

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. \_\_\_\_\_ CVS \_\_\_\_\_

BEAU ZANCA; ERIC KROHM; A.J., by )  
and through his Guardian CHRIS JONES; )  
Z.K., by and through his Guardian SEAN )  
KINNEY; M.M., by and through his )  
Guardian DAVID MINCES; L.M., by and )  
through his Guardian CHAD MOYER; )  
individually and on behalf of all others )  
similarly situated, )

Plaintiffs, )

v. )

EPIC GAMES, INC., )

Defendant. )

**COMPLAINT**

**(Class Action)**

Plaintiffs Beau Zanca; Eric Krohm; A.J., by and through his Guardian Chris Jones; Z.K., by and through his Guardian Sean Kinney; M.M., by and through his Guardian David Mince; and L.M., by and through his Guardian Chad Moyer (Plaintiffs A.J., Z.K., M.M., and L.M., collectively, hereinafter "Minor Plaintiffs") (Plaintiff Zanca, Plaintiff Krohm, and Minor Plaintiffs, collectively, hereinafter "Plaintiffs"), file this Complaint against Defendant Epic Games, Inc. (hereinafter "Defendant" or "Epic Games" or "Epic") and state:

**NATURE OF THE ACTION**

1. This is an action brought by Plaintiffs and others similarly situated due to deceptive and misleading trade practices engaged in by Defendant in marketing and selling "loot boxes" and other in-game items for its online video games that were often purchased by minors, who also were unable to exercise their unrestricted rights under state laws to rescind contracts into which they entered.

2. Epic is a provider of socially connected video games on the internet. Epic allows for free downloads of the client-side video game applications *Fortnite* and *Rocket League*, *i.e.* video game software that users download on different computing device platforms including iOS, Android, Windows, Mac, PlayStation, Xbox and Nintendo Switch. Users running *Fortnite* on their devices connect to Epic's software servers and other users connected through the internet together to create a simulation of the real-world in the digital realm, *i.e.*, cyberworld. Epic provides a video game service, *i.e.* an entertainment or recreational service through the internet.

3. This case arises under North Carolina's and other states' Unfair and Deceptive Trade Practices laws, N.C.G.S. § 75-1.1 *et seq.*, and common law claims regarding unjust enrichment.

4. This is a class action, filed pursuant to Rule 23 of the North Carolina Rules of Civil Procedure on behalf of a class of all persons in the United States who, between July 1, 2015 and the present, had a *Fortnite* or *Rocket League* account that they used to play either game on any device and in any mode and exchanged in-game virtual currency for any in-game benefit, or purchased virtual currency or any other in-game benefit for use within *Fortnite* or *Rocket League*.

#### **JURISDICTION AND VENUE**

5. The foregoing allegations are incorporated by reference and realleged herein.

6. This Court has jurisdiction over the parties and this action pursuant to N.C.G.S. §§ 1-75.4 , 7A-240, and 7A-243.

7. Venue is proper under N.C.G.S. §§ 1-79 and 1-82 in that Defendant maintains its headquarters in Wake County, North Carolina, and has regularly engaged in business in Wake County, North Carolina.

### PARTIES

8. The foregoing allegations are incorporated by reference and realleged herein.

9. Plaintiff Beau Zanca is a natural person and resident of Washington.

10. Plaintiff Eric Krohm is a natural person and resident of Illinois.

11. Minor Plaintiff A.J. and his guardian and Minor Plaintiff Z.K. and his guardian are all natural persons and reside in California.

12. Minor Plaintiff M.M. and his guardian are natural persons and reside in Texas.

13. Minor Plaintiff L.M. and his guardian are natural persons and reside in New York.

14. Defendant, Epic Games, Inc., is a Maryland corporation with its headquarters and principal place of business located in Wake County, North Carolina, and has regularly engaged in business in Wake County, North Carolina. Upon information and belief, Defendant directs the marketing and development of its products and services, including the subject *Fortnite* and *Rocket League* video games, and the deceptive and unfair conduct stemming therefrom, from its headquarters located in Cary, Wake County, North Carolina.

15. At all times relevant to this action, Defendant, in the ordinary course of business as the provider of products and services to individuals who play its *Fortnite and Rocket League* video games, engaged in acts or practices affecting commerce within the meaning of N.C.G.S. § 75-1.1 *et seq.* and other states' consumer protection laws, and Defendant's deceptive and unfair trade practices alleged herein have affected tens of thousands of consumers within North Carolina, and elsewhere nationwide.

## GENERAL BACKGROUND

### A. *Fortnite*

16. *Fortnite* is an online cooperative survival video game in which players search for and collect in-game items that help them build structures, fight and kill other players, and progress toward winning the game by being the last surviving player.

17. *Fortnite*, during the relevant time period, was available on PC, Xbox 1, PS4, iOS, Nintendo Switch, and Android, and has become one of the most played games on the planet, with more than 350 million registered players. Regardless of the system played on, a player's experience and Defendant's representations are the same.

18. *Fortnite* breaks away from the traditional pay-for-game model, wherein a consumer pays a one-time fee for a game and gains access to all of its features, and instead offers the game for free with the hopes that players purchase various in-game items. This is referred to as the free-to-play model.

19. The free-to-play model has broadened *Fortnite*'s customer base by allowing players, including minors, to start playing the game without requiring payment or parental consent.

20. However, while *Fortnite* can be played without making in-game purchases, the social nature of the game exacerbates the need for players, especially impressionable minors, to make in-game purchases. Players are left with little choice but to make in-game purchases in order to avoid ridicule among peers for lack of progression.

### ***1. V-Bucks***

21. Epic derives most of its *Fortnite* -related revenue through the sale of “V-Bucks,” *Fortnite*’s in-game currency. V-Bucks are an in-game currency created by Defendant solely for the *Fortnite* universe and are used by players to purchase equipment, tools, clothing, characters, “loot boxes” and other items within the *Fortnite* virtual world.

22. Critically, V-Bucks purchases are non-refundable, regardless of whether the purchaser is a minor, the minor’s parent or guardian or another adult, or an individual who has for any reason changed their mind about their purchase.

23. While Players can earn V-Bucks in-game instead of purchasing them for money, earning V-Bucks in the game is a difficult, time consuming, and an inconsistent process due to the amount of playtime required and the randomness at which V-Bucks are offered as rewards. By making V-Bucks inordinately difficult and time consuming to earn, Defendant creates a “paywall” to induce players to purchase V-Bucks instead of earning them.

24. The smallest amount of V-Bucks a player can currently purchase is 1000 V-Bucks for \$7.99 (previously \$9.99, when sold on the Apple Store). However, Defendant encourages players to purchase larger quantities of V-Bucks by providing discounts on larger amounts. For example, when V-Bucks were sold on the Apple Store, as shown below, a player could purchase 10,000 V-Bucks and receive 3,500 V-Bucks as a bonus for \$99.00, amounting to 13,500 V-Bucks, a \$135 value.

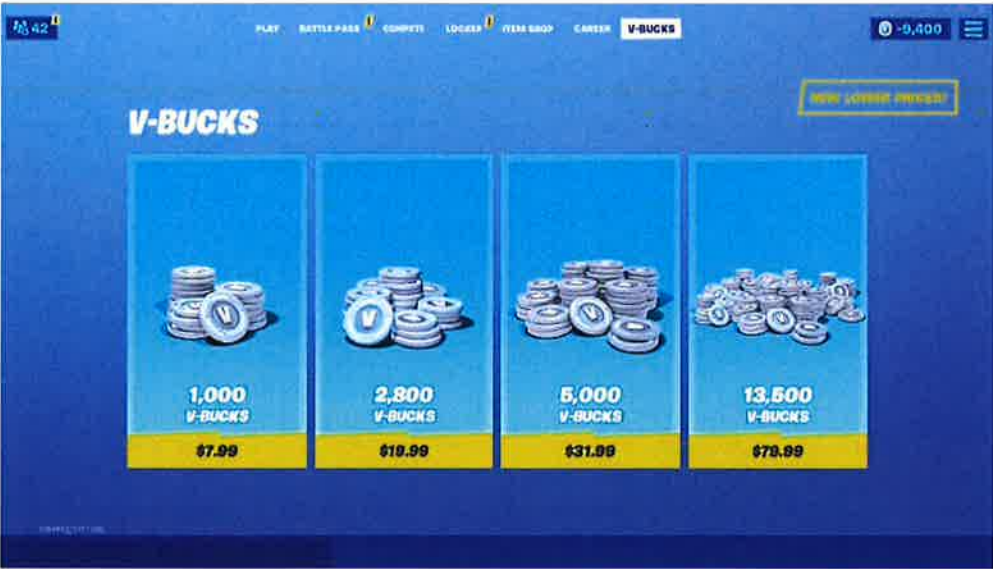


25. Although Epic could have very easily based in-game transactions on actual currency, requiring the conversion of money to V-Bucks permitted Defendant to particularly maximize its revenue in several ways. First, the V-Bucks system distances the player psychologically from the amount of real-world money he or she has spent within the game. The V-Bucks system serves to psychologically distance players from the financial implications of their in-game purchases by disconnecting the expenditure of real money from the products the players end up purchasing with their digital V-Bucks. This is especially the case for minors who may not have a firm understanding of the correlation between the amount of real-world money and V-Bucks spent. If *Fortnite* followed a traditional pay-for-game model, most players would think that spending hundreds of dollars, let alone thousands of dollars, is an exorbitant price to pay to play a single video game.

26. Defendant implements further pricing control by selling V-Bucks in currency packs and setting the price of in-game loot at odd amounts. The amount of V-Bucks in a currency pack almost never corresponds evenly to the price of loot. Using this system, Defendant

perpetuates a cycle of *Fortnite* players constantly needing V-Bucks, and never having enough, which leads players to purchase more. This cycle is further perpetuated by Defendant offering “limited time sales” on certain loot prices, creating a sense of urgency to purchase.

27. Defendant also encourages player spending by varying the exchange rate at which V-Bucks are purchased in different transaction sizes. While 1,000 V-Bucks can currently be purchased for \$7.99 at an exchange rate of approximately 125 V-Bucks per dollar, a player who purchases 13,500 V-Bucks in a single transaction is charged \$79.99, an exchange rate of approximately 169 V-Bucks per dollar.



28. Finally, Defendant induces players into making more purchases by making the purchase process incredibly easy. Once a player enters and saves a payment method, that player can purchase V-Bucks at any time almost instantly. In practice, that means minors whose parents enter and save their credit cards into a *Fortnite* account can use their parents’ credit cards to make an endless number of purchases. The ease of purchase combined with the constant cycle of introducing new items for purchase results in more purchases.

## 2. *Digital Content*

29. *Fortnite's* digital content, broadly speaking, includes two types of content: (i) related to items; and (ii) related to play modes that also allows unlocking of additional items. Both are for entertainment purposes for a user's enjoyment when playing the video game.

30. *Fortnite's* digital content items include, for example, virtual supplies, ammunition, skins, motes, Outfits (e.g., "Rox Progressive, Sentinel, Bunker Jonesy"), Wraps (Sentinel, Ripe), Glider, Harvesting Tool, 1 Music Track. Epic provides these digital content items as part of an entertainment service for recreation purposes.

31. *Fortnite's* digital content related to play modes include Battle Pass and related bundles or season matches. Battle Pass, in general, changes the play mode level of a user in the game as well as unlocks additional digital content. For example, Season Match, Season Friend Match, Battle Pass, and Battle Pass tiers allow players to play in a Battle Royale mode that unlocks in-game extras, *i.e.*, additional character and weapon skins, emotes or Sprays that act as recreation or entertainment service boosters.

32. *Fortnite's* digital content is updated frequently.

33. After purchasing digital content items, players are tempted and induced to make more purchases within a short time frame when newer content is made available and the purchase already made feels stale. Players are not able to enjoy purchases already made to the fullest extent because of Epic's frequency of pushing out newer items every week. Players are also tempted and induced to make immediate purchases when newer content is only made available for purchase for a limited time.



### 3. *Fortnite Loot Boxes*

34. In addition to obfuscating the amount of money that players spend in-game, Defendant previously maximized the amount of money that players spent in-game by incorporating so-called “loot boxes” into its game design. Defined generally, a loot box is an in-game virtual item that contains character costumes, tools, emotes and other specific in-game items that the player can use to progress through the game.

35. Until early 2019, Defendant sold some in-game items the contents of which were not revealed until after the player purchased the loot box and thereby committed to an irreversible transaction even though they did not know what items they would receive. Critically, Defendant obscured the odds of receiving the rarest items in its loot boxes, luring players into making more and more purchases on the off-chance that the next loot box will contain the item they are seeking. However, had players known the actual odds of receiving the items they desired, they would not have purchased the loot boxes.

36. This system was created to capitalize on and encourage addictive behaviors, akin to gambling. Minors are especially susceptible to these addiction-enhancing elements of game design. The experience of acquiring surprise rewards and the associated excitement of uncovering unexpected in-game items holds a strong appeal for minors and reinforces their desire to keep playing and keep getting rewards.

37. Defendant eliminated these loot boxes from *Fortnite* beginning in early 2019.<sup>1</sup> From that point forward, users could see what items they were acquiring with their V-Bucks.

38. However, Defendant did not remove in-game purchases entirely from *Fortnite*. Accordingly, while Defendant has ostensibly removed one of the most harmful elements of

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<sup>1</sup> *Fortnite loot box llamas go 'see through'*, BBC.com (January 28, 2019), <https://www.bbc.com/news/technology-47028992>.

*Fortnite*, *Fortnite* still takes in large amounts of money from in-game purchases and utilizes ever changing “seasons” that introduce new items for players to purchase.

39. Furthermore, *Fortnite* still fails to provide an unrestricted right to seek refunds of any in-game purchases made by minors, limiting refunds to just “three refund tokens” and allowing players to cancel purchases only immediately after a purchase is made and only for certain items.<sup>2</sup>

#### **4. *Fortnite In-App Purchases***

40. *Fortnite* can be played on different platforms and computing devices including PC, Xbox 1, PS4, iOS, Nintendo Switch, and Android. Minors download and install *Fortnite* and play on different platforms.

41. While on its face it appears that Epic requires that its terms of use be accepted by legal adults 18 years and older, Epic targets minors. An agreement that explicitly requires an acceptance by an adult cannot apply to a minor, and minors have a legal right to disaffirm contracts into which they enter.

42. Minors make in-App purchases, including for example, Battle Pass or Battle Pass Tiers. Minors wanting to refund their in-App purchases related to Battle Pass have no means within the game to request a refund. Epic sells Battle Pass and Battle Pass Tiers with descriptions stating that they are non-refundable. Although Epic gives players the ability to reverse three V-Bucks exchanges for cosmetic items, this is limited to three uses within the lifetime of an account, cannot be used for non-cosmetic items, cannot be used more than 30 days after an in-game exchange, and cannot be used to reverse real money purchases of V-Bucks.

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<sup>2</sup> See <https://www.epicgames.com/help/en-US/fortnite-c75/battle-royale-c93/how-to-refund-and-return-items-and-outfits-in-fortnite-a3299>; <https://www.epicgames.com/help/en-US/fortnite-c75/battle-royale-c93/what-is-the-cancel-purchase-feature-and-how-does-it-work-a3464>.

43. Minors make V-Bucks purchases without understanding the amounts involved in actual money to-date, that day, that week or that month. Minors make V-Bucks purchases through their parent's credit cards and debit cards that were stored on the gaming platforms. Parents and guardians who store credit card information in a gaming platform likely do not realize that those to whom they give access to the platform can use that credit card to make purchases.

44. Separate from purchases made directly from Epic, Minor Plaintiffs have made purchases from third-party marketplaces like the Apple Store and the PlayStation Store. V-Bucks gift cards are available for use on those marketplaces and minors who receive these gift cards for birthdays, etc., have been able to use their own money to purchase V-Bucks (as opposed to parental money charged on credit cards). Minor Plaintiffs who wanted to cancel those own-money purchases were not allowed to do so under Epic's or the third-party marketplaces' non-refundable policies.

45. Prior to making the in-App purchases, Minors are generally not aware of the non-refundable policy for Battle Pass, non-refundability of purchases older than 30 days and non-refundability of any items after exhausting three refunds for a given lifetime. Minor Plaintiffs and Class members are not buyers who would look for refund policy options at the time of purchase.

46. In many instances, a parent or guardian may not review his or her credit cards, debit cards and bank account information until months after the purchases occurred and thus would not know of the amounts spent at the time of purchase.

47. After making those purchases within the *Fortnite* ecosystem, minors who attempt to request refunds may find that none of the purchases qualified for a refund. Without hiring

counsel, Minor Plaintiffs and their guardians were not aware of a minor's right to disaffirm and get refunds on any and all in-App purchases without any restrictions.

**5. *Epic Induces Minors to Make Frequent In-App Purchases***

48. Epic induces minors to make purchases by its operation of V-Bucks currency within the *Fortnite* ecosystem.

49. Epic induces minors to make in-App purchases by promoting deals and price-cuts on different purchases that appear very enticing.

50. Epic induces minors by concealing the terms of the in-App purchase at the time of purchase by not displaying non-refundability or by displaying non-refundability in very small font.

51. Epic induces in-App purchases by allowing one-click and easy to make in-App purchases within *Fortnite*.

52. Epic does not give minors enough information to make reasonable and prudent choices with in-App purchases.

53. Epic further induces frequent in-App purchases by pushing newer content every week and comprehensive updates every other week. Any purchase already made becomes stale quickly. Players are induced to make frequent in-App purchases to keep up with their peers on whatever is the current fad.

54. By operation and policies of the *Fortnite* ecosystem, Epic is benefiting by luring minors into making in-App purchases that test the tolerance levels of parents. In many instances, parents ignore these expenses as one-time expenses at the early stages of using *Fortnite*. By disallowing refunds in the *Fortnite* ecosystem, while also making one-click purchases in the same ecosystem easy, Epic is running an unfair system.

## ***6. Epic Misleads or Misrepresents Information Related to In-App Purchases***

55. Epic misleads or misrepresents the applicable law for transactions including in-App purchases with minors. Upon information and belief, Epic knows that in the states of North Carolina, California, Illinois, Washington, Kansas, Texas and most states nationwide, the law allows minors to disaffirm contracts. Epic also knows that a minor can disaffirm contracts without any restrictions; the law permits a minor to do so. Yet, Epic operates a non-refund policy that misleads, misrepresents, and does not acknowledge a minor's right to get a refund.

56. Before hiring counsel in this action, Minor Plaintiffs and their guardians were not aware of a minor's right to disaffirm and request a refund. On information and belief, Epic's customer support routinely sends emails to players, including minors, stating that in-App purchases are non-refundable.

57. During the early use of *Fortnite*, a parent may not be monitoring his or her own credit card, debit card or bank account information closely. In such instances, the early purchases go undetected for a long period of time.

58. Epic misleads or misrepresents actual amounts spent on an in-App purchase by using intermediary V-Bucks amounts that require difficult calculations to figure out the accurate amounts spent. See details on operation of V-Bucks currency as outlined in V-Bucks section above within *Fortnite*.

59. Epic conceals and misleads minors by not displaying the terms of the in-App purchase at the time of purchase including non-refundability or by displaying non-refundability in very small font at the side. By not including any visibly cautionary language at the time of promoting in-App purchases, Epic is misleading the minors.

60. Epic misleads or misrepresents the current value of a digital content item by not disclosing when newer related content will be published. Minors have no way of knowing, for example, if a skin they are purchasing today will become stale within a day or two, or a week when newer content is published.

**B. *Rocket League***

61. *Rocket League*, similar to *Fortnite*, is a free-to-play game that involves individuals controlling stylized “cars” that move across a soccer field and attempt to score points by hitting a large soccer ball into the other side’s “goal”.

62. *Rocket League* is also available on PC, Xbox One, and PlayStation 4 and has more than 40 million registered players. As with *Fortnite*, regardless of the system played on, a player’s experience and Defendant’s representations are the same.

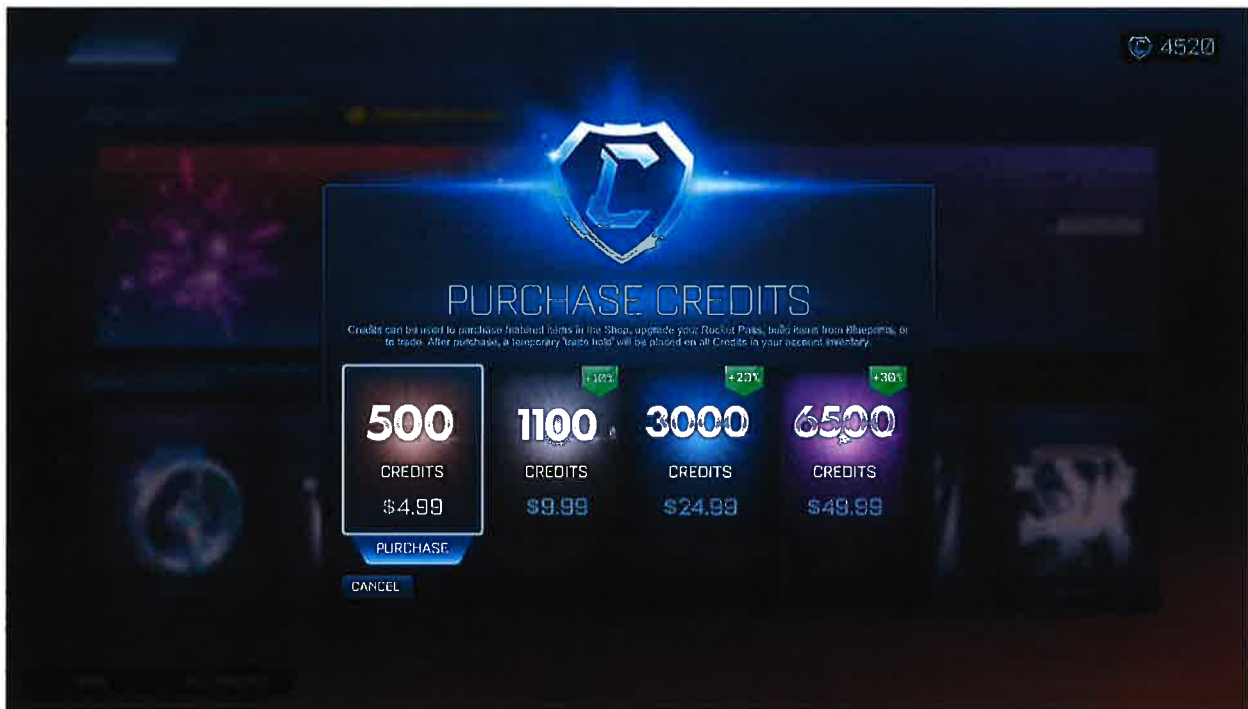
63. Similar to *Fortnite*, Defendant designed *Rocket League* in a way that links game progression to loot progression, forcing players to make in-game purchases to advance in the game.

64. While *Rocket League* used its own proprietary in-game currency, “Keys”, until late 2019, *Rocket League*’s “Keys” operated in an identical fashion to the “V-Bucks” that *Fortnite* players were encouraged to purchase.

65. *Rocket League* players could purchase Keys to “unlock” loot boxes that featured various upgrades to their in-game vehicles. However, as with *Fortnite*’s loot boxes, while Defendant would advertise to players that the loot boxes would provide the most valuable and rare loot, players did not actually know what loot they would unlock from their loot box and rarely received the valuable loot that Defendant promoted. *Rocket League* thus implemented the same deceptive elements as *Fortnite*.

66. As with *Fortnite*, in late 2019 Defendant removed “randomized” loot boxes from *Rocket League*. Following that change, players were able to see what they would be purchasing.<sup>3</sup> At this time *Rocket League* also switched to a new in-game currency named “Credits” instead of “Keys.”<sup>4</sup> Nonetheless, as with *Fortnite*, *Rocket League* still requires purchases of in-game items using “Credits” to progress in the game.

67. As in *Fortnite*, Defendant also implemented deceptive pricing controls in *Rocket League* by selling Credits in currency packs and setting the price of in-game loot at odd amounts. The amount of Credits in a currency pack almost never corresponds evenly to the price of loot. Using this system, Defendant perpetuates a cycle of *Rocket League* players constantly needing Credits, and never having enough, which leads players to purchase more.



<sup>3</sup> Georgina Torbet, ‘*Rocket League*’ update removes loot boxes from the game, Engadget.com (December 5, 2019), <https://www.engadget.com/2019-12-05-rocket-league-removes-loot-boxes.html>.

<sup>4</sup> See <https://support.rocketleague.com/hc/en-us/articles/360039416634-What-are-Credits->

68. As shown above, Defendant also encourages player spending by varying the exchange rate at which Credits are purchased in different transaction sizes. While 500 Credits can be purchased for \$4.99 at an exchange rate of approximately 100 Credits per dollar, a player who purchases 6,500 Credits in a single transaction is charged \$49.99, an exchange rate of approximately 130 Credits per dollar.

69. Critically, even though a large number of *Rocket League* players, like in *Fortnite*, are minors, *Rocket League* has not provided and still does not provide refunds for any in-game purchases, including any purchases made by minors.<sup>5</sup>

### **PLAINTIFFS' FACTS**

70. Plaintiffs were all avid players of Defendant's *Fortnite* and/or *Rocket League* video games during the relevant time period.

71. Throughout their time playing Defendant's video games, Plaintiffs have relied on Defendant's representations regarding the likelihood that any loot boxes that they purchased would actually contain any valuable in-game items.

72. Throughout their time playing Defendant's video games, Plaintiffs have also relied on Defendant's representations regarding the value of any in-game items that they received and were otherwise unaware of what any particular in-game item costs in real-world currency.

73. Despite spending the equivalent of at least \$25 in real-world currency on Defendant's loot boxes and in-game items, Plaintiffs almost never received any valuable items.

74. Had Plaintiffs known the extremely low chances of receiving any of the valuable items featured by Defendant in its loot boxes, they would not have purchased them.

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<sup>5</sup> See <https://support.rocketleague.com/hc/en-us/articles/360015502374-Refunds>.



75. Nor would Plaintiffs have made the amount of in-game purchases that they did had Defendant not required them to use its virtual currencies.

76. While *Fortnite* and *Rocket League* require that their Terms of Use be accepted by a legal adult over the age of 18 to play the game, Defendant failed to implement sufficient mechanisms for parental consent controls and does not put any procedure in place for minors to consent to the Terms of Use through their adult guardian prior to downloading and playing *Fortnite* or *Rocket League*.

77. Minor Plaintiffs do not recollect seeing, reading, or agreeing to Defendant's Terms of Use prior to playing *Fortnite*, and their guardians also did not see, read, or agree to the terms.

78. As a result, Minor Plaintiffs made several in-game purchases that were labeled non-refundable using their guardians' funds.

79. Had Defendant provided proper parental control and age verification features, Minor Plaintiffs would not have been able to make any of the purchases that they did. And had Defendant permitted Plaintiffs to disaffirm their contracted purchases, they would have done so.

80. Minor Plaintiff A.J. played *Fortnite* during the relevant time period. A.J. used a Samsung Tablet to play *Fortnite*. He does not recollect seeing, reading or agreeing to the EULA or any amended EULAs.

81. Minor Plaintiff A.J. has made several in-App purchases, including for example, Battle Pass or Battle Pass Tiers. He wanted to disaffirm the in-App purchases related to Battle Pass and request a refund but was not allowed to do so within the *Fortnite* ecosystem. Within the *Fortnite* ecosystem, Battle Pass or Battle Pass Tiers are non-refundable.

82. Minor Plaintiff A.J. has made several in-App purchases, including for example, skins. Plaintiff A.J. wanted to disaffirm the in-App purchases related to skins purchased more than 30 days ago and request a refund but was not allowed to do so within the *Fortnite* ecosystem. Within the *Fortnite* ecosystem, purchases older than 30 days are non-refundable.

83. Minor Plaintiff A.J. has made V-Bucks purchases without understanding the amounts involved in actual money to-date, that day, that week or that month. Plaintiff A.J. has made V-Bucks purchases through his parent's credit cards and debit cards that were available from his gaming platforms. Upon information and belief, several of his parent were without parental consent.

84. Minor Plaintiff A.J. has used his own money through gift cards received on social occasions including birthdays. He has used gift cards on more than one occasion, including gift cards from Epic payment vendors, for example, Google play store. Subsequent to the purchases, Minor Plaintiff A.J. wanted to cancel those purchases but was not allowed to do so under Epic's non-refundable policy.

85. Prior to making the in-App purchases, Minor Plaintiff A.J. was not aware of the non-refundable policy for Battle Pass, non-refundability of purchases older than 30 days and non-refundability of any items after exhausting three refunds for a given lifetime. Minor Plaintiff A.J. and Class members are not buyers who would look for refund policy options at the time of purchase.

86. Minor Plaintiff A.J.'s parent did not receive any notifications of the in-App purchases from Epic Games.

87. Before hiring counsel in this action, Minor Plaintiff A.J. and his parent were not aware of a minor's right to disaffirm and get refunds on any and all in-App purchases without any restrictions.

88. Minor Plaintiff A.J. relied on Epic's misrepresentation regarding non-refundability for Battle Pass purchases and non-refundability of purchases, for example, skins, older than 30 days.

89. Minor Plaintiff A.J. has not been able to earn sufficient V-Bucks within the game and all of his in-App purchases were purchases made through credit cards or debit cards from the gaming platform or gift cards.

90. Epic induces minors to make purchases by its operation of V-Bucks currency within the *Fortnite* ecosystem as outlined in paragraphs 21-38 above.

91. Minor Plaintiff A.J. has made purchases after viewing promotional deals and price-cuts. He has made one-click purchases.

92. Minor Plaintiff A.J. did not have information on his own purchase history or summary of amounts already spent with in-App purchases.

93. Minor Plaintiff A.J. has felt dissatisfied with items including skins purchased that became stale within a week.

94. Minor Plaintiff A.J. has played *Fortnite* for long periods of time, which has adversely affected his sleep at night and overall health. He has also played *Fortnite* for extended times outside his regular playing window further affecting his sleep and health adversely. Minor Plaintiff A.J. has made in-App purchases when he was tired after playing for long periods of time.

95. In many instances, during the use of *Fortnite*, Minor Plaintiff A.J.'s parent reviewed his credit cards, debit cards and bank account information months after the purchases occurred.

96. Minor Plaintiff Z.K. played *Fortnite* during the relevant time-period. Z.K. used his Sony Playstation 4, iPhone 6 Plus and iPhone X to play *Fortnite*.

97. Minor Plaintiff Z.K. does not recollect seeing, reading or agreeing to the EULA or any amended EULAs.

98. Minor Plaintiff Z.K. has made several in-App purchases, including for example, Battle Pass or Battle Pass Tiers. Minor Plaintiff Z.K. wanted to disaffirm the in-App purchases related to Battle Pass and request a refund but was not allowed to do so within the *Fortnite* ecosystem.

99. Minor Plaintiff Z.K. has made several in-App purchases, including for example, skins. Minor Plaintiff Z.K. wanted to disaffirm the in-App purchases related to skins purchased more than 30 days ago and request a refund but was not allowed to do so within the *Fortnite* ecosystem.

100. Minor Plaintiff Z.K. has made V-Bucks purchases without understanding the amounts involved in actual money to-date, that day, that week or that month. Minor Plaintiff Z.K. has made V-Bucks purchases through his parent's credit cards and debit cards that were available from his gaming platforms. Upon information and belief, several of his purchases were without parental consent.

101. Minor Plaintiff Z.K. has used his own money through gift cards received on social occasions including birthdays. He has used gift cards on more than one occasion, including gift

cards from Epic payment vendors. Subsequent to the purchases, Minor Plaintiff Z.K. wanted to cancel those purchases but was not allowed to do so under Epic's non-refundable policy.

102. Prior to making the in-App purchases, Minor Plaintiff Z.K. was not aware of the non-refundable policy for Battle Pass, non-refundability of purchases older than 30 days and non-refundability of any items after exhausting three refunds for a given lifetime. Minor Plaintiff Z.K. and Class members are not buyers who would look for refund policy options at the time of purchase.

103. Minor Plaintiff Z.K.'s parent did not receive any notifications of the in-App purchases from Epic Games.

104. After making those purchases, within the *Fortnite* ecosystem, Minor Plaintiff Z.K. attempted to request refunds but none of his purchases qualified for a refund. Before hiring counsel in this action, Minor Plaintiff Z.K. and his parent were not aware of a minor's right to disaffirm and get refunds on any and all in-App purchases without any restrictions.

105. Prior to filing this action, Minor Plaintiff Z.K. relied on Epic's misrepresentation regarding non-refundability for Battle Pass purchases and non-refundability of purchases, for example, skins, older than 30 days. Minor Plaintiff Z.K. has felt dissatisfied with items including skins purchased that became stale within a week.

106. Minor Plaintiff Z.K. has not been able to earn sufficient V-Bucks within the game and the majority of his in-App purchases were purchases made through credit cards or debit cards from the gaming platform or gift cards.

107. Minor Plaintiff Z.K. has made purchases after viewing promotional deals and price-cuts. Minor Plaintiff Z.K. has made one-click purchases. Minor Plaintiff Z.K. did not have information on his own purchase history or summary of amounts already spent with in-App

purchases. Minor Plaintiff Z.K. did not calculate or understand the actual amounts spent when making in-App purchases.

108. Minor Plaintiff Z.K.'s guardian did not receive any notifications of any of the purchases when he was not routinely monitoring his credit cards, debit cards and bank account information.

109. Minor Plaintiff Z.K. has played *Fortnite* for long periods of time to adversely affect his sleep at night and overall health. He has also played *Fortnite* at times for extended times outside his regular playing window further affecting his sleep and health adversely. Minor Plaintiff Z.K. has made in-App purchases when he was tired after playing for long periods of time.

110. In many instances, during the use of *Fortnite*, Minor Plaintiff Z.K.'s parent reviewed his credit cards, debit cards and bank account information months after the purchases occurred.

111. Minor Plaintiff M.M. started playing *Fortnite* when it was first released in 2017. Minor Plaintiff M.M. has made in-App purchases using credit card, debit card, PayPal or bank account information on his gaming platform and his own money in gift cards. He was induced and misled by Epic to make those purchases and was refused refunds.

112. During the relevant time period, Minor Plaintiff L.M. has made several *Fortnite* in-App purchases, including skins and emotes, using credit card, debit card, PayPal or bank account information on his gaming platform. He was induced and misled by Epic to make those purchases and was refused refunds.

## COMMON CLASS ALLEGATIONS

113. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

114. Pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, Plaintiffs bring this action individually and on behalf of the following class:

**The Class:**

All persons in the United States who, at any time between July 1, 2015 and the present, had a *Fortnite* or *Rocket League* account that they used to play either game on any device and in any mode and (a) exchanged in-game virtual currency for any in-game benefit, or (b) made a purchase of virtual currency or other in-game benefit for use within *Fortnite* or *Rocket League*.

115. Excluded from the Class are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officer or director.

116. Commonality: All questions concerning Defendant's marketing and sales of its *Fortnite* and *Rocket League* products and services are common. Each and every member of the proposed Class was subject to the same unfair and deceptive practices involving Defendant's marketing of its *Fortnite* and *Rocket League* in-game content and refund policies. Whether Defendant's conduct was unlawful under the North Carolina's and other states' Deceptive and Unfair Trade Practices laws is a common question the answer to which will drive other answers in the litigation, including whether the Defendant's conduct was unlawful and whether the monies Defendant obtained through its marketing and sales practices should be refunded to members of the Class.

117. Predominance: Common questions of law and fact predominate over any individual issues that may be presented, because Defendant engaged in standardized conduct of

deceptively marketing its in-game content and not allowing minors to obtain refunds of any purchases as described herein. These questions include, but are not limited to:

- a. Whether Defendant's practice of not disclosing the content of loot boxes was deceptive to a reasonable consumer;
- b. Whether Defendant's practice of requiring purchase of its virtual currencies to advance in its games constituted a deceptive practice;
- c. Whether Defendant's failure to provide a method for minors or their guardians to disaffirm any purchases violated their consumer rights;
- d. Whether Defendant's pricing schemes for its virtual currencies constituted a deceptive practice;
- e. Whether Plaintiffs and the other Class members were damaged by Defendant's conduct; and
- f. Whether Plaintiffs and the other Class members are entitled to restitution or other relief.

118. Numerosity: The Class members are so numerous that joinder of all is impractical. The names and contact information for the Class members are readily identifiable through the business records maintained by Defendant, and may be notified of the pendency of this action by published and/or mailed notice. Members of the Class include thousands of present and former players of Defendant's *Fortnite* and *Rocket League* video games who have already been subject to Defendant's deceptive and unfair practices and will continue to be subject to them in the future unless the deceptive and unfair trade practices is enjoined.

119. Typicality: The claims of the Plaintiffs are typical of the claims of the proposed Class and all are based on the same facts and legal theories, as all such claims arise out of



Defendant's standardized conduct of how it marketed its in-game content and failed to allow minors to obtain a refund.

120. Adequate Representation: The Plaintiffs are adequate representative of the class in that the Plaintiffs do not have antagonistic or conflicting claims with other members of the Class. Plaintiffs have also retained counsel experienced in the prosecution of complex class actions and consumer litigation. Neither Plaintiffs nor their counsel have any interests that might cause them not to vigorously pursue this action. Plaintiffs are aware of their responsibilities to the putative Class and have accepted such responsibilities.

121. Superiority: A class action is superior to all other available methods for fair and efficient adjudication of this controversy. Plaintiffs anticipate no difficulty in managing and maintaining this action as a class action. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

122. Further, Defendant has acted and refused to act on grounds generally applicable to the proposed Class, thereby making appropriate final injunctive and declaratory relief with respect to the Class as a whole.

**FIRST CAUSE OF ACTION**  
Violations of Consumer Protection Laws  
(on behalf of Plaintiffs and the Class)

123. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

124. The North Carolina Unfair and Deceptive Trade Practices laws, N.C.G.S. § 75-1.1 *et seq.*, as well as materially identical consumer protection statutes enacted in other states where

Plaintiffs and other consumers play Defendant's *Fortnite* and *Rocket League* games – see, e.g., Idaho (Idaho Code § 48-603 *et seq.*), Illinois (815 ILCS 502/1 *et seq.*), Indiana (Ind. Code § 24-5-0.5-3 *et seq.*), Michigan (Mich. Comp. Laws Ann. § 445.901 *et seq.*), Missouri (Mo. Rev. Stat. § 407.020(1) *et seq.*), Wisconsin (Wis. Stat. Ann. §§ 100.18, 100.20), California (Cal. Civ. Code § 1750 *et seq.*), New York (N.Y. Gen. Bus. Law §§ 349, 350), Washington state (Wash. Rev. Code. § 19.86.020 *et seq.*), *etc.* – prohibit deceptive acts and practices in advertising and selling products and services to consumers.

125. Plaintiffs and the other Class members are consumers within the meaning of the above listed consumer protection laws.

126. Defendant's conduct as alleged herein occurred in the course of trade or commerce.

127. Defendant's actions in affirmatively representing and advertising loot boxes in its *Fortnite* and *Rocket League* games as containing valuable in-game items, even though consumers rarely if ever received the advertised items, offends public policy, has caused substantial injury to consumers, including Plaintiffs, and constitutes an unfair and deceptive trade practice.

128. Defendant's actions in making its *Fortnite* and *Rocket League* games free to play but requiring consumers to purchase in-game items to advance in the game offends public policy, has caused substantial injury to consumers, including Plaintiffs, and constitutes an unfair and deceptive trade practice.

129. Defendant also engaged in unfair and deceptive trade practices by failing to implement any age verification or parental control features, including an unrestricted right to refund any purchases made by minors, despite knowing that a large number of the players of its

*Fortnite* and *Rocket League* video games were minors who can disaffirm contractual obligations, including purchase agreements.

130. Upon information and belief, and given the fact that Defendant is the owner and operator of its *Fortnite* and *Rocket League* video games, Defendant knew or should have known at all relevant times the odds of any given loot box containing any particular item and that its loot boxes rarely contained the valuable items that Defendant most prominently advertised.

131. Defendant also knew or should have known that while its *Fortnite* and *Rocket League* video games were advertised as “free” to play that they were designed in a manner that would require players to purchase in-game items to advance in their games and utilized a virtual currency system that made players spend significant amounts of money that they otherwise would not have spent on virtual “items” that are not worth the cash-equivalent amount.

132. Defendant intended for consumers to rely on its representations regarding the contents of the loot boxes in its *Fortnite* and *Rocket League* video games when choosing to purchase such products and intended for consumers to believe that the in-game items that they were purchasing were worth more than what Plaintiffs would have otherwise paid for them in real-world currency.

133. Plaintiffs and the other members of the Class did reasonably rely on Defendant’s misrepresentations in choosing to purchase Defendant’s virtual in-game products, and would not have purchased them had Defendant not made the false and deceptive representations regarding their value.

134. As a direct and proximate cause of Defendant’s deceptive and unfair trade practices, Plaintiffs and the other members of the Class suffered actual damages, including monetary losses.

135. Defendant's conduct is in violation of the North Carolina's Unfair and Deceptive Trade Practices law and other states' consumer protection laws as listed above, and pursuant to N.C.G.S. §§ 75-16–75-16.1 and other such states' consumer protection laws, Plaintiffs and the other members of the Class are entitled to damages in an amount in excess of \$25,000 to be proven at trial, reasonable attorney's fees, injunctive relief prohibiting Defendant's unfair and deceptive advertising going forward, and any other penalties or awards that may be appropriate under applicable law.

**SECOND CAUSE OF ACTION**

Violations of Consumer Protection Laws Against Minors  
(On behalf of Minor Plaintiffs and the Class)

136. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

137. The North Carolina Unfair and Deceptive Trade Practices laws, N.C.G.S. § 75-1.1 *et seq.*, as well as materially identical consumer protection statutes enacted in other states where Plaintiffs and other consumers play Defendant's *Fortnite* and *Rocket League* games – *see, e.g.*, Idaho (Idaho Code § 48-603 *et seq.*), Illinois (815 ILCS 502/1 *et seq.*), Indiana (Ind. Code § 24-5-0.5-3 *et seq.*), Michigan (Mich. Comp. Laws Ann. § 445.901 *et seq.*), Missouri (Mo. Rev. Stat. § 407.020(1) *et seq.*), Wisconsin (Wis. Stat. Ann. §§ 100.18, 100.20), California (Cal. Civ. Code § 1750 *et seq.*), New York (N.Y. Gen. Buss. Law §§ 349, 350), Washington state (Wash. Rev. Code. § 19.86.020 *et seq.*), *etc.* – prohibit deceptive acts and practices in advertising and selling products and services to consumers.

138. Minor Plaintiffs and the other Class members are consumers within the meaning of the above listed consumer protection laws.

139. Defendant's conduct as alleged herein occurred in the course of trade or commerce.

140. Defendant engaged in unfair and deceptive trade practices by failing to implement any age verification or parental control features, including providing an unrestricted right to refund any purchases made by minors, despite knowing that a large number of the players of its *Fortnite* and *Rocket League* video games were minors who cannot be bound by any contractual obligations including entering into any purchase agreements.

141. Defendant was aware that minors are a significant population of the individuals who play its *Fortnite* and *Rocket League* games and that they are not capable of entering into binding contracts including for purchases of goods such that Defendant should have included parental control features and provided for an unrestricted right for minors and their guardians to seek refunds of any purchases made.

142. Defendant did not make Minor Plaintiffs, their guardians, or the other members of the Class aware that they had an unrestricted right to refund any purchases, and did not implement any age verification or parental control features in its *Fortnite* and *Rocket League* video games that would have prevented Minor Plaintiffs and the other Class members from making the purchases that they did, or would have otherwise allowed them to seek a refund for their purchases.

143. Defendant intentionally and knowingly omitted giving information that refunds are allowed for minors without any restrictions under applicable law. Such representations and omissions misled Minor Plaintiffs and Class members and are likely to mislead the public.

144. Defendant knew or should have known that its representations regarding the in-App purchases were false, deceptive, and misleading.

145. Defendant's conduct described herein constitutes an unfair business practice because it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers, and any utility of such practices is outweighed by the harm caused to consumers, including to Minor Plaintiffs, the Class, and the public. Defendant engages in unfair practices by actively advertising, marketing and promoting Apps as "free" with the intent to induce minors to purchase in-game currency in a manner likely to deceive the minors.

146. Defendant's wrongful conduct is ongoing, and part of a pattern or generalized course of conduct repeated on thousands of occasions yearly.

147. As a direct and proximate cause of Defendant's deceptive and unfair trade practices, Minor Plaintiffs and their guardians, and the other members of the Class, suffered actual damages, including monetary losses.

148. Defendant's conduct is in violation of North Carolina's Unfair and Deceptive Trade Practices law and other states' consumer protection laws as listed above, and pursuant to N.C.G.S. §§ 75-16-75-16.1 and other such states' consumer protection laws, Plaintiffs and the other members of the Class are entitled to damages in an amount to be proven at trial, reasonable attorney's fees, injunctive relief prohibiting Defendant's unfair and deceptive practices as to any minors playing its *Fortnite* and *Rocket League* video games going forward, and any other penalties or awards that may be appropriate under applicable law.

**THIRD CAUSE OF ACTION**  
Unjust Enrichment  
(On behalf of Plaintiffs and the Class)

149. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

150. Plaintiffs and the other Class members conferred an economic benefit on Defendant through their in-game purchases.

151. It is inequitable and unjust for Defendant to retain the revenues obtained from in-game purchases made by Plaintiffs and the other Class members because Defendant knowingly misrepresented and omitted the odds of receiving valuable loot in its loot boxes. Had Plaintiffs and the other Class members known the odds of obtaining valuable loot, they would not have made the purchases.

152. It is also inequitable and unjust for Defendant to retain the revenue obtained from in-game purchases made by Plaintiffs and the other Class members due to the deceptive nature of Defendant's in-game currencies in its *Fortnite* and *Rocket League* video games that did not allow Plaintiffs and the other Class members to see the real-world currency value of the items that they were purchasing.

153. Accordingly, because Defendant will be unjustly enriched if it is allowed to retain such funds, Defendant must pay restitution to Plaintiffs and the other Class members in the amount which Defendant was unjustly enriched by each of their in-game purchases.

#### **FOURTH CAUSE OF ACTION**

Declaratory Judgment on Minor's Rights to Disaffirm  
(On behalf of Minor Plaintiffs and the Class)

154. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

155. On information and belief, Epic's *Fortnite* is approved for players 13 years and older. Epic enters into a contract with a minor when an in-App purchase by the minor is confirmed, and thus accepted. Epic gives the consideration of digital content and entertainment service of in-App purchases, *i.e.* skin, motes, v-bucks etc. exchanged for consideration of

returned purchase value in actual money from the minor. Plaintiffs and Class members incorporate and reallege all allegations set out in paragraphs 29-33 above.

156. Under North Carolina law, and equivalent law in most states nationwide, minors have the right to disaffirm contracts such as those at issue here. *See, e.g.*, N.C.G.S. § 48A; Cal. Fam. Code § 6710.

157. Minors may disaffirm or a guardian may disaffirm a contract on behalf of a minor. By no later than the filing date of this lawsuit, Minor Plaintiffs disaffirmed all in-App purchases made through *Fortnite* to-date and requested a refund. Minor Plaintiffs seek injunctive relief on behalf of the Class for future and prospective transactions on the Epic Games video gaming platform and ecosystem to allow for refunds on all in-App purchases without restrictions.

158. The contracts between Defendant and the members of the Class who are minors are voidable – a fact that Defendant denies.

159. Accordingly, there is an actual controversy between the parties, requiring a declaratory judgment.

160. This claim for declaratory judgment is brought pursuant to N.C.G.S. § 1-253 *et seq.*, seeking a determination by the Court that: (a) this action may proceed and be maintained as a class action; (b) the sales contracts between Defendant and Class members who are minors, relating to the purchase of in-game currency, are voidable at the option of those Class members or their guardians; (c) if the class members elect to void the contracts, they will be entitled to restitution and interest thereon; (d) an award of reasonable attorneys' fees and costs of suit to Minor Plaintiffs and the Class is appropriate; and € such other and further relief as is necessary and just may be appropriate as well.



**FIFTH CAUSE OF ACTION**  
Negligent Misrepresentation  
(On behalf of Minor Plaintiffs and the Class)

161. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

162. Epic had a duty to provide honest and accurate information to its customers including minors so that the minors could make informed decisions on the in-App purchases.

163. Epic breached its duty when it specifically and expressly misrepresented material facts to Minor Plaintiffs and the other Class members, as discussed above by not allowing minors to receive refunds when the law expressly allows it.

164. Epic knows, or in the exercise of reasonable diligence, should have known, that any ordinary minor would be misled by Epic's misleading and deceptive in-App game purchase policies.

165. Minor Plaintiffs and the other Class members justifiably relied on Epic's misrepresentations and have been subsequently damaged in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and members of the proposed Class respectfully request that this Court:

1. Assume jurisdiction over this action;
2. Certify the Class and appoint Plaintiffs and their counsel to represent the Class;
3. Issue a declaratory judgment that Defendant's actions as set forth herein violated the rights of Plaintiffs and each member of the proposed Class pursuant to N.C.G.S. § 75-1 *et seq.* and materially identical consumer protection statutes enacted in other states where Plaintiffs and other consumers play Defendant's *Fortnite* and *Rocket League* games;

4. Issue a declaratory judgment that the sales contracts between Defendant and Minor Plaintiffs and the minor Class members are voidable;
5. Award Plaintiffs and each member of the proposed Class compensatory damages in an amount to be determined at trial;
6. Award attorneys' fees to Plaintiffs and members of the proposed Class;
7. Tax the costs of this action to Defendant;
8. Allow a trial by jury on all issues so triable; and
9. Grant Plaintiffs and the members of the proposed Class such other and further relief as the Court deems just and proper.

Respectfully submitted on this 12<sup>th</sup> day of January, 2021.

**WHITFIELD BRYSON LLP**

BY: /s/ 

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