

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
E-Mail: ltfisher@bursor.com

BURSOR & FISHER, P.A.

Philip L. Fraietta (*pro hac vice* forthcoming)
Alec M. Leslie (*pro hac vice* forthcoming)
Matthew A. Girardi (*pro hac vice* forthcoming)
Julian C. Diamond (*pro hac vice* forthcoming)
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
E-Mail: pfraietta@bursor.com
aleslie@bursor.com
mgirardi@bursor.com
jdiamond@bursor.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

T.T., a minor, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

SUPERCELL, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff T.T., a minor (hereinafter “Plaintiff”), brings this action on behalf of himself and
2 all others similarly situated against Defendant Supercell, Inc. (hereinafter “Defendant” or
3 “Supercell”). Plaintiff makes the following allegations pursuant to the investigation of his counsel
4 and based upon information and belief, except as to the allegations specifically pertaining to
5 himself, which are based on personal knowledge.

6 **NATURE OF THE CASE**

7 1. This is a putative class action brought by Plaintiff on behalf of himself and all others
8 similarly situated who disaffirm their entire contracts with Defendant and seek restitution in the
9 amount already paid to Defendant on their now-void contracts. By filing this action, Plaintiff
10 hereby disaffirms his entire contract with Defendant.

11 2. Plaintiff and the putative class have suffered injury due to deceptive and misleading
12 trade practices by Defendant in marketing and selling in-game items and in-game currency for its
13 popular video games, Clash of Clans, Clash Royale and Brawl Stars (collectively, the “Games”).
14 These items and in-game currency are frequently purchased by minors who are unable to exercise
15 their unrestricted rights under state laws to rescind contracts into which they entered with
16 Defendant.

17 3. The Games are ostensibly “free” to play. However, the Games realize billions of
18 dollars in revenue, largely from children.

19 4. The Games are monetized through a system where players can obtain new upgrades,
20 characters, chests, weapons, costumes, and other resources in exchange for virtual currency. The
21 in-game currency can be purchased from Defendant using real money.

22 5. Plaintiff brings this action for declaratory, equitable, and monetary relief under the
23 Declaratory Judgment Act, Business and Professions Code § 17200 *et seq.*, and/or for Unjust
24 Enrichment.

25 **JURISDICTION AND VENUE**

26 6. Jurisdiction is proper in this Court pursuant to the Class Action Fairness Act
27 (“CAFA”), 28 U.S.C. § 1332(d)(2) because this is a class action in which at least one member of
28

1 the class is a citizen of a state different from any Defendant, the amount in controversy exceeds \$5
2 million, exclusive of interest and costs, and the proposed class contains more than 100 members.

3 7. This Court has personal jurisdiction over the Defendant because Defendant
4 maintains its principal place of business in this District and because a substantial part of the events
5 or omissions giving rise to the claims asserted herein occurred in this District.

6 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a substantial
7 part of the events or omissions giving rise to the claims asserted herein occurred in this District and
8 because Defendant maintains its principal place of business in this District.

9 **PARTIES**

10 9. Plaintiff T.T. is a minor and a resident of California. Plaintiff, on his own account
11 and using his money, made multiple in-game purchases in Clash Royale. Plaintiff no longer plays
12 the Games and will not play the Games in the future.

13 10. Defendant Supercell, Inc. is a Delaware corporation with a principal place of
14 business located at 555 California St., Suite 5200, San Francisco, California, 94104. Supercell is a
15 mobile video game development company whose video games include Brawl Stars, Clash of Clans,
16 and Clash Royale. Supercell transacts significant business within California and throughout the
17 country.

18 **GENERAL BACKGROUND**

19 **A. *The Games***

20 11. Brawl Stars, Clash of Clans, and Clash Royale are video game platforms developed
21 by Defendant. While the games are somewhat distinct in gameplay, they feature identical
22 contractual elements to the extent relevant for this case.

23 12. The Games all break away from the traditional pay-for-game model, wherein a
24 consumer pays a one-time fee for a game and gains access to all of its features. Supercell instead
25 offers the Games for free with the hopes that players purchase various in-game items. This is
26 referred to as the “free-to-play” or “freemium” model.

27 13. However, while the Games can ostensibly be played without making in-game
28 purchases, the Games encourage impressionable minors to make in-game purchases. This is

1 because many of the Games’ most desirable in-game items and avatars can only be obtained by
2 purchasing the items with virtual currency referred to as “Gems.” While Gems can be obtained
3 (albeit slowly) through gameplay, obtaining Gems generally requires users to purchase them with
4 real money.

5 14. This system was created to capitalize on and encourage addictive behaviors. Minors
6 are especially susceptible to these addiction-forming elements of game design. The experience of
7 acquiring in-game items holds a strong appeal for minors and reinforces their desire to keep
8 playing and continue making purchases.

9 15. Members of Congress have expressed concern about nearly identical practices.
10 Specifically, in letters released to the public, Congresswoman Lori Trahan, Congresswoman Kathy
11 Castor, and Senator Edward J. Markey have other similar video game makers to “make changes to
12 [their] product or service’s design or data collection” to address “Loot boxes ... [that] encourage[e]
13 purchase before a child knows what the ‘bundle’ contains— akin to gambling.” *See* Ex. A.

14 16. Defendant’s strategy has been immensely successful. Supercell earned
15 approximately \$2,240,000,000 in 2021.¹

16 17. In pursuit of these massive profits and to the detriment of minor consumers,
17 Defendant fails to provide an unrestricted right to seek refunds of any in-game purchases made by
18 minors as is required by state law.

19 18. Further, as detailed below, Plaintiff and the putative class’s contracts for the
20 purchase of virtual currency and/or virtual goods are void as a matter of law.

21 **B. *Defendant’s Misconduct***

22 19. Defendant misleads or misrepresents the applicable law for transactions with minor,
23 including in-game purchases. Specifically, Defendant knows that in the state of California, and in
24 most states nationwide, the law allows minors to disaffirm contracts. Defendant also knows that a
25 minor can disaffirm contracts without any restrictions because the law permits a minor to do so.
26 And finally, Defendant knows that contracts with minors for “personal property not in the
27 immediate possession or control of the minor[s]” are void under CA FAM § 6701. Yet, Defendant

28 ¹ <https://supercell.com/en/news/best-days/7600/>

1 operates a non-refund policy that misleads, misrepresents, and/or does not acknowledge a minor’s
2 right to obtain a refund.

3 20. To the extent that Supercell requires that its Terms of Service be accepted by legal
4 adults 18 years and older, Supercell still targets minors. An agreement that explicitly requires
5 acceptance by an adult cannot apply to a minor, and minors have a legal right to disaffirm contracts
6 into which they enter. And Supercell is aware a large portion of its player base is minors, and
7 depending on the game, either allows players who have verified an age under 18 to make
8 purchasers or does not verify ages at all.²

9 21. The Supercell Terms of Service (“TOS”) state that “[i]n the Service, you may
10 purchase, with ‘real world’ money, a limited, personal, non-transferable, non-sublicensable,
11 revocable right to use (a) virtual currency, including but not limited to virtual cash or diamonds, all
12 for use in Supercell games”³

13 22. The TOS also state that “ALL PURCHASES AND REDEMPTIONS OF VIRTUAL
14 ITEMS MADE THROUGH THE SERVICE ARE FINAL AND NON-REFUNDABLE”
15 (emphasis in original).⁴

16 23. Defendant maintains possession and control over Gems and whichever items that
17 users purchase with their Gems. Specifically, Defendant states “Supercell may manage, regulate,
18 control, modify or eliminate Virtual Items at any time, with or without notice. Supercell shall have
19 no liability to you or any third party in the event that Supercell exercises any such rights.”⁵

20 24. Gems can be purchased in the form of a digital code or a tangible card.

21 25. Defendant additionally maintains possession and control of the purchases of
22 Plaintiff and the Class by stating “Supercell owns, has licensed, or otherwise has rights to use all of
23 the content that appears in the Service or in Supercell games. Notwithstanding any provision to the
24 contrary herein, you agree that you have no right or title in or to any content that appears in the
25 Service, including without limitation the virtual items, content, features, goods, services or

26 ² <https://supercell.com/en/>.

27 ³ <https://supercell.com/en/terms-of-service/>.

28 ⁴ *Id.*

⁵ *Id.*, see section 4.1.

1 currency appearing or originating in any Supercell game, whether earned in a game or purchased
2 from Supercell, or any other attributes associated with an Account or stored on the Service.”⁶

3 26. Defendant also “reserves the right to stop offering and/or supporting the Service or a
4 particular game or part of the Service at any time, at which point your right to use the Service or a
5 part thereof will be automatically terminated.”⁷

6 27. Defendant thus contracts with Plaintiff and the class for “personal property not in
7 the immediate possession or control of the minor[s].” CA FAM § 6701.

8 28. After making purchases within the Supercell ecosystem, minors who attempt to
9 request refunds thus find that none of their purchases can be refunded. Without hiring counsel,
10 minor class members and their guardians are not aware of a minor’s right to disaffirm and get
11 refunds on in-game purchases.

12 **PLAINTIFF’S EXPERIENCE**

13 29. Before hiring counsel in this action, Plaintiff was not aware of a minor’s right to
14 disaffirm and request a refund.

15 30. Within the last year Plaintiff made multiple in-game purchases of Gems in the
16 Games, using his money.

17 31. Despite spending money on in-game purchases, Plaintiff did not receive any items
18 that had real value. Plaintiff regrets these purchases and wishes to obtain a full refund. Plaintiff no
19 longer plays the Games and has no desire to resume playing the Games.

20 32. After making his purchases, Plaintiff wanted to disaffirm them and request a refund.
21 However, he was not able to do so under Supercell’s refund policy, which states that “ALL
22 PURCHASES AND REDEMPTIONS OF VIRTUAL ITEMS MADE THROUGH THE SERVICE
23 ARE FINAL AND NON-REFUNDABLE” (emphasis in original).

24 33. Once his parent retained counsel on his behalf to determine if his purchases could be
25 recovered, Plaintiff and his parent read and reviewed the statement in the TOS that “[i]n the
26 Service you may purchase, with ‘real world’ money, a limited, personal, non-transferable, non-

27 ⁶ *Id.*, see section 2.3.

28 ⁷ *Id.*, see section 1.2.

1 sublicensable, revocable right to use (a) virtual currency, including but not limited to virtual cash
2 or diamonds, all for use in Supercell games,” and that “[a]ll purchases and redemptions of virtual
3 items made through the service are final and non-refundable.”

4 34. Had Defendant provided proper parental control and age verification features,
5 Plaintiff would not have been able to make any of the purchases that he did. Defendant could also
6 implement features to allow minors to obtain refunds for purchases based on their unrestricted right
7 to disaffirm contracts and/or based upon the fact that minors’ purchases of Gems and virtual goods
8 in the Games are void as a matter of law.

9 35. Plaintiff relied on Defendant’s representations regarding non-refundability for
10 purchases.

11 36. Plaintiff has felt dissatisfied with purchases that he made within the Games.

12 **CLASS ALLEGATIONS**

13 37. Plaintiff seeks to represent a class defined as:

14 All persons in the United States who, at any time while under the age of 18, (a)
15 exchanged in-game virtual currency for any in-game benefit within the Defendant’s
16 Games, or (b) made a purchase of virtual currency or other in-game benefit for use
within the Defendant’s Games.

17 38. Specifically excluded from the Class are Defendant, Defendant’s officers, directors,
18 agents, trustees, parents, children, corporations, trusts, representatives, employees, principals,
19 servants, partners, joint ventures, or entities controlled by Defendant, and their heirs, successors,
20 assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant’s
21 officers and/or directors, the judge assigned to this action, and any member of the judge’s
22 immediate family.

23 39. Plaintiff reserves the right to expand, limit, modify, or amend the class definition,
24 including the addition of one or more subclasses, in connection with his motion for class
25 certification, or at any other time, based on, inter alia, changing circumstances and/or new facts
26 obtained.

27 40. **Numerosity.** On information and belief, hundreds of thousands of consumers fall
28 into the definitions of the Class. Members of the Class can be identified through Defendant’s

1 records, discovery, and other third-party sources.

2 41. **Commonality and Predominance.** Common questions of law and fact exist as to
3 all members of the Class and predominate over any questions affecting only individual members of
4 the Class. These common legal and factual questions include, but are not limited to, the following:

- 5 a. Whether Defendant's failure to provide a method for minors or their guardians to
6 disaffirm any purchases violated their consumer rights;
- 7 b. Whether Plaintiff and the Class are able to disaffirm their contracts with Defendant
8 and obtain a refund through the Declaratory Judgment Act;
- 9 c. Whether Plaintiff's and the other Class members' contracts for the purchase of
10 virtual currency and/or goods are void as a matter of law;
- 11 d. Whether Plaintiff and the other Class members were damaged by Defendant's
12 conduct; and
- 13 e. Whether Plaintiff and the other Class members are entitled to restitution or other
14 relief.

15 42. **Typicality.** Plaintiff's claims are typical of the claims of the other members of the
16 Class in that, among other things, all Class members were similarly situated and were comparably
17 injured through Defendant's wrongful conduct as set forth herein. Further, there are no defenses
18 available to Defendant that are unique to Plaintiff.

19 43. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
20 interests of the Class. Plaintiff has retained counsel that is highly experienced in complex
21 consumer class action litigation, and Plaintiff intends to vigorously prosecute this action on behalf
22 of the Class. Furthermore, Plaintiff has no interests that are antagonistic to those of the Class.

23 44. **Superiority.** A class action is superior to all other available means for the fair and
24 efficient adjudication of this controversy. The damages or other financial detriment suffered by
25 individual Class members are relatively small compared to the burden and expense of individual
26 litigation of their claims against Defendant. It would thus be virtually impossible for the Class to
27 obtain effective redress for the wrongs committed against the members on an individual basis.
28 Furthermore, even if Class members could afford such individualized litigation, the court system

1 could not. Individualized litigation would create the danger of inconsistent or contradictory
2 judgments arising from the same set of facts. Individualized litigation would also increase the
3 delay and expense to all parties and the court system from the issues raised by this action. By
4 contrast, the class action device provides the benefits of adjudication of these issues in a single
5 proceeding, economies of scale, and comprehensive supervision by a single court, and presents no
6 unusual management difficulties under the circumstances.

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

10 **CAUSES OF ACTION**

11 **COUNT I**

12 **Declaratory Judgment on Minor's Right to Disaffirm
(On behalf of Plaintiff and the Class)**

13 46. The foregoing allegations are hereby reincorporated by reference as if fully restated
14 herein.

15 47. Defendant's video games are approved for players of all ages. Defendant enters into
16 and accepts a contract with a minor when an in-game purchase by the minor is confirmed, and thus
17 accepted.

18 48. There is consideration on both sides of this contract. Supercell gives the
19 consideration of digital content and entertainment service of the in-game purchases, exchanged for
20 consideration of actual money from the minor.

21 49. Under California law, and equivalent law in states nationwide, minors have the right
22 to disaffirm contracts such as those at issue here. Cal. Fam. Code § 6710 (2010).

23 50. Minors may disaffirm or a guardian may disaffirm a contract on behalf of a minor
24 within a reasonable amount of time of turning 18 years old. Through the filing of this lawsuit, and
25 thus by no later than the filing date of this lawsuit, Plaintiff disaffirmed all in-game purchases he
26 has made through the Games to date and requested a refund.

1 51. Plaintiff further seeks injunctive relief on behalf of the Class for future and
2 prospective transactions on the Supercell video gaming platform and ecosystem to allow for
3 refunds on all in-game purchases without restrictions.

4 52. The contracts between Defendant and the members of the Class who are minors are
5 voidable — a fact that Defendant denies as evidenced by its denial of the Class’s right to be
6 refunded in its Terms of Service.

7 53. Accordingly, there is an actual controversy between the parties, requiring a
8 declaratory judgment.

9 54. Plaintiff has no adequate remedy at law for this claim. There is no commensurate
10 legal remedy for avoidance of Plaintiff’s contract and full restitution and interest thereon.
11 Alternatively, legal remedies available to Plaintiff are inadequate because they are not “equally
12 prompt and certain and in other ways efficient” as equitable relief. *American Life Ins. Co. v.*
13 *Stewart*, 300 U.S. 203, 214 (1937); *see also U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct.
14 6, 1992) (“the ‘mere existence’ of a possible legal remedy is not sufficient to warrant denial of
15 equitable relief”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there
16 may be a remedy at law does not oust the jurisdiction of a court of equity. To have this effect, the
17 remedy must also be speedy, adequate, and efficacious to the end in view ... It must reach the
18 whole mischief and secure the whole right of the party in a perfect manner at the present time and
19 not in the future”). Furthermore:

- 20 a. To the extent damages are available here, damages are not equally certain as
21 restitution because the standard that governs ordering restitution is different than the
22 standard that governs damages. Hence, the Court may award restitution even if it
23 determines that Plaintiff fails to sufficiently adduce evidence to support an award of
24 damages.
- 25 b. Damages and restitution are not necessarily the same amount. Unlike damages,
26 restitution is not limited to the amount of money defendant wrongfully acquired plus
27 the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff
28 to recover all profits from the wrongdoing, even where the original funds taken have

1 grown far greater than the legal rate of interest would recognize. Plaintiff seeks such
2 relief here.

3 c. Legal claims for damages are not equally certain as restitution because claims under
4 the CLRA, UCL and unjust enrichment entail few elements.

5 d. Plaintiff also lacks an adequate remedy at law to prevent future harm.

6 55. This claim for declaratory judgment is brought pursuant to 28 U.S.C. § 2201 *et seq.*,
7 seeking a determination by the Court that: (a) this action may proceed and be maintained as a class
8 action; (b) the sales contracts between Defendant and Class members who are minors, relating to
9 the purchase of in-game currency and virtual items, are voidable at the option of those Class
10 members or their guardians; (c) if the Class members elect to void the contracts, they will be
11 entitled to restitution and interest thereon; (d) an award of reasonable attorneys' fees and costs of
12 suit to Plaintiff and the Class is appropriate; and such other and further relief as is necessary and
13 just may be appropriate as well.

14 **COUNT II**
15 **Declaratory Judgment on a Minor's Inability to Contract For Personal Property**
16 **Not In Their Immediate Possession Or Control**
17 **(On behalf of Plaintiff and the Class)**

18 56. The foregoing allegations are hereby reincorporated by reference as if fully restated
19 herein.

20 57. As described above, Defendant contracted with Plaintiff and the Class members,
21 who are minors.

22 58. Defendant's contracts with minor Plaintiff and class members include contracts for
23 the purchase of Gems and virtual items.

24 59. Gems can be purchased from Defendant in the form of tangible gift cards or
25 intangible codes.

26 60. California law recognizes both "intangible personal property" and "tangible
27 personal property." See, e.g., CA REV & TAX § 6011(10)(A)-(C); CA REV & TAX § 6016.

28 61. According to California Law, a "minor cannot ... [m]ake a contract relating to any
personal property not in the immediate possession or control of the minor." CA FAM § 6701.

1 62. Both Gems and any virtual item sold to Plaintiff and Class members are personal
2 property.

3 63. According to Defendant’s Terms of Service, Defendant explicitly maintains
4 possession and/or control over the Gems and virtual items sold to Plaintiff and the Class Members
5 as discussed supra.

6 64. Thus, according to California law, the contracts for these purchases are void and
7 Plaintiff and class members are entitled to a refund of the consideration paid under their contracts
8 with Defendant.

9 65. Defendant disputes that these contracts are void – as evidenced by the fact that
10 Defendant’s TOS claim that all purchases are non-refundable and the fact that Defendant does not
11 maintain any mechanism for users who contracted with Defendant as minors to obtain refunds.

12 66. Accordingly, there is an actual controversy between the parties, requiring a
13 declaratory judgment.

14 67. Plaintiff has no adequate remedy at law for this claim. There is no commensurate
15 legal remedy for full restitution and interest thereupon the void contract. Alternatively, legal
16 remedies available to Plaintiff are inadequate because they are not “equally prompt and certain and
17 in other ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214
18 (1937); *see also U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) (“the ‘mere
19 existence’ of a possible legal remedy is not sufficient to warrant denial of equitable relief”); *Quist*
20 *v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there may be a remedy at law
21 does not oust the jurisdiction of a court of equity. To have this effect, the remedy must also be
22 speedy, adequate, and efficacious to the end in view ... It must reach the whole mischief and
23 secure the whole right of the party in a perfect manner at the present time and not in the future”).

24 Furthermore:

- 25 a. To the extent damages are available here, damages are not equally certain as
26 restitution because the standard that governs ordering restitution is different than the
27 standard that governs damages. Hence, the Court may award restitution even if it
28

1 determines that Plaintiff fails to sufficiently adduce evidence to support an award of
2 damages.

3 b. Damages and restitution are not necessarily the same amount. Unlike damages,
4 restitution is not limited to the amount of money defendant wrongfully acquired plus
5 the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff
6 to recover all profits from the wrongdoing, even where the original funds taken have
7 grown far greater than the legal rate of interest would recognize. Plaintiff seeks such
8 relief here.

9 c. Legal claims for damages are not equally certain as restitution because claims under
10 the CLRA, UCL and unjust enrichment entail few elements.

11 68. Plaintiff also lacks an adequate remedy at law to prevent future harm.

12 69. This claim for declaratory judgment is brought pursuant to 28 U.S.C. § 2201 *et seq.*,
13 seeking a determination by the Court that: (a) this action may proceed and be maintained as a class
14 action; (b) the sales contracts between Defendant and Class members who are minors, relating to
15 the purchase of in-game currency and virtual items, are void; (c) the Class members are entitled to
16 restitution and interest thereon; (d) an award of reasonable attorneys' fees and costs of suit to
17 Plaintiff and the Class is appropriate; and such other and further relief as is necessary and just may
18 be appropriate as well.

19 **COUNT III**

20 **Violation of the California Business & Professional Code § 17200**
21 **(On behalf of Plaintiff and the Class)**

22 70. The foregoing allegations are hereby reincorporated by reference as if fully restated
23 herein.

24 71. Plaintiff and Class members have standing to pursue a cause of action against
25 Defendant for unfair and/or unlawful business acts or practices because they have suffered an
26 injury-in-fact and lost money due to Defendant's actions and/or omissions as set forth herein.

27 72. Defendant's conduct is unlawful under Bus. & Prof. Code § 17200 *et seq.* ("UCL")
28 because it is in violation of a minor's absolute right to disaffirm contracts as discussed above.

1 73. Defendant's conduct is also unlawful under the UCL because it has collected
2 monies paid for contracts void as a matter of law within the State of California and denied recovery
3 of said monies.

4 74. Defendant's conduct described herein is "unfair" under Bus. & Prof. Code § 17200
5 because it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or
6 substantially injurious to consumers, and any utility of such practices is outweighed by the harm
7 caused to consumers, including to Plaintiff, the Class, and the public. Defendant engages in unfair
8 practices by actively advertising, marketing, and promoting the Games as "free" with the intent to
9 induce minors to purchase in-game currency and virtual items while illegally and unscrupulously
10 denying minors any refunds they seek.

11 75. In addition, Defendant's conduct constitutes a fraudulent business practice within
12 the meaning of Bus. & Prof. Code § 17200, *et seq.*, in that Defendant intentionally and knowingly
13 omitted giving information that refunds are allowed for minors without any restrictions under
14 applicable law, and by explicitly representing that "**ALL PURCHASES AND REDEMPTIONS**
15 **OF VIRTUAL ITEMS MADE THROUGH THE SERVICE ARE FINAL AND NON-**
16 **REFUNDABLE.**" Such representations and omissions misled Plaintiff and Class members and
17 are likely to mislead the public.

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

23 77. Defendant, in light of its explicit representation to the contrary (*e.g.*, that purchases
24 of virtual currency and in-game purchases were non-refundable) had a duty to make Plaintiff or the
25 other members of the Class aware that they had an unrestricted right to refund any purchases, but
26 did not do so.

27 78. Defendant did not implement any features in its video games that would have
28 allowed Plaintiff and Class members to seek a refund for their purchases.

1 79. Plaintiff and putative Class members relied on Defendant’s omission in that they
2 were unaware that they could disaffirm their contract with Defendant and receive a refund and that
3 their contracts with Defendant are void and they could receive a refund.

4 80. Defendant knew or should have known that its representations regarding the in-
5 game purchases were false, deceptive, and misleading.

6 81. Defendant’s conduct described herein constitutes an unfair business practice
7 because it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or
8 substantially injurious to consumers, and any utility of such practices is outweighed by the harm
9 caused to consumers, including to Plaintiff, the Class, and the public.

10 82. Defendant’s wrongful conduct is ongoing, and part of a pattern or generalized
11 course of conduct repeated on thousands if not millions of occasions yearly.

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

14 84. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction enjoining
15 Defendant from continuing to engage in the conduct described above, or any other act prohibited
16 by law.

17 85. Plaintiff also seeks rescission and an order requiring Defendant to make full
18 restitution, and to disgorge its ill-gotten gains wrongfully obtained from members of the Class as
19 permitted by Bus. & Prof. Code § 17203.

20 86. Additionally, Plaintiff and the Class members seek an order requiring Defendant to
21 pay attorneys’ fees pursuant to Cal. Civ. Code § 1021.5.

22 87. Plaintiff has no adequate remedy at law for this claim. There is no commensurate
23 legal remedy for Plaintiff’s requested relief under this count. Alternatively, legal remedies
24 available to Plaintiff are inadequate because they are not “equally prompt and certain and in other
25 ways efficient” as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937); *see*
26 *also U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) (“the ‘mere existence’ of a
27 possible legal remedy is not sufficient to warrant denial of equitable relief”); *Quist v. Empire Water*
28 *Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there may be a remedy at law does not oust the

1 jurisdiction of a court of equity. To have this effect, the remedy must also be speedy, adequate, and
2 efficacious to the end in view ... It must reach the whole mischief and secure the whole right of the
3 party in a perfect manner at the present time and not in the future”). Furthermore:

- 4 a. To the extent damages are available here, damages are not equally certain as
5 restitution because the standard that governs ordering restitution is different than the
6 standard that governs damages. Hence, the Court may award restitution even if it
7 determines that Plaintiff fails to sufficiently adduce evidence to support an award of
8 damages.
- 9 b. Damages and restitution are not necessarily the same amount. Unlike damages,
10 restitution is not limited to the amount of money defendant wrongfully acquired plus
11 the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff
12 to recover all profits from the wrongdoing, even where the original funds taken have
13 grown far greater than the legal rate of interest would recognize. Plaintiff seeks such
14 relief here.
- 15 c. Legal claims for damages are not equally certain as restitution because claims under
16 the CLRA, UCL, and unjust enrichment entail few elements.
- 17 d. Plaintiff also lacks an adequate remedy at law to prevent future harm.

18 **COUNT IV**
19 **Restitution or Unjust Enrichment**
20 **In the Alternative**
21 **(On behalf of Plaintiff and the Class)**

22 88. The foregoing allegations are hereby reincorporated by reference as if fully restated
23 herein.

24 89. Plaintiff and the other Class members conferred an economic benefit on Defendant
25 through their in-game purchases and purchases of Gems.

26 90. It is inequitable and unjust for Defendant to retain the revenue obtained from in-
27 game purchases made by Plaintiff and the other Class members because, under principles of equity
28 and good conscience, Defendant should not be permitted to retain the revenue it acquired through
its unlawful conduct, i.e., with its non-refundable policy. Defendant’s conduct is unlawful because

1 it is in violation of the minor’s right to disaffirm contracts, because the contracts entered into by
2 Plaintiff and Class members were void as a matter of law yet Defendant still retains the monies
3 paid, and because Defendant’s conduct is fraudulent, unfair, and deceptive under the UCL, as
4 discussed above.

5 91. Defendant has misled and misinformed minors and their parents/guardians, i.e.
6 Plaintiff and Class members.

7 92. Accordingly, because Defendant will be unjustly enriched if it is allowed to retain
8 such funds, Defendant must pay restitution to Plaintiff and the other Class members in the amount
9 which Defendant was unjustly enriched by each of their purchases.

10 93. Plaintiff has no adequate remedy at law for this claim. Plaintiff pleads his claim for
11 unjust enrichment in the alternative, which inherently would necessitate a finding of no adequate
12 remedy at law. Alternatively, legal remedies available to Plaintiff are inadequate because they are
13 not “equally prompt and certain and in other ways efficient” as equitable relief. *American Life Ins.*
14 *Co. v. Stewart*, 300 U.S. 203, 214 (1937); *see also U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D.
15 Cal. Oct. 6, 1992) (“the ‘mere existence’ of a possible legal remedy is not sufficient to warrant
16 denial of equitable relief”); *Quist v. Empire Water Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact
17 that there may be a remedy at law does not oust the jurisdiction of a court of equity. To have this
18 effect, the remedy must also be speedy, adequate, and efficacious to the end in view ... It must
19 reach the whole mischief and secure the whole right of the party in a perfect manner at the present
20 time and not in the future”). Furthermore:

- 21 a. To the extent damages are available here, damages are not equally certain as
22 restitution because the standard that governs ordering restitution is different than the
23 standard that governs damages. Hence, the Court may award restitution even if it
24 determines that Plaintiff fails to sufficiently adduce evidence to support an award of
25 damages.
- 26 b. Damages and restitution are not necessarily the same amount. Unlike damages,
27 restitution is not limited to the amount of money defendant wrongfully acquired plus
28 the legal rate of interest. Equitable relief, including restitution, entitles the plaintiff

1 to recover all profits from the wrongdoing, even where the original funds taken have
2 grown far greater than the legal rate of interest would recognize. Plaintiff seeks such
3 relief here.

4 c. Legal claims for damages are not equally certain as restitution because claims under
5 the CLRA, UCL, and unjust enrichment entail few elements.

6 d. A claimant otherwise entitled to a remedy for unjust enrichment, including a remedy
7 originating in equity, need not demonstrate the inadequacy of available remedies at
8 law. Restatement (Third) of Restitution, § 4(2).

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment
11 against Defendant, as follows:

- 12 a. For an order certifying the Class under Rule 23 of the Federal Rules of Civil
13 Procedure and naming Plaintiff as the representative for the Class and Plaintiff's
14 attorneys as Class Counsel;
- 15 b. For an order issuing a declaratory judgment that the sales contracts between
16 Defendant and Plaintiff and the minor Class members are voidable;
- 17 c. For an order issuing a declaratory judgment that the sales contracts between
18 Defendant and Plaintiff and the minor Class members are void;
- 19 d. For an order declaring that Defendant's conduct violates the laws referenced herein;
- 20 e. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- 21 f. For prejudgment interest on all amounts awarded;
- 22 g. For an order of restitution and all other forms of equitable monetary relief;
- 23 h. For injunctive relief as the Court may deem proper; and
- 24 i. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and
25 expenses and costs of suit.

26 **DEMAND FOR TRIAL BY JURY**

27 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any
28 and all issues in this action so triable of right.

1 Dated: June 1, 2022

BURSOR & FISHER, P.A.

2 By: /s/ L. Timothy Fisher
3 L. Timothy Fisher

4 L. Timothy Fisher (State Bar No. 191626)
5 1990 North California Boulevard, Suite 940
6 Walnut Creek, CA 94596
7 Telephone: (925) 300-4455
8 Facsimile: (925) 407-2700
9 E-Mail: ltfisher@bursor.com

BURSOR & FISHER, P.A.

10 Philip L. Fraietta (*pro hac vice* forthcoming)
11 Alec M. Leslie (*pro hac vice* forthcoming)
12 Matthew A. Girardi (*pro hac vice* forthcoming)
13 Julian C. Diamond (*pro hac vice* forthcoming)
14 888 Seventh Avenue
15 New York, NY 10019
16 Telephone: (646) 837-7150
17 Facsimile: (212) 989-9163
18 E-Mail: pfraietta@bursor.com
19 aleslie@bursor.com
20 mgirardi@bursor.com
21 jdiamond@bursor.com

22 *Attorneys for Plaintiff*