

S 20 13510



No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

TROY LUSSIER, GREG FRIESEN, DAVID DOERKSEN, and
VINCENT TOUCHETTE

PLAINTIFFS

and

SCOPELY, INC.

DEFENDANT

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 Defendant has operated an unlicensed, illegal gaming system through their loot boxes in mobile games. Through this suit, Canadian consumers seek to hold the Defendant accountable for this unlawful conduct, and to recover their losses.

The Parties

3. The Defendant, Scopely, Inc., is a company incorporated under the laws of Delaware, with an address for service c/o National Registered Agents, Inc, 1209 Orange Street, Wilmington, DE 19801, USA. Its principal place of business is located at 3530 Hayden Ave A, Culver City, CA 90232, USA. It has a registered trademark in Canada. Scopely, Inc. develops,

publishes and distributes branded interactive entertainment software for mobile phones and tablets running Apple's iOS and Google's AndroidOS mobile operating systems. It carries on business in British Columbia and Canada by making its games available in this country and collecting money from Canadians.

4. The Plaintiff Troy Lussier is a resident of New Westminster, British Columbia. He is a customer of the Defendant. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game "Star Trek Fleet Command" published by the Defendant. He purchased the loot boxes for personal purposes.

5. The Plaintiff Greg Friesen is a resident of Sherwood Park, Alberta. He is a customer of the Defendant. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game "Marvel Strike Force" published by the Defendant. He purchased the loot boxes for personal purposes.

6. The Plaintiff David Doerksen is a resident of Ingersoll, Ontario. He is a customer of the Defendant. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game "The Walking Dead: Road to Survival" published by the Defendant. He purchased the loot boxes for personal purposes.

7. The Plaintiff Vincent Touchette is a resident of Quebec City, Quebec. He is a customer of the Defendant. During the Class Period he spent money to purchase the opportunity to open loot boxes in the game "The Walking Dead: Road to Survival" published by the Defendant. He purchased the loot boxes for personal purposes.

8. The Plaintiffs bring this claim on their own behalf and on behalf of the Canadian customers of the Defendant who during the Class Period purchased or otherwise paid directly or indirectly for loot boxes in any of the following games published by Scopely, Inc:

- a. The Walking Dead: Road to Survival;
- b. Star Trek Fleet Command;
- c. WWE Champions;

- d. Marvel Strike Force;
- e. Looney Tunes World of Mayhem;
- f. Avatar: Pandora Rising;
- g. Scrabble Go;
- h. Yahtzee With Buddies;
- i. Dice With Buddies;
- j. Dice With Ellen;
- k. Wheel Of Fortune Free Play; and
- l. Such other games developed and published by the Defendant that may become known to the Plaintiffs.

between the date the first of those games was published by the Defendant and the date this action is certified as a class proceeding (the “**Class**”, “**Class Members**” and “**Class Period**”).

Digital Games

9. 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**”).

10. 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.

11. 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 and tablets). 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**”.

12. Digital Games played on mobile devices make up approximately 45 percent of global video game industry revenue. In 2019, these games generated an estimated \$68.5 billion in revenue. Scopely, Inc’s business is focused on Digital Games exclusive to mobile devices.

13. Digital Games come in many different styles, including sports simulators (*the FIFA franchise; the NBA 2K franchise*), 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.

14. 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.

15. 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.

16. 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.

17. 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).

18. 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”.

19. 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.

20. 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

21. 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.

22. 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.

23. 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.

24. 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 armour 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.

25. 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.

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

27. 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 personalize their in-game avatars and show off to other players.

28. 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.

29. 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.

30. 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.

31. In some Digital Games, players must use real money to purchase virtual currencies with which to then purchase Loot Boxes. Often a Digital Game will have several virtual currencies requiring multiple conversions before a player can purchase Loot Boxes.

32. Publishers, including the Defendant, 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 Defendant, 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

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

34. 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*.

35. 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.

36. The Defendant is not licensed in Canada to operate gambling, gaming or lottery businesses.

The Defendant's Loot Boxes

37. Loot Boxes in the Defendant's 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.

38. Loot Boxes in most of the Defendant's Digital Games contain random items and characters that aid the player in competing in the game. Items and characters that provide a greater game advantage to players are rarer, while items and characters that provide a more modest game advantage to players are more common. The relative rarity of items and characters is set by the Defendant. 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. Players do not know the contents of a Loot Box at the time they commit to purchasing the right to open one.

39. Loot Boxes in certain of the Defendant’s Digital Games contain cosmetic items, which change the appearance of a player’s in-game avatar without directly affecting gameplay. Cosmetic items are associated with player prestige, and in particular rare cosmetic items will provide a player with more prestige than common ones. Players who use the default avatars are looked down on by other players. There is therefore an incentive for players to purchase multiple Loot Boxes in order to obtain more valuable and more prestigious rare cosmetic items. 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. Players do not know the contents of a Loot Box at the time they commit to purchasing the right to open one.

40. In “The Walking Dead: Road To Survival”, players can purchase the right to open a number of different Loot Boxes known as “Packs”, “Bags”, “Caches”, “Collectibles” and other names. Some Loot Boxes are available in exchange for virtual currencies that the player can earn, some are available for virtual currencies that the player can either earn or purchase with real money, and some are only available for virtual currencies that the player must purchase with real money. Where a virtual currency can be earned in-game or purchased for real money, it is generally earned in-game at a rate slow enough to incentivize a purchase. This action is concerned only with Loot Box purchases traced to the expenditure of real money.





Players can exchange “coins” for Loot Boxes, and are prompted to spend real money if they do not have enough “coins”.





Players are not able to determine the contents of a Loot Box before spending virtual currency on it.

41. In “Star Trek Fleet Command”, players can purchase the right to open Loot Boxes known as “Chests” in exchange for several different virtual currencies. These Loot Boxes contain different categories of rewards, each of which require several different virtual currencies to access. Some of these virtual currencies can be obtained through gameplay or in exchange for real money. Players can purchase the virtual currency “Latinum” for real money. Latinum can be exchanged for the virtual currencies required to purchase the right to open certain Loot Boxes. Other virtual currencies must be earned in the game, but the game features an artificial time limit to progression that increases as the player progresses in the game, which can be bypassed by spending “Latinum”. Players are therefore increasingly given incentive to spend “Latinum” in order to continue progression in the game and earn the virtual currencies required to open Loot Boxes.

RECRUIT

Standard Recruit

REWARDS

INSTR. SPOCK 0/3 CHANCE!	CADET SULLU 0/6 CHANCE!	CADET UHURA 0/3 CHANCE!
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1 CHEST 20

3 CHESTS 60

5 CHESTS 100

0 15 100

CONVERT LATINIUM

You need 60 Recruit Token. Would you like to convert 240 Latinium to get it?

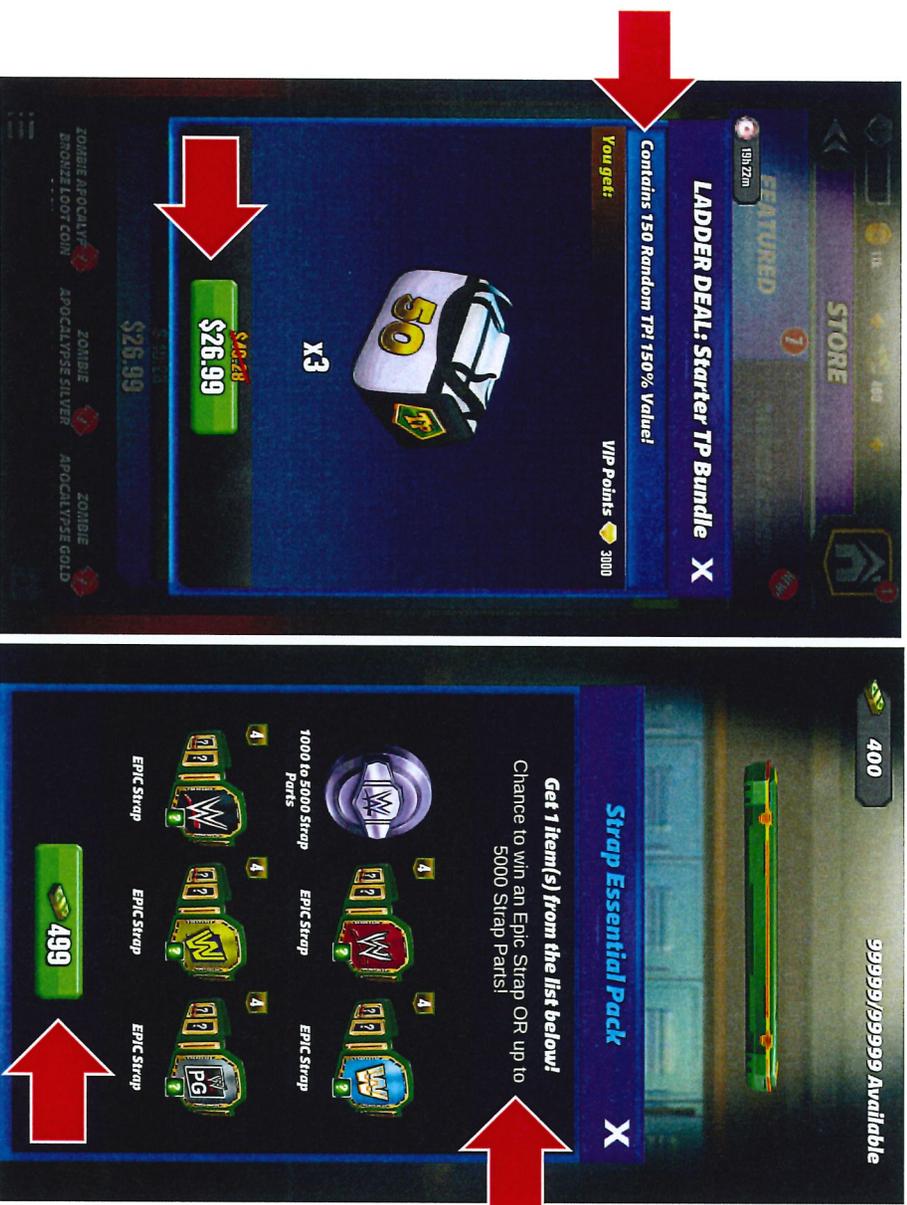
CANCEL

CONVERT 240

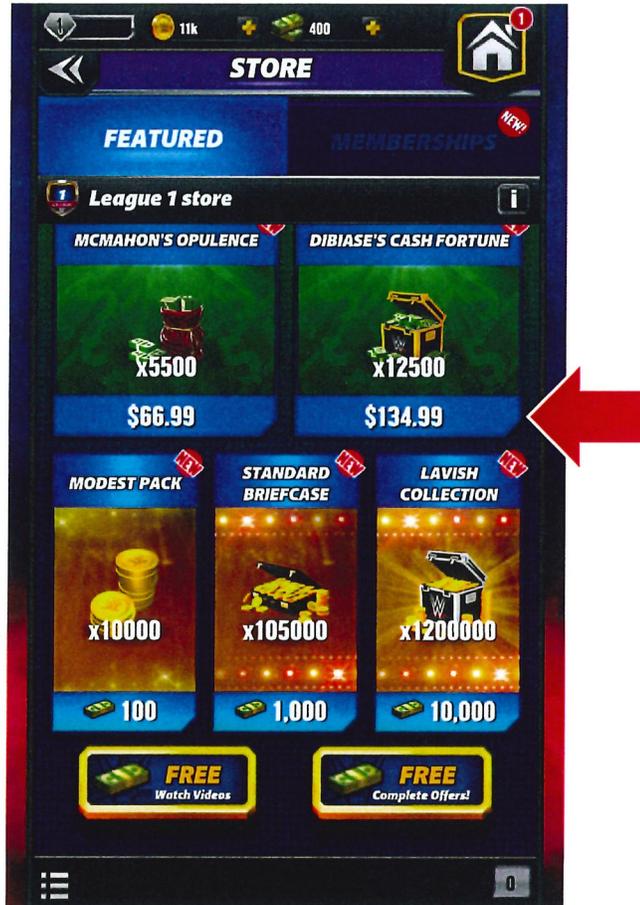


A “Standard Recruit” chest is a Loot Box. To open a “Standard Recruit” Loot Box, a player needs “Recruit Tokens” which can be purchased with “Lanthum”, which can itself be purchased with real money.

42. In “WWE Champions”, players can purchase the right to open Loot Boxes known variously as “Packs”, “Bags”, “Straps”, “Training Posters” and other names. Players can purchase Loot Boxes directly using real money, or with virtual currencies called “cash” and “coins”. These virtual currencies can be acquired for real money.

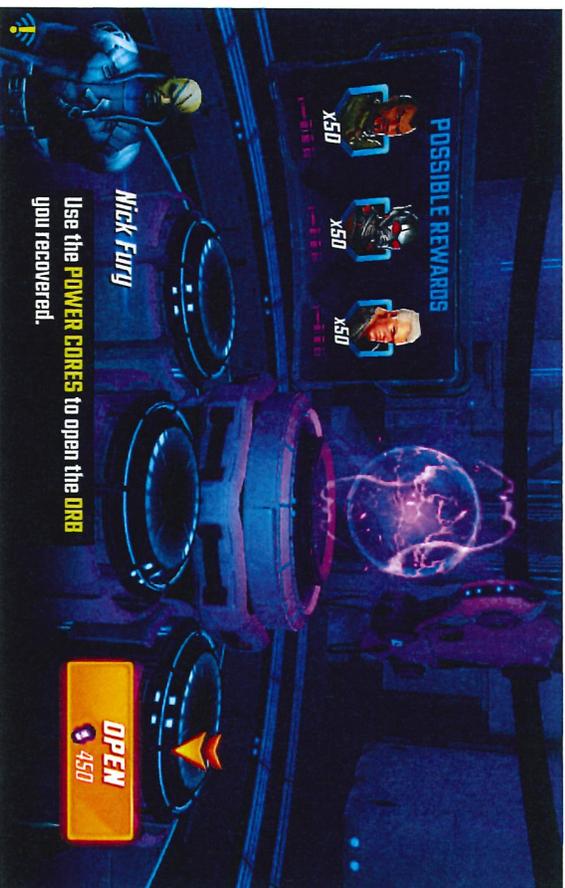


Players can purchase Loot Boxes for real money, or by exchanging virtual currency.



Players can buy virtual currencies with real money.

43. In "Marvel Strike Force", players can purchase the right to open Loot Boxes called "Orbs" which can be purchased in exchange for a virtual currency called "Power Cores". Players can use real money to purchase "Power Cores".



*Players must spend "Power Cores" in order to open Loot Boxes called "Orbs".
Loot Boxes have a random chance of including a specific character.*



Players can acquire additional "Orbs" in exchange for "Power Cores".



Players can purchase “Power Cores” for real money.

44. In “Looney Tunes World of Mayhem”, Loot Boxes take the form of a wheel of chance, a play of which is purchased in exchange for a virtual currency called “Golden Tickets”. Players can also open Loot Boxes called “the Reatomizer” in exchange for a virtual currency called “Illudium”. Both “Golden Tickets” and “Illudium” can be purchased in exchange for a virtual currency called “Gems”. “Gems” can be purchased with real money.



Players can exchange “Golden Tickets” for spins on the wheel of chance.



Players can exchange “Illudium” for random rewards in the “Reatomizer”.

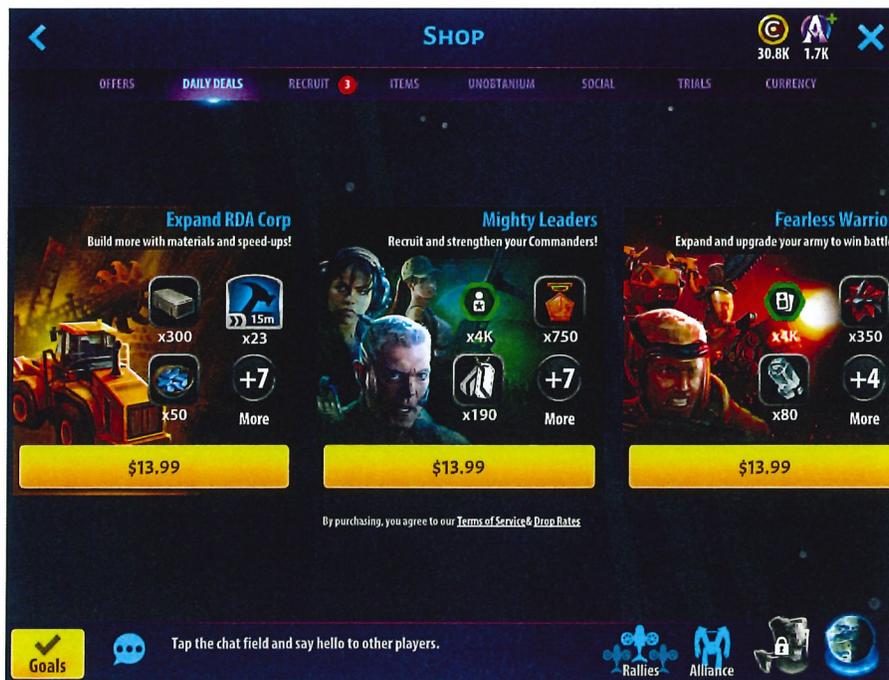


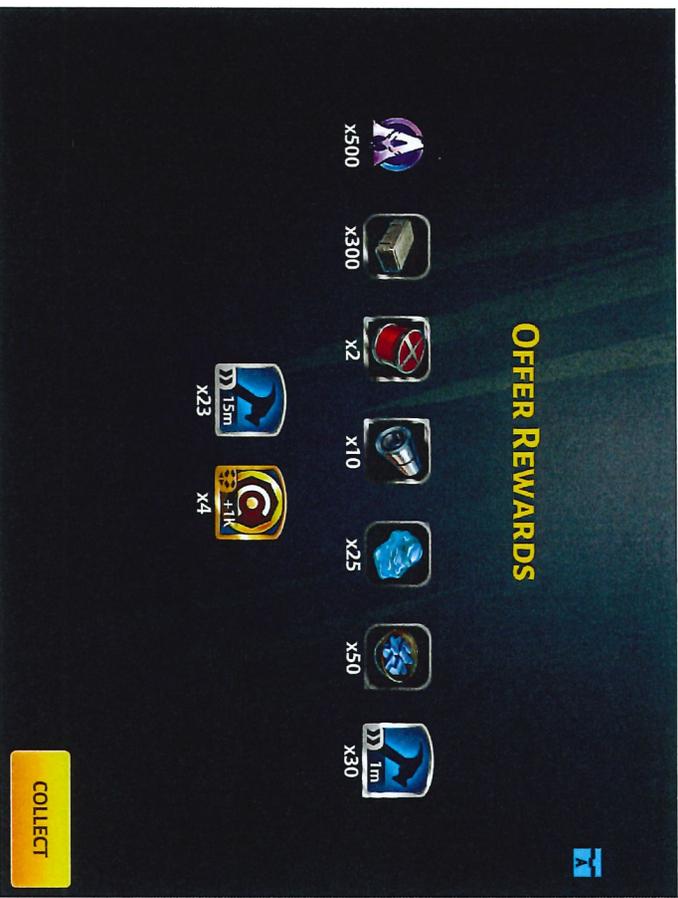
“Golden Tickets” and “Illudium” can be purchased in exchange for “Gems”.



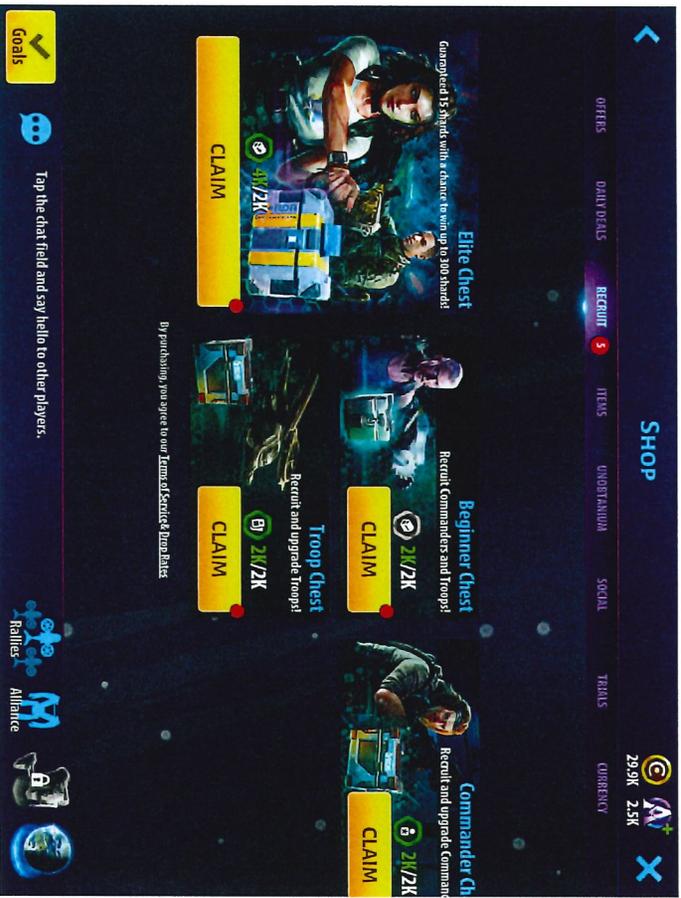
Players can purchase “Gems” for real money.

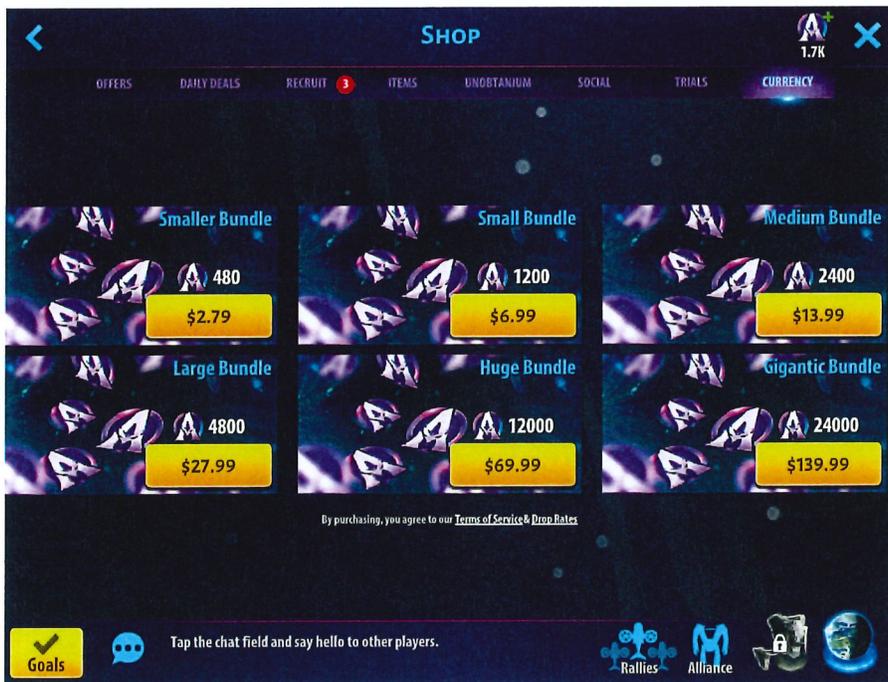
45. In “Avatar: Pandora Rising”, players can purchase the right to open a Loot Box in exchange for real money. For some Loot Boxes that are earned through gameplay, a player can spend a virtual currency in order to open the Loot Box multiple additional times. This virtual currency can be purchased with real money.





These Loot Boxes can only be purchased for real money. A player can only see a sample of the potential awards contained within the Loot Box before committing to the purchase.



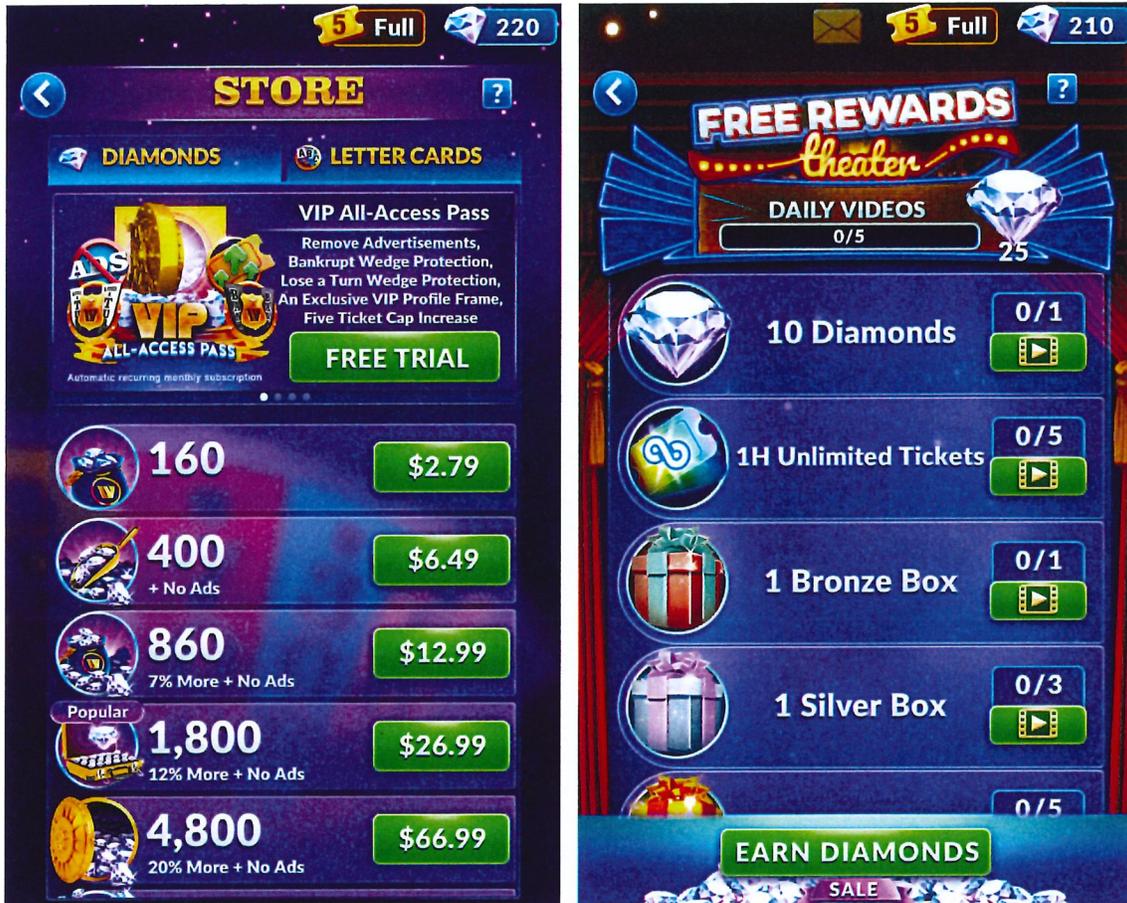


A player earns this Loot Box by playing the game, but has the option to open it multiple additional times in exchange for a virtual currency that can be purchased with real money.

46. In “Scrabble Go”, players can purchase the right to open Loot Boxes called “Bundles” in exchange for a virtual currency called “Gems” that can be purchased with real money.



47. In “Wheel Of Fortune Free Play”, players can indirectly purchase the right to open Loot Boxes won in bonus rounds of the game. The first opportunity to open a Loot Box is free upon successful completion of the bonus round. If a player fails to win the bonus round, they can spend virtual currency called “Diamonds” for additional chances to win the bonus round and access the Loot Box. “Diamonds” are purchased with real money or are earned by watching advertising videos from which the Defendant derives revenue. These Loot Boxes contain collectible items, which a player collects for fun.



48. In the three games “Yahtzee With Buddies”, “Dice With Buddies”, and “Dice With Ellen”, players can purchase the right to open Loot Boxes in the form of virtual “scratch & win” tickets, which can be purchased directly with real money or with a virtual currency called “dice” or “bonus rolls” which are virtual currencies that can be purchased with real money.



49. The Defendant's 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 Defendant 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*.

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

Unlawful Gaming

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

- a. The Walking Dead: Road to Survival;
- b. Star Trek Fleet Command;
- c. WWE Champions;
- d. Marvel Strike Force;
- e. Looney Tunes World of Mayhem;
- f. Avatar: Pandora Rising;
- g. Scrabble Go;
- h. Yahtzee With Buddies;
- i. Dice With Buddies;
- j. Dice With Ellen;
- k. Wheel Of Fortune Free Play; and

1. Such other games developed and published by the Defendant that may become known to the Plaintiff.

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

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

54. The Plaintiffs and Class Members have an interest in the funds received by the Defendant as a result of the Takings.

55. The Defendant has wilfully concealed the unlawful nature of their enterprise from the Plaintiffs and Class Members.

Regulatory Enforcement

56. 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.

57. At the time this action is filed, the Defendant's misconduct continues in Canada.

Part 2: RELIEF SOUGHT

58. An order certifying this action as a class proceeding;

59. An accounting and restitution of the benefits received by the Defendant in the full amount of the Takings;

60. In the alternative, disgorgement of the benefits received by the Defendant on account of the wrongdoing;

61. Damages under the *Competition Act*, s 36;

62. A declaration that the Defendant has contravened the *Business Practices and Consumer Protection Act*, SBC 2004, c 2 ("*BPCPA*"), ss 4, 5, 8 and 9; the *Consumer Protection Act*, RSA 2000, c C-26.3 ("*Alberta CPA*"), ss 5 - 6; 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;

63. A statutory injunction under the *BPCPA*, s 172(1)(b) and related provincial consumer protection statutes to restrain the breaches of the *BPCPA*;

64. A restoration order under the *BPCPA*, s 172(3); damages or, alternatively, restitution under the *Alberta CPA*, s 7(3) or 13(2); 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;

65. 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;

66. Statutory compensation under the *Infants Act*, s 20 and related enactments;

67. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;
68. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Unjust Enrichment

69. As set out above, the Defendant has been enriched by the collection of the Takings from the Plaintiffs and Class Members.

70. The Plaintiffs and Class Members have been deprived through the payment of the Takings to the Defendant.

71. There is no juristic reason why the Defendant should have received or should retain this benefit. The Defendant's violations of the *Criminal Code*, Part VII, the *Gaming Control Act*, SBC 2002, C-14, the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1, the *Gaming Control Act, 1992*, SO 1992, c 24, the *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 Defendant should have received or should retain this benefit, including any contract. Any alleged contracts by which the Defendant obtained these benefits are void and unenforceable.

72. In particular, the Defendant's conduct in selling the right to open Loot Boxes in the Affected Titles constitutes the keeping of gaming or betting houses by the Defendant contrary to s 201(1) of the *Criminal Code*, especially as concerns the Defendant's 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.

73. Further and in the alternative, the Defendant's 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 Defendant:

- 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).

74. Further and in the alternative, the Defendant's 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*.

75. Further and in the alternative, the Defendant's 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*.

76. Further and in the alternative, the Defendant's 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*.

77. Further and in the alternative, the Defendant's 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*.

78. Further and in the alternative, the Defendant's 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*.

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

80. Further and in the alternative, the Defendant has 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 Defendant is a "gaming services provider". By the Defendant's conduct described herein, and especially their failure to obtain required licenses, the Defendant has violated the *Gaming Control Act*, ss 94-95 and 97; the *Gaming, Liquor and Cannabis Act*, s 36; 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.

81. As a result of its actions, the Defendant has been unjustly enriched by the benefits received from the Plaintiffs and Class Members.

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

83. In the alternative, justice and good conscience require that the Defendant 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 Alberta CPA, the Ontario CPA and the Quebec CPA

84. The Defendant has breached the *BPCPA*.

85. The Plaintiff Lussier 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*.

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

87. The Defendant is a “supplier”, within the meaning of s. 1 of the *BPCPA*. The *BPCPA* does not require privity of contract between suppliers and consumers.

88. 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*.

89. By the conduct set out above, the Defendant has 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 Defendant knew or ought to have known that offering and operating Loot Boxes within the Affected Titles was unconscionable.

90. In particular, the Defendant's 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).

91. Specifically, the Defendant took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiff Lussier 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 Defendant's 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.

92. Further and in the alternative, per *BPCPA*, s-ss 8(3)(e), the terms or conditions on or subject to which the Plaintiff Lussier and Class Members entered by for the purchase of Loot Boxes from the Defendant 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 Defendant about the lawfulness of the activity.

93. In addition, the Defendant's actions have breached *inter alia* the *BPCPA*, s 4. Specifically, the Defendant's 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).

94. 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 Plaintiff Lussier and Class Members per *BPCPA*, s. 10(1).

95. The Plaintiff Lussier and Class Members have an interest in the funds received from them by the Defendant 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 Plaintiff Lussier 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.

96. As a result of the Defendant's breaches of the *BPCPA*, the Plaintiff Lussier 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 Defendant, under the *BPCPA*, s 172(3)(a).

97. For the same reasons, the Defendant has breached the *Alberta CPA*. The Plaintiff Friesen and Class Members in Alberta are “consumers” within the meaning of the *Alberta CPA*, s 1. The Affected Titles and the Loot Boxes within them are “goods” and “services” within the meaning of the *Alberta CPA*. The Defendant is a “supplier” within the meaning of the *Alberta CPA*. 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 the *Alberta CPA*, s 1.

98. As set out above, by reason of the Defendant’s conduct, the Defendant has breached the *Alberta CPA*, ss 5-6. The Defendant’s actions constitute unfair practices. As a result of the Defendant’s breaches of the *Alberta CPA* the Plaintiff Friesen and Class Members in Alberta are entitled to an award of damages, or alternatively, restitution under the *Alberta CPA*, s 7(3). The Plaintiff Friesen and Class Members in Alberta further plead and rely on ss 1, 2, 2.1, 3, 7(1)-(2), 7(4), 7.2, 7.3, 13, and 16 of the *Alberta CPA*.

99. For the same reasons, the Defendants have breached the *Ontario CPA*. The Plaintiff Doerksen 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.

100. 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 Doerksen and Class Members in Ontario are entitled to an award of damages under the *Ontario CPA*, s 18. The Plaintiff Doerksen and Class Members in Ontario further plead and rely on ss 3, 4, 6, 7, 8 of the *Ontario CPA*.

101. For the same reasons, the Defendants have breached the *Quebec CPA*. The Plaintiff Touchette 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*.

102. 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 Touchette and Class Members in Quebec are entitled to an award of damages under the *Quebec CPA* article 272. The Plaintiff Touchette and Class Members in Quebec further plead and rely on the *Quebec CPA* articles 8, 11.1, 261, 262, 263, 270, and 271.

103. Class Members resident outside British Columbia, Alberta, Ontario, and Quebec plead and rely on *inter alia*: *The Consumer Protection and Business Practices Act*, SS 2013, c C-30.2; *Consumer Protection Act*, CCSM c C200; *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

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

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

106. By the conduct set out above, the Defendant has 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 operation, contrary to *inter alia* the *Ontario CPA*, s 13.1;
- c. Advertising an illegal internet gaming operation, contrary to *inter alia* the *Alberta CPA*, s 9;
- d. 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 provincial policies and standards (together, the “**Advertising Regulations**”);
- e. Failing to take appropriate steps to protect minors, as required by the Advertising Regulations;
- f. Failing to promote responsible gaming, as required by the Advertising Regulations.

107. The Defendant 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 Defendant in the monetization of the Affected Titles, knowingly and recklessly to their material falsity.

108. In addition, the misleading representations by the Defendant 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*.

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

110. The Plaintiffs and Class Members are entitled to recover from the Defendant 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

111. 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.

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

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

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

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

Limitation Period

116. The Defendant 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*.

117. 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 Defendant, or that a court proceeding would be an appropriate means to seek to remedy the injury until this action was filed.

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

119. 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

120. The Plaintiffs and Class Members have the right to serve this Notice of Civil Claim on the Defendant 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.

121. 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:

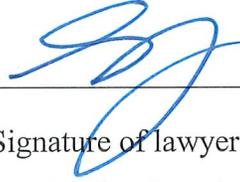
Slater Vecchio LLP
1800 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K4

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: December 18, 2020



Signature of lawyer for plaintiffs

Mathew P. Good **Anthony Vecchio QC**

Co-Counsel for the Co-Counsel for the
Plaintiffs Plaintiffs

Good Barrister **Slater Vecchio LLP**

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 SCOPELY, 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