

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Class Actions)

No.: 500-06-001132-212

GABRIEL BOURGEOIS

Plaintiff

V.

SCOPELY EXPLORE, INC. (F.K.A. NIANTIC,
INC.) et al.

Defendants

SECOND APPLICATION OF THE DEFENDANT SCOPELY EXPLORE, INC.
(F.K.A. NIANTIC INC.) FOR LEAVE TO ADDUCE RELEVANT
EVIDENCE AT AUTHORIZATION
(Article 574 CCP)

TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER, J.S.C., ACTING AS
DESIGNATED JUDGE IN THIS CASE, DEFENDANT NIANTIC INC. RESPECTFULLY
SUBMITS THE FOLLOWING:

A. INTRODUCTION

1. Defendant Scopely Explore, Inc. ("**Scopely Explore**"), formerly known as Niantic Inc. ("**Niantic**"),¹ seeks leave to adduce relevant evidence in order to establish the facts necessary to enable this Court to undertake an informed analysis of whether the criteria for authorization set out in article 575 of the *Code of Civil Procedure* (the "**CCP**") are satisfied.
2. This evidence directly responds to new allegations in the Third Amended Application (as defined in paragraph 10 hereof) as well as new exhibits filed by the Plaintiff in support thereof.

¹ As more fully described in the amended sworn statement of Edward Wu (Exhibit SE-1), Niantic was acquired by Scopely Inc. in May 2025 and began operating under the Name Scopely Explore, Inc. in July 2026.

B. THE PROPOSED CLASS ACTION

3. On March 2nd, 2021, the Plaintiff filed an *Application for Authorization to Institute a Class Action & Obtain the Status of Representative Plaintiff* (the “**Authorization Application**”) against multiple Defendants, including Scopely Explore (f.k.a. Niantic), as it appears from the Court record.
4. The Plaintiff has subsequently amended the Application three times, on October 25, 2021, May 27, 2022 and May 1, 2026.
5. In response to the first amended Application (October 25, 2021), Scopely Explore (f.k.a. Niantic) sought this Court’s permission to adduce evidence on December 22, 2021.
6. In response to the second amended Application (May 27, 2022), Scopely Explore (f.k.a. Niantic) amended its application for leave to adduce evidence on September 15, 2023.
7. By judgment dated August 7, 2025, the Court granted the amended application for leave to adduce evidence and allowed into evidence the sworn statement of Edward Wu dated September 14, 2023.
8. On March 6, 2026 the Plaintiff sought leave to further amend the Authorization Application. This Court granted leave on May 1, 2026, and this further amendment (the “**Third Amended Application**”) was duly entered into the record.
9. In its judgment dated May 1, 2026, the Court also granted the Defendants the opportunity to make verifications and advise whether they would seek leave to adduce additional evidence.
10. The Third Amended Application substantially modifies the Plaintiff’s allegations in various respects including, without limitation, by alleging for the first time that the Defendants “deliberately employed vague language in their descriptions of the Loot Box contents or odds to obscure the likelihood that a Class Member could realistically obtain a valuable item” (paragraph 68.2) and that class members “could not understand or appreciate the economic value of the goods or services acquired” (paragraph 71.2).

11. In support of the Third Amended Application, the Plaintiff also produced, for the first time, evidence specifically relating to Scopely Explore (f.k.a Niantic). This evidence consists of:
 - a. Exhibit P-57F, a “factual report” prepared by Eamon Garrett, in which Mr. Garrett describes certain gameplay mechanics in *Pokémon GO* and *Harry Potter: Wizards Unite* (the “**Games**”), the two titles developed by Niantic that are identified in Appendix A to the Third Amended Application; and
 - b. A portion of Exhibit P-59 consisting of print-outs of a website, PlayerAuctions, which purports to offer *Pokémon GO* accounts for sale, which the Plaintiff relies on as evidence that “Prizes” obtained through “Loot Boxes” have real-world value and can be “monetized and resold in third-party online marketplaces” (paragraph 69).
12. The Plaintiff continues to allege that the Games contain unlawful loot boxes that constitute an unlicensed, illegal gaming system under the *Criminal Code*.
13. Through their conduct relating to the alleged offering and operation of loot boxes, the Plaintiff continues to allege that the Defendants have contravened:
 - a. The *Consumer Protection Act*, CQLR, c p-40.1 (the “**CPA**”), the *Civil Code of Québec* (the “**CCQ**”) and the related consumer protection statutes in other Canadian provinces; as well as
 - b. The provisions of the *Competition Act*, RSC 1985, c C-35, relating to false and misleading representations and omissions.
14. The Plaintiff claims restitution as well as compensatory and punitive damages, whose quantum remains unspecified.

C. APPLICATION FOR LEAVE TO ADDUCE RELEVANT EVIDENCE PRIOR TO THE AUTHORIZATION HEARING

15. Scopely Explore hereby seeks permission of this Court to adduce relevant evidence within the meaning of article 574 CCP, evidence which is essential and indispensable to the Court’s analysis of whether the criteria of paragraphs 575(1) and (2) CCP are met in the present matter.

16. Prior to the Third Amended Application, the Application contained only four (4) paragraphs specifically relating to Scopely Explore (f.k.a. Niantic) (paras. 33 and 111-113), and it was accompanied by no evidence specific to Scopely Explore (f.k.a. Niantic).
17. Mr. Wu's sworn statement was therefore intended to provide a true and complete factual matrix with regard to the allegations in the proceedings as they then stood.
18. In response to the Third Amended Application and supporting exhibits, Scopely Explore (f.k.a. Niantic) seeks leave to provide further evidence—in the form of an amendment to Mr. Wu's sworn statement, **Exhibit N-2**, and four new exhibits EW-16 to EW-19 (the "**New Evidence**")—in order to provide a true and complete factual matrix with regard to the allegations in the Third Amended Application as they now stand. Of note:
 - a. Many of the Plaintiff's latest allegations remain generalized and, as such, continue to treat the Defendants as if their games and the alleged loot boxes therein are identical and interchangeable.
 - b. Where the Plaintiff does add evidence specifically relating to Scopely Explore (f.k.a. Niantic), his evidence is incomplete and, at times, inaccurate. Mr. Garrett's report explains only partially the function of eggs and portmanteaus in the Games. Notably, for the majority of the period of the proposed class action, *Pokémon GO* has informed players which Pokémon can hatch from any particular egg, a fact that undermines the Plaintiff's allegations concerning disclosure and Mr. Garrett's observation that his "reward was not known prior to disclosure" (Exhibit P-57F, page 7).
 - c. Similarly, while the Plaintiff has filed into evidence a document purporting to show *Pokémon GO* accounts for sale, the Plaintiff has not addressed whether such sales are legitimate or permitted.
19. The New Evidence addresses these issues and, in so doing, will assist the Court in determining whether the criteria under article 575 CCP are met. Specifically, it:
 - a. Corrects and completes Mr. Garrett's account of certain gameplay mechanics in the Games, which directly addresses the Plaintiff's allegations that the Defendants' disclosures are misleading or inadequate and ensures that it is established that, since March of 2021 at least, Scopely Explore (f.k.a. Niantic) did in fact make disclosures;

- b. Updates information regarding terms of service for *Pokémon GO*, which directly addresses the Plaintiff's allegations that the items acquired from "loot boxes" are exchangeable and have real-world value; and
 - c. More broadly explains how Scopely Explore (f.k.a. Niantic) handles violations of its terms of service in order to prevent acts of cheating, such as the sale of accounts now alleged by the Plaintiff.
- 20. In addition, the New Evidence adduces seeks to adduce into the record evidence regarding Niantic's name change to Scopely Explore.
 - 21. As such, the New Evidence will provide the true and complete factual matrix regarding the allegations advanced by the Plaintiff pertaining to Niantic, thereby providing the Court with useful and contextual clarification so that it can better understand the facts of the case and the composition of the class.
 - 22. The New Evidence, which is neutral, objective and uncontroverted, is limited to only that which is essential and indispensable to assessing the criteria of article 575 CCP. It is also short and limited. Accordingly, it meets the requirements of the rule of proportionality set out in articles 18 and 19 CCP.
 - 23. Allowing this New Evidence to be adduced will simplify the proceedings, focus the legal debate and avoid any confusion or surprises at the authorization hearing.
 - 24. The present application is well-founded in fact and in law.

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

GRANT the present Application; and

AUTHORIZE Defendant Scopely Explore, Inc. (f.k.a. Niantic) to file into evidence the amended sworn statement of Edward Wu, Exhibit N-2 as well as its supporting Exhibits EW-16 to EW-19;

THE WHOLE without legal costs, unless the present Application is contested.

Montreal, August 28, 2026



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TAKE NOTICE that the *Second Application of the Defendant Scopely Explore, Inc. (f.k.a. Niantic Inc.) for Leave to Adduce Relevant Evidence at Authorization* will be presented for adjudication before the Honourable Sylvain Lussier of the Superior Court of Québec, sitting in and for the District of Montréal, at the Montréal Courthouse, situated at 1 Notre-Dame Street East, at a time and place to be determined by this Honourable Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Montreal, August 28, 2026



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ORIGINAL

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