

**SUPERIOR COURT
(CLASS ACTION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-001132-212

GABRIEL BOURGEOIS

Plaintiff

v.

ELECTRONIC ARTS INC.

-and-

ELECTRONIC ARTS (CANADA), INC.

-and-

ACTIVISION BLIZZARD INC.

-and-

ACTIVISION PUBLISHING INC.

-and-

BLIZZARD ENTERTAINMENT INC.

-and-

TAKE TWO INTERACTIVE SOFTWARE INC.

-and-

TAKE TWO INTERACTIVE CANADA HOLDINGS INC.

-and-

2K GAMES INC.

-and-

ROCKSTAR GAMES INC.

-and-

WARNER BROS. ENTERTAINMENT INC.

-and-

WARNER BROS ENTERTAINMENT CANADA INC.

-and-

WARNER BROS. HOME ENTERTAINMENT INC.

-and-

UBISOFT ENTERTAINMENT SA

-and-

UBISOFT INC.

-and-

UBISOFT ENTERTAINMENT INC. / UBISOFT DIVERTISSEMENTS INC.

-and-

MICROSOFT CORPORATION

-and-

MICROSOFT CANADA INC.

-and-

EPIC GAMES INC.

-and-

EPIC GAMES CANADA ULC

-and-

SCOPELY INC.

-and-

NIANTIC INC.

-and-

KING DIGITAL ENTERTAINMENT GROUP INC.

-and-

KING.COM LTD.

-and-

ZYNGA INC.

-and-

ZYNGA GAME CANADA LTD.

Defendants

**SECOND APPLICATION BY DEFENDANT SCOPELY INC.
FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP)**

**TO THE HONOURABLE JUSTICE SYLVAIN LUSSIER OF THE SUPERIOR COURT
OF QUEBEC, THE DEFENDANT, SCOPELY INC., RESPECTFULLY SUBMITS THE
FOLLOWING:**

I. Introduction

1. The Defendant Scopely Inc. ("**Scopely**") seeks leave to file relevant evidence into the Court record.
2. On December 22, 2021, Scopely brought an application for leave to adduce evidence, which was amended on November 15, 2023.
3. On August 7, 2025, Scopely was granted leave to adduce evidence on this application.
4. On May 1, 2026, the Plaintiffs were granted leave to deliver a *Third Amended Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff* (the "**Third Amended Application**").
5. The Third Amended Application attaches new exhibits that were not previously disclosed, including a report on loot boxes in Scopely games dated March 17, 2021 (Exhibit P-56), which contains erroneous statements of fact.

6. Scopely seeks to assist the Court in determining whether the criteria found at article 575 of the *Code of Civil Procedure* (the “CCP”) have been met and to allow this Court to benefit from a more accurate and relevant factual context in order to determine whether the proposed class action should be authorized.

II. **Brief Description of the Proposed Class Action**

7. On March 2, 2021, an Application for Authorization was filed by the Plaintiff against 25 Defendants, including Scopely Inc.
8. On May 27, 2022, the Plaintiff filed an *Amended (2) Application for Authorization to Institute a Class Action & to Obtain the Status of Representative Plaintiff*.
9. On May 1, 2026, the Plaintiff filed the Third Amended Application, which seeks authorization to file a class action on behalf of the following group:

All Canadian customers of the Loot Box Defendants (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this *Third Amended Application for Authorization* between 2008 and the date this action is authorized as a class proceeding, except such Canadian customers otherwise already included in class description in either one of the following cases *Cunningham et al v. Activision Blizzard Inc. et al* SCBC S-2013414, *Lussier et al v. Scopely Inc.*, SCBC S-2013510, *Pechnik et al v. Take-Two Interactive Software Inc. et al*, SCBC S-211073, *Sutherland v. Electronic Arts Inc. et al*, SCBC S-209803, *Petty et al v. Ninantic Inc. et al*, SCBC S-213723.

10. Appendix “A” of the Third Amended Application lists the games in which Plaintiff alleges the Defendants have included loot boxes. With respect to Scopely, the following games are listed:

“129. *The Walking Dead: Road to Survival*;

130. *Star Trek Fleet Command*;

131. *WWE Champions*;

132. *Marvel Strike Force*;

133. *Looney Tunes World of Mayhem*;

134. *Avatar: Pandora Rising*;

135. *Scrabble Go*;

136. *Yahtzee With Buddies*;

137. *Dice With Buddies*;

138. *Dice with Ellen*;

139. *Wheel of Fortune Free Play*;

140. *Such other games developed and published by the Defendant Scopely that may become known to the Plaintiffs;*"

(hereinafter, the "**Subject Games**").

11. The Plaintiff alleges that the Defendants acted unlawfully by offering for purchase a feature (referred to by the Plaintiff as "**Loot Boxes**") contained in the games published by the Defendants. Plaintiff alleges essentially that this constitutes unlawful gaming and gambling.
12. The Plaintiff alleges that his action only concerns games in which "players pay with real or virtual currency for the opportunity to play or open a Loot Box".¹
13. The Plaintiff alleges that the Defendants conceal the odds of their Loot Boxes and that they fail to place safeguards to prevent minors from playing their Loot Boxes.
14. The Plaintiff alleges that such actions violate the *Criminal Code*, provincial gambling regulations, provincial consumer protection legislation, the *Competition Act*, the *Consumer Protection Act*, and the *Civil Code of Québec* (the "**CCQ**").
15. The Plaintiff is claiming "restitution, compensatory or other damages for any breach of the *Criminal Code*, breach of any provincial statute or regulations, breach of the CCQ, or breach of the common law"² and punitive damages.
16. Scopely rejects the claims made against it.

III. Application for Leave to File Relevant Evidence

17. Scopely seeks leave to file relevant evidence into the Court record in order to permit the Court to examine the authorization criteria appropriately.
18. Scopely intends to seek leave to file the second affidavit of Sol Roy Rosenthal, **Exhibit R-1**, which includes the following:
 - (a) Evidence with respect to the game played by the Plaintiff, Marvel Strike Force;
 - (b) Evidence with respect to the other Subject Games.
19. This evidence could not have been adduced earlier, as it addresses erroneous statements found in the Third Amended Application and its supporting exhibits.
20. The evidence that Scopely seeks to file will serve to:

¹ Third Amended Application, para. 63.

² *Ibid.*, para. 141.

- (a) Demonstrate that Plaintiff's syllogism that Loot Boxes constitute unlawful gambling is *prima facie* unfounded (art. 575(2) CCP);
 - (b) Rectify erroneous or vague allegations of fact (art. 575(2) CCP).
21. The evidence that Scopely seeks to file is limited to what is necessary at the authorization stage and will assist the Court in examining the authorization criteria.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE the Defendant to file the second affidavit of Sol Roy Rosenthal;

ALL OF WHICH IS SOUGHT without costs, unless the present Application is contested.

MONTREAL, August 31, 2026

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

Me Jean Lortie
Me Sajeda Hedaraly
Me Kevin L. Pinkoski
Lawyers for Defendant, Scopely Inc.

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AFFIDAVIT

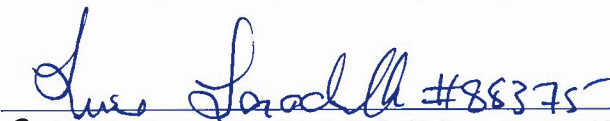
I, the undersigned, Jean Lortie, lawyer, exercising my profession at McCarthy Tétrault LLP, located at Suite MZ400, 1000 De La Gauchetière Street West, in the City and District of Montreal, Province of Quebec, solemnly declare and affirm the following:

1. I am one of the lawyers of Defendant Scopely Inc.; and
2. All of the facts alleged in the present amended application filed by the Defendant are true.

AND I HAVE SIGNED,


JEAN LORTIE

DECLARED UNDER OATH BEFORE ME, AT
MONTREAL, this September 1, 2026


COMMISSIONER OF OATHS FOR THE PROVINCE
OF QUÉBEC

NOTICE OF PRESENTATION

TO: Me Irwin Liebman
Liebman Légal Inc.
Lawyers for the Plaintiff,
Gabriel Bourgeois

Me Andrea Roulet
Slater Vecchio LLP
Lawyers for the Plaintiff,
Gabriel Bourgeois

Me Éric Christian Lefebvre
Me Henri Barbeau
Norton Rose Fulbright
Lawyers for Activision Blizzard Inc.,
Activision Publishing Inc. and Blizzard
Entertainment Inc.

Me Karine Chênevert
Me Amanda Afeich
Borden Ladner Gervais
Lawyers for Electronic Arts Inc. and Electronics
Arts Canada Inc.

Me Simon Jun Seida
Blake, Cassels & Graydon
Lawyers for Warner Bros. Entertainment
Inc., Warner Bros. Entertainment Canada
Inc., and Warner Bros. Home Entertainment
Inc.

Me François Grondin
Me Patrick Plante
Me Antoine Gamache
Gowling WLG
Lawyers for Take Two Interactive Canada
Holdings Inc., Two games Inc., Rockstar games
Inc., Zynga Inc., Zynga Game Canada Ltd. and
2K Games Inc.

Me Sébastien Richemont
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Fasken Martineau Dumoulin
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Microsoft Canada Inc.

Me Myriam Bixi
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Lawyers for Ubisoft Entertainment SA and
Ubisoft Inc.

Me Margareth Weltrowska
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Entertainment Group Inc., King.com Ltd.
and Niantic Inc.

Me Sébastien Richemont
Me Noah Michael Boudreau
Me Mirna Kaddis
Fasken Martineau LLP
Lawyers for Microsoft Corporation and Microsoft
Canada inc.

TAKE NOTICE that the *Second Application by Defendant Scopely Inc. for Leave to Adduce Evidence* will be presented for adjudication before the Honourable Sylvain Lussier of the Superior Court of Québec, on a date and time to be determined by the Honourable Sylvain Lussier at the Montreal Courthouse located at 1, Notre-Dame Street East.

MONTREAL, August 31, 2026
McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP
Me Jean Lortie / Me Sajeda Hedaraly / Me Kevin L.
Pinkoski
Lawyers for Defendant, Scopely Inc.

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DISTRICT OF MONTRÉAL**

GABRIEL BOURGEOIS

Plaintiff

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Defendants

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DEFENDANT
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FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP),
AFFIDAVIT AND NOTICE OF
PRESENTATION**

ORIGINAL

Mtre Jean Lortie / Mtre Sajeda Hedaraly /
Mtre Kevin L. Pinkoski
File # 225489-543869

BC0847

McCarthy Tétrault LLP

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