

1 LAW OFFICES OF ANDREW J. BROWN
ANDREW J. BROWN (160562)
2 501 W. Broadway, Suite 1490
San Diego, CA 92101
3 Telephone: (619) 501-6550
andrewb@thebrownlawfirm.com
4

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/16/2020 at 02:25:26 PM
Clerk of the Superior Court
By Rhonda Babers, Deputy Clerk

5 BLOOD HURST & O'REARDON, LLP
TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
6 501 W. Broadway, Suite 1490
San Diego, CA 92101
7 Telephone: (619) 338-1100
Facsimile: (619) 338-1101
8 tblood@bholaw.com
toreardon@bholaw.com
9

Attorneys for Plaintiffs

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 B.D., a minor by STEWART K. DADMUN,)
13 B.D.'s father and guardian.)

14 Plaintiffs,)

15 vs.)

16 ACTIVISION BLIZZARD, INC., and DOES 1)
17 THROUGH 10, inclusive,)

18 Defendants.)
19
20
21
22
23
24
25
26
27
28

Case No. 37-2020-00020000-CU-BT-CTL

COMPLAINT FOR INJUNCTIVE RELIEF

1 Plaintiffs identified below (collectively, “Plaintiffs”), file this Complaint for Injunctive Relief.
2 Plaintiffs file suit against Activision Blizzard, Inc. (“Blizzard” or “the Company”) and DOES 1 and
3 through 10 (“Defendants”) for a public injunction in accordance with the McGill Rule (*McGill v.*
4 *Citibank, N.A.*, 2 Cal. 5th 945 (2017)). Plaintiffs bring this action based upon personal knowledge of
5 the facts pertaining to themselves, and on information and belief as to all other matters, by and through
6 the investigation of undersigned counsel.

7 I. NATURE OF THE ACTION

8 1. The California legislature has declared a public policy against gambling activities
9 targeting or otherwise involving minors: “Gambling can become addictive and is not an activity to be
10 promoted or legitimized as entertainment for children and families.” Cal. Bus. & Prof. Code
11 § 19801(c). Through its wildly popular video game “Overwatch,” Blizzard engages in predatory
12 practices enticing children to engage in gambling and similar addictive conduct in violation of this
13 and other laws designed to protect consumers and children, and to prohibit such practices.

14 2. Not unlike Big Tobacco’s “Joe Camel” advertising campaign, Blizzard profits from
15 creating addictive behaviors in kids to generate huge revenues for the Company. Over the last three
16 years Defendant’s “Overwatch” games have brought in billions of dollars, through the sale of the
17 game and, more importantly, from in-game purchases by players.

18 3. Most of Blizzard’s huge revenues from Overwatch come from the in-game purchases
19 known in the gaming industry as “loot boxes” or “loot crates.” The specific Overwatch “Loot Boxes”
20 look like this:



1 4. Most of Blizzard’s huge revenues from Overwatch come from the in-game purchases
2 known in the gaming industry as “loot boxes” or “loot crates.” The specific Overwatch “Loot Boxes”
3 look like this:

4 5. Loot Boxes are purchased using real money, but are simply randomized chances in-
5 game to obtain desirable or helpful “loot” in the game – frequently better costumes for the player’s
6 character (called “skins”), “emotes” (character-specific actions), or speech-lines for the player’s
7 character in the game. If obtained, these rewards can enhance the game playing experience for the
8 player. As the odds of obtaining a reward decreases, its prestige increases along with the stature of
9 the player among other players within the game. However, most of the items in a Loot Box are of the
10 “common” or otherwise undesirable nature, and are of no value to the player.

11 6. Unsurprisingly, the perceived best loot in the game is also the most difficult to obtain,
12 and least likely to be received via Loot Box. Some of these specific high-demand items in the game
13 can be so difficult (and costly) to obtain that a “gray market” has sprung up on the internet – websites
14 where Overwatch accounts can be (and are) bought and sold for real money outside of the game based
15 upon the value of the “loot” held by that player. In fact, numerous websites have been created to
16 broker these transactions, bringing buyer and seller together to sell these items for real money.

17 7. The Overwatch Loot Boxes have all the hallmarks of a Las Vegas-style slot machine,
18 including the psychological aspects to encourage and create addiction – especially among
19 adolescents. Moreover, under California law they constitute illegal “slot machines or devices” when
20 played on a console, computer, or other device. California Penal Code § 330(d) broadly defines an
21 unlawful “slot machine or device” as,

22 a machine, apparatus, or device that is adapted, or may readily be converted, for use
23 in a way that, as a result of the insertion of any piece of money or coin or other object,
24 or by any other means, the machine or device is caused to operate or may be operated,
25 and by reason of any element of hazard or chance or of other outcome of operation
26 unpredictable by him or her, the user may receive or become entitled to receive any
27 piece of money, credit, allowance, or thing of value, or additional chance or right to
28 use the slot machine or device, or any check, slug, token, or memorandum, whether
of value or otherwise, which may be exchanged for any money, credit, allowance, or
thing of value, or which may be given in trade, irrespective of whether it may, apart
from any element of hazard or chance or unpredictable outcome of operation, also

1 sell, deliver, or present some merchandise, indication of weight, entertainment, or
2 other thing of value.

3 Cal. Pen. Code § 330(b)(d).

4 8. Governments, regulators, psychologists, and even Overwatch gamers themselves
5 agree that loot boxes like the ones Blizzard employs in its Overwatch game operate as gambling
6 devices for minors, and create and reinforce addictive behaviors.

7 9. For instance, the Government of Belgium examined the use of loot boxes in
8 videogames – including Overwatch – and determined that they violated that country’s gambling laws,
9 specifically finding,

10 The paid loot boxes in the examined games Overwatch, FIFA 18 and Counter-Strike:
11 Global Offensive fit the description of a game of chance because all of the
12 constitutive elements of gambling are present (game, wager, chance, win/loss).

13 10. Likewise, in September 2019 Great Britain Parliament’s Digital, Culture, Media and
14 Sport Committee issued a report to Parliament determining that loot boxes constitute gambling and
15 encourage addictive behavior, and recommending that the sale of loot boxes to children should be
16 banned. Committee Chair Damian Collins MP said:

17 Loot boxes are particularly lucrative for games companies but come at a high cost,
18 particularly for problem gamblers, while exposing children to potential harm. Buying
19 a loot box is playing a game of chance and it is high time the gambling laws caught
20 up. We challenge the Government to explain why loot boxes should be exempt from
21 the Gambling Act.¹

22 11. Similarly, psychologists who have studied the issue agree that loot boxes correlate
23 with problem gambling, especially among adolescents. For example, one such survey analysis of
24 current studies concluded,

25 *[T]he findings are very consistent that there is an association between problem
26 gambling and loot box buying among both adolescents and adults (and that the
27 association may be even stronger among adolescents).*²

28 ¹ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/immersive-technology-report-17-19/>

² “Loot box buying among adolescent gamers: A cause for concern?,” Griffiths, Mark D. 63 *Education and Health* Vol.37 No.3, 2019

1 12. Even Blizzard’s own game developers have admitted the predatory nature of their Loot
2 Box mechanism – Overwatch Loot Boxes are specifically designed to create addictive tendencies in
3 the players. “When the box is there, you’re excited at the possibilities of what could be inside.” says
4 Overwatch senior game designer Jeremey Craig. “Click the open loot box button and the box bursts
5 open, sending four disks into the sky. The rarity is indicated by colored streaks to further build the
6 suspense. Seeing purple or gold you start to think about what specific legendary or epic [item] you’ve
7 unlocked. This all happens so fast, but it was those discrete steps that we felt maximized excitement
8 and anticipation.”³

9 13. Incorporation of loot boxes into videogames has become the main revenue generator
10 in the industry. Rather than paying one time to purchase the game, players are now the source of an
11 endless revenue stream for the companies as long as they play the game. According to one estimate,
12 loot boxes will generate \$50 Billion for the video game industry by the year 2022.⁴

13 14. Blizzard is earning huge sums from predatory Loot Boxes in its games (including
14 Overwatch) and it is only going to get worse. According to Blizzard’s most recent SEC Form 10-K
15 (filed Feb. 27, 2020):

16 Increasingly, our consumers are connected to our games online through consoles,
17 PCs, and mobile devices. This allows us to offer additional digital player investment
18 opportunities directly to our consumers on a year-round basis. In addition to
19 purchasing full games or subscriptions, players can invest in certain of our games and
20 franchises by purchasing incremental “in-game” content (including larger
21 downloadable content or smaller content, via microtransactions). These digital
22 revenue streams tend to be more recurring and have relatively higher profit
23 margins. . *We are still in the early stages of developing these new revenue
24 streams.*

22 II. THE PARTIES

23 15. Plaintiff Stewart K. Dadmun is the father and legal guardian of B.D. He is and at all
24 relevant times was a citizen of the State of California who resides in San Diego, California.

26 _____
27 ³ “*Behind the addictive psychology and seductive art of loot boxes,*” Alex Wiltshire, Sept. 28,
28 2017. *PC Gamer*. <https://www.pcgamer.com/behind-the-addictive-psychology-and-seductive-art-of-loot-boxes/>

⁴ <https://www.juniperresearch.com/press/press-releases/loot-boxes-and-skins-gambling>

1 16. Plaintiff B.D. is a minor. He is and at all relevant times was a citizen of the State of
2 California who resides in San Diego. Since at least 2018, B.D. has owned and played Overwatch, a
3 game developed, owned and sold by Defendant Blizzard. In the course of playing Overwatch, B.D.
4 has been induced to spend either his parents' money or perhaps his own money to purchase "loot
5 boxes" in-game.

6 17. B. D. played Overwatch on his personal computer ("PC") and on his Xbox One
7 console. He estimates he has spent approximately \$40.00 to purchase the game itself. He estimates
8 spending an additional \$10 on in-game Loot Boxes in exchange for the random-chance possibility of
9 winning valuable items. He believes he used his parents' credit card to purchase the game, and is
10 unsure whether he used his parents' credit card, or his own gift card (or both) to purchase Loot Boxes.
11 B. D. estimates he has spent approximately 50 hours playing Overwatch over the course of
12 approximately two years.

13 18. B.D. still owns the Overwatch game. To the extent he plays it in the future, he will be
14 subjected to Blizzard's predatory loot box scheme.

15 19. Defendant Blizzard is a publicly-held United States corporation with its principal place
16 of business at 3100 Ocean Park Blvd in Santa Monica, California. Blizzard's Santa Monica, California
17 headquarters is where the Corporation's officers direct, control, and coordinate the Corporation's
18 activities. Blizzard is engaged in continuous and significant business in the State of California
19 consisting of, among other things, research and development, retail operations, advertising,
20 marketing, and distribution activities.

21 20. Blizzard makes money through two methods of generating revenue from each game.
22 First, it sells the Overwatch game to consumers.⁵ Second, after the game is purchased Blizzard can
23 entice the player to make in-game purchases in order to improve the playing experience and help the
24 player advance in the game. Activision does not allow Overwatch players to purchase directly any
25 specific item for a set price. Rather, the player can only attempt to obtain in-game items by obtaining
26

27 _____
28 ⁵ Overwatch "Standard Edition" retails for \$19.99; "Legendary Edition" retails for \$39.99. *See*,
<https://us.shop.battle.net/en-us/product/overwatch>

1 a Loot Box and opening it.⁶

2 21. Loot Boxes are a form of “in-game” purchase, and according to Blizzard’s 2018 SEC
3 Form 10-K (filed Feb. 28, 2019) they have become extremely important part of the multi-billion
4 dollar revenue stream at the Company:

5 Providing additional opportunities for player investment outside of full-game
6 purchases has allowed us to shift from our historical seasonality to a more
7 consistently recurring and year-round revenue model. In addition, if executed
8 properly, it allows us to increase player engagement, as it provides more frequent and
9 incremental content for our players.

10 22. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as
11 DOES 1 through 10, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiffs
12 will amend this Complaint to allege their true names and capacities when the same are ascertained.
13 Plaintiffs are informed and believe and thereon allege that each of the fictitiously named Defendants
14 are responsible in some manner for the occurrences and acts alleged herein, and that Plaintiffs
15 damages alleged herein were proximately caused by these Defendants. When used herein, the term
16 “Defendants” is inclusive of DOES 1 through 10.

17 23. Whenever and wherever reference is made in this Complaint to any act by a Defendant
18 or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to
19 act of each Defendant acting individually, jointly, and severally.

20 **III. JURISDICTION AND VENUE**

21 24. This Court has jurisdiction over the subject matter of this case, pursuant to the
22 California Constitution, Article VI, section 10, because this case is not given by statute to any other
23 trial courts.

24 25. Plaintiffs allege, upon information and belief, that each of the Defendants conduct
25 professional and commercial activities in California on a substantial, continuous, and systematic basis
26 and therefore each of the Defendants are subject to the general jurisdiction of the courts of this state.

27 26. Plaintiffs further allege, upon information and belief that the claims asserted in this
28 complaint arise out of or are related to each of the Defendants’ professional and commercial activities

⁶ Most, but not all, Loot Boxes must be purchased. The game occasionally gifts a Loot Box to players, when they “level up” in the game or sometimes for a “seasonal event.”

1 within California, and therefore each of the Defendants are subject to the specific jurisdiction of the
2 courts of this state.

3 27. Federal jurisdiction does not exist because there is no diversity among the parties;
4 Defendant Blizzard and Plaintiffs are both California residents.

5 28. Venue is proper in this court because at all relevant times Plaintiffs resided in the
6 County of San Diego, California and the claims asserted in this complaint arise out of acts,
7 transactions, and conduct that occurred in whole or in part within the County of San Diego, California.

8 IV. SUBSTANTIVE ALLEGATIONS

9 29. Overwatch is a team-based, first-person shooter video game available for download
10 and play on videogame consoles (such as the Sony PS4 and Microsoft Xbox One) as well as on
11 computers. It is aimed at minors and the majority of Overwatch players are, in fact, minors. The game
12 appearance is cartoonish – the characters are fantastical (although with human attributes) and their
13 appearance, as well as the appearance of the “world” in which the game is played, is animated,
14 imaginary and colorful. Below is a promotional picture of the “hero” characters available to
15 Overwatch gamers.⁷



27 _____
28 ⁷ In total there are now more than 30 different playable characters (known as “heroes”) plus other supporting characters.

1 30. Overwatch includes casual play modes, competitive ranked play modes, and various
2 arcade modes where special rules apply. Most game modes bring together two teams of six players
3 each into a match and compete in one of several objective-based game types based on a randomly
4 selected map.

5 31. Winning matches earns the player experience towards higher experience levels in the
6 meta-game. The player can earn a loot box on reaching a new experience level, which contains a
7 random assortment of character skins, emotes, speech lines, and other cosmetic items for each
8 character without specific game-changing effects. More importantly, players can also purchase loot
9 boxes with real-world money, and are encouraged to do so. Blizzard also periodically introduces
10 limited-time, seasonal events (such as during the lunar new year), offering new cosmetic items in loot
11 boxes for a specific limited period of time.

12 32. Blizzard sells two “versions” of the Overwatch game – the “Standard Edition” sells
13 for \$19.99 and the “Legendary Edition” sells for \$39.99. The material difference between the two
14 versions is that the Legendary Edition provides the player with additional “Loot” that otherwise can
15 only be won through Loot Boxes. More specifically, Overwatch Legendary Edition includes 5 “epic”
16 and 5 “legendary” skins, and other Blizzard game related paraphernalia.⁸

17 **Overwatch Loot Boxes Explained**

18 33. The randomized Loot Boxes can be “earned” as a result of in-game performance or
19 through monetary payment. Because a single loot box is only earned when the player gains enough
20 experience points from playing the game to increase his “level,” it takes an increasing amount of time
21 spent playing the game in order to achieve the next Loot Box. Thus, it becomes increasingly attractive
22 to purchase Loot Boxes the longer one plays the game.

23 34. Loot boxes are purchased through the console or computer, or can be purchased
24 directly through Blizzard’s website. It is usually done with a credit card or by using PayPal. Blizzard
25 maintains a scale for price of purchasing Loot Boxes: The more one buys, the cheaper the cost per
26 Loot Box.

27
28 ⁸ See, <https://us.shop.battle.net/en-us/product/overwatch>

1 35. To purchase Loot Boxes, all the player has to do is go to “Loot Box” on the main menu
2 and then press the button that takes you to the store, which in the case of the Sony PS4 controller is
3 the square button, which will take you to the Sony PlayStation Store. If played on a PC, the Loot Box
4 can be purchased through Blizzard’s website.

5 36. Upon doing this on the respective platforms, the player is presented with five options
6 to choose from. The base package is just two Loot Boxes for \$1.99, but the player also has the options
7 of five Loot Boxes for \$4.99, 11 Loot Boxes for \$9.99, 24 Loot Boxes for \$19.99, and 50 Loot Boxes
8 for \$39.99.⁹

9 37. Once purchased, a Loot Box can be opened by the player at any time by pressing the
10 “open loot box” button on screen.

11 38. Overwatch’s Loot Box mechanism does everything possible to build up the player’s
12 hoped-for win, tension, and excitement. Once the player presses the “open loot box” button, music
13 starts, the box bursts open and discs are emitted towards the heavens. While these discs are lobbed
14 into the air and fall back to the ground, one can see how rare they are based on their color. Only after
15 all the discs have fallen back to the ground is the player able to see which items he obtained. The
16 player cannot therefore immediately see what he’s won. The tension is built up in multiple steps. This
17 colorful animated system more often than not gives the player disappointing items, and rarely does
18 the player get exactly the item he wanted.

19 39. Especially rare Loot Box items often come with long odds. “Legendary” items in
20 Overwatch – of which there are more than 100 to collect, with no way to control which ones you get
21 first – show up in just 7.5% of Loot Boxes. Although there is no guarantee, collecting all “Legendary”
22 items can mean buying more than 1,200 Loot Boxes at a cost of \$1,000 or more, based on these
23 probabilities.

24 40. Each Loot Box contains four items, ranked by order of probability: “Common,”
25 “Rare,” “Epic,” and “Legendary.” According to probabilities published by Activision in China, the
26
27

28 ⁹ <https://us.shop.battle.net/en-us/product/overwatch-loot-box>

1 “drop rate” – the likelihood of appearance in any given Loot Box – for each level of desired item is
2 as follows:

- 3 • A Rare item or above is included in every box.
- 4 • An Epic item is included in about 18.5% of all boxes.
- 5 • A Legendary item is included in about 7.5% of all boxes.
- 6 • A Rare Victory Pose is included in about 23% of all boxes.
- 7 • A Rare Skin is included in about 30% of all boxes.
- 8 • A Rare Player Icon is included about 48% of all boxes.

9 41. In Loot Boxes, Overwatch also offers (randomly) the ability to receive “credits” that
10 act as a form of in-game currency. These credits can be used in exchange for in-game items such as
11 skins and emotes. However, the credits themselves cannot be purchased directly. These too only come
12 from Loot Boxes, in small and various amounts that are unknown to the Loot Box purchaser. Thus,
13 the player never knows whether he will win “credits” in a Loot Box, nor how many (if he does).¹⁰

14 42. These Loot Boxes are designed to create a slot machine effect, where even when a
15 player is not receiving the desired result, there exists a belief that the next loot box will contain the
16 desired items. This is further reinforced when viewing favorable results from other players opening
17 loot boxes.

18 43. Blizzard’s Overwatch game developers themselves publicly boast about the loot box
19 mechanism’s audio-visual design as a means of enticing players. According to them, it’s all about
20 building the anticipation. “When the box is there, you’re excited at the possibilities of what could be
21 inside.” says Overwatch senior game designer Jeremy Craig. “Click the open loot box button and
22 the box bursts open, sending four disks into the sky. The rarity is indicated by colored streaks to
23 further build the suspense. Seeing purple or gold you start to think about what specific legendary or

24 ///

25 ///

26 ///

27 _____
28 ¹⁰ There is approximately a 30% chance any particular Loot Box contains some amount of
“credits.”

1 epic [item] you've unlocked. This all happens so fast, but it was those discrete steps that we felt
2 maximized excitement and anticipation.”¹¹

3 44. Michael Heiberg, an Overwatch developer described the process of opening a loot box:
4 “When you start opening a loot box, we want to build anticipation. We do this in a lot of ways –
5 animations, camera work, spinning plates, and sounds. We even build a little anticipation with the
6 glow that emits from a loot box's cracks before you open it.” This process went through a lot of
7 testing during development, and the team even initially hinted at the rarity of the contents within the
8 loot boxes through lights that were omitted by the reward. This was later taken away, though, as it
9 removed some of the suspense surrounding an unopened box.¹²

10 45. One researcher described the physical experience invoked by this Loot Box
11 mechanism:

12 Research by Kim (1998) found that waiting for the outcome of a gamble can activate
13 the brain's chemical reward system, releasing endorphins that create pleasure. In a
14 gaming context, think of someone who really wants the Pharah Anubis skin in
15 Overwatch. They buy five loot boxes and get excited during the big flashy box-
opening animation. This excitement happens five times in a short space of time, with
five flashy box-opening animations that are almost an event in itself.¹³

16 46. Commenting on the loot box mechanism incorporated into games like Overwatch,
17 Hawaiian congressman Chris Lee noted that *these loot boxes “are specifically designed to exploit
18 and manipulate the addictive nature of human psychology.”*

19 47. Blizzard has taken it to an extreme. *Blizzard has obtained a patent in the United
20 States for the explicit purpose of stimulating sales of loot boxes and microtransactions.*¹⁴

21 48. According to Blizzard's patent, the first step is to examine which in-game object
22 individual players are most interested in. The second step is to have them play against the player who
23

24 ¹¹ *Behind the addictive psychology and seductive art of loot boxes.* Alex Wiltshire, Sept. 28,
25 2017. PC Gamer. <https://www.pcgamer.com/behind-the-addictive-psychology-and-seductive-art-of-loot-boxes/>

26 ¹² *Overwatch: Blizzard Explains How Loot Boxes Are Designed.* Gamerant.com/overwatch-
original-loot-box-design. March 20, 2017.

27 ¹³ *The Psychology of Loot Boxes and Microtransactions* (8/23/2019), at
28 platinumparagon.info/the-psychology-of-loot-boxes-and-microtransactions/.

¹⁴ U.S. Patent Application No. 9,789,406.

1 is at a higher level and already has this object. The intention is to motivate the less experienced player
2 to try to obtain that object too.

3 49. The patent goes on to explain the many possible implementations. "For instance, the
4 microtransaction engine may match a more expert/marquee player with a junior player to encourage
5 the junior player to make game-related purchases of items possessed/used by the marquee player,"
6 the patent reads. "A junior player may wish to emulate the marquee player by obtaining weapons or
7 other items used by the marquee player. [https://www.pcgamer.com/activision-wins-patent-that-uses-](https://www.pcgamer.com/activision-wins-patent-that-uses-matchmaking-to-make-you-want-to-buy-stuff)
8 [matchmaking-to-make-you-want-to-buy-stuff.](https://www.pcgamer.com/activision-wins-patent-that-uses-matchmaking-to-make-you-want-to-buy-stuff)¹⁵

9 50. The patent also provides specific examples of implementation. "In a particular
10 example, the junior player may wish to become an expert sniper in a game (e.g., as determined from
11 the player profile). The microtransaction engine may match the junior player with a player that is a
12 highly skilled sniper in the game. In this manner, the junior player may be encouraged to make game-
13 related purchases such as a rifle or other item used by the marquee player."

14 **Overwatch loot boxes create addictive behaviors in kids, especially adolescents, akin to**
15 **gambling addiction**

16 51. Psychologists call the principle by which loot boxes work on the human mind,
17 'variable rate enforcement'. This kind of reward structure underpins many forms of gambling. It
18 results in people quickly acquiring behaviors and repeating these behaviors frequently in hopes of
19 receiving a reward. Dopamine cells are most active when there is maximum uncertainty, and
20 dopamine system responds more to an uncertain reward than if the same reward delivered on a
21 predictable basis.

22 52. For numerous reasons minors, and adolescents in particular, are especially vulnerable
23 to this type of manipulation. By some estimates, teenage gambling is the fastest rising gambling
24
25
26

27 ¹⁵ Contrary to the suggestion of Activision's patent, in Overwatch, the player cannot directly
28 purchase the desired item in-game. He must purchase Loot Boxes until he randomly "wins" the
desired item.

1 addiction. “Teenage gambling, like alcohol and drug abuse in the 1930s, is the fastest growing
2 addiction.”¹⁶

3 (a) First, adolescents have low impulse control. The teenage brain is still
4 developing; the part of the brain that’s responsible for good impulse control and decision making is
5 not fully developed. Dr. Frances Jensen, the chair of the department of neurology at the University of
6 Pennsylvania Perelman School of Medicine and formally Harvard professor and director of
7 neuroscience at Boston’s Children’s Hospital, explains it as follows: “their frontal lobes are there.
8 They're there and they're built. They're just not accessed in as rapid a manner because the insulation
9 to the wiring to them isn't fully developed, so the signals go more slowly. Hence, teenagers are not as
10 readily able to access their frontal lobe to say, oh, I better not do this. An adult is much more likely
11 to control impulses or weigh out different factors in decisions, where a teenager may not actually
12 have full on-line, in-the-moment capacity”. Dr. Frances Jensen, *Why Teens are Impulsive- Prone and*
13 *Should Protect Their Brains*. NPR. Fresh Air. Jan. 28, 2015. Adolescence is a developmental period
14 characterized by suboptimal decisions and actions. Casey, B. J., Jones, R. M., & Hare, T. A. (2008).
15 The adolescent brain. *Annals of the New York Academy of Sciences*, 1124, 111–126. During this
16 time, impulse control is still relatively immature. *Id.*

17 (b) Second, adolescents are more inclined to engage in risk-taking behaviors and
18 risky decision making than are adults. Gardener M, Steinberg L. *Peer influence on risk taking, risk*
19 *preference, and risky decision making in adolescence and adulthood: an experimental*
20 *study*. *Developmental Psychology*. 2005;41:625–635. Adolescents and young adults are more
21 inclined to risk taking because development of executive brain function and appreciation of risk is
22 continuing in this period. Kelley, A.E., Schochet, T. & Landry, C.F. (2004). *Risk taking and novelty*
23 *seeking in adolescence: Introduction to Part I*. *Annals of the New York Academy of Sciences*, 1021,
24 27-32. Steinberg, L. (2005). Cognitive and affective development in adolescence. *Trends in Cognitive*
25 *Sciences*, 9(2), 69-74.

26
27
28 ¹⁶ David Robertson, National Coalition Against Legalized Gambling. Quoted at
<https://www.crchealth.com/troubled-teenagers/teen-gambling/>

1 (c) Third, not only are adolescents more likely to take risks, but they are also more
2 prone to addiction. “They build a reward circuit around that substance to a much stronger, harder,
3 longer, stronger addiction. That is an important fact for an adolescent to know about themselves - that
4 they can get addicted faster.” Dr. Frances Jensen, *Why Teens are Impulsive- Prone and Should Protect*
5 *Their Brains*. NPR. Fresh Air. Jan. 28, 2015.

6 (d) Last, children and adolescents often lack a critical understanding of money and
7 financial management. Approximately one in four students in the 15 countries and economies that
8 took part in the latest OECD Programme for International Student Assessment (PISA) test of financial
9 literacy are unable to make even simple decisions on everyday spending, while only one in ten can
10 understand complex issues, such as income tax. OECD (2017), *PISA 2015 Results (Volume Iv);*
11 *Students’ Financial Literacy*, PISA, OECD Publishing, Paris.¹⁷

12 53. As set forth in detail above, purchasing and opening a loot box – by design – is
13 visually, physically, and aurally stimulating. Opening a loot box gives the player a rush; the moment
14 of anticipation followed by release. The loot box mechanism has been proven to be effective on adults,
15 and its effects are only intensified when used on minors who are more prone to engage in risk-taking
16 behaviors, more prone to gambling addiction, and “are less equipped to critically appraise the value
17 proposition of these schemes.”¹⁸

18 54. In fact, virtually every study published to date on the connection between loot boxes
19 and gambling has found an association. ***“Given all everything we know about the similarities***
20 ***between boxes and slot machines, it would actually be astounding and surprising were there not***
21 ***such a connection. They are, in many ways, so closely related.”***¹⁹

22 55. Dan Trolaro, the Assistant Executive Director of the Council on Compulsive
23 Gambling of New Jersey, explained, “The mechanics within a loot box look and feel like a gamble.
24

25 ¹⁷ USA adolescents scored in the middle of the 15 tested countries. The results are available
26 online at <https://www.oecd.org/education/pisa-2015-results-volume-iv-9789264270282-en.htm>

27 ¹⁸ King, Daniel and Delfabbro, Paul. “Predatory monetization schemes in video games (e.g. ’loot
boxes’) and internet gaming disorder,” *Addiction*, 2018.

28 ¹⁹ Keith Whyte, Executive Director of the National Council On Problem Gambling: *Inside the*
Game: Unlocking the Consumer Issues Surrounding Loot Boxes. An FTC Workshop. August 7, 2019.

1 *Once minors are exposed to game of chance mechanisms, there is a significantly higher risk that*
2 *they will have problems with it at a later stage in their lives. The literature indicates that exposure*
3 *at an early age increases the risk of addiction and the severity of the addiction.*²⁰

4 56. Other experts agree. For example, the mental health director of the UK’s National
5 Health Service summarized their studies by declaring that the gaming industry is “setting kids up for
6 addiction by teaching them to gamble.” And according to Keith Whyte, the Executive Director of the
7 National Council On Problem Gambling, “Those who play loot boxes, may well be on their way to
8 developing gambling problems due to their loot box play.”²¹

9 57. Peer-reviewed empirical research bears this out. For example, Zendle, Meyer and Over
10 (2019) examined the relationship between loot box buying and problem gambling (using the Canadian
11 Adolescent Gambling Inventory) in a survey of 1,115 adolescents aged 16-18 years. They reported
12 that the association between loot box buying and problem gambling was stronger than that found
13 among previous studies examining adults. Their results ***“suggest that loot boxes either cause problem***
14 ***gambling among older adolescents, allow game companies to profit from adolescents with***
15 ***gambling problems for massive monetary rewards, or both.”***

16 58. Professor Mark D. Griffiths²² conducted a survey of the available literature in 2019
17 and concluded,

18 Based on the few studies carried out to date, the findings are very consistent that there
19 is an association between problem gambling and loot box buying among both
20 adolescents and adults (and that the association may be even stronger among
21 adolescents).²³

21 ///

22 ///

24 ²⁰ King, D. L., & Delfabbro, P. H. (2016). *Early exposure to digital simulated gambling: A review and conceptual model*. *Computers in Human Behavior*, 55, 198-206.

25 ²¹ *Inside the Game: Unlocking the Consumer Issues Surrounding Loot Boxes*. An FTC
26 Workshop. August 7, 2019.

27 ²² Distinguished Professor of Behavioural Addiction, Psychology Department, Nottingham
Trent University.

28 ²³ Mark D Griffiths. *Loot box buying among adolescent gamers: A cause for concern?* 63. *Education and Health*. Vol 37. No. 3. 2019.

1 **Overwatch Players Understand Loot Boxes Are A Gamble and That They Target Kids**

2 59. Many players who play Overwatch and themselves purchase Loot Boxes understand
3 it is gambling and there is a concern of targeting children. “As a gamer let me tell you, loot boxes
4 have gotten out of control. Gaming companies have expanded loot box systems, made them more
5 predatory, and even done what they could to specifically target children with them.”²⁴

6 60. One Overwatch player compared their loot box addiction to the euphoric feeling of
7 opening Christmas presents. When opening a bunch of loot boxes at once “I had a feeling of a
8 continuous rush... like opening a bunch of Christmas presents.” “The rush of pulling is addicting,”
9 another player stated. “One failed attempt means an attempt closer to success.” *Vice. For Many*
10 *Players, Lootboxes Are a Crisis That's Already Here.* Ellen McGrody. Jan 30, 2018.²⁵ Still another
11 Overwatch player admitted they eventually felt “physically sick” when they logged in. “I woke up,”
12 explained the player, “realized what I had done, checked my bank account and wanted to throw up.”
13 *Id.*

14 **Some Countries Have Banned Loot Boxes For Violating Gambling Laws**

15 61. Over just the last two years, some countries have banned loot boxes (Belgium,
16 Netherlands, Japan), while others report current investigations (including Australia who issued a
17 report that they are “psychologically akin to gambling”). Similarly, lawmakers in Hawaii, Minnesota
18 and Washington have introduced state legislation to ban the use of loot boxes in videogames.

19 62. For instance, in the study completed in Belgium, the regulators specifically looked at
20 Overwatch and determined paid Loot Boxes in Overwatch fit the description of a game of chance
21 because all of the constitutive elements of gambling are present, specifically finding,

22 The paid loot boxes in the examined games Overwatch, FIFA 18 and Counter-Strike:
23 Global Offensive fit the description of a game of chance because all of the
24 constitutive elements of gambling are present (game, wager, chance, win/loss).

26 _____
27 ²⁴ <https://www.forbes.com/sites/tedknutson/2019/08/08/video-games-can-be-a-gateway-to-problem-gambling-ftc-warned/#5e0cee2c978a>

28 ²⁵ Available at https://www.vice.com/en_us/article/kznmwa/for-many-players-lootboxes-are-a-crisis-thats-already-here

1 63. In Australia, they too determined the loot box mechanism constitutes a form of
2 gambling that targets minors. They recently passed new regulations that,

3 require that any person purchasing videogame loot boxes will have to show ID.
4 According to the Office of the eSafety Commissioner, access to these boxes and other
5 simulated gambling elements in computer or video games will be restricted to “adults
6 aged 18 years or over, including through the use of mandatory age verification.”²⁶

7 64. Here in the U.S.A., the Trade Commission recently hosted a workshop on loot boxes
8 And U.S. Senators Maggie Hassan (D-NH)), and Josh Hawley (R-MO) introduced a bill co-sponsored
9 by Ed Markey (D-MA) and Richard Blumenthal (D-CT) titled “The Protecting Children From
10 Abusive Games Act” that would prohibit loot boxes in minor-oriented games such as Overwatch. The
11 proposed bill includes a prohibition in minor-oriented games of loot boxes, which it defines as “an
12 add-on transaction to an interactive digital entertainment product that in a randomized or partially
13 randomized fashion unlocks a feature of the product or adds to or enhances the entertainment value
14 of the product[.]”²⁷

14 **Overwatch is Rated “T – for Teen” But Does Not Disclose Gambling Or the Loot Box
15 Mechanism**

16 65. In the United States, videogames are currently age-rated by a “self-regulatory” body
17 of the videogame industry, of which Blizzard is an active member – the Entertainment Software
18 Ratings Board (“ESRB”). According to the ESRB’s website,

19 ESRB ratings provide information about what’s in a game or app so parents and
20 consumers can make informed choices about which games are right for their family.
21 Ratings have 3 parts: Rating Categories, Content Descriptors, and Interactive
22 Elements.²⁸

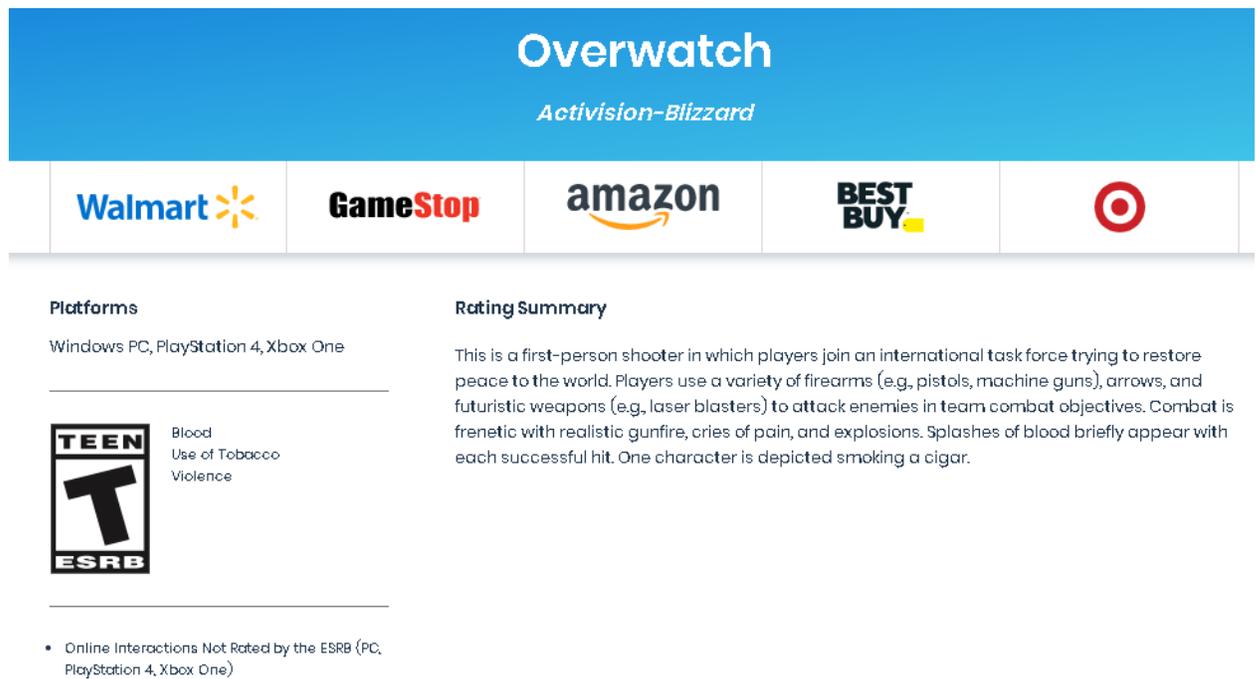
23 66. Parents are encouraged to, and frequently do, rely on these “ratings” by the ESRB to
24 decide whether a specific game is appropriate for their child to play. Indeed, that was the whole
25 purpose of the rating system: to give parents information about the contents of the game. Through
26 Blizzard’s efforts, Overwatch has been rated “T for Teen” by the ESRB, noting only that it contains

27 ²⁶ <https://calvinayre.com/2020/03/09/business/australia-looking-to-age-restrict-loot-boxes/>

28 ²⁷ <https://www.congress.gov/bill/116th-congress/senate-bill/1629/text>

²⁸ <https://www.esrb.org/>

1 “blood,” “use of tobacco,” and “violence.” Below is a screenshot of the ESRB’s rating page for
2 Blizzard’s Overwatch game:²⁹



3
4
5
6
7
8
9
10
11
12
13
14 67. On its website, the ESRB notes that a game rated “Teen” tells parents and players that
15 a game’s “content is generally suitable for ages 13 and up. [It m]ay contain violence, suggestive
16 themes, crude humor, minimal blood, simulated gambling and/or infrequent use of strong language.”
17 Notably, Overwatch’s “T for Teen” rating does not contain a disclosure that the game contains
18 gambling, or even “simulated gambling.” Instead, it only generically discloses “In-Game Purchases.”
19 But what is omitted in the “Rating” – and never disclosed by Blizzard – is that the only “items” that
20 can be purchased “in-game” are Loot Boxes.

21 **Blizzard earns huge profits from minors purchasing Loot Boxes in Overwatch**

22 68. Blizzard does not report earnings based on Loot Boxes specifically, or the number of
23 players for each game. However, in June 2019 it was reported that Overwatch had surpassed revenues
24 of \$1 Billion from in-game purchases.³⁰ And while there are in-game purchase opportunities other
25 than loot boxes, it is understood that the vast majority of these revenues are attributable specifically

26
27
28 ²⁹ <https://www.esrb.org/ratings/34210/Overwatch/>

³⁰ <https://www.thesixthaxis.com/2019/07/25/overwatch-loot-boxes-update-sales-1-billion/>

1 to loot boxes. Moreover, Blizzard states that Overwatch has “surpassed 50M players globally since
2 launch” in 2016.³¹ Blizzard’s net revenues from in-game products exceeded \$3.3 billion in 2019.

3 69. This is entirely consistent with the videogame industry generally. SG Cowen analyst
4 Doug Creutz estimates that 18% of Blizzard’s total revenue stream comes from loot box sales.³²
5 Similarly, for competitor EA Sports, they estimate a third of its revenue is loot boxes, whereas another
6 competitor achieves 11% of its revenue from them. And Jupiter Research estimates the videogame
7 industry will earn \$50 Billion from loot boxes by the year 2022.

8 **Overwatch Loot Boxes constitute gambling in violation of California Law**

9 70. Overwatch Loot Boxes are a form of gambling and violate California’s anti-gambling
10 laws. According to the California Bureau of Gambling Control, by paying for and opening Loot Boxes
11 within the game, the game is creating a “gambling device.” It states:

12 California’s gambling device statutes are broad in their coverage and prohibit any
13 person from owning, renting, or possessing illegal gambling devices. (Penal Code,
§§ 330a, 330b, 330.1.) An illegal gambling device has three features:

- 14 1. It is a machine, apparatus, or device (coin operation is not required);
- 15 2. Something of value is given to play the device; and
- 16 3. The player has the opportunity to receive something of value by any element
17 of hazard or chance (“something of value” is not limited to coins, bills, or
18 tokens—it also includes free replays, additional playing time, redemption
tickets, gift cards, game credits, or anything else with a value, monetary or
otherwise.) (Penal Code, §§ 330a, 330b & 330.1.)³³

19 None of these elements can be in dispute. A player uses his console or computer, with the Overwatch
20 game on it (#1); The player pays real-world currency for the opportunity to open a Loot Box (#2);
21 and the Loot Box is a randomized chance to obtain something valuable in-game (#3). In fact, there is
22 a market for Overwatch player accounts to be bought and sold outside of the game. The value, or
23 price, of each Overwatch account is determined by the “Loot” the player possesses in the account. In
24
25

26 ³¹ <https://investor.activision.com/static-files/fafbc7a-0ddd-44ae-acf3-7f5aec4ea3ea>

27 ³² <https://www.barrons.com/articles/videogame-publishers-face-scrutiny-over-the-use-of-lock-boxes-51555120828>

28 ³³ https://oag.ca.gov/sites/all/files/agweb/pdfs/gambling/ill_devices.pdf

1 fact, there are even online companies who claim to specialize in buying and selling Overwatch and
2 other videogame accounts.³⁴

3 **FIRST CAUSE OF ACTION**

4 **(Unlawful and Unfair Business Practices**
5 **in Violation of the Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**
6 **(Against All Defendants)**

7 71. Plaintiffs reallege and incorporate by reference the allegations set forth in each of the
8 preceding paragraphs of this Complaint.

9 72. Plaintiffs and Defendant are “persons” within the meaning of the UCL. Cal. Bus. &
10 Prof. Code § 17201.

11 73. The UCL defines unfair competition to include any “unlawful, unfair or fraudulent
12 business act or practice.” Cal. Bus. Prof. Code § 17200.

13 74. By committing the acts and practices alleged herein, Blizzard has engaged in unlawful
14 and unfair business practices in violation of the UCL.

15 75. Unlawful Conduct: In the course of conducting business, as a result of engaging in the
16 conduct alleged in this Complaint, Blizzard has violated the UCL’s proscription against engaging in
17 “unlawful” business practices by virtue of its conduct in violation of California Penal Code §§ 330,
18 *et seq.*, the Illegal Gambling Business Act (18 U.S.C. § 1955), and the Unlawful Internet Gambling
19 Enforcement Act of 2006 (31 U.S.C. §§ 5361-5367) as set forth herein.

20 76. Plaintiffs reserve the right to allege other violations of law, which constitute other
21 unlawful business acts or practices. Such conduct is ongoing and continues to this date.

22 77. Unfair Conduct: In the course of conducting business, Blizzard has violated the UCL’s
23 proscription against “unfair” business practices by, among other things:

24 (a) Engaging in the conduct alleged in this Complaint, which is illegal and also
25 violates legislatively-declared policies articulated in, *inter alia*, California Business & Professions
26 Code §§ 19800, *et seq.*, the Illegal Gambling Business Act (18 U.S.C. § 1955), and the Unlawful
27 Internet Gambling Enforcement Act of 2006 (31 U.S.C. §§ 5361-5367) by conducting illegal and

28 ³⁴ See, e.g., <https://www.g2g.com/overwatch/account-21555-21556>

1 unlicensed gambling business including at places not suitable for gambling activities, knowingly
2 accepting payments from those who participated in Defendant’s unlawful Internet gambling, and
3 promoting predatory gambling as entertainment for children and families;

4 (b) Intentionally profiting from conduct designed to create and/or exploit addictive
5 tendencies in vulnerable minors, and adolescents in particular;

6 (c) Omitting important information and misleading parents of vulnerable minors
7 and adolescents concerning the addictive, costly and random chance nature of the loot box mechanism
8 and its use in the Overwatch game.

9 78. There is no societal benefit from Defendant’s conduct which includes promoting
10 addictive gambling as entertainment for children and families. There is only harm from Defendant’s
11 conduct. While Plaintiffs were harmed, Defendant was unjustly enriched by its deceptive, predatory
12 and harmful conduct. As a result, Defendant’s conduct is “unfair,” as it offended an established public
13 policy. Further, Defendant engaged in immoral, unethical, oppressive, and unscrupulous activities
14 that are substantially injurious to consumers as the gravity of Defendant’s conduct outweighs any
15 alleged benefits attributable to such conduct.

16 79. There were reasonably available alternatives to further Defendant’s legitimate
17 business interests, other than the conduct described herein.

18 80. Blizzard’s violations of the UCL continue to this day. As a direct and proximate result
19 of Blizzard’s violations of the UCL, Plaintiffs have suffered actual damage in that, *inter alia*, they
20 were enticed to pay money and participate in the predatory gambling activities as set forth more fully
21 herein.

22 81. Unless restrained and enjoined, Defendant will continue to engage in the unlawful and
23 unfair conduct described herein.

24 82. Accordingly, pursuant to Section 17203 of the UCL, Plaintiffs seek an Order that
25 requires Blizzard: (a) to modify its game(s) in a manner that prevents its users from engaging in
26 gambling, including through the use of loot boxes; (b) to provide owners of Overwatch with notice
27 that the game is being modified to eliminate loot boxes; and (c) requires Blizzard to pay the attorney
28

1 fees and costs incurred by counsel for Plaintiffs in accordance with California Code of Civil Procedure
2 § 1021.5.

3 **VI. PRAYER FOR RELIEF**

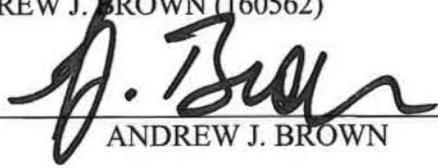
4 WHEREFORE, Plaintiffs pray for relief in this Complaint as follows:

- 5 A. For an order finding that Blizzard's Loot Box practices violate California Business &
6 Professions Code §§ 17200, *et. seq.* and prohibiting those practices as alleged herein;
- 7 B. For an award of attorney fees, where applicable;
- 8 C. For an award of costs; and
- 9 D. For any and all other relief the Court deems just and appropriate.

10 Respectfully submitted,

11 Dated: March 16, 2020

LAW OFFICES OF ANDREW J. BROWN
ANDREW J. BROWN (160562)

12
13 By: 

14 ANDREW J. BROWN

15 501 W. Broadway, Suite 1490
San Diego, CA 92101
Telephone: (619) 501-6550
andrewb@thebrownlawfirm.com

17 BLOOD HURST & O'REARDON, LLP
18 TIMOTHY G. BLOOD (149343)
THOMAS J. O'REARDON II (247952)
19 501 West Broadway, Suite 1490
San Diego, CA 92101
20 Telephone: (619) 338-1100
Facsimile: (619) 338-1101
21 tblood@bholaw.com
toreardon@bholaw.com

22 *Attorneys for Plaintiffs*

23
24
25
26
27
28