

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-06-000500-104

VIRGINIA NELLES

Plaintiff

vs.

ROYAL BANK OF CANADA

Defendant

**DEFENDANT'S NOTICE OF DISCLOSURE
OF PRELIMINARY EXCEPTIONS
(Art. 159 et seq C.p.c.)**

TO : Me Neil H. Stein
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ATTORNEYS FOR PLAINTIFF

**TAKE NOTICE THAT DEFENDANT INTENDS ON PRESENTING THE FOLLOWING
PRELIMINARY EXCEPTIONS UPON THE NEXT HEARING DATE FOR THE MOTION
INTRODUCTIVE OF CLASS ACTION PROCEEDINGS, UNDER STRICT RESERVE
OF DEFENDANT'S RIGHTS AND RECOURSES :**

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1. Exception to dismiss the class action as instituted (art. 165(4) C.p.c.);
 - 1.1 The Motion introductive of class action proceedings contains no specific allegations setting forth the Plaintiff's cause of action;
 - 1.2 Defendant is therefore entitled to request that the Motion introductive of class action proceedings, as instituted, be dismissed;
 - 1.3 Upon adjudication of the exception to dismiss, Defendant reserves its rights to present, *inter alia*, the following preliminary motions:
2. Motion to strike allegations that are immaterial, redundant or libelous (art. 168 *in fine* C.p.c.);
 - 2.1 Indeed, paragraph 3 of the Motion introductive of class action proceedings is libelous and immaterial as it is contrary to the accusation and guilty plea actually filed in the criminal proceedings;
 - 2.2 Defendant is therefore entitled to request that such paragraph be struck from the Motion introductive of class action proceedings as instituted;
3. Motion for particulars and to obtain documents (art. 168 C.p.c.);
 - 3.1 Indeed, Defendant is entitled to obtain particulars on vague and ambiguous allegations contained in the Motion introductive of class action proceedings;
 - 3.2 More particularly, but without limitation, paragraphs 6, 7, 8, 10, 17, 30 and 33 are vague and ambiguous in that it is not indicated in what capacity Jones received and administered third party funds, how he made such representations, if there were any cash payments and who remitted and received back what funds;
4. Motion to examine additional class members and/or third parties (arts. 1019, 1020 and 397 C.p.c.);
 - 4.1 Indeed, considering that Jones testified in the context of his bankruptcy proceedings that he fuelled his ponzi scheme with approximately 4 different types of alleged fund management (namely through investments, estate and trust management, inter-client loans and various special projects), it will be extremely useful to the adjudication of the various questions of law or fact dealt with collectively that at least one class member from each of these groups be examined on discovery;
 - 4.2 More particularly, the Plaintiff's claim is based on representations made by Jones to his customers as to the investment vehicle which he used with Defendant RBC, while such representations would likely differ

substantially, or be completely inexistent, for different types of Jones clients;

4.3 Moreover, it may also be useful to examine those employees of Jones who dealt directly with Defendant's representatives in the day to day operation of the bank account held at Defendant's institution;

5. Motion to implead third parties;

5.1 Indeed, it may become apparent that other parties are responsible in whole or in part, for the alleged losses suffered by the class members.

FOR THESE REASONS, THE DEFENDANT SHALL REQUEST THAT THIS HONOURABLE COURT :

- A. **DISMISS** Plaintiff's Motion to institute proceedings;
- B. **RESERVE** Defendant's rights with respect to all of the other preliminary motions disclosed herein;
- C. **THE WHOLE** with costs.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 10, 2010

BORDEN LADNER GERVAIS s.r.l., s.e.n.c.r.l.

Borden Ladner Gervais LLP
Attorneys for Defendant
Royal Bank of Canada

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