, Ontario,
M2J 5B5

and

SONY ELECTRONICS INC., legal person
having an elected domicile at 2235 Sheppard
Avenue East, Suite 700, Toronto, Ontario,
M2J 5B5

and

SONY CORPORATION, legal person having
a place of business at 2235 Sheppard
Avenue East, Suite 700, Toronto, Ontario,
M2J 5B5

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. This class action seeks the reimbursement of the shipping costs that Class Members paid to send their products to either of the Sony Defendants (or their agents) during the performance of the Sony Defendants' conventional warranty, for all Sony electronic products whose warranty did not stipulate that the customer must incur the shipping costs when the Sony Defendants' perform their warranty;
2. The Applicant seeks authorization to institute a class action on behalf of the following class of which he is a member, namely:

Class:

All persons in Canada, who, since May 4, 2017, paid the costs of transportation or shipping when Sony was performing its conventional warranty, for all Sony electronic products, when the warranty for their Sony product did not stipulate that the consumer must pay transport or shipping costs.

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

or any other Class to be determined by the Court;

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:

3. On July 2, 2019, the Applicant purchased a Sony PlayStation Wireless Headset model CUHYA-0080 for \$138.24 (the "**Sony Headset**") from the Best Buy store located on boulevard des Galeries, in Québec, as it appears from his receipt disclosed herewith as **Exhibit P-1**;
4. Best Buy is listed as a "Sony Authorized Dealer" on Sony's website (<https://www.sony.ca/en/retailers>);
5. In April 2020, the Bluetooth function of the Applicant's Sony Headset suddenly stopped working normally as the product was intended to be used for;
6. On April 29, 2020, the Applicant contacted Sony's customer service by using the "chat" feature on two occasions;
7. In his first chat session, a Sony agent identified as "Norma" provided the Applicant with trouble shooting instructions, which he tried and which were unsuccessful, as it appears from the chat transcript disclosed herewith as

Exhibit P-2;

8. In his second chat session, a Sony agent identified as “JeCory” explained Sony’s warranty process and explained the Applicant how he can send his Sony Headset to Sony for repairs pursuant to Sony’s warranty, as it appears from the chat transcript disclosed herewith as **Exhibit P-3**;
9. Sony’ Limited warranty for the Applicant’s Sony Headset notably provides the following, as it appears from the document evidencing his warranty disclosed herewith as **Exhibit P-4**:

Sony Interactive Entertainment LLC (“SIE LLC”) warrants to the original purchaser that this product shall be free from defects in material and workmanship for a period of one (1) year from the date of purchase. This warranty does not apply to any consumables (such as batteries). For defects in material or workmanship within the warranty period, upon showing a proof of purchase, SIE LLC agrees for a period of one (1) year to either repair or replace this product with a new or factory recertified product at SIE LLC’s option. For the purpose of this Limited Warranty, “factory recertified” means a product that has been returned to its original specifications. Visit playstation.com/helpme or call 1-800-345-7669 to receive a return authorization and shipping instructions. This warranty shall not be applicable and shall be void if the defect in the SIE LLC product has arisen through abuse, unreasonable use, mistreatment, neglect, or means other than from a defect in materials or workmanship.

[...]

This warranty is valid only in the United States and Canada.

10. In its warranty (Exhibit P-4), Sony does not mention that its customers must assume the shipping or transport costs. Nevertheless, “JeCory” told the Applicant that he must assume the shipping costs (see Exhibit P-3, page 2):

JeCory: All Sony products have a one year warranty. By the information you provide The Gold Wireless Headset is in warranty but **You will need to pay for shipping.**

11. The Applicant explained to Sony that asking him to pay for shipping in respect of the performance of the Sony warranty is against the law, but Sony ignored this and insisted that the Applicant must pay for the shipping costs if he wanted Sony to honour and perform the warranty for his Sony Headset;
12. On May 1, 2020, the Applicant had no choice but to pay the shipping costs of \$32.18 to send the Sony Headset back to Sony for the performance of the warranty, as it appears from his Canada Post receipt disclosed herewith as

Exhibit P-5;

13. Sony's conduct is in violation of section 49 of Quebec's *Consumer Protection Act* that stipulates:

| | |
|--|--|
| <p>49. The merchant or the manufacturer shall assume the real cost of transportation or shipping incurred in respect of the performance of a conventional warranty, unless otherwise stipulated in the writing evidencing the warranty.</p> | <p>49. Le commerçant ou le fabricant assume les frais réels de transport ou d'expédition engagés à l'occasion de l'exécution d'une garantie conventionnelle, à moins qu'il n'en soit autrement stipulé dans l'écrit qui constate la garantie.</p> |
|--|--|

14. As such, the Applicant hereby claims from Sony the reimbursement of the shipping costs of \$32.18 which he unlawfully incurred in respect of the performance of Sony's conventional warranty;
15. Additionally, Sony is a repeat offender, as it was already sued for this issue in Ontario and Saskatchewan and in 2015 Sony settled a class action making similar allegations and refunded the shipping costs to a class of Canadian consumers (*McCallum-Boxe v Sony*, 2015 ONSC 6896);
16. Sony is therefore well aware of consumer protection legislation in Canada and it appears that Sony has made a business decision that it is less expensive not to comply with the law on this issue and pay a modest amount when caught off-side;
17. Indeed, Sony's conduct is lax, careless, passive and ignorant with respect to consumers' rights and to their own obligations;
18. In these circumstances, a condemnation of \$2 million in punitive damages (with collective recovery) against the Sony Defendants on behalf of all Class Members pursuant to section 272 CPA is appropriate so as to punish and deter such conduct again in the future. This amount is appropriate considering Sony's patrimonial situation;
19. The punitive damages provided for in section 272 CPA have a preventive objective, that is, to discourage the repetition of such undesirable conduct;
20. Sony's conduct is intentional and it demonstrates through its behavior (before, during and after the violations) that it is more concerned about its bottom line than about consumers' rights and its own obligations under public order consumer protection legislation;

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

21. By reason of Sony's unlawful conduct, the Applicant and Class Members have

suffered a prejudice, which they wish to claim, every time Class Members paid for shipping a Sony product to Sony while it was performing its warranty which did not specify that the customer must assume the shipping costs;

22. The Applicant discloses herewith *en liasse* as **Exhibit P-6**, the warranties for some of Sony's other electronic products, none of which mention that the customer must pay the shipping costs;
23. For instance, Sony's PlayStation 4 Warranty (Exhibit P-6), which appears to also cover the DualShock controller, specifically mentions that Sony will carry out the warranty at "No Charge" to the customer:

“...This warranty is valid only in the United States and **Canada**. IF THIS PRODUCT IS DETERMINED TO BE MATERIALLY DEFECTIVE DURING THE WARRANTY PERIOD, YOUR SOLE REMEDY AND SIE'S SOLE AND EXCLUSIVE LIABILITY IS LIMITED TO: (A) THE REPAIR OR REPLACEMENT OF THIS PRODUCT WITH A FACTORY-RECERTIFIED PRODUCT, AT SIE'S OPTION, **AT NO CHARGE TO YOU**; AND (B) RETURN SHIPPING OF THE CONSOLE (NOT ANY PERIPHERAL, CONTROLLER, ACCESSORY OR CABLE) TO AN SIE-AUTHORIZED SERVICE FACILITY, VIA A SHIPPING BOX **WITH A PREPAID SHIPPING LABEL PROVIDED BY SIE**, AND SHIPPING OF THE REPAIRED CONSOLE OR A FACTORY-RECERTIFIED REPLACEMENT CONSOLE TO YOU, **AT NO CHARGE TO YOU...**”

24. All of the warranties for Sony's electronic products are similar in this regard, namely that they do not mention that the customer has to assume the shipping costs when Sony performs the warranty (this includes, but is not limited to Sony televisions, projectors, cameras, audio/video equipment, smart devices, tablets, phones, PlayStations and their accessories, car equipment, digital displays, stereo systems, voice recorders, storage media, etc.). Since some of these warranties are not available online, the Applicant consents in advance to Sony adducing its warranties for these products during the Class Period (in English and French) for the authorization hearing;
25. Given that none of Sony's warranties in Exhibit P-6 stipulate that Sony shall *not* assume the real cost of transportation or shipping incurred in respect of the performance of its conventional warranty, it is the general rule of s. 49 CPA that applies and Sony must therefore assume the shipping costs;
26. It is worth noting that for some of its other electronic products, the English version of the Sony warranty does mention that the customer must ship the product “*freight prepaid*”, but the French version of this warranty – on the same document – does not make this mention, as it appears from **Exhibit P-7**, a

portion of which is reproduced below:

| French Version | English Version |
|---|--|
| <p>Livraison :</p> <p>L'unité doit être livrée en personne à l'un des centres de réparation Sony du Canada, <u>ou expédiée</u>, dans son emballage d'origine ou un emballage équivalent accordant un niveau de protection équivalent, ainsi que des directives indiquant l'emplacement au Canada où l'unité peut être retournée. Si l'unité est expédiée à un centre de réparation, <u>l'unité réparée sera retournée au client port payé.</u></p> | <p>Delivery:</p> <p>The unit must be delivered in person to one of the nearest Sony service facilities in Canada, <u>or shipped, freight prepaid</u>, in either its original package or similar package affording an equal degree of protection and with instructions indicating a location within Canada to which the unit may be returned. If shipped to the service facility, <u>the repaired unit will be returned to customer freight prepaid.</u></p> |

27. The Applicant's and Class members' damages are a direct and proximate result of the Sony Defendants' misconduct and bad faith;
28. As such, all Class members have a common interest both in proving the commission of a prohibited business practice by Sony and in claiming the aggregate of the amounts that they unlawfully paid in shipping or transport costs;
29. In this case, the legal and factual backgrounds at issue are common to all the members of the Class, namely whether the warranty for their Sony product(s) mentions that the customer must pay the shipping costs and, if not, whether they subsequently paid to ship their product to Sony in order for Sony to perform the warranty;
30. Individual questions, if any, pale by comparison to the common questions that are significant to the outcome of the present Application;
31. **The recourses of the Class members raise identical, similar or related questions of fact or law, namely:**
 - a) Did Sony violate s. 49 CPA?
 - b) If so, are the Class members entitled to claim the amounts they paid for shipping their Sony products to Sony under the warranty, as well as punitive damages, plus interest and the additional indemnity set out in the *Civil Code of Quebec* on these amounts, from the date of service of the Application for authorization?

C) THE COMPOSITION OF THE CLASS

32. 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;
33. Sony is one of the most prominent consumer electronic companies in the world and its electronic products and accessories are sold online and in retail locations all over Canada;
34. Based on the above, the number of persons included in the Class is estimated in the thousands during the Class Period;
35. 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 Sony Defendants since they must return the products to the Class members after they perform the warranty;
36. Class members are very numerous and are dispersed across the province and Canada;
37. 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;
38. 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

39. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
 - a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) He 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) His interests are not antagonistic to those of other Class members;
40. Additionally, the Applicant respectfully adds that:
 - a) He contacted and mandated his attorneys to file the present application for the sole purpose of having his 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 Sony's fault and so that Sony can be held accountable;

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

II. DAMAGES

- 41. During the Class Period, it appears that Sony has caused financial losses to consumers, while intentionally choosing to ignore the law in Canada and Quebec, including the obligation to act in good faith;
- 42. In light of the foregoing, the following damages may be claimed against solidarily against the Sony Defendants:
 - a) compensatory damages, in an amount to be determined, on account of the damages suffered; and
 - b) punitive damages of \$2 million pursuant to section 272 CPA.

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

- 43. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
- 44. 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;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members the amounts that they paid to ship their Sony electronic products to Sony for the performance of the Sony Warranty 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 \$2 million, 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;

45. 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;

APPOINT the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All persons in Canada, who, since May 4, 2017, paid the costs of transportation or shipping when Sony was performing its conventional warranty, for all Sony electronic products, when the warranty for their Sony product did not stipulate that the consumer must pay transport or shipping costs.

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 Sony violate s. 49 CPA?
- b) If so, are the Class members entitled to claim the amounts they paid for shipping their Sony products to Sony under the warranty, as well as punitive damages, plus interest and the additional indemnity set out in the *Civil Code of Quebec* on these amounts, from the date of service of the Application for authorization?

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;

CONDEMN the Defendants, solidarily, to pay the Representative Plaintiff and the Class members the amounts that they paid to ship their Sony electronic products to Sony for the performance of the Sony Warranty 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 \$2 million, 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";

ORDER the Defendants and their representatives to supply class counsel, within thirty (30) days of the judgment rendered herein, all lists in their possession or under their control permitting to identify Class members, including their names, addresses, phone numbers and email addresses;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, May 4, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

276 Saint-Jacques Street, Suite 801

Montréal, Québec, H2Y 1N3

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Telecopier: (514) 221-4441

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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:** Copy of Best Buy receipt dated July 2, 2019;
- Exhibit P-2:** Copy of chat a transcript with Sony agent identified as "Norma";
- Exhibit P-3:** Copy of chat a transcript with Sony agent identified as "JeCory";
- Exhibit P-4:** Copy of Sony Limited warranty for CUHYA-0080 Headset;
- Exhibit P-5:** Copy of Canada Post receipt dated May 1, 2020;
- Exhibit P-6:** *En liasse*, copies of the Sony warranties for other Sony electronic products;
- Exhibit P-7:** Copy of Sony Consumer 1 Year Warranty / Garantie d'un an protégeant les consommateurs (available on Sony's website: <https://www.sony.ca/en/electronics/support/cameras-camcorders-photo-frames-printers-others>).

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, May 4, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran

Attorney for the Applicant

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Montréal, Québec, H2Y 1N3

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

TO: SONY INTERACTIVE ENTERTAINMENT LLC
2207 Bridgepointe Parkway
San Mateo, California, 94404
United States of America

SONY OF CANADA LTD.
2235 Sheppard Avenue East, Suite 700
Toronto, Ontario, M2J 5B5

SONY ELECTRONICS INC.
2235 Sheppard Avenue East, Suite 700
Toronto, Ontario, M2J 5B5

SONY CORPORATION
2235 Sheppard Avenue East, Suite 700
Toronto, Ontario, M2J 5B5

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, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, May 4, 2020

(s) LPC Avocat Inc.

LPC AVOCAT INC.

Mtre Joey Zukran
Attorney for the Applicant
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500-06-001064-209

(Class Action)
SUPERIOR COURT
DISTRICT OF MONTREAL

PHILIPPE THERRIEN

Applicant

-VS.-

SONY INTERACTIVE ENTERTAINMENT LLC
ET ALS.

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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N/D: JZ-212
