

DEC 16 2020

S 20 134 14  
No.  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

MATTHEW CUNNINGHAM, DANIEL BUSTO,  
CHRIS ROCHA, and MATHIEU BÉLANGER

PLAINTIFFS

and

ACTIVISION BLIZZARD INC,  
ACTIVISION PUBLISHING INC, AND BLIZZARD ENTERTAINMENT INC

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## **THE PLAINTIFFS' CLAIM**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. Video games are a multi-billion-dollar global industry that counts both children and adults as customers and players on personal computers, dedicated consoles and mobile devices. As video game developers and publishers have sought to monetize their products, they have increasingly employed addictive game elements including so-called “loot boxes” to compel players to spend more time and money in their games. A loot box is 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. A loot box is either purchased with real money (or with virtual currency bought with real money) or must be “unlocked” using a virtual “key” purchased with real money. Video game publishers have received hundreds of millions of dollars from the exploitation of players through their loot boxes.

2. The *Criminal Code of Canada* prohibits unlawful gaming, betting, lotteries, and games of chance. Gaming is strictly controlled and licensed in this country. In breach of these laws, the Defendants have operated an unlicensed, illegal gaming system through their loot boxes. Through this suit, Canadian consumers seek to hold the Defendants accountable for this unlawful conduct, and to recover their losses.

### *The Parties*

3. The Defendant Activision Blizzard Inc. is a company incorporated under the laws of Delaware, with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808. Activision Blizzard Inc is a video game holding company that owns major video game publishing labels Activision Publishing Inc and Blizzard Entertainment Inc, and others. Activision Blizzard Inc is publicly traded on the NASDAQ stock exchange and carries on business in British Columbia, across Canada and worldwide by developing, marketing, distributing and selling the video games referred to herein, including to British Columbians and Canadians, and collecting from the sales of those products.

4. The Defendant Activision Publishing Inc. is a company incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808, and a business address at 3100 Ocean Park Blvd, Santa Monica, California, 90405. Activision Publishing Inc. is a wholly-owned subsidiary of Activision Blizzard Inc. Activision Publishing Inc. carries on business in British Columbia and Canada. Activision Publishing Inc. develops and distributes games through subsidiary studios, publishers, and support services in Canada including DemonWare Vancouver (Vancouver, BC); Radical Entertainment (Vancouver, BC); and Beenox (Quebec City, Quebec); and corporate offices in Barrie, Ontario and Toronto, Ontario.

5. The Defendant Blizzard Entertainment Inc. is a company incorporated pursuant to the laws of Delaware with an address for service at 251 Little Falls Drive, Wilmington, New Castle, Delaware, 19808, and a business address at 16251 Alton Parkway, Irvine, California, 92618. Blizzard Entertainment Inc. is a wholly-owned subsidiary of Activision Blizzard Inc. Blizzard Entertainment Inc. carries on business in British Columbia and Canada.

6. The Defendants Activision Blizzard Inc., Activision Publishing Inc., and Blizzard Entertainment Inc. are together “**Activision Blizzard**”. These Defendants function as a joint enterprise. Each of these Defendants is an agent of the other for the purposes of developing, marketing, distributing and selling the video games and Loot Boxes referred to herein.

7. The Plaintiff Matthew Cunningham is a resident of British Columbia. He is a customer of the Defendants. During the Class Period he spent money to purchase the opportunity to open

loot boxes in the games “Hearthstone” and “Overwatch” published by the Defendants. He purchased the loot boxes for personal purposes.

8. The Plaintiff Daniel Busto is a resident of British Columbia. He is a customer of the Defendants. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game “Hearthstone” published by the Defendants. He purchased the loot boxes for personal purposes.

9. The Plaintiff Chris Rocha is a resident of Ontario. He is a customer of the Defendants. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game “Hearthstone” published by the Defendants. He purchased the loot boxes for personal purposes.

10. The Plaintiff Mathieu Bélanger is a resident of Quebec. He is a customer of the Defendants. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game “Overwatch” published by the Defendants. He purchased the loot boxes for personal purposes.

11. Matthew Cunningham, Daniel Busto, Chris Rocha, and Mathieu Bélanger are together the “**Plaintiffs**”.

12. The Plaintiffs bring this claim on their own behalf and on behalf of the Canadian customers of the Defendants who during the Class Period purchased or otherwise paid directly or indirectly for loot boxes in any of the following games published by Activision Blizzard:

- a. Hearthstone;
- b. Heroes of the Storm;
- c. Overwatch;
- d. Destiny;
- e. Destiny 2;
- f. Call of Duty: Advanced Warfare;

- g. Call of Duty: Black Ops III;
- h. Call of Duty: Black Ops 4;
- i. Call of Duty: Infinite Warfare;
- j. Call of Duty: Modern Warfare Remastered;
- k. Call of Duty: WWII;
- l. Skylanders: Imaginators; and
- m. Such other games developed and published by the Defendants that may become known to the Plaintiff.

between 2013 and the date this action is certified as a class proceeding (the “**Class**”, “**Class Members**” and “**Class Period**”).

### ***Digital Games***

13. Modern video games are complex constructs, incorporating top-of-the-line graphics, dynamic gameplay, sophisticated plots and stories, and intricate engineering. Video games are increasingly popular across all age groups and are part of mainstream culture around the world. Video games are especially popular with children under the age of majority (“**Underage Players**”).

14. Video games are a multi-billion-dollar industry. Today, the global digital games market is worth approximately US\$117-billion and is expected to grow to US\$160-billion by 2022. The top ten global publishers of video games all have annual revenues over US\$1-billion.

15. Video games are played on computers, as well as on games consoles (for example Microsoft’s Xbox, Nintendo’s devices, Sony’s Play Station) and on mobile devices (smartphones). The majority of video games are playable over the internet; many are only playable online. Given the variety of platforms and formats, and the diversity of types of gameplay and stories, these products are best referred to as “**Digital Games**”.

16. Digital Games come in many different styles, including sports simulators (*FIFA*; *NBA 2K*), racing (*Burnout*; *Forza Motorsport*), open world (*Fallout 4*; *Grand Theft Auto*; *The Elder Scrolls: Skyrim*), massively multiplayer online role playing games (*World of Warcraft*), turn-based strategy (*Civilization*), real time strategy (*StarCraft 2*; *Total War: Warhammer II*), multiplayer online battle arena (*Dota 2*; *League of Legends*), fighting games (*Street Fighter V*; *Mortal Kombat 11*), first- and third-person shooters (*Counter-Strike*; *Call of Duty*; *PlayerUnknown's Battlegrounds*; *Fortnite*; *Star Wars Battlefront*), and mobile games (*Clash of Clans*; *Candy Crush Saga*; *Fruit Ninja*) among others. The increasing popularity of e-sports (competitive, broadcast video game competitions) has brought new audiences to the format. All modern Digital Games are substantially the same in key respects.

17. Digital Games are designed and produced by developers. Using their own resources or external financing, developers create Digital Games. They are the authors of a particular game or franchise. Digital Games with the biggest budgets and promotions are referred to as “AAA” games.

18. Digital Games are distributed by publishers. Publishers are responsible for their products’ manufacturing, marketing and distribution. Publishers either develop their own products in house or license or contract with external developers. For Digital Games that are playable exclusively or principally online, publishers are responsible for managing the game on an ongoing basis, including the provision of support and updates, the maintenance of servers, and the processing and collection of payments from players. Some Digital Games, including the ones at issue in this proceeding, are both developed and published by the same company.

19. From about the 1980s until the early 2000s, Digital Games were distributed in physical form, such as cartridges or CDs and DVDs. Customers paid for the game up front (known as “pay once”), and the publishers received most of their income from the retail sale of their products.

20. Beginning in the early 2000s, Digital Games were offered with online components or for download from the internet. Publishers began to take advantage of their ability to sell upgrades (expansions or add-ons) to existing products to customers multiple times for the same product (or title).

21. During this period, Digital Games publishers began to host Digital Games as a service, whereby internet access was required to make use of the product. Publishers again made innovations to their business model, offering access to products on a monthly or annual subscription basis. By the mid-2000s, publishers were offering extensive add-ons, including downloadable content “packs” that would change the appearance of a player’s in-game character – for a price. This process of financial engineering is generally referred to as “game monetization”.

22. Some of these add-ons are regarded by gaming purists as “cheats”, because they allow a player to artificially accelerate their progress through a game by buying abilities or experience otherwise only obtainable through long hours of gameplay. Paid add-ons are especially popular in free to play games (e.g., *Farmville*; *Angry Birds*). While such products or services may take away from the experience of gameplay or even be ethically troublesome, they did not attract much regulatory scrutiny.

23. By the late 2000s and early 2010s, the Digital Games market had expanded and matured. An immense variety of Digital Games became available, from free-to-play mobile and browser games, through to more complicated online products, such as massive multi-player online role-playing games (“MMORPGs”) and arena games. Publishers had to compete for players’ attentions with other digital distractions.

### ***Loot Boxes***

24. One innovation developed by publishers to both keep players’ attention and to extract additional revenue was the loot box. A loot box is a consumable virtual item which can be redeemed (or “opened”) to receive a randomized selection of further virtual items, ranging from simple customization options for a player’s avatar or character, to game-changing equipment or additional avatars/characters (with effects on gameplay, including relative to other players) (“**Loot Boxes**”). Purchasing the right to open a Loot Box is a bet – a game of chance.

25. Loot Boxes have real-world value. Players can buy Loot Boxes directly from publishers through an in-game transaction (using real money or in-game currency earned through play or

purchased with real money) or receive the Loot Boxes during play and later buy "keys" with which to redeem them.

26. Some Loot Boxes are free to play. This action is concerned only with games in which players pay with real or virtual currency for the opportunity to play or open a Loot Box.

27. Loot Boxes are an extension of randomized loot drop systems from earlier Digital Games, frequently used to give out rewards in MMORPGs or similar games (for example, the chance to obtain a special item, like a sword or armor with special characteristics, on vanquishing a "boss"). Loot Boxes are also an extension of a feature developed for the Japanese market (known as "gacha" or "kompu gacha") and refined in the Chinese market from around 2007.

28. The random chance element is central to the appeal of Loot Boxes to developers and publishers: Loot Boxes are considered part of the compulsion loop of game design to keep players invested in a game. Such compulsion loops are known to contribute towards video game addiction and are frequently compared to gambling addiction. This is in part due to the use of a "variable-rate reinforcement schedule" similar to how slot machines dole out prizes and it is especially dangerous for children. The random element also makes players more likely to pay for the chance to "win" an item from a Loot Box. Players do not know the contents of a Loot Box at the time they commit to purchase.

29. The odds of a particular item being in a Loot Box are determined by publishers including the Defendants. For the majority of the Class Period the Defendants did not make available to players in Canada the odds of obtaining particular items from their Loot Boxes.

30. Items obtained from Loot Boxes can either affect gameplay or not affect gameplay. Items may affect gameplay where they offer a player a competitive advantage over another player, for example by giving the player additional abilities or "stats". Items will not affect gameplay where they offer purely cosmetic rewards, such as clothing for an in-game avatar. Cosmetic items still have importance and value to players, who desire the ability to personalise their in-game avatars and show off to other players.



31. Loot Boxes contain items and rewards of varying rarity, with “rare” items and rewards conferring a larger advantage than “common” items and rewards. In the case of cosmetic items, “rare” items are generally more prestigious than “common” ones, and carry higher social value. Rarer items have greater real-money value than more common items, which may be worthless.

32. The items in Loot Boxes have intrinsic value, and in some games the same or similar items can be purchased directly with real money. Where a game allows trading of items between players, often third-party marketplaces arise allowing players to pay real money for items normally only available in Loot Boxes. Some publishers have moved this ability “in house” and offer in-game auction houses for the trading and selling of items contained in Loot Boxes. During the Class Period, online marketplaces existed for the sale of content normally only available in Loot Boxes in the Defendants’ Digital Games.

33. Certain items are available only from Loot Boxes and not from ordinary gameplay. Games are increasingly designed such that players must obtain high-value items available exclusively from Loot Boxes in order to be competitive with other players in the games’ online environments. This increases the compulsion or the need for players to pay for Loot Boxes.

34. Publishers, including the Defendants, market and advertise their Digital Games, including the Loot Boxes as a feature. The advertisements include promotions online and offline, including electronic ads and messages to players or potential players, encouraging them to play their Digital Games and their Loot Boxes. In particular, publishers, including the Defendants, extol to players and potential players the excitement and possible advantage to be gained from acquiring a Loot Box and its contents.

### ***The Regulation of Gaming in Canada***

35. The *Criminal Code of Canada*, RSC 1985, c C-46, Part VII prohibits unlawful gaming, betting, lotteries, and games of chance.

36. Gaming properly licensed by a provincial government is lawful in the province of license. Alberta, British Columbia, Ontario and Québec regulate gaming through statutes including the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1, *Gaming Control Act*, SBC 2002, C-14, the *Gaming Control Act, 1992*, SO 1992, c 24, and the *Act Respecting Lotteries, Publicity Contests*

*and Amusement Machines*, 1990, c 46, s 18, L-6 and regulations including the *Advertising and Marketing Standards for Gambling in British Columbia* and the *OLG Marketing and Advertising Standard*.

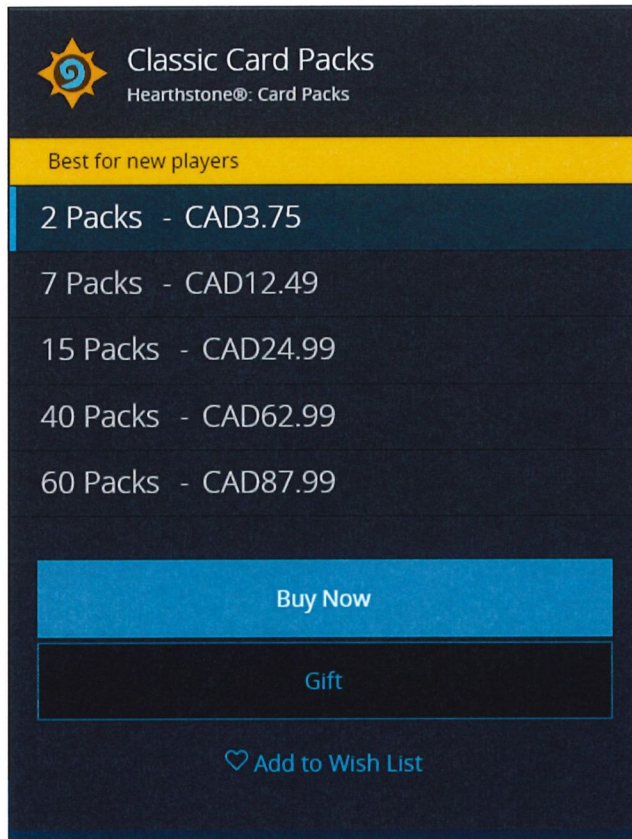
37. Gaming operations must be licensed at the provincial level to offer their services to the public. There is no exception for online gaming operations inside or outside Canada.

38. The Defendants are not licensed in Canada to operate gambling, gaming or lottery businesses.

### ***The Defendants' Loot Boxes***

39. Loot Boxes in the Defendants' Digital Games all function in a substantially similar fashion, with players either purchasing the Loot Box directly using real money, or spending real money on a virtual currency which they can then exchange for a Loot Box.

40. Since at least 2014, the Defendants have employed Loot Boxes in their game "Hearthstone". In Hearthstone, players are able to spend real currency to purchase Loot Boxes known as "Card Packs", which contain random cards for use in the game. The core gameplay in Hearthstone is based on cards, and so players must purchase Card Packs in order to stay competitive. Additionally, cards that provide a greater game advantage to players are rarer, while cards that provide a more modest game advantage to players are more common. The relative rarity of cards is set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes are randomized games of chance in which the player has the prospect of loss or gain of money's worth.



*Card Packs available for purchase on Activision Blizzard's Battle.net online store*

41. From 2015 through about 2019 (the precise date is well known to the Defendants), the Defendants employed Loot Boxes in their game “Heroes of the Storm”. In Heroes of the Storm, players were able to purchase a virtual currency known as “Gems”, which they were able to exchange for Loot Boxes known as “Loot Chests”. Loot Chests contained cosmetics items, as well as playable “heroes” and Loot Chest-exclusive items. Items and heroes that provided a greater game advantage to players were rarer, while items and heroes that provide a more modest game advantage to players were more common. The relative rarity of items and heroes was set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes were randomized games of chance in which the player has the prospect of loss or gain of money’s worth.

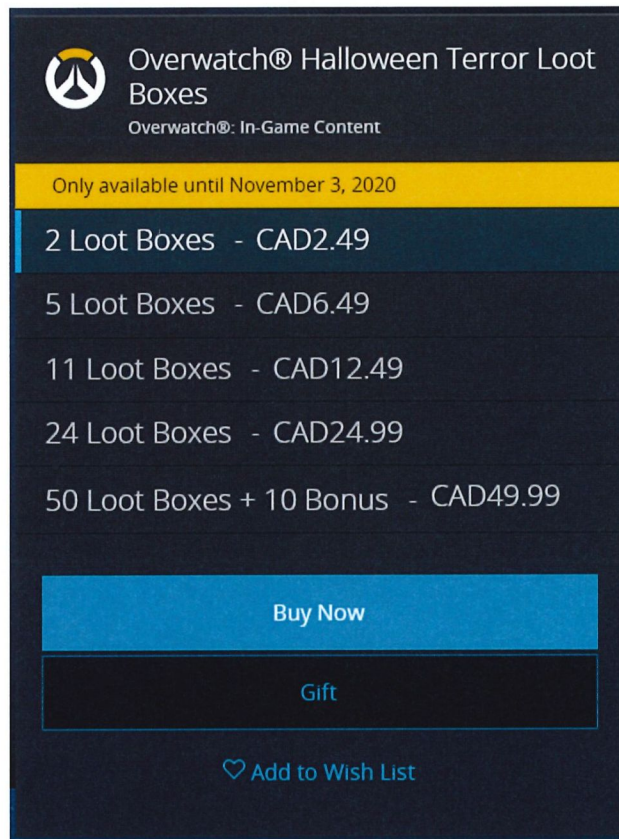


*Players are able to purchase “Gems” for real money.*



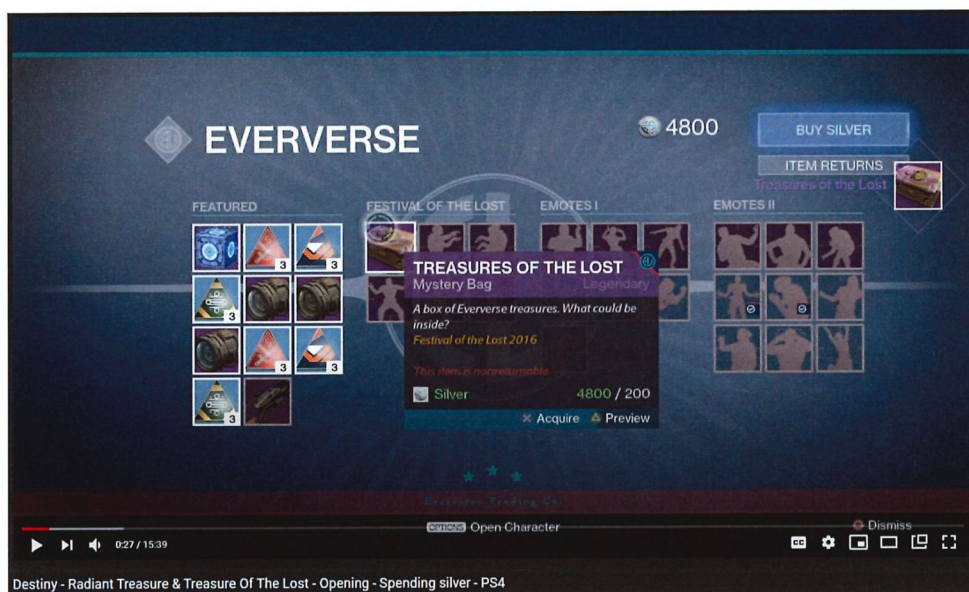
*Players can exchange “Gems” for Loot Boxes known as “Loot Chests”.*

42. Since at least 2016, the Defendants have employed Loot Boxes in their game “Overwatch”. In Overwatch, players are able to spend real currency to purchase Loot Boxes known as “Loot Boxes”, which contain random cosmetic items for use in the game. Cosmetic items are associated with player prestige, and in particular rare cosmetic items will provide a player with more prestige than common ones. The relative rarity of cosmetic items is set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes are randomized games of chance in which the player has the prospect of loss or gain of money’s worth.



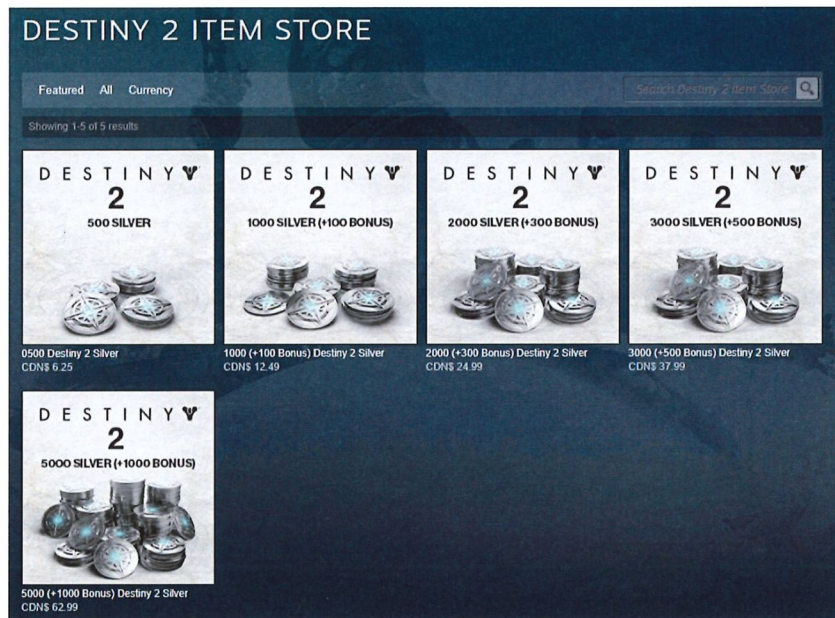
*Overwatch Loot Boxes, available for purchase on Activision Blizzard's Battle.net online store*

43. From 2014 through 2019, the Defendants employed Loot Boxes in their game “Destiny”. In Destiny, players were able to purchase a virtual currency known as “Silver” for real money, which they were able to exchange for Loot Boxes known as “Mystery Bags”. Mystery Bags were known by a number of different names, including “Sterling Treasure”, “Radiant Treasure”, “Treasure of Ages”, and others. Mystery Bags contained cosmetics items, as well as items that affect gameplay. Items that provide a greater game advantage to players were rarer, while items that provide a more modest game advantage to players were more common. The relative rarity of items was set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes were randomized games of chance in which the player had the prospect of loss or gain of money’s worth.



*Screenshot of YouTuber "Razorback\_TTV" purchasing a Loot Box from Destiny's in-game store "Eververse". This Loot Box is named "Treasures of the Lost, Mystery Bag", and has a cost of 200 Silver.*

44. From 2017 through 2019 (the precise date is well known to the Defendants), the Defendants employed Loot Boxes in their game "Destiny 2". In Destiny 2, players were able to purchase a virtual currency known as "Silver" for real money, which they were able to exchange for Loot Boxes known as "Bright Engrams". Bright Engrams contained cosmetics items, with more desirable items being rarer than less desirable ones. Players were also able to exchange Silver for activations of a Loot Box known as the "Prismatic Matrix" which was more attractive to players because its random contents were guaranteed not to contain items already in the possession of the player. The Prismatic Matrix contained cosmetics items, with more desirable items being rarer than less desirable ones. The relative rarity of items was set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes were randomized games of chance in which the player had the prospect of loss or gain of money's worth.



Players can purchase "Silver" for real money.



Players can exchange "Silver" for Loot Boxes at Destiny 2's in-game store "Eververse Trading Co".

This Loot Box costs 200 Silver.



*Players can also activate the “Prismatic Matrix” for “Silver”.*

45. Since at least 2014, the Defendants have employed Loot Boxes in multiple titles from their “Call of Duty” franchise, including “Call of Duty: Advanced Warfare” (2014); “Call of Duty: Black Ops III” (2015); “Call of Duty: Black Ops 4” (2019); “Call of Duty: Infinite Warfare” (2016); “Call of Duty: Modern Warfare Remastered” (2016); and “Call of Duty: WWII” (2017). In those games, players are able to purchase Loot Boxes known as “Advanced Supply Drops”, “Rare Supply Drops”, “Reserve Crates”, and others, either directly for real money, or in exchange for a virtual currency called “Call of Duty Points” (also known as “CP”, or “COD Points”) which can be obtained for real money. These Loot Boxes contain cosmetic skins that do not affect gameplay, as well as items and weapons that confer an in-game advantage. Items and weapons that provide a greater game advantage to players are rarer, while items and weapons that provide a more modest game advantage to players are more common. The relative rarity of items and weapons is set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes are randomized games of chance in which the player has the prospect of loss or gain of money’s worth.



**2,400 Call of Duty®: Modern Warfare® Remastered Points**

Activision • Action & adventure

♡ Wish list

This bundle includes 2,000 + 400 Bonus Call of Duty® Points (CP) for an extra 20% value.

More

CAD \$26.99

Buy

This content requires a game (sold separately).

*Call of Duty Points available for purchase on Microsoft's online store*

CURRENT: 25800 CP 50

**RARE SUPPLY DROP**

Guarantees 1 Rare item or better. Increased chance of Legendary and Epic items. Includes bonus parts.

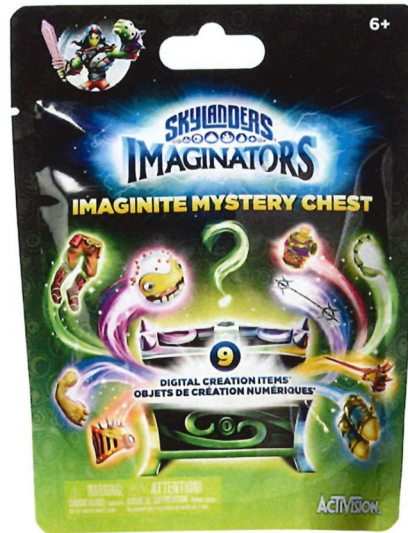
PURCHASE WITH DEPOT CREDITS COST: 30

PURCHASE WITH COD POINTS COST: 200

*"Rare Supply Drop" Loot Boxes available for Call of Duty Points in Call of Duty: Modern Warfare Remastered*

46. Since at least 2016, the Defendants have employed Loot Boxes in their game Skylanders: Imaginators. In Skylanders: Imaginators, players are able to purchase physical toys at retail, each of which contain an RFID chip that can be read by a special accessory attached to the player's video game console and unlocking a new character or item in the game. Players are able to purchase Loot Boxes in the form of physical toy "Mystery Chests" which "open" virtually in the game when placed on the game accessory, providing the player with random items, weapons, and parts for their character in the game. Items, weapons, and parts that provide a greater game advantage to players are rarer, while items, weapons, and parts that provide a more modest game advantage to players are more common. Mystery Chests come in Gold, Silver, and Bronze variants, with a Gold Mystery Chest providing the best random rewards, however, players must purchase these toys "blind" in a "gacha" or "gachapon" mechanic whereby the exact contents of the purchase are unknown until after the consumer opens the package. Players must therefore go

through two rounds of randomization, once when they purchase the physical toy and once when opening the Mystery Chest in the game, to determine what is contained in a Loot Box. The relative rarity of both Mystery Chests and items, weapons, and parts is set by the game designer and the publisher. Available for purchase using real money, these Loot Boxes are randomized games of chance in which the player has the prospect of loss or gain of money's worth.



Roll over image to zoom in

#### Skylanders Imaginators - Imaginite Mystery Chest

Brand: ACTIVISION

★★★★☆ 12 ratings

Currently unavailable.

We don't know when or if this item will be back in stock.

- Use the power of Imagine with the Mystery Chest Packs to unlock new parts, weapons and gear for you Imaginators Skylanders.

*Physical toy "Mystery Chest" listing on Amazon.ca, the player does not know whether this is a Gold, Silver, or Bronze Mystery Chest at the time of purchase.*



#### Skylanders Imaginators Mystery Chest

Activision • Action & adventure

♡ Wish list

This Mystery Chest randomly contains a Bronze, Silver or Gold Chest all containing 9 Creation Pieces. The 9 Pieces are a random mix of Weapons, Imaginator Parts and Gear. The Creation Parts can be Rare, Epic or Ultimate depending upon which rarity of Chest is received! DUPLICATE PIECES ENHANCE STATS. DISTRIBUTION OF CREATION PIECES IS RANDOM.

CAD \$4.99

Buy

This content requires a game (sold separately).

*Mystery Chest available on Microsoft's online store.*

47. The Defendants' Loot Boxes are "games", the purchase and opening of a Loot Box is a "bet", the computer infrastructure and the Affected Titles (as defined below) alone or in combination are "gaming equipment", and the Defendants are "keepers" who operate "common betting houses" or "gaming houses" at their physical and online offices and facilities ("places") wherein Loot Box transactions are recorded and processed and proceeds are paid, all as defined in section 197 of the *Criminal Code*.

48. The technology that underpins the operation of Loot Boxes is hosted on servers located in facilities operated by the Defendants.

***Unlawful Gaming***

49. By making available Loot Boxes that players pay to access, the Defendants have engaged in unlawful gaming in breach of the *Criminal Code*, Part VII. In particular, the Defendants have made available Loot Boxes in the following Digital Games (the “**Affected Titles**”):

- a. Hearthstone;
- b. Heroes of the Storm;
- c. Overwatch;
- d. Destiny;
- e. Destiny 2;
- f. Call of Duty: Advanced Warfare;
- g. Call of Duty: Black Ops III;
- h. Call of Duty: Black Ops 4;
- i. Call of Duty: Infinite Warfare;
- j. Call of Duty: Modern Warfare Remastered;
- k. Call of Duty: WWII;
- l. Skylanders: Imaginators; and
- m. Such other games developed and published by the Defendants that may become known to the Plaintiff.

50. The senior officers and directors of the Defendants were at all times fully aware of the unlawful nature of their enterprise and took active steps to carry it out. In the alternative, the

senior officers and directors of the Defendants were reckless or willfully blind to the unlawful nature of their enterprise and took active steps to implement it.

51. As a result of the Defendants' unlawful enterprise, the Plaintiffs and Class Members have paid money to the defendants for the purpose of obtaining Loot Boxes. The Plaintiffs and Class Members have been deprived through those payments ("**Takings**"), and the Defendants have collectively obtained a corresponding benefit in the form of the Takings.

52. The Plaintiffs and Class Members have an interest in the funds received from them by the Defendants as a result of the Takings.

53. The Defendants have wilfully concealed the unlawful nature of their enterprise from the Plaintiffs and Class Members.

#### ***Regulatory Enforcement***

54. The use and abuse of Loot Boxes by online game publishers has been met with condemnation by regulators around the world:

- a. As early as 2012, the Japanese Consumer Affairs Agency began actively enforcing its prize regulations (*Law for Preventing Unjustifiable Extras or Unexpected Benefit and Misleading Representation*) against online game publishers employing Loot Boxes;
- b. In 2018, the Korea Fair Trade Commission levied US\$950,000 in fines against online game publishers for deceptive Loot Boxes practices;
- c. In 2018, the Netherlands Kansspelautoriteit (Gaming Authority) and the Belgian Kansspel Commissie (Gaming Commission) began actively enforcing their gaming laws against online game publishers employing Loot Boxes; and
- d. The Parliament of the United Kingdom, the United States Congress and U.S. Federal Trade Commission have initiated inquiries into Loot Boxes.

55. At the time this action is filed, the Defendants' misconduct continues in Canada.

**Part 2: RELIEF SOUGHT**

56. An order certifying this action as a class proceeding;
57. An accounting and restitution of the benefits received by the Defendants in the full amount of the Takings;
58. In the alternative, disgorgement of the benefits received by the Defendants on account of the wrongdoing;
59. Damages under the *Competition Act*, s 36;
60. A declaration that the Defendants have contravened the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 (“*BPCPA*”), ss 4, 5, 8 and 9; the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A (“*Ontario CPA*”), ss 14-17; la *Loi Sur La Protection Du Consommateur*, chapitre P-40.1 (“*Quebec CPA*”); and related provincial consumer protection statutes;
61. A statutory injunction under the *BPCPA*, s 172(1)(b) and related provincial consumer protection statutes to restrain the breaches of the *BPCPA* and related provincial consumer protection statutes;
62. A restoration order under the *BPCPA*, s 172(3); damages under the *Ontario CPA*, s 18; damages under the *Quebec CPA*; and damages or restitution under related provincial consumer protection statutes for return of the Takings;
63. A declaration that any agreement by an Underage Player for the purchase of a Loot Box is unenforceable under the *Infants Act*, s 19 and related enactments;
64. Statutory compensation under the *Infants Act*, s 20 and related enactments;
65. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;
66. Such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### ***Unjust Enrichment***

67. As set out above, the Defendants have been enriched by the collection of the Takings from the Plaintiffs and Class Members.

68. The Plaintiffs and Class Members have been deprived through the payment of the Takings to the Defendants.

69. There is no juristic reason why the Defendants should have received or should retain this benefit. The Defendants' violations of the *Criminal Code*, Part VII, the *Gaming Control Act*, SBC 2002, C-14, the *Gaming Control Act, 1992*, SO 1992, c 24, *Loi sur les lotteries, les concours publicitaires et les appareils d'amusement* chapitre L-6 and related enactments, the *Competition Act* ss 52, 52.01 and 53 (as set out below), and the doctrine of illegality, negate any juristic reason why the Defendants should have received or should retain this benefit, including any contract. Any alleged contracts by which the Defendants obtained these benefits are void and unenforceable.

70. In particular, the Defendants' conduct in selling Loot Boxes in the Affected Titles constitutes the keeping of gaming or betting houses by the Defendants contrary to s 201(1) of the *Criminal Code*, especially as concerns the Defendants' establishing and operation of offices, computer facilities and other physical or online infrastructure for the receipt and processing of payments for Loot Boxes in the Affected Titles.

71. Further and in the alternative, the Defendants' conduct described herein contravenes the prohibition on betting, pool-selling, book-making and similar conduct enumerated in s 202(1) of the *Criminal Code*. In particular, the Defendants:

- a. use or knowingly allow places under their control (including offices, computer facilities and other physical infrastructure for the receipt and processing of payments for Loot Boxes in the Affected Titles) to be used for the purpose of recording bets;

- b. employ devices and apparatus for the purpose of recording or registering bets, and devices for gambling and betting (including the computer servers used to operate the Affected Titles and for the receipt and processing of payments for Loot Boxes in the Affected Titles);
- c. have under their control money and other property relating to transactions in breach of s 202 (including the proceeds from the sale of Loot Boxes in real or virtual currency);
- d. record and register bets in respect of the Loot Boxes in the Affected Titles;
- e. are in the business of betting; and
- f. wilfully send, transmit, deliver and receive messages conveying information relating to betting (including their advertisements of Loot Boxes both in game, online and offline).

72. Further and in the alternative, the Defendants' conduct described herein constitutes engaging in the business or practice of placing or agreeing to place bets on behalf of other persons contrary to s 203 of the *Criminal Code*.

73. Further and in the alternative, the Defendants' conduct described herein constitutes a scheme for the sale, barter, exchange or otherwise disposition of a lot, card, ticket or other means or device for advancing, lending, giving, selling or otherwise disposing of any property by lots, cards, tickets or any mode of chance, contrary to s-ss 206(1)(a) to (d) of the *Criminal Code*.

74. Further and in the alternative, the Defendants' conduct described herein constitutes the conduct, management or participation in a scheme, contrivance, or operation by which a person, on payment of a sum or money or the giving of valuable security, shall become entitled to receive a larger sum of money or valuable security under the scheme, contrivance or operation than the sum or amount paid or given, by reason of the fact that other persons have paid or given, or obligated themselves to pay or give any sum or money or valuable security under the scheme, contrivance or operation, contrary to s-s 206(e) of the *Criminal Code*.

75. Further and in the alternative, the Defendants' conduct described herein constitutes the disposition of goods, wares or merchandise by a game of chance in which the contestant or competitor pays money or other valuable consideration, contrary to s-s 206(f) of the *Criminal Code*.

76. Further and in the alternative, the Defendants' conduct described herein constitutes an inducement to persons to stake or hazard money or other valuable property or thing on the result of a dice game, three-card monte or on the operation of a wheel of fortune, contrary to s-s 206(g) of the *Criminal Code*.

77. Further and in the alternative, the Defendants' conduct described herein constitutes the operation of a "lottery scheme" contrary to s 207 of the *Criminal Code*.

78. Further and in the alternative, the Defendants have breached the *Gaming Control Act*, SBC 2002, C-14 and related provincial enactments. In particular, the operation and offer for sale of Loot Boxes to the public constitutes "gaming services" and the Defendants are each "gaming services providers". By the Defendants' conduct described herein, and especially their failure to obtain required licenses, the Defendants have violated the *Gaming Control Act*, ss 94-95 and 97; the *Gaming Control Act 1992*, s 4; and the *Loi sur les lotteries, les concours publicitaires et les appareils d'amusement*, ss 34 and 52-53.

79. As a result of its actions, the Defendants have been unjustly enriched by the benefits received from the Plaintiffs and Class Members.

80. The Plaintiffs and Class Members are entitled to restitution of the benefits received by the Defendants from them in the form of the Takings.

81. In the alternative, justice and good conscience require that the Defendants disgorge to the Plaintiffs and Class Members an amount attributable to the benefits received from their unlawful Loot Box scheme.

***Breach of the Business Practices and Consumer Protection Act, the Consumer Protection Act, 2002, and the Quebec CPA***

82. The Defendants have breached the *BPCPA*.



83. The Plaintiffs Cunningham, Busto, and Class Members purchased and played the Affected Titles for purposes that are primarily personal, family or household and are “consumers” within the meaning of s. 1 of the *BPCPA*.

84. The Affected Titles and the Loot Boxes within them are “goods” and “services” within the meaning of s. 1 of the *BPCPA*.

85. The Defendants are “suppliers”, within the meaning of s. 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.

86. The payment for access to or purchase of a Loot Box in each of the Affected Titles is a “consumer transaction”, within the meaning of s. 1 of the *BPCPA*.

87. By the conduct set out above, the Defendants have breached ss, 4-5 and 8-9 of the *BPCPA*, and their actions constitute unfair and unconscionable business practices. In particular:

- a. Offering and operating the Loot Boxes in the Affected Titles in breach of the *Criminal Code*, Part VII;
- b. Concealing the odds for their Loot Boxes in the Affected Titles;
- c. Failing to have in place safeguards to prevent minors from playing Loot Boxes in the Affected Titles;
- d. Making high-value items that affect gameplay available exclusively from Loot Boxes in the Affected Titles, thereby forcing players to obtain Loot Boxes

are unfair and unconscionable business practices. The Defendants knew or ought to have known that offering and operating Loot Boxes within the Affected Titles was unconscionable.

88. In particular, the Defendants’ actions have breached *inter alia* the *BPCPA*, s 8, whether or not the factors in ss 8(3) are present in any individual case, and under s-ss 8(3)(b) and (c).

89. Specifically, the Defendants took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiffs Cunningham, Busto, and Class Members, to reasonably protect their own interests because of their ignorance or inability to understand the character or nature of

the consumer transaction and the Defendants' misconduct within it based on their total control over the service (including the Affected Titles and the operation of the Loot Boxes within them) and the lawfulness of the activity.

90. Further and in the alternative, per *BPCPA*, s-ss 8(3)(e), the terms or conditions on or subject to which the Plaintiffs Cunningham, Busto, and Class Members entered by for the purchase of Loot Boxes from the Defendants were so harsh or adverse to these consumers as to be inequitable because of the inequality of bargaining power and the lack of candid disclosure by the Defendants about the lawfulness of the activity.

91. In addition, the Defendants' actions have breached *inter alia* the *BPCPA*, s 4. Specifically, the Defendants representations in connection with the promotion of the Loot Boxes, and the omission of the odds of the Loot Boxes, breached s-ss 4(3)(b)(vi) and (c)(i).

92. As result of the breaches of the *BPCPA*, s 8, the consumer transactions – insofar as it implicates payments for Loot Boxes – are not binding on the Plaintiffs Cunningham, Busto, and Class Members per *BPCPA*, s. 10(1).

93. The Plaintiffs Cunningham, Busto, and Class Members have an interest in the funds received from them by the Defendants on account of the Loot Boxes in the Affected Titles obtained in breach of ss 4-5, 8-9 and which are not binding per s 10(1), and they are entitled to the restoration of those amounts. The Plaintiffs Cunningham, Busto, and Class Members would have a right to make a claim for damages under the *BPCPA*, s. 171 and a claim for unjust enrichment for which the unlawful act is a breach of the *Criminal Code*, Part VII.

94. As a result of Defendants' breaches of the *BPCPA*, the Plaintiffs Cunningham, Busto, and Class Members are entitled to a declaration under *BPCPA*, s 172(1)(a), an injunction under s 172(2) to restrain the conduct, and a restoration order against the Defendants, under the *BPCPA*, s 172(3)(a).

95. For the same reasons, the Defendants have breached the *Ontario CPA*. The Plaintiff Rocha and Class Members in Ontario are “consumers” within the meaning of the *Ontario CPA*, s 1. The Affected Titles and the Loot Boxes within them are “goods” and “services” within the meaning of the *Ontario CPA*. The Defendants are each a “supplier” within the meaning of the

*Ontario CPA*. The payment for access to or purchase of a Loot Box in each of the Affected Titles is a “consumer transaction”, and involves a “consumer agreement” within the meaning of the *Ontario CPA*, s 1.

96. As set out above, by reason of the Defendants’ conduct, the Defendants have breached the *Ontario CPA*, ss 14-15 and 17. The Defendants’ actions constitute unfair and unconscionable business practices. As a result of the Defendants’ breaches of the *Ontario CPA* the Plaintiff Rocha and Class Members in Ontario are entitled to an award of damages under the *Ontario CPA*, s 18. The Plaintiff Rocha and Class Members in Ontario further plead and rely on ss 3, 4, 6, 7, 8 of the *Ontario CPA*.

97. For the same reasons, the Defendants have breached the *Quebec CPA*. The Plaintiff Bélanger and Class Members in Quebec are “consumers” (“consommateurs”) within the meaning of the *Quebec CPA*. The Affected Titles and the Loot Boxes within them are “goods” (“biens”) and “services” within the meaning of the *Quebec CPA*. The Defendants are each a “manufacturer” (“fabricant”) and a “merchant” (“commerçant”) within the meaning of the *Quebec CPA*. The payment for access to or purchase of a Loot Box in each of the Affected Titles is a “contract for goods or services entered into between a consumer and a merchant in the course of his business” (“contrat conclu entre un consommateur et un commerçant dans le cours des activités de son commerce et ayant pour objet un bien ou un service”) within the meaning of the *Quebec CPA*.

98. As set out above, by reason of the Defendants’ conduct, the Defendants have breached the *Quebec CPA* articles 219, 220, 221, 222, 228, 229, 233, and 253. The Defendants’ actions constitute unfair and unconscionable business practices. As a result of the Defendants’ breaches of the *Quebec CPA* the Plaintiff Bélanger and Class Members in Quebec are entitled to an award of damages under the *Quebec CPA* article 272. The Plaintiff Bélanger and Class Members in Quebec further plead and rely on the *Quebec CPA* articles 8, 11.1, 261, 262, 263, 270, and 271.

99. Class Members resident outside British Columbia, Ontario, and Quebec plead and rely on *inter alia*: *Consumer Protection Act*, RSA 2000, c C-26.3; *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; Sch A; *Consumer Protection Act*, RSNS 1989, c 92; *Consumer Protection Act*, RSPEI 1988, c C-19;

*Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1; *Consumers Protection Act*, RSY 2002, c 40; *Consumer Protection Act*, RSNWT 1988, c C-17; and *Consumer Protection Act*, RSNWT 1988 (Nu), c C-17; each as amended from time to time and with regulations in force at material times.

***Breach of the Competition Act***

100. The *Competition Act*, RSC 1985, c C-34, applies to business transacted in Canada, including over the internet.

101. Digital Games, including the Affected Titles, and Loot Boxes are “products” and “services” within the meaning of the *Competition Act*, s. 2.

102. By the conduct set out above, the Defendants have breached ss. 52 and 52.01 of the *Competition Act*, and have made false or misleading representations and omissions by:

- a. Offering the Loot Boxes to the public and Class Members as though they were legal when they are in fact unlawful;
- b. Advertising an illegal internet gaming site, contrary to *inter alia* the *Consumer Protection Act, 2002*, s 13.1;
- c. Failing to disclose odds of winning, as required by *inter alia* the *Advertising and Marketing Standards for Gambling in British Columbia*, the *OLG Marketing and Advertising Standard*, and the *Loi sur les lotteries, les concours publicitaires et les appareils d’amusement*, and related enactments (together, the “**Advertising Regulations**”);
- d. Failing to take appropriate steps to protect minors, as required by the Advertising Regulations;
- e. Failing to promote responsible gaming, as required by the Advertising Regulations.

103. The Defendants made these representations to the public for the purpose of promoting directly or indirectly the supply or use of Loot Boxes in the Affected Titles, and for the purpose of promoting directly or indirectly the business interests of the Defendants in the monetization of the Affected Titles, knowingly and recklessly to their material falsity.

104. In addition, the misleading representations by the Defendants regarding Loot Boxes were made by electronic message both in game and in advertising and marketing for the Affected Titles, in breach of s 53.01 of the *Competition Act*.

105. As a result of the Defendants' breaches of the *Competition Act*, the Plaintiffs and Class Members have suffered loss and damage in the form of the Takings.

106. The Plaintiffs and Class Members are entitled to recover from the defendants an amount equal to the loss or damage suffered by them in the full amount of the Takings, under the *Competition Act*, s 36, as well as the costs of investigation.

#### ***Breaches of the Infants Act***

107. Persons under the age of majority are afforded special protection in British Columbia and elsewhere in Canada. Contracts made with minors are unenforceable by operation of the *Age of Majority Act*, RSBC 1996, c. 7 and the *Infants Act*, RSBC, c 223, s. 19(1) and related enactments.

108. Infants are entitled to compensation under the *Infants Act*, s 20 where a contract is unenforceable.

109. The agreements by which the Defendants collected money from Underage Players on account of Loot Boxes in the Affected Titles are unenforceable under the *Infants Act*, s 18.

110. Class Members who are or were Underage Players during the Class Period are entitled to statutory compensation from the Defendants in the amount of the Takings.

111. Class Members rely upon parallel provisions and the common law in the other provinces and territories of Canada.

### ***Limitation Period***

112. The Defendants willfully concealed the unlawfulness of their Loot Box scheme from the Plaintiffs and Class Members. The Plaintiffs and Class Members rely on the doctrine of fraudulent concealment and *Pioneer Corp. v. Godfrey*.

113. In addition, the Plaintiffs or Class Members could not reasonably have known that loss or damage had occurred, that it was caused or contributed to by acts of the Defendants, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

114. The Plaintiffs and Class Members rely on the doctrines of postponement and discoverability to postpone the running of the limitation period until 2020.

115. The Plaintiffs and Class Members plead and rely on and the *Limitation Act*, SBC 2012, c 13, and in particular ss 8, 21(3). In the alternative, or in addition, the Plaintiffs and Class Members rely on the *Limitation Act*, SBC 2012, c 13, s 30 and the *Limitation Act*, RSBC 1996, c 266. In addition, the Plaintiffs and Class Members plead and rely on the *Emergency Program Act*, Ministerial Order No. M089 and related enactments to suspend the running of the limitation period from March 26, 2020.

### ***Service***

116. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on the Defendants pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*), because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based.

117. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and

c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

Plaintiffs' address for service:

Slater Vecchio LLP  
1800 - 777 Dunsmuir Street  
Vancouver, BC V7Y 1K4

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street  
Vancouver, BC  
V6Z 2E1

Date: December 16, 2020



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For

Signature of lawyer for plaintiffs

<b>Mathew P. Good</b>	<b>Anthony Vecchio QC</b>
Co-Counsel for the Plaintiffs	Co-Counsel for the Plaintiffs
<b>Good Barrister</b>	<b>Slater Vecchio LLP</b>

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.





**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION  
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading on the Defendant ACTIVISION BLIZZARD INC, ACTIVISION PUBLISHING INC, and BLIZZARD ENTERTAINMENT INC. outside British Columbia on the ground that the *Court Jurisdiction and Proceedings Transfer Act*, SBC 2003, c 28, s 10 (*CJPTA*) applies because there is a real and substantial connection between British Columbia and the facts on which this proceeding is based. The Plaintiffs and Class Members rely on the following grounds, in that this action concerns:

- a. restitutionary obligations that, to a substantial extent, arose in British Columbia (*CJPTA*, s 10(f));
- b. a tort committed in British Columbia (*CJPTA*, s 10(g)); and
- c. a business carried on in British Columbia (*CJPTA*, s 10(h)).

## Appendix

*[The following information is provided for data collection purposes only and is of no legal effect.]*

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a proposed class proceeding regarding loot boxes in video games.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

*[Check one box below for the case type that best describes this case.]*

A personal injury arising out of:

a motor vehicle accident

medical malpractice

another cause

A dispute concerning:

contaminated sites

construction defects

real property (real estate)

personal property

the provision of goods or services or other general commercial matters

investment losses

the lending of money

an employment relationship

a will or other issues concerning the probate of an estate

a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

**Part 4:**

*Limitation Act*, SBC 2012, c 13

*Court Order Interest Act*, RSBC 1996, c 79

*Competition Act*, RSC 1985, c C-34

*Business Practices and Consumer Protection Act*, SBC 2004, c 2