SUPERIOR COURT
(Class Action Chamber)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-001132-212

DATE : August 7, 2025

PRESIDING: THE HONORABLE SYLVAIN LUSSIER, J.S.C.

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-
MICROSOFT CORPORATION
-and-
MICROSOFT CANADA INC.
-and-
UBISOFT ENTERTAINMENT SA
-and-
UBISOFT INC.
-and-
UBISOFT ENTERTAINMENT INC. /UBISOFT DIVERTISSEMENTS INC.
-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

JUDGMENT ON APPLICATIONS TO ADDUCE EVIDENCE

CONTEXT

[1] Plaintiff seeks to institute a class action on behalf of the following group[1]:

> All Canadian customers, except residents of British Columbia and Alberta, of the Lootbox Respondents (defined further below) other than Ubisoft, and all Canadian customers of Ubisoft (further defined

1 The “Proposed Class”.

> below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games s-and- out in Schedule A to this *Amended Application for Authorization b-and-ween 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 -and- al v. Activision Blizzard Inc. -and- al *SCBC S-2013414*, Lussier -and- al v. Scopely Inc., *SCBC S- 2013510*, Pechnik -and- al v. Take Two Interactive Software Inc. -and- al, *SCBC S-211073*, Sutherland v. Electronic Arts Inc. -and- al, *SCBC S- 209803*, P-and-ty -and- al v. Niantic Inc. -and- al, *SCBC S213723*.

And

> All Quebec customers of the Quebec-class Loot Box Respondents (defined further below) who purchased or otherwise paid directly or indirectly for loot boxes in any of the games s-and- out in Schedule A to this *Amended (2) Application for Authorization* b-and-ween 2008 and the date this action is authorized as a class proceeding.

[2] Plaintiff alleges that the Respondents operate an unlicensed and illegal gaming system through the loot boxes that are offered in certain video games made available to the public.

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[3] Plaintiff defines a loot box as “a game of chance inside a video game, by which a player pays for a digital ‘roll of the dice’ and the possibility of obtaining desirable virtual rewards,” and as a “a consumable virtual item which can be redeemed […] to receive a randomized selection of further virtual items…[2]”

[4] Plaintiff claims that the Respondents committed the following faults related to the alleged offering of Loot Boxes in their video games:

a) The Respondents operated an unlawful gaming system by “offering and operating the Loot Boxes in breach of the [Canadian] *Criminal Code*” (par. 44 a) of the Application for Authorization)*;*

b) The Respondents concealed the odds of winning for their Loot Boxes (par. 44 b) of the Application for Authorization);

c) The Respondents failed to place safeguards to prevent minors from playing the Loot Boxes (par. 44 c) of the Application for Authorization);

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[2] Amended Application for Authorization, paragr. 2 and 61.

d) The Respondents made high-value items that affect game play available exclusively from Loot Boxes, thereby forcing the Proposed Class members to play the Loot Boxes (par. 44 d) of the Application for Authorization);

e) The Respondents advertised an illegal internet gaming site (par. 46 b) of the Application for Authorization);

f) The Respondents failed to promote responsible gaming (par. 46 e) of the Application for Authorization);

g) The Respondents used various m-and-hods to encourage the use of the Loot Boxes by the Proposed Class members, namely dynamic difficulty adjustment, matchmaking optimization and dynamic pricing.

[5] Respondents seek to adduce evidence which they believe will clearly demonstrates that this is not the case, thereby contradicting what they characterize as “implausible and sometimes outright false allegations” and providing the Court with some context[3].

[6] Plaintiff contests the filing of limited extracts of the proposed evidence, not taking position on the rest. The contested evidence put forward is, according to him, irrelevant and should not be admitted as it does not demonstrate that the allegations at issue are without question false or unlikely.

[7] An application to examine Plaintiff has been withdrawn.

QUESTION AT ISSUE

[8] Should Respondents be permitted to file additional evidence?

ANALYSIS

Applicable Principles

[9] The principles governing the submission of relevant evidence are well known. It is constant that the evidence may only be filed for the purpose of determining whether the criteria of article 575 *C.C.P.* are met[4]. As Justice Dominique Bélanger wrote in *Lambert (Gestion Peggy)* v. *Écolait ltée*[5]:

> [38] Dans tous les cas, la preuve autorisée doit permettre d’évaluer les quatre critères que le juge de l’autorisation doit examiner et non le bien-fondé du dossier. Et si, par

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[3] Paragr. 18 of Respondent’s Joint Brief of Argument.

[4] *Asselin* c. *Desjardins Cabinet de services financiers inc.,* 2017 QCCA 1673 (CanLII), Leave to appeal to the Supreme Court of Canada granted, n : 37898.

[5] 2016 QCCA 659.

> malheur, le juge de l'autorisation se retrouve devant des faits contradictoires, il doit faire prévaloir le principe général qui est de tenir pour avérés ceux de la requête pour autorisation, sauf s'ils apparaissent invraisemblables ou manifestement inexacts.

[10] The allegations of the application for authorization are to be taken as averred but evidence may be filed to demonstrate the falsity or the ludicrous character of certain allegations[6].

[11] In addition, it is useful to allow the production of evidence explaining the business and operations of Defendant[7]. Moreover, the documentation establishing the contractual relationship and respective obligations of the parties is judged useful and is allowed[8].

[12] Proof providing the Court with useful and contextual clarification allowing it to better understand the facts of the case or composition of the class may also be allowed[9].

[13] In this context, Justice Suzanne Courchesne summarized the criteria guiding the Court's analysis:

> - le juge dispose d'un pouvoir discrétionnaire afin d'autoriser une preuve pertinente et appropriée ainsi que la tenue d'un interrogatoire du représentant, dans le cadre du processus d'autorisation;
>
> - la vérification de la véracité des allégations de la demande relève du fond;
>
> - le tribunal doit analyser la demande soumise à la lumière des enseignements récents de la Cour suprême du Canada et de la Cour d'appel sur l'autorisation des actions collectives et qui favorisent une interprétation et une application libérales des critères d'autorisation;
>
> - à ce stade, la finalité de la demande se limite au seuil fixé par la Cour suprême du Canada, soit la démonstration d'une cause défendable. Le tribunal doit se garder d'autoriser une preuve qui inclut davantage que ce qui est strictement nécessaire pour atteindre ce seuil;
>
> - le tribunal doit se demander si la preuve requise l'aidera à déterminer si les critères d'autorisation sont respectés ou si elle permettra plutôt de déterminer si le recours est fondé ; dans cette dernière hypothèse, la preuve n'est pas recevable à ce stade;

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6 *Asselin*, at paragr. 91.

7 *Ehouzou* c. *Manufacturers Life Insurance Company*, 2018 QCCS 4908 (CanLII), paragr. 23; *Gagné* c. *Rail World inc.*, 2014 QCCS 32 (CanLII), paragr. 67, 137 et 162.

8 *Jacques* c. *Petro-Canada*, 2009 QCCS 4787 (CanLII); *Gagné* c. *Rail World*, 2014 QCCS 32 (CanLII), par. 77, 97, 136 et 137.

9 *Leventakis* v. *Amazon-com inc.*, 2020 QCCS 289, paragr. 10; *Allstate du Canada, compagnie d'assurance* v. *Agostino*, 2012 QCCA 678, at paragr. 64.

> • la prudence est de mise dans l'analyse d'une demande de permission de produire une preuve appropriée ; il s'agit de choisir une voie mitoyenne entre la rigidité et la permissivité;
>
> • le fardeau de convaincre le tribunal de l'utilité et du caractère approprié de la preuve repose sur la partie qui la demande[10].

[14] In the case of *Ward* c. *Procureur general du Canada,*[11] Justice Donald Bisson gave a detailed list of the guidelines applicable to applications to file appropriate evidence:

> [17] Les demandes de preuve appropriée à l'étape de l'autorisation sont prévues à l'article 574 Cpc. La jurisprudence de la Cour d'appel et de la Cour suprême du Canada nous enseigne quels sont les critères applicables :
>
> • le juge dispose d'un pouvoir discrétionnaire afin d'autoriser une preuve pertinente et appropriée ainsi que la tenue d'un interrogatoire du représentant, dans le cadre du processus d'autorisation;
>
> • une preuve n'est appropriée que si elle est pertinente et utile à la vérification des critères de l'article 575 Cpc. Le consentement de la partie demanderesse à une preuve suggérée par la défense ne suffit pas à en autoriser le dépôt;
>
> • la preuve documentaire et l'interrogatoire proposés doivent respecter les principes de la conduite raisonnable et de la proportionnalité posés aux articles 18 et 19 Cpc;
>
> • la vérification de la véracité des allégations de la demande relève du fond. Une partie défenderesse ne peut mettre en preuve des éléments qui relèvent de la nature d'un moyen de défense au mérite;
>
> • le tribunal doit analyser la demande soumise à la lumière des enseignements récents de la Cour suprême du Canada et de la Cour d'appel sur l'autorisation des actions collectives et qui favorisent une interprétation et une application libérales des critères d'autorisation;
>
> • à ce stade, la finalité de la demande se limite au seuil fixé par la Cour suprême du Canada, soit la démonstration d'une cause défendable. Le tribunal doit se garder d'autoriser une preuve qui inclut davantage que ce qui est strictement nécessaire pour atteindre ce seuil;
>
> • le tribunal doit se demander si la preuve requise l'aidera à déterminer si les critères d'autorisation sont respectés ou si elle permettra plutôt de déterminer si le recours est fondé; dans cette dernière hypothèse, la preuve n'est pas recevable à ce stade;

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[10] *Options Consommateurs* c. *Samsung Electronics Canada*, 2017 QCCS 1751, paragr. 11.
[11] 2021 QCCS 109.

- la prudence est de mise dans l'analyse d'une demande de permission de produire une preuve appropriée; il s'agit de choisir une voie mitoyenne entre la rigidité et la permissivité;

- il doit être démontré que la preuve demandée est appropriée et pertinente dans les circonstances spécifiques et les faits propres du dossier, notamment en regard des allégations et du contenu de la demande d'autorisation;

- le fardeau de convaincre le tribunal de l'utilité et du caractère approprié de la preuve repose sur la partie qui la demande;

- le tribunal ne doit pas laisser les parties produire une preuve volumineuse et ne doit en aucun cas examiner la preuve produite en profondeur comme s'il s'agissait d'évaluer le fond de l'affaire;

- le processus d'autorisation d'une action collective n'est pas, du point de vue de la preuve, une sorte de préenquête sur le fond. C'est un mécanisme de filtrage;

- l'admission de preuve appropriée doit être faite avec modération et être réservée à l'essentiel et l'indispensable. Or, l'essentiel et l'indispensable, du côté du demandeur, devraient normalement être assez sobres vu la présomption rattachée aux allégations de fait qu'énonce sa procédure. Il devrait en aller de même du côté de la défense, dont la preuve, vu la présomption attachée aux faits allégués, devrait être limitée à ce qui permet d'en établir sans conteste l'invraisemblance ou la fausseté. C'est là un « couloir étroit »;

- puisque le fardeau du demandeur à l'autorisation en est un de logique et non de preuve, il faut conséquemment éviter de laisser les parties passer de la logique à la preuve (prépondérante) et de faire ainsi un préprocès, ce qui n'est pas l'objet de la démarche d'autorisation;

- pour échapper à la perspective d'une action collective, la partie défenderesse souhaitera généralement présenter une preuve destinée à démontrer que l'action envisagée ne tient pas et, pour ce faire, elle pourrait bien forcer la note, sur le thème « abondance de biens ne nuit pas ». Le juge doit résister à cette propension, tout comme il doit se garder d'examiner sous toutes leurs coutures les éléments produits par l'une et l'autre des parties, au risque de transformer la nature d'un débat qui ne doit ni empiéter sur le fond, ni trancher celui-ci prématurément, ni porter sur les moyens de défense;

- à l'autorisation, le tribunal doit simplement porter un regard sommaire sur la preuve, qui devrait elle-même être d'une certaine frugalité;

- dans tous les cas, la preuve autorisée doit permettre d'évaluer les quatre critères que le juge de l'autorisation doit examiner et non le bien-fondé du dossier. Et si, par malheur, le juge de l'autorisation se retrouve devant des faits contradictoires, il doit faire prévaloir le principe général qui est de tenir pour avérés ceux de la demande d'autorisation, sauf s'ils apparaissent invraisemblables ou manifestement inexacts;

- si l'on ne veut pas que les actions collectives accaparent une part indue des ressources judiciaires, ressources limitées, il serait donc utile, dans l'état actuel du droit, que l'on évite de faire au stade de l'autorisation ce qui, en réalité, appartient au fond.

The Contested Evidence

[15] Plaintiff contests limited portions of the proposed evidence. The proposed evidence generally aims at describing the activities of the different Defendants, or their discontinuance of certain games, as well at introducing the terms of use of their different games. As stated above, this evidence is usually found to be of assistance in determining the fulfillment of article 575's criteria.

[16] While voluminous, the evidence is repetitive in that it includes time variations of the different Terms of Use of certain games. While the Court would have preferred chosen "typical terms", it will not perform that exercise and counts on the parties to direct it to relevant passages at authorization.

[17] The affidavits filed by Defendants are generally short and limited, which respects the criteria listed above.

[18] The Court grants permission to file the uncontested evidence, excluding any portions that the Defendants may have agreed to delete.

Activision and King Defendants

[19] Plaintiff opposes paragraphs 26 and 27 of the Lodato Affidavit:

> 26. The virtual items a player acquires through a Supply Drop in a CoD Title are mostly "cosmetic", such as weapon decorations, emblems, or player cards, although "functional" items, such as certain weapons variants and weapon upgrades, can also be acquired.
>
> 27. Because the CoD Titles are designed so as not to be "pay to-play", the weapon types, weapon upgrades and other "functional" virtual items acquired through Supply Drops do not provide players with a competitive advantage over other players.

[20] With regards to paragraph 26, Plaintiff argues that it is subjective for the affiant to qualify that "most" of the virtual items acquired in the Call of Duty video game Loot Boxes, referred to as Supply Drops, are cosmetic rather than functional. According to him, the evidence is somewhat benign and appears to suggest that there are different categories of virtual items, with one broad category not affecting game play while a second category does. He contends that as drafted the evidence itself is vague, providing some inadequately described quantitative assessment of different categories in the argumentative but unhelpful qualifier "most".

[21] Regarding paragraph 27, Plaintiff argues that this is a defense on the merits that the "functional" category of Loot Boxes in the Call of Duty franchise do not influence

gameplay. He outlines that the evidence in support of the Application for Authorization suggests the opposite, notably evidence of Activision's patented invention of a matchmaking system that facilitates matching a more expert/marquee player with a junior player to encourage the junior player to make game-related purchases of items used or possessed by the marquee player in First-Person Shooter games, such as Call of Duty, suggests that there is more than a mere possibility that such Supply Drogs may influence game play.

[22] Defendants answer that the use of the qualifier "cosmetic" is not subjective, nor is it argumentation. It is a statement of fact – either virtual items acquired through "Supply Drops" have an effect on gameplay, or they do not.

[23] Given the silence of the Application for Authorization on the subject, Defendants argue that the impugned paragraphs provide the Court with valuable context regarding the kinds of virtual items players may obtain from the "Supply Drops" in the Call of Duty Titles.

[24] The Court finds that using "mostly cosmetic" does not advance the study of article 575 CCO, leaving an incertitude better left to the appreciation of a judge on the merits.

[25] Paragraph 27 advances facts that may be contested. As such, these allegations are not appropriate evidence at this stage.

Electronic Arts Defendants

[26] Plaintiff opposes paragraphs 20, 28-29, 43, and 44 of the Hopkins Affidavit:

> 20. These are not "real-world" currencies but currencies for use only within the game environment. Earned Virtual Currency and Premium Virtual Currency (together, "EA Virtual Currency") has no monetary value and has no value outside of EA's products and services.
>
> 28. All Real Money Transactions occur at the platform level, between the platform operator/owner and the user, through the associated user account with the platform. EA does not have transaction records of any Real Money Transactions for any of the class members that occurred through third-party platforms.
>
> 29. EA receives a portion of the proceeds related to sales of Premium Virtual Currency, calculated in a variety of ways depending on the third-party gaming platform.
>
> 43. Virtual items have no monetary value and have no value outside of EA's products and services. Virtual items from a Pack are not returnable, exchangeable with EA, or refundable. EA does not provide any way for players to "cash out" a value of the virtual item (i.e., for a user to sell, buy, trade, or otherwise transfer the acquired digital items or content within the game) for real money and EA prohibits in its User Agreement any attempt to transfer game content or Entitlements outside the game.

> 44. In 2018, EA began to provide probability disclosures for (1) all mobile games on both Apple and Google platforms and (2) all new EA games for PC and console. EA began providing probability disclosures approximately a year before the broader gaming industry committed to implementation across all major games and platforms. These probability disclosures are available to users directly prior to them acquiring the relevant Pack.

[27] Plaintiff's position regarding paragraph 20 and 43 is that the statements that Loot Boxes do not have real-world value is a mere denial of the Plaintiff's assertion that they do. The Plaintiff's evidence indicates that the Loot Boxes in FIFA contain players whose in-game statistics make them more likely to succeed during play than other players. There is an intrinsic value to these items where players conclude that they cannot be competitive in a game without Loot Boxes.

[28] Electronic Arts replies that paragraph 20 of Kerry Hopkins' affidavit is essential to define the nature of EA's "virtual currency" and how it can be used to acquire Packs within the EA Games. Moreover, this paragraph should be read in conjunction with paras. 21 & 22, to which the Plaintiff does not object. The fact that EA's Premium Virtual Currency has no real-life value is not contradicted by any allegation or evidence in support of the Application for Authorization. It would thus be incorrect to state that this issue speaks to the merits.

[29] Regarding paragraph 43, EA advances that this evidence will assist the Court in determining whether the allegations with respect to wagering or betting are manifestly untrue, more specifically that there is no prospect of gaining or losing anything with a real-world value when a user acquires a Pack in the EA Games. They add that the allegations made in paras. 62 and 69 of the Application for Authorization are bald, conclusory and unsupported by material facts. It is therefore essential for the EA Defendants to be allowed to provide information on the nature of Packs and on the contractual framework that governs their use.

[30] The Court is tempted to apply the sayings of Justice Donald Bisson in *Li* v. *Equifax inc.*[12], if the allegations of the Motion for authorization are insufficient:

> [86] Le demandeur vivra ou périra avec sa procédure telle que rédigée. Il n'appartient pas aux défenderesses de venir la compléter avec un interrogatoire. Si le demandeur a choisi de rédiger des allégations laconiques, ou vagues, ou incomplètes ou de la nature de l'opinion, alors il en subira les conséquences à l'autorisation.

[31] Notwithstanding the wisdom of this pronouncement, the Court feels that paragraphs 20 and 43 provide context. If at authorization it appears that they raise contested questions of fact, they will be disregarded.

[32] Regarding paragraphs 28 and 29, Plaintiff argues that to the extent this evidence is put forward for the purpose of contradicting the unlawful gambling allegations, the Defendants

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[12] 2018 QCCS 1892.

are putting forward evidence that addresses the merits. The evidence about not having transaction record of any Real Money Transactions serves no purpose at authorization. Considering the lucrative benefit that Loot Boxes have brought to video games, as set out in the evidence at Exhibit P-32 at page 8, these Defendants may very well have an ability to obtain these transaction records. In any event, the evidence suggests that they are able to discern an aggregate benefit that they have incurred as a result of Loot Boxes in their games.

[33] Defendants answer that these paragraphs provide the Court with useful context of the EA Games as they explain how Premium Virtual Currency can be purchased. They are essential to understand the nature of acquiring Packs as well as the environment in which they are used. The affidavit clarifies that in fact, the real money transaction takes place with the third-party platform and not with EA. The acquisition of the Pack is an exchange of the virtual currency for other in-game content.

[34] The evidence may in fact be useful to appreciate the allegations concerning unlawful gambling" It is too early to decide whether this evidence is contradicted. If it is not, it may well itself contradict the allegations of Plaintiff. This will be assessed at authorization.

[35] Regarding paragraph 44, Plaintiff argues that the Defendants‘ evidence brings the debate into the merits of the case. The Plaintiff's evidence, notably the report by Dr. Zendle (Exhibit P-32), contests the sufficiency of the odds disclosure method used by the EA Defendants in their FIFA franchise as these disclosures do not clearly inform the prospective Loot Box purchaser as to what their odds are of obtaining a specific item. Indeed, in the FIFA Ultimate Team video game, EA disclose the odds of receiving specific 'classes' of players, but within a specific class there is a wide range of probabilities. Paragraph 44 in no way establishes that the Dr. Zendle evidence is *invraisemblable*.

[36] Defendants respond that the evidence is useful to the Court to demonstrate that the allegations of the Application for Authorization with respect to probability disclosures are manifestly untrue with respect to the EA Defendants starting 2018.

[37] The Court agrees that this allegation does not render Dr. Zendle's evidence inaccurate or false. There will remain a difference of views concerning the sufficiency of the disclosure. Paragraph 44 gives context to answer the allegation that there was no disclosure. It is too early to decide whether this will be relevant in the context of authorization.

[38] The Hopkins affidavit is allowed in its entirety.

Scopely

[39] Plaintiff opposes paragraphs 20 and 23-25 of the Rosenthal Affidavit:

> 20. In all cases where a loot box is obtained, the player receives one or multiple in-game items. The item(s) received always have a positive in-game value.
>
> 23. Throughout the class period and in all Scopely games, it is always possible for a player to verify the potential content of a loot box before purchasing a loot box.
>
> 24. In addition, since 2019 and in all Scopely games, it is always possible for a player to verify the drop rates of the items, i.e. the odds of receiving the items, before purchasing a loot box.
>
> 25. To verify the content of a loot box and the drop rates of items, the player can click on a button labeled “i” on the top right of a loot box.

[40] Regarding paragraph 20, the Plaintiff only objects to the second sentence – “[t]he item(s) received always have a positive in-game value.” because this is not a factual statement that has any specific meaning, much less any meaning that clearly contradicts anything the Plaintiff alleges. This sentence is not “indispensable”.

[41] The Court is of the opinion that this allegation is relevant in the context of understanding the nature of these “in-game items”.

[42] Regarding paragraphs 23-25, Plaintiff argues that the affiant’s three statements regarding Scopely’s disclosure of odds are not neutral and are contentious. That it was possible to verify the “potential” contents of a Loot Box before purchase does not equate to a proper disclosure of odds. While the Plaintiff acknowledges that the Scopely Defendants modified the methods of their odds disclosure in 2019, the contention remains that the odds, or drop rates of specific Loot Box items, were concealed as they are presented to consumers in a manner that seeks to go unnoticed and is therefore deceptive. Whether the Scopely Defendants provided all necessary information to the consumers prior to their Loot Box purchases in accordance with consumer protection legsiation remains an issue to be resolved on the merits.

[43] Scopely answers that paragraphs 23-25 are necessary because the Petitioner’s general statements regarding the disclosure of the odds of Loot Boxes are absent any specific allegations regarding Scopely (Application for Authorization, para 66). While the teachings of Justice Bisson may also be applicable in this case, it is safer to insure that it be established that Scopely did in fact make disclosure. The sufficiency of the disclosure would be an issue for the merits.

[44] At this stage, the paragraphs should remain.

Ubisoft Defendants

[45] The Plaintiff opposes paragraphs 7-8, 10-11, 22-27 of the Revol Affidavit:

> 7. Domiciliée en France, Ubisoft Entertainment SA (« Ubisoft SA ») est une entreprise de développement, d'édition et de distribution de jeux vidéo.
>
> 8. Elle n'a pas d'établissement au Québec.
>
> 10. Domiciliée en Californie, Ubisoft inc. est l'éditeur et le distributeur d'Ubisoft SA pour l'Amérique du Nord, quel que soit l'endroit où ces jeux aient été développés.
>
> 11. Elle n'a pas d'établissement au Québec.
>
> 22. L'acquisition d'une boîte à butin par un joueur est toujours facultative, ce qui signifie que les joueurs ne sont en aucun cas tenus d'acheter une boîte à butin pour bénéficier de l'expérience de jeu.
>
> 23. Dans tous les cas où une boîte à butin est achetée, le joueur reçoit un ou plusieurs objets dans le jeu. Il n'existe pas de boîte à butin vide et le ou les objets reçus ont toujours une valeur positive dans le jeu.
>
> 24. Dans tous les Jeux Ubisoft, les boîtes à butin ou leur contenu ne peuvent pas être vendus ou échangés contre de l'argent réel.
>
> 25. Les Conditions Ubisoft indiquent explicitement que les objets virtuels n'ont pas de valeur monétaire ou réelle et qu'ils ne sont pas échangeables contre une somme d'argent ou une valeur monétaire.
>
> 26. Ni les boîtes à butin ni leur contenu ne peuvent être vendus ou échangés en dehors de l'écosystème du jeu.
>
> 27. Le contenu des boîtes à butin reçues par un joueur ne peut être utilisé que dans le jeu dans lequel il est obtenu, bien qu'il ne soit pas nécessaire d'utiliser des boîtes à butin pour jouer aux Jeux Ubisoft.

[46] Regarding paragraphs 7 and 10, Plaintiff raises that they are redundant as they repeat paragraphs 22 and 23 of the Application for Authorization, respectively. Paragraphs 8 and 11 are not neutral factual statements, but conclusions in law. The conclusion that these entities have or do not have establishments in Quebec for the purpose of article 3148 par. 2 CCQ analysis on jurisdiction over a national class is one that the Court will be asked to draw upon the evidence and arguments made at authorization. As such, the affiant's evidence would improperly usurp the role of the Court insofar as it attempts to enter conclusions of law into evidence.

[47] The Court believes that this evidence is useful to decide the issue of a national class and such evidence may be adduced by a defendant in a motion for declinatory exception. The evidence made here is of the same nature and will be allowed.

[48] Regarding paragraphs 22-27, Plaintiff contends that these are disguised legal arguments. The allegations that Loot Boxes in Ubisoft video games are *always* optional

and that because Loot Boxes always provide the consumer with an item, this means they provide a "positive" value in the game is not a neutral fact. That someone is left with *an* item does not mean that the Loot Box provided the customer with value. The argument this Defendant offers in support of these paragraphs does not rise to meet the "indispensable" threshold.

[49] The Ubisoft Defendants respond:

> « Boîtes à butin (par. 22-27) : Ces paragraphes fournissent des explications pertinentes pour comprendre la nature des opérations des Jeux Ubisoft. Ils mettent en lumière la manière dont ces mécanismes fonctionnent dans le contexte des jeux, tout en clarifiant les limites imposées sur la valeur et l'échange des objets virtuels ce que la Demande ne précise pas. Ces informations sont pertinentes pour la Cour qui devra déterminer si les faits allégués paraissent justifier les conclusions recherchées et si les réclamations des membres soulèvent des questions de droit ou de fait suffisamment similaires ou suffisamment connexes pour justifier une action collective ».

[50] The Court agrees with these arguments

[51] The Revol affidavit is allowed in its entirety.

Zynga Defendants

[52] The Plaintiff opposes paragraphs 12, 14-15 and 18 of the Ice affidavit:

> 12. In addition to being obtainable through playing the game, some of the Affected Titles allow the user to purchase in-game virtual currency with real-world money, such as Canadian Dollars.
>
> 14. Using their in-game virtual currency or real-world currency, players can choose, among other things, to buy a so-called "loot box".
>
> 15. Once purchased, these loot boxes will allow the player to receive a randomized selection of virtual items that can solely be used in the Affected Titles.
>
> 18. Putting aside that it is technologically impossible to sell virtual items for real-world money in the Affected Titles, section 5 of Zynga's Terms of Service (Exhibit Z-1) and section 2 of Zynga's Community Rules (Exhibit Z-2) specifically forbid users from transferring any virtual item to another, including by sale, gift, or trade.

[53] Plaintiff asserts that these statements repeat allegations the Plaintiff already sets out in the Application for Authorization at paragraphs 117-119 and are thus not indispensable at authorization. The Court finds that this is not an impediment to their production.

[54] Plaintiff adds that virtual currency purchased with real money serve other purposes besides purchasing Loot Boxes in Zynga video games is irrelevant. The only use this

claim is concerned with is their use to acquire Loot Boxes. This background information neither contests or compliments anything the Plaintiff alleges and is at best benign. The Court finds that because of their "benign" character, their removal is not warranted.

[55] Regarding paragraph 18, Plaintiff does not object to the filing of Exhibits Z-1 or Z-2 but however argues that the affiant's statements that offer their interpretation of the Terms of Service are irrelevant.

[56] The Court agrees that the Terms of Service speak for themselves.

[57] La traduction du présent jugement a été demandée le 6 août 2025. Vu le délai annoncé pour sa livraison, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite entraînerait un retard préjudiciable à l'intérêt public ou causerait une injustice ou un inconvénient grave à une des parties au litige. La traduction suivra.

FOR THESE REASONS, THE COURT:

[58] **GRANTS** Defendants leave to file the additional evidence proposed in their respective applications, except:

- Paragraphs 26 and 27 of the Lodato Affidavit;
- Reference to the Terms of Service in paragraph 18 of the Ice Affidavit.

[59] **THE WHOLE,** with costs to follow suit.

Sylvain Lussier

Signature numérique de Sylvain Lussier
Date : 2025.08.07 15:07:29 -04'00'

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Date of hearing : December 18, 2024