IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hyper Hippo Entertainment Ltd. v. Redcell Games General Partnership,* 2026 BCSC 333

Date: 20260227
Docket: S217364
Registry: Vancouver

Between:

Hyper Hippo Entertainment Ltd.

Plaintiff

And

Redcell Games General Partnership, Redcell Games Inc., AppQuantum Publishing Ltd., Andrew Doll, Navjote Sandhu, Mikael Pomerleau, and Stephen Williams

Defendants

And

Hyper Hippo Entertainment Ltd.

Defendant By Way of Counterclaim

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Plaintiff / Defendant by Counterclaim Hyper Hippo Entertainment Ltd.:	M. Fancourt-Smith K. Andrews
Counsel for Defendant AppQuantum Publishing Ltd.:	J. Cytrynbaum L. Rogers
Counsel for the Defendants Redcell Games General Partnership, Redcell Games Inc., Andrew Doll, Navjote Sandhu, Mikael Pomerleau and Stephen Williams:	D. Dalke S. Wright
Place and Date of Hearing:	Vancouver, B.C. February 2, 2026
Place and Date of Judgment:	Vancouver, B.C. February 27, 2026

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Introduction

[1] By application filed on January 20, 2026, the defendant AppQuantum Publishing Ltd. ("AppQuantum") applies to adjourn the trial of this action, currently set for June 1, 2026, for 25 days. It asks that the trial be reschedule to the earliest mutually convenient date, for 35 days.

[2] The remaining defendants (collectively the "Redcell Defendants") support the application. They filed a lengthy application response which significantly expands upon the reasons for why the trial should be adjourned.

[3] The plaintiff ("Hyper Hippo") raises a preliminary objection regarding the Redcell Defendants' application response and opposes adjournment of the trial.

Background

[4] The plaintiff ("Hyper Hippo") is an online videogame and software development company. It has previously developed a successful "AdVenture" games series, including "AdVenture Communist" and "AdVenture Capitalist".

[5] The individual defendants Messrs. Doll, Pomerleau, Sandhu and Williams (collectively the "Personal Defendants") are former employees of Hyper Hippo. Their employment with it ended between July 2020 and February 2021. It alleges that while so employed, they all breached obligations owed to it under their respective employment agreements and that they breached fiduciary duties by planning and establishing a competing videogame and software development business, starting in or around December 2019. By July 2020, they registered Redcell Games General Partnership ("Redcell GP"). It says they used Hyper Hippo's computer code and other proprietary information to develop a game called Gold and Goblins: Idle Miner ("Gold and Goblins") to compete with it.

[6] Hyper Hippo says the Personal Defendants had employment agreements which included provisions addressing non-disclosure of its proprietary and confidential information and which provide that ownership of any work product and developments they created during their employment vested in Hyper Hippo (the

"NDOA"). Upon leaving Hyper Hippo, each signed a departure letter agreeing to the continuing effect of certain provisions in the employment agreement / NDOA, and agreeing to return Hyper Hippo property to it.

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[7] AppQuantum carries on business publishing and marketing video games. Hyper Hippo alleges that by September 2020, Redcell GP had contacted AppQuantum regarding possible collaboration on Gold and Goblins. By December 2020, Redcell Games Inc. ("Redcell") was incorporated. Each of the Personal Defendants was a director and held 25% of its shares.

[8] By January 2021, Redcell contracted with AppQuantum regarding publication and marketing of Gold and Goblins. The game was successful. By March 31, 2021, it had earned roughly USD $3 million and by April 20, 2021, about USD $7 million.

[9] Hyper Hippo alleges the creation of Redcell was part of a concerted plan by the Personal Defendants to improperly and unfairly compete with it, that they breached a duty of loyalty owed to it, and misused its confidential and proprietary information in order to compete with it. The NDOAs require the Personal Defendants to each assign or transfer ownership of work product or developments to the plaintiff.

[10] Hyper Hippo alleges that Redcell GP and Redcell are impressed with the knowledge of the Personal Defendants regarding the confidential nature of its proprietary information and their misuse of same while developing Gold and Goblins. It says AppQuantum knew or ought to have known that Redcell GP and Redcell were misusing its confidential and proprietary information during the development, testing and publishing of Gold and Goblins, and that by participating with that, AppQuantum became a party to the alleged misuse. Hyper Hippo also advanced a claim in the alternative for breach of copyright in respect of its computer code.

[11] On or about May 31, 2021, Hyper Hippo wrote to defendants, putting them on notice that it considered the development, publishing and sale of Gold and Goblins to be a misuse of its proprietary information and demanding they cease and desist

from doing so, basically by pulling Gold and Goblins off the market. The defendants declined to do so.

[12] Hyper Hippo alleges it has suffered loss, damage and expense and claims for loss of profit, loss of goodwill and reputation, loss of market share and loss of employees, amongst other things.

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Procedural History

[13] On August 13, 2021, Hyper Hippo filed its notice of civil claim.

[14] On October 7, 2021, AppQuantum issued a demand for particulars of the what the plaintiff alleged was the Hyper Hippo Code and Hyper Hippo Proprietary Information (as defined in the notice of civil claim) which was copied or incorporated into Gold and Goblins.

[15] On October 29, 2021, the Redcell Defendants and AppQuantum each filed a response to civil claim in which they deny all of Hyper Hippo's claims.

[16] On November 2, 2021, Redcell and AppQuantum each filed a counterclaim against Hyper Hippo.

[17] On February 1, 2022, Hyper Hippo filed a response to counterclaim to each of the two counterclaims.

[18] On February 28, 2022, Hyper Hippo responded to AppQuantum's October 7, 2021 demand for particulars.

[19] On June 19, 2023, Hyper Hippo produced its initial list of documents, but refused to produce copies of listed documents until a confidentiality order was in place. A consent confidentiality order was eventually pronounced on February 29, 2024.

[20] On April 15, 2024, Hyper Hippo produced copies of its listed documents to the other parties. It subsequently produced amended lists as follows:

a) First amended – November 29, 2024;

b) Second amended – February 10, 2024;
c) Third amended – May 12, 2024;
d) Fourth amended – June 4, 2025;
e) Fifth amended – June 23, 2025;
f) Sixth amended – August 8, 2025;
g) Seventh amended – September 5, 2025; and
h) Eighth amended – December 19, 2025.

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[21] On September 1, 2023, the Redcell Defendants delivered their initial list of documents. It also declined to provide copies of listed documents to Hyper Hippo until after a confidentiality order was pronounced. It eventually produced copies of its listed documents on April 5, 2024. It produced amended lists as follows:

a) First amended – December 23, 2024;
b) Second amended – January 24, 2025;
c) Third amended – February 10, 2025;
d) Fourth amended – June 13, 2025; and
e) Fifth amended – October 6, 2025.

[22] On September 5, 2023, Hyper Hippo filed a notice of trial, returnable February 10, 2025 for 24 days.

[23] On September 19, 2023, the Redcell Defendants issued a demand for particulars to Hyper Hippo.

[24] On September 28, 2023, AppQuantum filed its initial list of documents. Amended lists followed on:

a) First amended - February 2, 2024;
b) Second amended – February 10, 2025;
c) Third amended – February 19, 2025;
d) Fourth amended – June 10, 2025; and
e) Fifth amended – December 9, 2025.

[25] On November 2, 2023, the Redcell Defendants demanded additional documents from Hyper Hippo. On November 30, 2022, Hyper Hippo rejected the demand.

[26] On February 15, 2024, Hyper Hippo responded to the Redcell Defendants' September 19, 2023 demand for particulars. The Redcell Defendants considered the particulars to be inadequate and filed an application seeking further and better particulars.

[27] As previously noted, on February 29, 2024, the consent confidentiality order was pronounced.

[28] On May 31, 2024, the parties spoke to the Redcell Defendants' application for particulars and disclosure of Gold and Goblins source code. On June 14, 2024, reasons were issued dismissing the application for particulars. The application for production of source code was granted.

[29] On August 14, 2024, the Redcell Defendants issued a second demand for particulars, including that Hyper Hippo identify what aspects of Gold and Goblins source code were allegedly copied from "Hyper Hippo Proprietary Information". By this time, Gold and Goblins source code had been produced.

[30] In September 2024, Hyper Hippo conducted two partial examinations of defendants Mr. Williams and Mr. Doll.

[31] On January 13, 2025, a case plan order was pronounced which included a term requiring all parties to provide responses to outstanding discovery requests from future discoveries within 60 days after receipt of the transcript.

[32] In or about December 2024, the February 10, 2025 trial date was adjourned by consent. All parties agreed the case was not ready for trial. On December 16, 2024, Hyper Hippo filed a new Notice of Trial, setting the current trial June 1, 2026 trial date.

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[33] In February and March 2025, Hyper Hippo conducted partial examinations of Mr. Pavlyuk as representative of AppQuantum, and the defendants Mr. Pomerleau and Mr. Sandhu. Also in March 2025, AppQuantum and the Redcell Defendants conducted a partial examination of Mr. Fisher as representative of Hyper Hippo. On March 24, 2025, transcripts of the examinations of Mr. Fisher and Mr. Pavlyuk were received. A total of 198 requests had been left with Mr. Fisher; 150 by the Redcell Defendants and 48 by AppQuantum.

[34] On June 4, 2025, Hyper Hippo provided responses to Mr. Fisher’s discovery requests. On June 6, 2025, the Redcell Defendants advised that some responses to Mr. Fisher’s requests had either not been answered or were incomplete. On August 8 and 29, 2025, Hyper Hippo provided further responses to Mr. Fisher’s outstanding discovery requests.

[35] On September 19, 2025, the Redcell Defendants filed an application to compel Hyper Hippo to provide a response to their August 14, 2024 demand for particulars. On September 26, 2025, Hyper Hippo provided particulars.

[36] On September 29, 2025, Hyper Hippo sent a proposed amended notice of civil claim to the defendants.

[37] On October 10, 2025, AppQuantum and Redcell Defendants canvassed dates for a continuation of the examination of Mr. Fisher. On November 11, 2025, Hyper Hippo responded with available dates.

[38] On October 30, 2025, the Redcell Defendants and AppQuantum each consented to Hyper Hippo filing its amended notice of civil claim, on the basis that this was without prejudice to any defences they might raise in response to it. Counsel for the Redcell Defendants raised a concern that a previously agreed 14 hours of examination for discovery time might not be sufficient in view of the amendments and suggested the amendments could also put the June 1, 2026 trial date in jeopardy.

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[39] On November 19, 2025, Hyper Hippo issued a demand for particulars to AppQuantum.

[40] On November 26, 2025, Hyper Hippo filed its amended notice of civil claim. The amendments include:

a) Setting out the text of the assignment of work product and ownership of developments language in the NDOA agreements;

b) Addition of allegations that the Personal Defendants refused to transfer ownership of work product and developments to Hyper Hippo;

c) Addition of an allegation that Hyper Hippo's proprietary information and computer code had been used in the visuals and game design of Gold and Goblins;

d) Addition of allegations that the loss and damage it suffered also included:

   i. Loss of profit, value and other benefits which it could have received from ownership of the Personal Defendants' interests in Gold and Goblins; and

   ii. Loss of opportunity to develop and release Gold and Goblins, with the associated profit and benefits accruing therefrom;

e) Under Part 2, Relief Sought, addition of:

   i. Claims for declaratory relief, including that the Personal Defendants breached their agreements and duties owed to Hyper Hippo, that they misused its proprietary information or alternatively infringed its copyright in certain code, that Gold and Goblins or some portion of it belongs to Hyper Hippo, and that any contract made by the Redcell Defendants concerning Gold and Goblins was void;

   ii. A request for an order that the Redcell Defendants transfer their interest, right and title in Gold and Goblins to Hyper Hippo; and

   iii. A claim for general damages.

f) Under Part 3, Legal Basis, addition of allegations that the breaches by the Personal Defendants included breach of their duties of loyalty, fidelity and good faith, allegations they failed to complete work for Hyper Hippo as required, that they lied to and deceived it regarding their conduct and

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intentions, that they solicited Hyper Hippo employees for employment, and failed to transfer their interest in Gold and Goblins to Hyper Hippo.

[41] On December 9, 2025, AppQuantum provided its response to Hyper Hippo's demand for particulars.

[42] On December 12, 2025, Hyper Hippo issued a second demand for particulars to AppQuantum. On that same day, the Redcell Defendants wrote to Hyper Hippo demanding production of documents related to the new issues raised in the amended notice of civil claim.

[43] On December 16, 2025, the Redcell Defendants served a demand for particulars on Hyper Hippo.

[44] On December 18, 2025, counsel for Hyper Hippo proposed that the trial be extended by 10 days. All counsel agreed at the time that the number of days currently reserved was not adequate.

[45] On December 24, 2025, counsel for Hyper Hippo responded to the December 12, 2025 demand, suggesting there were no significant new issues raised in the amended notice of civil claim. They also said they would vigorously oppose any attempt to adjourn trial based on the amended notice of civil claim.

[46] On December 29, 2025, Hyper Hippo filed a case plan proposal in which it confirmed the parties agreed that an additional 10 trial days would be appropriate.

[47] On January 2 and 6, 2026, the Redcell Defendants and AppQuantum filed each amended responses to the amended civil claim. Also on January 6, 2026, AppQuantum provided its response to Hyper Hippo's second demand for particulars.

[48] On January 7, 2026, the parties attended a case planning conference. A case plan order was made which includes:

a) The application to adjourn trial was to be filed by January 20, 2026 and heard between February 2-4, 2026;

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b) Parties were to complete the next round of examinations by March 13, 2026;

c) Responses to outstanding requests made at continued examinations are due within 45 days of receipt of the transcript;

d) The deadline for service of expert reports was extended from March 9, 2026 to April 16, 2026;

e) The parties were to attend a further case planning conference on March 5, 2026.

[49] On January 8-9, 2026, the parties attended mediation, but unfortunately it was not successful.

[50] On January 9, 2026, Supreme Court Scheduling advised the parties that it was not possible to add the 10 additional trial days requested.

[51] On January 14, 2026, counsel for the Redcell Defendants responded to counsel for Hyper Hippo’s December 24, 2025 correspondence, disagreeing with the proposition that no significant new issues had been raised in the amended notice of civil claim and reiterating that significant additional document disclosure from Hyper Hippo would be necessary. Also on this date, Hyper Hippo provided particulars of the Hyper Hippo “visuals” it alleges were improperly used in Gold and Goblins. The Redcell Defendants have indicated they take the view this response is insufficient and they intend to apply for further particulars of the amended notice of civil claim.

[52] On January 16, 2026, Hyper Hippo delivered a proposed further amended notice of civil claim, which narrows the scope of its claim. The amendments include (i) withdrawal / abandonment of its breach of copyright claim, (ii) striking “visuals” from the new elements added in the amended notice of civil claim, namely elements from the plaintiff’s AdVenture Communist and Adventure Capitalist games which it alleges were copied or derived and incorporated into Gold and Goblins. It suggested that this amendments would reduce the amount of time required for trial, such that the trial can complete within the 25 days currently reserved.

[53] On January 19 and 20, 2026, the Redcell Defendants continued their examination of Mr. Fisher. On March 4, 2026, Hyper Hippo has scheduled a

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continuation of its examination of Mr. Pavlyuk. On March 6, 2026, AppQuantum has scheduled a continuation of its examination of Mr. Fisher. On February 12, 12, 24 and March 9, 2026, Hyper Hippo scheduled continuations of its examination of the four Personal Defendants.

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[54] As noted, the modified deadline for exchange of primary expert reports is April 16, 2026, and trial is scheduled to start on June 1, 2026.

Applicable Law

[55] Rule 12-1(9)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 ("SCCR") provides the court may order the adjournment of a trial. The test for adjournment is set out in *Navarro v. Doig River First Nation*, 2015 BCSC 2173 [*Navarro*], at paras. 18-20:

> [18] A judge exercises discretion when an adjournment is sought and has wide powers in relation to the order that is made (*Cal-Wood Door v. Olma*, [1984] B.C.J. No. 1953 at para. 13 (C.A.) (*Cal-Wood Door*)). The discretion must, of course, be exercised judicially in accordance with appropriate principles (*Dhillon v. Virk*, 2014 BCSC 745 at para. 8 (*Dhillon*)). The exercise of discretion is a delicate and difficult matter that addresses the interests of justice by balancing the interests of the plaintiff and of the defendant (*Sidoroff v. Joe* (1992), 1992 CanLII 1815 (BC CA), 76 B.C.L.R. (2d) 82 at paras. 8-11 (C.A.) (*Sidoroff*)). This balancing requires a careful consideration of all of the elements of the case including the nature of the proceedings and the parties (*Sidoroff* at para. 10). The Court of Appeal will be extremely reluctant to interfere with a decision of a trial judge on an adjournment matter which is integral to exercise of judicial discretion (*Sidoroff* at para. 11; *Toronto-Dominion Bank v. Hylton*, 2010 ONCA 752 at para. 36 (*Toronto-Dominion Bank*)).
>
> [19] There are numerous factors to be considered on an adjournment application. However, the paramount consideration is the interest of justice in ensuring that there will remain a fair trial on the merits of the action (*Cal-Wood Door* at para. 13; *Graham v. Vandersloot*, 2012 ONCA 60 at para. 12 (*Graham*)). Because the overall interests of justice must prevail at the end of the day, courts are generous rather than overly strict in granting adjournments, particularly where granting the request will promote a decision on the merits (*Graham* at para. 12). The natural frustration of judicial officials and opposing parties over delays in processing civil cases must give way to the interests of justice, which favours a claimant having his day in court and a fair chance to make out his case (*Graham* at para. 12).
>
> [20] Other factors or considerations include (in no particular order of priority):

> • the expeditious and speedy resolution of matters on their merits (Rule 1-3(1); *Sidoroff* at para. 10);
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> • the reasonableness of the request (*Dhillon* at para. 16);
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> • the grounds or explanation for the adjournment (*Dhillon* at para. 16; *Toronto-Dominion Bank* at para. 38);
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> • the timeliness of the request (*Dhillon* at para. 16);
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> • the potential prejudice to each party (*Dhillon* at paras. 16-17);
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> • the right to a fair trial (*Dhillon* at para. 16);
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> • the proper administration of justice (*Dhillon* at paras. 16 and 39; *Toronto-Dominion Bank* at para. 36);
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> • the history of the matter, including deliberate delay or misuse of the court process (*Toronto-Dominion Bank* at para. 38); and
>
> • the fact of a self-represented litigant (*Toronto-Dominion Bank* at para. 39).

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Position of the Parties

AppQuantum

[56] AppQuantum says this case is complex, involves commercial, employment and intellectual property law issues concerning computer code, visuals and game design. It estimates Hyper Hippo may be claiming damages of about $140 million. Redcell and AppQuantum are each pursuing counterclaims. Thus far, the parties have listed and produced multiple thousands of pages worth of documents.

[57] AppQuantum argues this matter is not ready for trial. The pleadings are not yet settled. Document discovery and examinations for discovery are not yet completed. It is not possible to properly finalize expert evidence within the remaining time leading up to the current expert report deadline and trial date.

[58] The amended notice of civil claim filed November 26, 2025 added new factual allegations, including that the Redcell Defendants copied “visuals” and “game design” from Hyper Hippo’s AdVenture games and used them in Gold and Goblins. It alleges the Personal Defendants solicited Hyper Hippo employees to work for Redcell and that they failed to compete work for Hyper Hippo. The new allegations require further document discovery, examination for discovery and development of expert evidence, particularly for the visuals and game design allegations.

[59] It says the amended notice of civil claim expands the relief sought in a qualitatively different way. Hyper Hippo now seeks as one of the remedies, a transfer of ownership of Gold and Goblins from Redcell to Hyper Hippo, voiding of any contracts between Redcell and others regarding Gold and Goblins, damages for loss of opportunity to develop and release Gold and Goblins, and damages for loss of profit, value and other benefits that Hyper Hippo would have received from ownership of Gold and Goblins.

[60] Further complicating matters is the fact that Hyper Hippo has delivered a proposed further amended notice of civil claim with yet more changes. It seeks to abandon copyright claims which have been a large feature of its claim for the preceding four years. It characterizes Hyper Hippo's claim as "continuously evolving" and a moving target. Rather than shortening trial, AppQuantum suggests withdrawal of the copyright claim may make consequential changes to the defendants' respective counterclaims appropriate, and this could actually mean an even longer trial is necessary. There is not sufficient time between now and June 1 to carry out all consequential analysis, document discovery, examinations and to arrange appropriate adjustments to expert reports.

[61] AppQuantum says in December 2025, Hyper Hippo acknowledged that ten additional hearing days are needed for trial, however, Supreme Court Scheduling has advised they are not available. Even if they were, AppQuantum's counsel is also not available for the proposed extension period. The defendants have also indicated they are opposed to any bifurcation of the trial, which Hyper Hippo suggested at the last case planning conference.

[62] The parties exchanged expert reports on a without prejudice basis for the mediation. These were not "trial ready" reports. AppQuantum expects there will be between 8-10 expert reports at trial. It may not be possible to finalize some reports until document discovery and examinations are complete.

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Redcell Defendants

[63] The Redcell Defendants support AppQuantum's application to adjourn trial. They agree that the case is not ready for trial. They suggest that historically Hyper Hippo was not in any particular rush to advance its claim, noting that it took 18 months after it started the action for the plaintiff to produce its initial list of documents. Document discovery and examinations are not complete. Hyper Hippo filed its amended notice of civil claim more than four years after it started this action, and just over six months before the scheduled trial date. The amendments materially expand the issues in dispute.

[64] The new allegations are framed broadly, which has made it necessary for the Redcell Defendants to demand particulars so they can know what they are alleged to have done wrong and the case they have to meet. Hyper Hippo has refused to provide quantification of its alleged loss of opportunity, profits and benefits. Its recent announcement that it intends to abandon copyright and visuals claims emphasizes that the pleadings are still in a state of flux. The Redcell Defendants are still assessing the implications of the proposed amendments, but they suggest the amount of time required for trial is unlikely to decrease.

[65] They note the January 7, 2026 case plan order requires that parties provide responses to future discovery requests within 45 days from receipt of the transcript. This means that responses to requests from the January continuation of the examination of Mr. Fisher are likely to be provided by mid-March, the responses from February continuations by about the end of April. This is just one month before the start of trial and falls after the deadline for exchange of primary expert reports.

[66] The Redcell Defendants complain that Hyper Hippo's representative for discoveries was not properly prepared or able to answer questions, technical ones in particular. This resulted in numerous information requests were made so he could inform himself by consulting others in the company. This has made the discovery process inefficient and cumbersome, and has frustrated their ability to conduct meaningful discovery. They suggest that further discovery may be necessary, and

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ideally with a different representative. If Hyper Hippo refuses to agree, a contested application for additional time and leave to examine a new Hyper Hippo representative may be necessary.

[67] The Redcell Defendants say they expect to serve three different expert reports focused on game design, computer code and financial loss. The January 7, 2026 case planning order shortened the time for service of expert reports by 38 days. It did not address timing for service of responding reports. Absent modification, the adjusted deadline would be April 20, 2026, which is only four days after the primary report deadline. If the deadline for responding reports is also modified by 38 days, that would means they have to be served by May 28, 2026, which his one business day before trial starts. Either way, there is inadequate time to do all that is necessary prior to the current trial date.

Hyper Hippo

[68] Hyper Hippo argues that AppQuantum's application lacks specifics. It asserts that further document discovery is required, but fails to identify specific documents which are lacking or say why they are needed. It complains examinations are not yet complete, but AppQuantum's own counsel selected the discovery continuation dates declined offers of earlier ones. It also fails to identify what areas have yet to be covered. AppQuantum argues the amended notice of civil claim materially expands the matters in issue, but it has had the amended pleading in hand since late September 2025, and the new claims are made primarily against the Redcell Defendants, not AppQuantum. Hyper Hippo says the one item of relief which does impact AppQuantum, the request to void contracts which the Redcell Defendants have entered into regarding Gold and Goblins, is not one which requires any factual investigation. Meanwhile, the Redcell Defendants, who are more significantly impacted by the amendments, did not file their own application to adjourn trial. It argues the amended notice of civil claim does not actually expand the case in the way that the defendants allege, and there are no genuine issues of trial fairness or prejudice which justify a second adjournment of trial.

[69] Hyper Hippo acknowledges it did not produce its initial list of document until June 19, 2023, but emphasizes that the review and listing process was complex and time consuming due to the volume and nature of the documents involved. It had reviewed about 27,500 documents by December 2022, and its initial list included 864 documents. It started the document review process in early 2022.

[70] It says it was the defendants who dragged their feet on document production:

a) The Redcell Defendants did not produce their initial list until September 1, 2023, consisting of 279 documents. Their list was "underinclusive" and included snapshots of Slack messages between the Personal Defendants rather than production the message in a native format. After much prompting, it took until June 13, 2025 for them to produce hundreds of additional Slack messages in appropriate format. Many of these were highly relevant and significant. It also notes they inexplicably delayed producing Gold and Goblins source code, even after the February 29, 2024 confidentiality order had been pronounced, thereby forcing Hyper Hippo to apply for an order compelling production of source code, which was granted June 14, 2024;

b) AppQuantum did not produce its initial list of documents until September 28, 2023. As of August 2023, it had acknowledged not yet having collected documents from relevant custodians. Its first list was "plainly underinclusive", making it necessary for Hyper Hippo to repeatedly press for proper production.

[71] Hyper Hippo rejects the suggestion that Mr. Fisher, who is CEO of the plaintiff, was not an appropriate representative for discovery and had not properly prepared for the examination.

[72] Hyper Hippo says the belated production of Slack messages in June 2025 is what drove the timing of its preparation of the amended notice of civil claim. The messages demonstrated the scope and severity of the Personal Defendants' breaches of their NDOAs and breaches of duties owed to Hyper Hippo. The plaintiff was delayed in sharing them because the Redcell Defendants had claimed the messages contained "counsel's eyes only" information. It was not until September 5, 2025 that the Redcell Defendants abandoned the counsel's eyes only designations

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for many of the messages. The proposed amended notice of civil claim was delivered to the defendants on September 29, 2025. It took until late November 2025 for the parties to reach agreement on the terms under which the defendants would consent to the amended notice of civil claim being filed.

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[73] Hyper Hippo disputes the defendants' characterization of the newly added facts, relief sought and legal basis in the amended notice of civil claim. It denies that any new causes of action have been added, saying it has only further particularized existing facts and legal allegations which already appear in the original notice of civil claim. The new relief sought flows from the causes of action and issues previously pled. It stresses that there are no new claims in relation to AppQuantum in particular.

[74] Hyper Hippo notes the December 12, 2025 letter issued by counsel for the Redcell Defendants raising procedural concerns arising from the amended notice of civil claim and demanding production of additional documents was sent nearly three months after they received the proposed amended notice of civil claim. On December 19, 2025, Hyper Hippo produced a further amended list of documents which included some which are responsive to the December 12, 2025 demand. It takes the position that the remaining demands are overbroad. It promised to conduct a further document search and provide an update by February 10, 2026.

[75] On January 16, 2026, Hyper Hippo delivered a proposed further amended notice of civil claim which contemplates withdrawing its claim of copyright infringement and the new copying of visuals allegation. The Redcell Defendants responded to this on January 23, 2025 by welcoming the withdrawal of the copyright claim, but seeking additional information and clarification.

[76] With respect to examinations, it notes the Redcell Defendants continued their examination of Mr. Fisher on January 19 and 20, 2026. They have examined him for a total of 17 hours. AppQuantum chose to schedule its continuation of its examination for March 6, 2026, despite Hyper Hippo advising he was generally available in January and February.

[77] Hyper Hippo notes the parties exchanged significant information for the mediation which occurred on January 8 and 9, 2026, through detailed mediation briefs setting out the parties' positions, and the exchange of preliminary expert reports.

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Analysis

Preliminary Objection

[78] Hyper Hippo objects to the Redcell Defendants' application response, saying it breaches Rule 8-1(10) by improperly amplifying the grounds for AppQuantum's application, by advancing additional arguments in favour of adjournment and by tendering additional supporting evidence. Doing so is improper, contrary to the letter and spirit of the *SCCR* and ought not to be permitted. In argument, counsel said many of the reasons AppQuantum gives for why an adjournment is necessary are actually Redcell Defendants' issues which do not actually affect AppQuantum's ability to be ready for trial.

[79] Rule 8-1(10) is as follows:

> **Contents of application response**
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> (10) An application response must be in Form 33, must not exceed 10 pages in length and must
>
> > (a) indicate, for each order sought on the application, whether the application respondent consents to, opposes or takes no position on the order, and
> >
> > (b) if the application respondent wishes to oppose any of the relief sought in the application,
> >
> > > (i) briefly summarize the factual and legal bases on which the orders sought should not be granted,
> > >
> > > (ii) list the affidavits and other documents to which the application respondent intends to refer at the hearing of the application, and
> > >
> > > (iii) set out the application respondent's estimate of the time the application will take for hearing.

[80] I agree that the Redcell Defendants have used their application response to support and significantly expand on AppQuantum's application. This is not

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something which subrule (10) contemplates be done via an application response. The provisions in subrule (10)(b) allow a responding party who wishes to oppose any of the relief sought to raise factual and legal bases for doing so, tender evidence, *etc*. The Redcell Defendants do not oppose the relief sought by AppQuantum. Technically, the Redcell Defendants should have raised their extensive additional factual and legal arguments through a parallel application to adjourn the trial.

[81] That said, in this instance, AppQuantum and the Redcell Defendants have clearly coordinated their efforts for this application. AppQuantum's application was filed on January 20, 2026 (16 pages) and it selected a February 2, 2026 hearing date. The Redcell Defendants' application response was filed on January 22, 2026 (19 pages). Hyper Hippo did receive adequate notice of both of these documents and supporting materials before it had to prepare its application response, which it filed on January 27, 2026 (14 pages). Hyper Hippo's response ably responds to all significant factual and legal points raised by both AppQuantum's application and the Redcell Defendants' response.

[82] At the hearing, I informed counsel for Hyper Hippo that if they felt they required additional time to respond to the points raised in the Redcell Defendants' response, I would adjourn the hearing to allow them to do so. Counsel for Hyper Hippo declined that offer and preferred to proceed with a hearing on the merits.

[83] In my view, it is clear that AppQuantum's application involves a coordinated effort as between it and the Redcell Defendants to seek adjournment of the trial. There is little to be gained by prioritizing form over substance by requiring Redcell to cut and paste the contents of it application response into a parallel notice of application which seeks the same relief that AppQuantum is seeking. All parties been able to present the factual and legal arguments they wish to make. Hyper Hippo, as the party opposing adjournment, has had adequate notice of all contrary positions and materials. It has been able to give a full response to them. In all the

circumstances, I dismiss Hyper Hippo's preliminary objection and will proceed to also consider the additional points raised by the Redcell Defendants.

Expeditious and speedy resolution of matters on their merits

[84] Neither party expressly addressed this factor in argument. Through their arguments, AppQuantum and Redcell were emphasizing that if trial proceeds as scheduled, they will not be in a position to properly defend the claims against them on the merits. Hyper Hippo disputes this and emphasizes that if trial is adjourned, any new trial date will be 18+ months away and that such a delay in obtaining a remedy while the defendants continue to be able to deal with Gold and Goblins would prejudice it.

[85] This is clearly a complex case and the timeframe involved here is not all that unusual, particularly where the claim continues to evolve in a significant manner. I consider this factor to be neutral.

Reasonableness of the request / Grounds or explanation for the adjournment

[86] AppQuantum says its request for adjournment is reasonable and justified, for the reasons previously stated. The Redcell Defendants agree with AppQuantum's position. The need for an adjournment flows from Hyper Hippo's late amendment of its notice of civil claim. The changes make further discovery and development of new expert evidence essential for there to be a fair trial. There is not adequate time remaining before June 1, 2026 to complete all that needs to be done. Hyper Hippo's proposed further amendments announced January 16, 2026 would make additional significant changes to its claim. This is a complex claim involving claims valued at around $140 million, and now also involving a claim for transfer of ownership of Gold and Goblins. Proportionality favours allowing all parties adequate time to properly prepare for trial.

[87] Hyper Hippo denies that there are any outstanding document requests. It has already produced extensive documentation which is responsive to the Redcell Defendants' most recent demand and it was working diligently to meet a February

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10, 2026 deadline to announce the outcome of its ongoing document search. It argues the amendments are not as significant as the defendants suggest, characterizing them as being more in the nature of further particulars of original claims. Any additional examinations which may be necessary can be accommodated within the time remaining prior to June 1. Hyper Hippo denies that it withdrawing its copyright claim can be a proper basis for adjourning the trial. That will reduce the number of issues to be addressed at trial. It insists that 25 days will be sufficient. The fact that there are ongoing documentary and oral discoveries at roughly 4 months prior to trial is unexceptional. If AppQuantum is concerned about the timing of its continuation of its examination of Mr. Fisher, it could have selected an earlier date.

[88] I am persuaded that the grounds and explanation for the request to adjourn trial are reasonable. The November 2025 amendments to the claim do constitute a material change which appear to justify additional document discovery, examination for discovery and development of additional expert evidence. The further amendments announced on January 16, 2026 also create significant uncertainty. That amendment has not yet been finalized. While I accept that withdrawal of copyright claims will likely shorten the overall time required for trial, it is not at all clear that the savings would amount to 10 hearing days, as urged by plaintiff's counsel. Redcell and AppQuantum mention the possibility that this latest amendment could lead to consequential amendments to their counterclaims, however, that was not clearly explained.

[89] One of the concerns raised relates to the new claim for an order voiding any contracts the Redcell Defendants entered into regarding Gold and Goblins. Hyper Hippo does not appear to have identified what specific contracts it seeks to have declared void. The Redcell Defendants in particular note that this type of relief could adversely impact the interests of persons who are not parties to this action.

[90] I agree that this item of relief does appear to be problematic as it is currently framed. At the very least, Hyper Hippo should particularize which specific contracts it

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seeks to have declared void. Some further reflection on the broader implications of this item of relief appears appropriate.

[91] I agree that, in view of the complexity of the issues raised in the action and the amounts involved, combined with the recent (and contemplated) significant changes to Hyper Hippo's claim, proportionality favours allowing the defendants additional time to prepare to defend the new claims so that trial will be fair for all parties.

[92] Hyper Hippo's suggestion that, because it sent the proposed amended notice of civil claim to the defendants at the end of September 2025, the defendants are to blame if they were not more diligent in pursuing relevant document discovery and examinations. I do not agree that delivery of a draft amended pleading would instantly trigger a corresponding obligation on the defendants' part to treat the draft pleading as finalized and effective. It is only once it was filed with the court (November 26, 2025) that it became effective. In any event, in *Navarro* at para. 24, the court noted that simple neglect to get properly ready for a hearing (in this case, trial) will still usually lead to an adjournment:

> [24] The explanation for the need of an adjournment is an important consideration. It has been said that simple neglect to get properly ready for a hearing, while irksome for the other party, will still usually lead to an adjournment on the theory that the prejudice to the person denied the adjournment will be greater than prejudice to the person who is forced to accept an adjournment (*Michel v. Lafrentz*, 1998 ABCA 224 at para. 12). It would be unjust to decide, without more, that a party who has been less than diligent will be forced to go to trial unprepared (*Trumbley v. Belanger*, [1994] B.C.J. No. 2178 at para. 4 (S.C.)). Failure of a party's lawyer to take appropriate and/or timely steps should not irrevocably jeopardize the client under the "often applied principle that the sins of the lawyer should not be visited upon the client" provided that relief can be given on terms that protect the innocent adversary as to costs thrown away and as to the security of the legal position he has gained (*Graham* at para. 10). …

Timeliness of the request

[93] AppQuantum says its request for an adjournment of trial and this application were made in a timely manner. Initial notice was given to Hyper Hippo in December 2025, shortly after the amended notice of civil claim was filed. It points to the

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January 16, 2026 notice (i.e. two days before the CPC ordered deadline for this application to be filed) from Hyper Hippo that it intends to make additional fundamental amendments to its claim. The Redcell Defendants support this submission. Hyper Hippo did not directly address this point in argument.

[94] I am satisfied that AppQuantum raised the issue of adjourning trial and took steps to set down this application in a reasonably timely manner.

Potential prejudice to each party / Right to a fair trial

[95] AppQuantum argues it will suffer significant prejudice if the trial is not adjourned. It will be forced to proceed to trial on a complex and technical case involving damages of about $140 million without sufficient opportunity to (i) complete document discovery related to the newly pled claims, (ii) complete examinations with the benefit of proper document discovery and (iii) instruct and obtain expert reports which are responsive to the additional discovery. This prejudice will directly impact the fairness of the trial process.

[96] The Redcell Defendant offer similar submissions, arguing they would suffer prejudice if forced to proceed to trial before they are able to properly prepare through pursuit of outstanding demands for particulars, document discovery, examination for discovery and development of expert opinion evidence evidence. They say the prejudice to them outweighs any potential prejudice to Hyper Hippo due to a delay of the trial.

[97] Hyper Hippo did not directly address this issue. During argument, counsel did raise a concern that if trial is adjourned, any new trial date will likely be at least 18 months distant for a 35-day trial. Such lengthy delay in resolving ownership of Gold and Goblins and damages issues would be highly prejudicial.

[98] In my view, the potential prejudice to AppQuantum and the Redcell Defendants by forcing them to go to trial without adequate time to properly prepare outweighs the prejudice Hyper Hippo will suffer due to a delay. I am satisfied the

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adjournment is necessary to allow the defendants to adjust their cases to meet the newly amended claims, and so there can be a fair trial.

History of the matter, including deliberate delay or misuse of the court process

[99] There has been one previous adjournment of trial. The February 10, 2025 trial date was adjourned by consent of all parties. At the time, all parties agreed adjournment was necessary. In my view, this cannot be counted as a prior adjournment as against any particular party.

[100] There is no serious suggestion that the defendants have deliberately misused or delayed the process. Hyper Hippo does criticize the timing of serious document production by each of the defendants. They likewise raise concerns about the pace at which Hyper Hippo produced its lists of documents, but that appears to largely flow from the complex nature of the claims and the very large volume of documents which have to be reviewed. I do not consider any of the foregoing to rise to the level of deliberate delay or misuse of court process by any party.

Conclusion

[101] Considering all of the foregoing, I conclude that the prejudice to AppQuantum and the Redcell Defendants if the June 1, 2026 trial date is not adjourned exceeds the prejudice to Hyper Hippo if the trial is adjourned.

[102] I exercise my discretion to adjourn the trial.

<u>Orders Made</u>

[103] AppQuantum's application is granted. I direct the parties to schedule the earliest mutually convenient new trial date. I decline to order a specific length of trial – this will be at counsel's discretion. It is not clear at this time what impact withdrawal of copyright claims will have on trial length.

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[104] Hyper Hippo asked that the new trial date be peremptory on the defendants. I did not receive submissions on this point from the defendants. I order that the new trial date will be peremptory on all parties.

[105] AppQuantum has been successful, however, in view of the procedurally questionable manner in which it and the Redcell Defendants chose present this application, it is appropriate that all parties bear their own costs.

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"Associate Judge Bilawich"