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No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

SHARISE PETTY AND DAVID STASCH

PLAINTIFFS

and

NIANTIC INC,
WARNER BROS ENTERTAINMENT INC,
WARNER BROS ENTERTAINMENT CANADA INC, AND
WARNER BROS HOME ENTERTAINMENT 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. Through this suit, consumers resident in British Columbia and Alberta seek to hold the Defendant accountable for this unlawful conduct, and to recover their losses.

The Parties

3. The Defendant, Niantic Inc, is a company incorporated under the laws of Delaware. It has an address for service at Incorporating Services Ltd, 3500 South Dupont Highway, Dover, Delaware, 19901. Niantic 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.

4. The Defendant, Warner Bros Entertainment Inc, is a company incorporated under the laws of Delaware. It has an address for service at Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801. Through its divisions Warner Bros Home Entertainment Inc, and Warner Bros Interactive Entertainment (*also known as WB Games*), Warner Bros Entertainment Inc develops, publishes and distributes branded interactive entertainment software. Warner Bros Entertainment Inc is a wholly owned subsidiary of WarnerMedia LLC. Warner Bros Entertainment Inc carries on business in British Columbia, across Canada, and worldwide by developing, marketing, distributing and selling the video games referred to herein, including to residents of British Columbia and Canadians, and collecting from the sales of those products.

5. The Defendant, Warner Bros Entertainment Canada Inc, is a company incorporated under the laws of Ontario. It has an address for service at Suite 1600, 5000 Yonge Street, Toronto, Ontario, M2N 6P1. Warner Bros Entertainment Canada Inc develops, publishes and distributes branded interactive entertainment software. Warner Bros. Entertainment Canada Inc carries on business in British Columbia and Canada.

6. The Defendant, Warner Bros Home Entertainment Inc, is a division of Warner Bros. Entertainment Inc with an address for service at Corporation Trust Center, 1209 Orange St., Wilmington, DE 19801. Warner Bros Home Entertainment Inc carries on business under its own name and through its division Warner Bros Interactive Entertainment (*also known as WB Games*), in British Columbia and Canada by publishing and making available various video games and online services to consumers.

7. Warner Bros Entertainment Inc and Warner Bros Entertainment Canada are both subsidiaries of the larger WarnerMedia LLC, and its parent company AT&T. Warner Bros Interactive Entertainment manages several wholly owned games development studios, including WB Games Montreal, WB Games Boston, Rocksteady Studios Ltd, Monolith Productions, and Portkey Games (a publishing label created specifically for games in the Harry Potter franchise).

8. Together, Warner Bros Entertainment Inc, Warner Bros Entertainment Canada, and Warner Bros Home Entertainment Inc are the “**WB Defendants**”.

9. Together, the Defendant Niantic and the WB Defendants are the “**Defendants**”.

10. The Defendant Niantic developed, published, and distributed Pokémon Go for mobile phones and tablets running Apple’s iOS and Google’s AndroidOS mobile operating systems.

11. The Defendant Niantic and the WB Defendants developed, published, and distributed Harry Potter: Wizards Unite in concert for mobile phones and tablets running Apple’s iOS and Google’s AndroidOS mobile operating systems.

12. The Plaintiff Sharise Petty is a resident of British Columbia. She is a customer of the Defendants. During the Class Period she spent money to purchase the opportunity to open loot boxes in the game Pokémon Go published by the Defendants. She purchased the loot boxes for personal purposes.

13. The Plaintiff David Stash is a resident of Alberta. 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 Pokémon Go published by the Defendants. He purchased the loot boxes for personal purposes.

14. The Plaintiffs bring this claim on their own behalf and on behalf of residents of British Columbia and Alberta who are or were customers of the Defendants, and who during the Class Period purchased or otherwise paid directly or indirectly for loot boxes in any of the following games published by the Defendants:

- a. Pokémon Go;
- b. Harry Potter: Wizards Unite; and
- c. Such other games developed and published by the Defendants that may become known to the Plaintiffs.

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

Digital Games

15. 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**”).

16. 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.

17. 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**”.

18. 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.¹ The Defendant Niantic’s business is focused on Digital Games exclusive to mobile devices (“**Mobile Games**”).

19. 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;*

¹ <https://techcrunch.com/2019/08/22/mobile-gaming-mints-money/>

Call of Duty; PlayerUnknown's Battlegrounds; Fortnite; Star Wars Battlefront), and mobile games (*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.

20. 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.

21. 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.

22. 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.

23. 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).

24. 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”.

25. 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.

26. 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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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

35. 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.

36. 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.

37. 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

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

39. Gaming properly licensed by a provincial government is lawful in the province of license. Alberta and British Columbia regulate gaming through statutes including the *Gaming, Liquor and Cannabis Act*, RSA 2000, c G-1 and the *Gaming Control Act*, SBC 2002, C-14, as well as through regulations including the *Advertising and Marketing Standards for Gambling in British Columbia*.

40. 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.

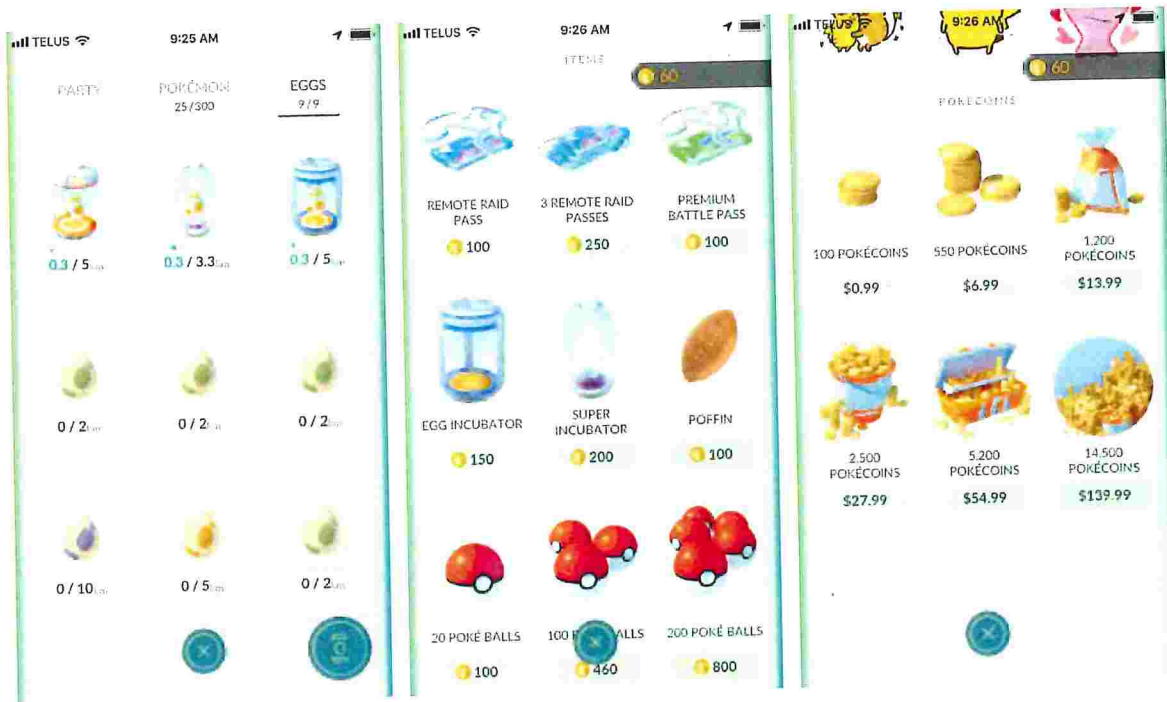
41. The Defendants are not licensed in Canada to operate gambling, gaming or lottery businesses.

The Defendants’ Loot Boxes

42. 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.

43. Loot Boxes in most of the Defendants' Digital Games contain random items and characters that aid the player in competing in the game. Items and characters that provide a larger 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 Defendants. 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.

44. In Pokémon Go, players can purchase the right to open Loot Boxes known as "Eggs". Players accumulate Eggs through gameplay, and must unlock them by placing them in an "Incubator" and then walking a set distance in the real world to "Hatch" them. Players are provided with a single unlimited-use Incubator that can hold a single Egg at a time, and can purchase additional limited-use Incubators for "PokéCoins" in order to Hatch additional Eggs simultaneously. PokéCoins can be purchased for real money. Players accumulate Eggs at a rate that incentivizes the purchase of additional Incubators. Additionally, some Pokémon can only be acquired through Eggs, and the odds of acquiring one of these Pokémon is low, which further incentivizes the use of multiple Incubators at one time. This action is concerned only with Loot Box purchases traced to the expenditure of real money.



Eggs are hatched in Incubators, which can be purchased for PokéCoins, which themselves can be purchased for real money.

45. In Pokémon Go, players can purchase the right to open Loot Boxes known as “Raids”. Raids are special Pokémon battles that multiple players can engage in at the same time, provided they have a “Raid Pass” allowing them to participate. Players are provided one free Raid Pass per day, and can purchase additional Raid Passes as well as special premium Raid Passes for PokéCoins in order to participate in additional Raids per day. PokéCoins can be purchased for real money. If a group of players successfully complete a Raid, they each receive a random assortment of special items as well as a limited number of “Premier PokéBalls” each of which provides a player with a chance to capture the special Pokémon that was the subject of the Raid. This action is concerned only with Loot Box purchases traced to the expenditure of real money.

46. In Harry Potter: Wizards Unite, players can purchase the right to open Loot Boxes known as “Portmanteaus”. Players accumulate Portmanteaus through gameplay, and must unlock them by placing a “Key” in them and then walking a set distance in the real world to open them. Players are provided with a single unlimited-use Golden Key that can open a single Portmanteau at a time, and can purchase additional limited-use Silvery Keys for “Gold” in order to open additional Portmanteaus simultaneously. Gold can be purchased for real money. Players

accumulate Portmanteaus at a rate that incentivizes the purchase of additional Keys. Further, there are different Portmanteaus of various qualities, and a player does not know what kind of Portmanteau they are acquiring when they pick it up. Because a player can hold only eight Portmanteaus at a time, and can only divest themselves of any single Portmanteau by opening it, a player is further incentivized to open multiple Portmanteaus at a time. Each Portmanteau contains a random “Portkey” that takes the player to a minigame that rewards the player with random items and a random piece of a “Foundable”, the collection of which is the object of the game. Certain Foundables can only be found inside certain Portkeys. This action is concerned only with Loot Box purchases traced to the expenditure of real money.



Portmanteaus are opened with Keys, which can be purchased for Gold, which itself can be purchased for real money.



Portmanteaus open to reveal Portkeys which, when completed, reward a player with random items and a piece of a Foundable.

47. In Harry Potter: Wizards Unite, players can purchase the right to open Loot Boxes known as “Runestones”. Runestones allow a player to engage in special “Wizarding Challenges” at “Fortresses” in the game. Typically, multiple players engage in the same Wizarding Challenge at the same time, provided they have a “Runestone” allowing them to participate. Players can accumulate Runestones slowly through gameplay, or purchase them for Gold at any time. Gold can be purchased for real money. If a group of players successfully complete a Wizarding Challenge, they each receive a set rewards, as well as a chance at a random piece of a “Foundable”, the collection of which is the object of the game. Certain Foundables can only be obtained by completing certain Wizarding Challenges. This action is concerned only with Loot Box purchases traced to the expenditure of real money.

48. 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*.

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

Unlawful Gaming

50. 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. Pokémon Go;
- b. Harry Potter: Wizards Unite; and
- c. Such other games developed and published by the Defendant and / or the WB Defendants that may become known to the Plaintiffs.

51. 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.

52. 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.

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

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

Regulatory Enforcement

55. 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.

56. At the time this action is filed, the misconduct of the Defendants continues in Canada.

Part 2: RELIEF SOUGHT

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

58. An accounting and restitution of the benefits received by the Defendants in the full amount of the Takings;

59. In the alternative, disgorgement of the benefits received by the Defendants on account of the wrongdoing;

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

61. 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, RSA 2000, c C-26.3 (“*Alberta CPA*”), ss 5-6, and related provincial consumer protection statutes;

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

63. A restoration order under the *BPCPA*, s 172(3), damages or, alternatively, restitution under the *Alberta CPA*, s 7(3) or 13(2), and damages or restitution under related provincial consumer protection statutes for return of the Takings;

64. 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;

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

66. Interest under the *Court Order Interest Act*, RSBC 1996, c 79;

67. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

Unjust Enrichment

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

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

70. 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, Liquor and Cannabis Act*, RSA 2000, c G-1, 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.

71. In particular, the Defendants' conduct in selling the right to open 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.

72. 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).

73. 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*.

74. 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*.

75. 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*.

76. 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*.

77. 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*.

78. Further and in the alternative, the Defendants' conduct described herein constitutes the carrying on in a public place, or a place to which the public has access, of the game of three-card monte, contrary to s-s 206(h) of the *Criminal Code*.

79. Further and in the alternative, the Defendants' conduct described herein constitutes the receipt of bets on the outcome of a game of three-card monte, contrary to s-s 206(i) of the *Criminal Code*.

80. Further and in the alternative, the Defendants' conduct described herein constitutes the permission of persons to play the game of three-card monte in a place owned by the Defendants.

81. 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*.

82. 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 a "gaming services provider". By the Defendants' conduct described herein, and especially their failure to obtain required licensed, the Defendants have violated the *Gaming Control Act*, ss 94-95 and 97, and the *Gaming, Liquor and Cannabis Act*, s 36.

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

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

85. 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 and the Consumer Protection Act

86. The Defendants have breached the *BPCPA*.

87. The Plaintiff Petty 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*.

88. The Affected Titles and the Loot Boxes within them are "goods" and "services" within the meaning of s. 1 of the *BPCPA*.

89. 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.

90. 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*.

91. 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 Defendant knew or ought to have known that offering and operating Loot Boxes within the Affected Titles was unconscionable.

92. 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).

93. Specifically, the Defendants took advantage of the inability of consumers per *BPCPA*, s-s 8(3)(b), including the Plaintiff Petty 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.

94. Further and in the alternative, per *BPCPA*, s-ss 8(3)(e), the terms or conditions on or subject to which the Plaintiff Petty 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.

95. 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).

96. 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 Petty and Class Members per *BPCPA*, s. 10(1).

97. The Plaintiff Petty 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 Plaintiff Petty 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.

98. As a result of the Defendants' breaches of the *BPCPA*, the Plaintiff Petty 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).

99. For the same reasons, the Defendants have breached the *Alberta CPA*. The Plaintiff Stasch 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 Defendants are each 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.

100. As set out above, by reason of the Defendants' conduct, the Defendants have breached the *Alberta CPA*, ss 5-6. The Defendants' actions constitute unfair practices. As a result of the Defendants' breaches of the *Alberta CPA* the Plaintiff Stasch and Class Members in Alberta are

entitled to an award of damages, or alternatively, restitution under the *Alberta CPA*, s 7(3). The Plaintiff Stasch and Class Members in Alberta further plead and rely on ss 7(1)-(2), 7(4), 7.2, 7.3, 13, and 16 of the *Ontario CPA*.

Breach of the Competition Act

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

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

103. 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 operation, contrary to *inter alia* the *Alberta CPA*, s 9;
- c. Failing to disclose odds of winning, as required by *inter alia* the *Advertising and Marketing Standards for Gambling in British Columbia* and related provincial policies and standards (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.

104. 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.

105. 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*.

106. 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.

107. 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

108. 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.

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

110. 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.

111. 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.

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

Limitation Period

113. 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*.

114. 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.

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

116. 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

117. 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.

118. 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: April 14, 2021

A handwritten signature in blue ink, consisting of a stylized 'V' followed by a long horizontal stroke with a slight curve at the end.

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 Defendants NIANTIC INC, WARNER BROS ENTERTAINMENT INC, WARNER BROS ENTERTAINMENT CANADA, AND WARNER BROS HOME 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