

**SUPERIOR COURT  
(CLASS ACTION CHAMBER)**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-001132-212

DATE: December 7, 2021

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**BY THE HONOURABLE STÉPHANE LACOSTE, J.S.C.**

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**GABRIEL BOURGEOIS**, natural  
Person, residing at 2179 rue des  
Artisans, St-Jérôme, Québec, J7Y 4S6  
Petitioner

v.

**ELECTRONIC ARTS INC.**, legal  
person duly constituted, having its  
address of service at 1209 Orange  
Street, Wilmington, DE 19801 USA

and

**ELECTRONIC ARTS (Canada) Inc.**,  
legal person duly constituted, having  
its address for service at 1800  
510 West Georgia St., Vancouver,  
BC, V6B 0M3, Canada

and

**ACTIVISION BLIZZARD INC.**, legal  
person duly constituted, having its  
Address for service at 251 Little Falls  
Drive, Wilmington, New Castle  
Delaware, 19809

and

**ACTIVISION PUBLISHING INC.**,  
Legal person duly constituted, having  
its address for service at 251 Little  
Fall Drive, Wilmington, New Castle,  
Delaware, 19808

and

**BLIZZARD ENTERTAINMENT INC.**,  
legal person duly constituted, having  
Its address for service at 251 Little  
Falls Drive, Wilmington, New Castle,  
Delaware, 19808

and

**TAKE TWO INTERACTIVE  
SOFTWARE INC.**, legal person duly  
constituted, having its address for  
service at 251 Little Falls Drive,  
Wilmington, Delaware, 19808

and

**TAKE TWO INTERACTIVE CANADA  
HOLDINGS INC.**, legal person duly  
constituted, having its address for  
service at 251 Little Falls Drive,  
Wilmington, Delaware, 19808

and

**2K GAMES INC.**, legal person duly  
constituted, having its address for  
service at 251 Little Falls Drive,  
Wilmington, Delaware, 19808

and

**ROCKSTAR GAMES INC.**, legal person  
duly constituted, having its address for  
service at 251 Little Falls Drive,  
Wilmington, Delaware, 19808

and  
**WARNER BROS ENTERTAINMENT INC.,**  
legal person duly constituted, having its  
address for service at Suite 1600, 5000  
Yonge Street, Toronto, Ontario, M2N 6P1

and  
**WARNER BROS ENTERTAINMENT CANADA INC.,**  
legal person duly constituted, having its  
address for service at Suite 1600, 5000 Yonge  
Street, Toronto, Ontario, M2N 6P1

and  
**WARNER BROS HOME ENTERTAINMENT INC.,**  
legal person duly constituted, having its  
address for service in 1290 Orange St.,  
Wilmington, DE 19801

and  
**UBISOFT ENTERTAINMENT SA,**  
legal person duly constituted, having its  
address for service at 107, avenue  
Henri Fréville, Rennes, France, 35200

and  
**UBISOFT INC.**  
legal person duly constituted, having its  
address for service at Law Office of Stephen S.  
Smith, PC, 30700 Russellrand Rd, Suite 250,  
Westlake Village, CA, 91362

and  
**UBISOFT ENTERTAINMENT INC. /**  
**UBISOFT DIVERTISSEMENTS INC.,**  
legal person duly constituted, having its  
address for service at 5000 – 5505 Blvd  
Saint-Laurent, Montréal (Québec) H2T 1S6

and  
**MICROSOFT CORPORATION,**  
legal person duly constituted, having its  
address for service at 1 Microsoft Way,  
Redmond, WA, 98052

and  
**MICROSOFT CANADA INC.,**  
legal person duly constituted, having its  
address for service at 600 – 1741 Lower  
Water Street, Halifax, NS, B3J 0J2

and  
**EPIC GAMES INC.,**  
legal person duly constituted, having its  
address for service at 201 – 2405 York Road,  
Lutherville Timonium, MD, 21093

and  
**EPIC GAMES CANADA ULC,**  
legal person duly constituted, having its  
address for service at 2400 – 745 Thurlow  
Street, Vancouver, BC, V6E 0C5

and  
**SCOPELY INC.,**  
legal person duly constituted, having its  
address for service atc/o National Registered  
Agents Inc., 1209 Orange Street,  
Wilmington, DE, 19801

and  
**NIANTIC INC.,**  
legal person duly constituted, having its  
address for service at 3500 South Dupont  
Highway, Dover, Delaware, 19901

and  
**KING DIGITAL ENTERTAINMENT  
GROUP INC.,**  
legal person duly constituted, having its  
address for service in 1209 Orange St.,  
Wilmington, DE 19801

and  
**KING.COM LTD,**  
legal person duly constituted, having its  
address for service at Aragon House  
Business Center, Dragonara Rd, St-Julians

Malta, STJ 3140

and

**ZYNGA INC.,**

legal person duly constituted, having its  
address for service at 251 Little Falls Drive,  
Wilmington, DE, 19808

and

**ZYNGA GAME CANADA LTD,**

legal person duly constituted, having its  
address for service in 1600 – 925 West  
Georgia Street, Vancouver, BC, V6C 3L2

respondents

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JUDGMENT (ON AN AMENDED MOTION TO AMEND)

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**OVERVIEW**

[1] Plaintiff seeks leave to amend the *Application for authorization to institute a class action & to obtain the status of representative plaintiff* (the “Application”). The case involves many defendants and concerns video games allegedly offered to the public by either one of the defendants.

[2] The Application’s current class description reads as:

All Canadian customers of the Lootbox Respondents (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 Application for Authorization between 2008 and the date this action is authorized as a class proceeding.

[3] A certain number of class members are covered by other class action proceedings pending before the courts in British Columbia in 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. Niantic Inc. et al*, SCBC S-213723.

[4] Defendants expressed the intention to seek a suspension of the present case pending resolution of those cases because of the partial overlap of class members. Discussions ensued between the parties. In a letter to the Court dated September 29<sup>th</sup>, 2021, Plaintiff informs the Court that:

- The *Electronic Arts* claim is already confined to residents of B.C. only;
- The *Niantic* claim is already confined to residents of B.C. and Alberta;
- The *Take Two* claims will be confined to residents of B.C. and Alberta;
- The *Activision* claim will be confined to residents of B.C. and Alberta;
- The *Scopely* claim will be confined to residents of B.C. and Alberta;

[5] The *Niantic*, *Take Two*, *Activision* and *Scopely* claims have since amended accordingly.

[6] In order to not see its case suspended, Plaintiff now seeks leave to amend the Application to replace the class description by the following:

All Canadian customers, except residents of British Columbia and Alberta, of the Loot Box Respondents (defined further below) other than Ubisoft, and all Canadian customers of Ubisoft (further defined below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games set out in Schedule A to this Amended Application for Authorization between 2008 and the date this action is authorized as a class proceeding.

[7] Noone objects although many Defendants maintain that the Court should dismiss the Application, even as amended, for lack of competence as per Article 3148 of the *Civil Code of Quebec* and/or because their contracts with the affected consumers include an arbitration clause. The Court has already taken case management measures regarding those issues that will be decided at a later time.

[8] At this time, the Court must decide whether or not to authorize Plaintiff's motion to amend the Application.

[9] Plaintiff argues that the amendments aim to permit the case to move forward quickly and reflect the discussions between the parties.

[10] Outside of class action cases, the right to amend is given a broad application and the Court will not usually have to take into account the rights of third parties. This is not quite the same thing in class action cases because the class members, although not strictly speaking parties to the case, are chiefly concerned and affected by the actions of the Plaintiff<sup>1</sup>. This is even more so where the amendment sought is of the nature of a partial desistment insofar as it would result in excluding class members who were up to then included in the class description. A class action plaintiff cannot simply amend an Application in a way that abandons class members without *any* justifiable reasons.

[11] In our case, Plaintiff presents only partial justification for the amendments he seeks.

[12] It is reasonable to amend in order to remove from the class description individuals already included in the cases pending in British Columbia and the Court will grant leave to do so.

[13] But Plaintiff fails to convince the Court that it should grant leave to exclude other individuals. In his oral presentation to the Court, counsel for Plaintiff admits that there are class members who reside in Alberta or British Columbia who are not included in any of the pending cases identified above and who are not clients of Ubisoft and would therefore simply be excluded from this Case and be left outside of any class action. Yet, he fails to provide *any* reasonable explanation or dispel the concerns the Tribunal has regarding what the Court of appeal calls the "intérêts des membres putatifs"<sup>2</sup>. Plaintiff bears the burden of convincing the Court; while it is not a heavy burden it exists nonetheless and the Court cannot close its eyes and grant any and all amendments/desistments. Simply alleging that the amendment would be in the public interest and serve the purpose of proportionality does not suffice. More concrete reasons must be presented to convince the Court that pushing outside of the class description a group of consumers that are currently included would not lead to a violation of their interest. As it is, allowing the amendment would not maintain the integrity of the judicial process.

[14] The Court will therefore partially grant the motion to amend.

**FOR THESE REASONS, THE COURT:**

[15] **GRANTS PARTIALLY** Plaintiff's motion to amend the *Application for authorization to institute a class action & to obtain the status of representative plaintiff*;

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<sup>1</sup> *École communautaire Belz c. Bernard*, 2021 QCCA 905.

<sup>2</sup> *Idem*, at paragraph 21.

[16] **REPLACES** paragraph 4 of the *Application for authorization to institute a class action & to obtain the status of representative plaintiff* by the following:

“Petitioner seeks to institute a class action on behalf of the following group, of which he is a member, namely:

All Canadian customers of the Lootbox Respondents (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 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. Niantic Inc. et al*, SCBC S-213723.

(the "Class", "Class Members" and "Class Period")”

[17] **REPLACES** paragraph the third conclusion of the *Application for authorization to institute a class action & to obtain the status of representative plaintiff* by the following:

“**GRANT** The Petitioner’s Motion to obtain the Status of Representative of all Class Members forming part of the Class hereinafter defined as:

All Canadian customers of the Lootbox Respondents (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 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. Niantic Inc. et al*, SCBC S-213723.”

[18] **REPLACES** the date of the *Application for authorization to institute a class action & to obtain the status of representative plaintiff* by “December 7<sup>th</sup>, 2021”



[19] **COST** to follow.

  
Honorable Stéphane Lacoste, J.C.S.

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STÉPHANE LACOSTE J.S.C.

Me Irwin Liebman  
Liebman Légal inc.  
Avocats de Gabriel Bourgeois et als

Me Karine Chênevert  
Borden Ladner Gervais  
Avocats de Electronic Arts inc.  
Electronics Arts Canada inc.

Me Éric Christian Lefebvre  
Norton Rose Fulbright

Avocats de Activision Blizzard inc.  
Activision Publishing inc.  
Blizzard Entertainment inc.

Me Paule Hamelin  
Me Emily Bolduc  
Gowling WLG  
Avocats de Take Two Interactive Software inc.  
Take Two Interactive Canada Holdings inc.  
Two games inc.  
Rockstar games inc.

Me Simon Jun Seida  
Me Robert Torralbo  
Blake, Cassels & Graydon  
Avocats de Warner Bros. Entertainment inc.  
Warner Bros Entertainment Canada inc.  
Warner Bros. Home Entertainment inc.

Me Myriam Brix  
Lavery De Billy  
Avocats de Ubisoft Entertainment SA  
Ubisoft inc.

Me Sébastien Richemont  
Me Mirna Kaddis  
Fasken Martineau Dumoulin  
Avocats de Microsoft Corporation  
Microsoft Canada inc.

Me Nicholas Rodrigo  
Me Faiz Munir Lalani  
Davie Ward Phillips & Vineberg  
Avocats de Epic Games inc.  
Epic Games Canada ULC

Me Kristian Brabander  
McCarthy Tetrault  
Avocats de Scopely inc.

Me Margareth Malgorzata Weltrowska  
Dentons Canada LLP  
Avocats de Niantic inc.

500-06-001132-212

PAGE : 11

King Digital Entertainment Group inc.  
King.com Ltd  
Non représentées à l'audience

Me François Grondin  
Me Patrick Plante  
Borden Ladner Gervais  
Avocats de Zynga inc.  
Zynga Game Canada Ltd

Hearing date: December 3<sup>rd</sup>, 2021