

Amended pursuant to Rule 6-1(1)(a) on April 18, 2023.
Original filed March 17, 2023.

**SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY**

No. S-231957
Vancouver Registry

APR 19 2023

In the Supreme Court of British Columbia

Between



A. B., and as Litigation Guardian for C. D.

Plaintiffs

and

**EPIC GAMES INC., EPIC GAMES CANADA ULC, EPIC
GAMES INTERNATIONAL LTD., EPIC GAMES
INTERNATIONAL GMBH and EPIC GAMES
INTERNATIONAL S.A.R.L**

Defendants

Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

PART 1: STATEMENT OF FACTS

The Representative Plaintiffs

1. The Plaintiff, A.B. is the mother and legal guardian of the minor child, C.D. (the "**Plaintiff's Child**"). A.B. and C.D. are both individuals who reside in the City of Vancouver in the Province of British Columbia.
2. In or around January 2018, when C.D. was 9 years old, he downloaded Fortnite: Battle Royale onto his PlayStation 4 gaming console. He began playing Fortnite and purchasing various Fortnite products. C.D. later downloaded and played

Fortnite on his Xbox One, Nintendo Switch, mobile phone, and PC, and continued to make purchases of Fortnite products through many of these platforms.

3. During the period of time that C.D. played Fortnite, Epic Games received payment for numerous charges made to A.B.'s credit card without her authorization.
4. Epic Games deliberately designed Fortnite to be as addictive as possible. This design resulted in C.D. developing an adverse dependence on the game, which has materially and negatively impacted his mental and physical health, well-being, and relationships with friends and family. C.D.'s adverse dependence on Fortnite caused him to spend thousands of dollars on in-game purchases.
5. If Epic Games had warned A.B. that playing Fortnite could lead to psychological harm and financial expense, A.B. would not have allowed C.D. to download Fortnite.

The Defendants

6. The defendant, Epic Games Inc. ("**Epic Games**"), is a corporation incorporated under the laws of the state of Maryland with its principal place of business located in Cary, North Carolina. Epic Games is a video game developer, a software developer and a publisher. It is the developer of the video games Fortnite: Save the World, Fortnite: Battle Royale, Fortnite: Zero Build and Fortnite Creative, all of which are different modes of play within the game of "Fortnite" and shall collectively be referred to as "**Fortnite**".
7. In addition to being the developer of Fortnite, Epic Games also created and runs the Epic Games Store, an online video game store through which Epic Games distributes to customers Fortnite, Fortnite-related digital and physical products, and other video games developed by Epic Games or third parties (the "**Epic Games Store**").
8. The defendant, Epic Games Canada ULC ("**Epic Canada**") is a corporation incorporated under the laws of British Columbia with its principal place of business

located in Vancouver, British Columbia. Epic Canada is a wholly owned subsidiary of Epic Games.

9. The defendant, Epic Games International Ltd. ("**Epic Games International**") is a corporation incorporated under the laws of the state of North Carolina with its principal place of business located in Cary, North Carolina.
10. The defendant, Epic Games International GMBH ("**Epic Games Swiss**") is a corporation incorporated under the laws of the country of Switzerland. For at least a portion of the Class Periods, Epic Games Swiss entered into agreements or had commercial relations related to Fortnite with the Class Members.
11. The defendant, Epic Games International S.A.R.L ("**Epic Games Lux**") is a corporation incorporated under the laws of the country of Luxembourg which acts through a subsidiary incorporated under the laws of Switzerland. For at least a portion of the Class Periods, Epic Games Lux entered into agreements or had commercial relations related to Fortnite with the Class Members.
12. Epic Canada, Epic Games International, Epic Games Swiss and Epic Games Lux are affiliates of Epic Games who were controlled by Epic Games at all material times. At the direction of Epic Games, these entities enter into contracts or other commercial relations with customers who reside outside of the United States of America.
13. Epic Games, Epic Canada, Epic Games International, Epic Games Swiss and Epic Games Lux, may be collectively referred to as the "**Defendants**" or "**Epic Games**".

The Classes

14. The Plaintiffs bring this claim on their own behalf and on behalf of the following classes of persons:
 - (a) All persons in Canada (except residents of Quebec) who claim they made unwanted purchases of in-game Fortnite items during the Class Period (the "**Accidental Purchaser Class**");

- (b) All persons in Canada (except residents of Quebec), and their parents or guardians, who claim they made a purchase of V-Bucks or in-game Fortnite items, while under the age of majority, during the Class Period (the “**Minor Purchaser Class**”); and
 - (c) All persons in Canada (except residents of Quebec) who claim they suffered harm as a result of an adverse dependence on Fortnite (the “**Addiction Class**”).
15. The Accidental Purchaser Class, the Minor Purchaser Class and the Addiction Class may be collectively referred to as the “**Classes**” and the persons included in each of the classes and collectively may referred to as the “**Class Members**”.
16. “**Class Period**” is defined as the period between January 1, 2017 and the present.

Fortnite – The Game

17. Fortnite was launched in or around July 2017. It is available on multiple platforms including Sony PlayStation, Microsoft Xbox, and Nintendo Switch game consoles, and PCs with Windows operating systems. Fortnite has previously been available for Mac OS and mobile devices running Google Android or Apple iOS.
18. Fortnite is a third-person shooter and survival video game that allows dozens of players to play the game alone or in teams from all around the world.
19. Fortnite has a game rating of “Teen” in the United States and Canada. It is marketed to children through a variety of channels, including advertisements on social media and other online platforms.
20. Fortnite uses cartoonish graphics and character design to appeal to children. This was an intentional design choice used by Epic Games to ensure that the adults whose credit cards or other payment accounts are associated with the game allow their children to play it.

Fortnite Was Intentionally Designed To Be as Addictive as Possible

21. The design of the Fortnite user experience incorporates visual, social and gratification (or reward) elements, among others (the “**Fortnite UX**”).
22. Epic Games used expert cognitive and developmental psychologists, among others, to design the Fortnite UX to make the game as addictive as possible. Epic Games used psychological tools that have emerged from classical and operant conditioning as well as from fields of child and addiction/gambling psychology.
23. Some of the features of Fortnite which make it highly addictive include:
 - (a) Fortnite offers players various rewards for completing different challenges each day and those rewards are doubled on weekends;
 - (b) Fortnite changes every ten weeks, which encourages the player to start over and continue playing to accumulate more rewards;
 - (c) the game is constantly updated to ensure the player’s continued interest and attention;
 - (d) Fortnite does not provide users with accurate data about the game and other players so some players believe they are better or more successful than they actually are, thus avoiding players leaving the game because they feel like achieving a certain level or attainment is hopeless or out of reach;
 - (e) the game is designed as a “survival game” set in a constantly pressurized, “kill or be killed” environment which provides a consistent dopamine rush each time a player kills another player and survives and an even greater dopamine rush if a player ends up the winner of the battle royale;
 - (f) each battle lasts approximately twenty minutes. This encourages players to continue playing for many hours because it feels easy to rationalize playing “just one more” battle many times;

- (g) the game incorporates variable reward programs, much like slot machines or other gambling-like activities, in order to manipulate players into wanting to play the game more in the hopes of receiving additional or greater rewards;
 - (h) the game incorporates various social events, some for free and some at a cost, that keeps players trapped in the virtual world of Fortnite. If certain players, primarily children, do not attend these online Fortnite events, they experience a “fear of missing out” and are emotionally drawn back into the game due to this fear;
 - (i) the game offers players an opportunity to achieve “originality” and “authenticity” by providing users with options to customize the player’s character’s cosmetic features. Epic Games actively cultivates a culture of “originality” within Fortnite to encourage users to make more in-game purchases. In addition, rewards are provided for purchasing these cosmetic items and game passes and as such, users are exploited into spending more money within the game because they are rewarded with points for doing so;
 - (j) the game offers in-game items, including the hosting of events which are facilitated through partnerships with celebrities and are often in popular culture trends that are primarily of interest to younger users; and
 - (k) Epic Games has exploited users’ “fear of missing out” by creating artificial scarcity of in-game products and making those products available for only a limited time (collectively, the “**Addictive Elements**”).
24. Some of these Addictive Elements are what is known in the gaming industry as a “dark pattern”. Defined generally, a “dark pattern” is something that is deliberately added to a game to manipulate users into taking certain actions which can cause a negative experience for the user with a positive outcome for the game developer.
25. Dark patterns are also used to put undue pressure on players to make in-game purchases.

26. Dark patterns in Fortnite include, without limitation:
- (a) time-limited purchasing windows for in-game items. This dark pattern creates pressure on players to purchase in-game items impulsively to avoid missing out before the purchasing window closes;
 - (b) misrepresentation of the normal price of in-game items when offering them for a “discount”. This dark pattern makes players believe they are receiving a bargain when they are not, and creates pressure to buy an item before the discount period closes.
 - (c) deliberately confusing interfaces, such as assigning inconsistent commands to buttons in similar menus. This dark pattern causes players to purchase in-game items accidentally;
 - (d) hiding refund features in difficult-to-find locations. This dark pattern causes players to give up when attempting to cancel or refund a purchase;
 - (e) variable rewards that depend on chance. This dark pattern relies on similar methods as gambling to make players play the game longer and spend more money; and
 - (f) the imposition of schedules to complete challenges which give awards. This dark pattern is designed to maximize player engagement and playtime by making them play when Epic wants them to.
27. The Addictive Elements, including the dark patterns, are design elements that are intentionally used by Epic Games to keep players playing for as long as possible and spending more and more money.

The Weaponization of Collected User Information

28. In addition to the Addictive Elements and the dark patterns, the Fortnite UX was designed and has been continuously adapted using user data. Without limitation, Epic Games collects the following data on players of Fortnite:

- (a) Usage information and statistics about how a user interacts with (a) Fortnite and other games, (b) websites and applications published or distributed by Epic Games, and (c) developer tools including Epic Games' "Developer Portal" and "Unreal Engine" (collectively, the "**Epic Services**") including:
- (i) which of the Epic Services the user is interacting with;
 - (ii) how long the user has played Fortnite or used the Epic Service;
 - (iii) when the user played Fortnite or used the Epic Service;
 - (iv) **g**ameplay attempts;
 - (v) Profession and Results;
 - (vi) Saved Preferences and Crash Reports;
 - (vii) URLs of Epic Games websites that the user has visited, URLs of referring and exiting pages;
 - (viii) **P**age views;
 - (ix) time spent on a page;
 - (x) number of clicks; and
 - (xi) platform type.
- (b) Technical information about the device that is used by the player to access Epic Services including:
- (i) IP address;
 - (ii) Device identifiers;
 - (iii) the user's internet service provider;
 - (iv) Plugins;

- (v) other transactional or identifier information for the user's device (such as the device make and model, information about the device operating system and browsers, or other device or system-related specifications;
 - (vi) the general location of the user's device; and
 - (vii) data obtained from online discussions among users playing Fortnite; and
- (c) information from service providers and third parties of the user (collectively, the "**Collected User Information**").
29. Epic Games has collected extensive data from child users of Fortnite without obtaining their parents' verifiable consent.
30. Epic Games' collection of user data is extensive. The Collected User Information is used by Epic Games for a variety of purposes, including to continuously adapt the game - at global and individual player levels - to make it as addictive as possible for the players and as profitable as possible for Epic Games.

Fortnite Causes Adverse Dependence and Addiction

31. As a result of the incorporation of the Addictive Elements and the use of dark patterns in Fortnite, many people, including children, have developed an adverse dependence on the game. In many cases, this adverse dependence takes the form of "Gaming Disorder" which was recognized by the World Health Organization in its 11th Revision of the International Classification of Diseases (the "**ICD-11**").
32. "Gaming Disorder" is a diagnosable form of addictive behaviour and is characterized by "impaired control over gaming, increasing priority given to gaming over other activities to the extent that gaming takes precedence over other interests and daily activities, and continuation or escalation of gaming despite the occurrence of negative consequences."

33. Video game addiction can result in numerous adverse effects including but not limited to:
 - (a) emotional deficiencies which persist throughout adulthood,
 - (b) aggression and mood disruption,
 - (c) sleep disturbances,
 - (d) social inability,
 - (e) a variety of mental health disorders, and (f) the interference with the development of the prefrontal cortex of the brain.

34. Video games have been around for decades, but Fortnite is unique in that the science and psychology of addiction and cognitive development are at the core of the game's design. The development and distribution of Fortnite by Epic Games is predatory and exploitative, particularly because Epic Games knows that a significant portion of players are minor children.

35. All elements of the Fortnite UX, including the dark patterns and Addictive Elements, work in concert with each other to maximize the commercial benefits of Fortnite to Epic Games by making Fortnite as addictive as possible. Using the Collected User Information and other tools at its disposal, Epic Games continuously adapts and updates Fortnite with a view to (a) increasing the time players spend playing Fortnite, and (b) increasing the amount of money a player spends on in-game purchases.

36. Children are particularly vulnerable to the Addictive Elements and dark patterns of the Fortnite UX as the self-control system in their brains is not sufficiently developed. In addition, children do not have the cognitive tools necessary to recognize the Addictive Elements or the dark patterns and moderate their game play.

37. Members of the Addiction Class have suffered significant psychological and financial harm as a result of adverse dependence on Fortnite. Dependence on Fortnite caused them to prioritize Fortnite over other aspects of their lives, leading to significant impairment of their functioning in personal, family, social, educational, and occupational aspects of their lives.

Epic Games Knew

38. At all material times, Epic Games was aware or ought to have been aware that the addictive design of the Fortnite UX, including by incorporating the Addictive Elements and the dark patterns, could result in significant harm to Fortnite's users, especially children.
39. There have been numerous media reports and complaints made to Fortnite about the game being addictive and causing severe adverse impacts on many individuals and their families, including players suffering from Gaming Disorder.
40. Epic Games has refused to acknowledge these concerns and/or take any meaningful steps to mitigate the adverse effects of the Addictive Elements and dark patterns used in Fortnite.
41. Epic Games has even refused to put a warning of any kind on the game that would advise players and guardians about the risk of potential harm to children as a result of playing the game.
42. In fact, at or around the time when the WHO released the ICD-11, which included Gaming Disorder as a diagnosable illness, Epic Games - as part of the Entertainment Software Association (the "ESA", a prominent interest group in the video game industry) - engaged in an aggressive propaganda campaign to emphasize the positive aspects of the video game industry and asked the WHO to reverse its inclusion of Gaming Disorder in the list of recognized diseases.
43. Far from attempting to mitigate the harm and risk associated with Fortnite, Epic Games and their agents actively and flagrantly tried to conceal the harm and risk

associated with Fortnite and continually attempted to mislead players into believing that Fortnite is not addictive.

How Fortnite Makes Money for Epic

44. While there is a premium version of Fortnite that is available for download at a cost, Fortnite is mostly downloaded by players for free. Despite being free to download, while playing Fortnite users are prompted to spend money to purchase additional features and virtual goods. This is colloquially known as a “freemium gaming” model in the video game industry.
45. V-Bucks is the in-game currency used by players of Fortnite for in-game purchases. V-Bucks are purchased with real currency.
46. While Fortnite may be free to download, customization of an avatar or character’s appearance using emotes, skins or gliders (collectively, “**Cosmetics**”) and other in-game content and products (such as a missions, tools, and battle passes) usually requires purchases within the game using V-Bucks.

Accidental Purchases

47. Members of the Accidental Purchaser Class made accidental purchases of in-game items using V-Bucks.
48. Epic Games designed the mechanism through which in-game purchases are made in a misleading and unfair way. Epic Games -made deliberate design choices in order to increase the likelihood that players would make accidental purchases.
49. Features of Fortnite that were designed to increase the likelihood of accidental purchases included:
 - (a) A “one-click” method to purchase items that immediately deducts V-Bucks from the player’s account without giving the player an opportunity to confirm their intent to purchase.

- (b) Using different buttons to make purchases or back out of a menu in different menus throughout the game.
 - (c) Not providing an option for players to cancel a transaction after it was made.
50. In or around June 2019, Epic Games began allowing users to cancel certain purchases made for a limited time by clicking on an “undo” button. After a significant decline in revenue as a result of players using the “undo” button, Epic intentionally changed the location and design of the button to make it more difficult for players to use.
 51. In addition, Epic Games intentionally changed the refund pathway available to players through the Epic Games Store to make it difficult for players to request a refund.
 52. Epic Games also punished players who disputed unauthorized credit card charges directly with the credit card provider, by banning the player from accessing previously paid-for items.
 53. Epic Games had an unwritten policy to routinely refuse refunds for accidental purchases.
 54. Epic Games continues to refuse to provide refunds for a significant portion of in-game purchases by using a restrictive refund policy (the “**Refund Policy**”).

Minor Purchases

55. At all material times Epic Games knew or ought to have known that children were making purchases of V-Bucks and in-game items without their guardians’ knowledge.
56. As V-Bucks are not a real-world currency, it is often unclear to persons playing Fortnite, especially children, how many real dollars each V-Buck represents. The V-Buck economy was designed by Epic Games to obfuscate the true cost of in-game purchases.

57. Parents and guardians were charged for purchases of V-Bucks. In many cases, they were charged hundreds or thousands of dollars before becoming aware that Epic Games was profiting from the sale of V-Bucks to their children.
58. In most cases, no parental or payment account holder action, such as the input of a pin or password, is necessary to authorize the purchase of V-Bucks or in-game items.
59. At all material times, Epic Games was aware that its deceptive and unfair billing practices were permitting children to make purchases that had no benefit for children, but prejudiced them and their guardians.
60. Despite receiving recommendations from its own employees and third-party fraud and risk consultants regarding proposed alterations to these unfair billing practices, Epic Games has failed to take reasonable steps to prevent minors from making purchases of V-Bucks or in-game items.

PART 2: RELIEF SOUGHT

Accidental Purchaser Class

61. The Plaintiffs, on behalf of themselves and the Accidental Purchaser Class, claim:
 - (a) damages for breaches of the Business Practices and Consumer Protection Act, SBC 2004 c. 2 (the “**BCPCA**”);
 - (b) damages for breaches of the Consumer Protection Act, R.S.A. 2000, c. C-26.3; Consumer Protection and Business Practices Act, S.S. 2014, c. C-30.2; Business Practices Act, S.M. 1990-1991, c. 6; Consumer Product Warranty and Liability Act, S.N.B. 1978, c. C-18.1; Consumer Protection Act, R.S.N.S. 1989, c. 92; Business Practices Act, R.S.P.E.I. 1988, c. B-7; Consumer Protection and Business Practices Act, S.N.L. 2009, c. C-31.1; Consumer Protection Act 2002, S.O. 2002, c. 30; Consumers Protection Act, RSY 2002, c 40; Consumer Protection Act, RSNWT 1988, c C-17; Consumer

Protection Act, RSNWT (Nu) 1988, c C-17 (the “**Equivalent Consumer Protection Legislation**”);

- (c) damages for unjust enrichment and restitution; and
- (d) disgorgement of the revenue obtained by the Defendants as a result of their wrongdoing against the Accidental Purchaser Class.;

The Minor Purchaser Class

62. The Plaintiffs, on behalf of themselves and the Minor Purchaser Class claim:

- (a) a declaration that any agreement between the Defendants, or any of them, and any minor is unenforceable;
- (b) damages for breaches of the BCPCA and the Equivalent Consumer Protection Legislation;
- (c) damages for unjust enrichment and restitution; and
- (d) disgorgement of the revenue obtained by the Defendants as a result of their wrongdoing against the Minor Purchaser Class.;

The Addiction Class

63. The Plaintiffs, on behalf of themselves and on behalf of the Addiction Class claim:

- (a) damages for negligent design and failure to warn; and
- (b) special damages.

64. The Plaintiffs, on behalf of themselves and on behalf of all of the Classes claim:

- (a) an Order certifying this action as a class proceeding and appointing them as the representative plaintiffs for the Accidental Purchaser Class, the Minor Purchaser Class and the Addiction Class;
- (b) punitive, aggravated and exemplary damages;

- (c) the costs of this proceeding, plus applicable taxes and disbursements;
- (d) interest under the Court Order Interest Act, RSBC 1996, c 79; and
- (e) such further and other relief as may be requested by the Plaintiff(s) and this Honourable Court deems just.

PART 3: LEGAL BASIS

The Accidental Purchaser Class

Breaches of Consumer Protection Legislation

65. Accidental Purchaser Class Members resident in British Columbia are “consumers” within the meaning of Section 1(1) of the BPCPA and the Defendants are “suppliers” within the meaning of Section 1(1) of the BPCPA. All transactions with the Defendants, including through the Epic Games Store and any in-game purchases made while a B.C. Class Member was playing Fortnite are “consumer transactions” within the meaning of Section 1(1) of the BPCPA.
66. Accidental Purchaser Class Members resident in Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, are consumers located in those provinces for the purposes of the Equivalent Consumer Protection Legislation. The Defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Legislation.
67. Epic Games intentionally or recklessly incorporated and continued to adapt the Addictive Elements, including dark patterns, into the Fortnite UX. These elements of Fortnite, and the conduct of Epic Games in creating this design, constitute unfair, unconscionable, and deceptive acts or practices under the BCPCA and Equivalent Consumer Protection Legislation.
68. Epic Games breached Sections 4 and 9 of the BPCPA and the B.C. Accidental Purchaser Class Members rely on Sections 10, 12 and 171 of the BPCPA for the

relief requested. The Plaintiffs claim against each of the Defendants for contravention of consumer protection legislation and remedies as follows:

- (a) a declaration that the Defendants' conduct constitutes "unconscionable acts or practices" contrary to s. 9 of the BPCPA and an order pursuant to s. 172(3) of the BPCPA that Class Members are entitled to damages under s. 171 of the BPCPA; and
 - (b) a declaration that the Defendants' conduct constitutes "deceptive acts or practices" contrary to s. 4 of the BPCPA and an order pursuant to s. 172(3) of the BPCPA that the Class Members are entitled to damages under s. 171 of the BPCPA.
69. The Accidental Purchaser Class Members also advance claims pursuant to the Equivalent Consumer Protection Legislation, including any rights of rescission, damages, disgorgement or equitable relief under each Act, including:
- (a) The Consumer Protection Act, R.S.A. 2000, c. C-26.3, including, without limitation, ss. 6, 7, 7.2, 7.3, and 13;
 - (b) The Consumer Protection and Business Practices Act, S.S. 2014, c. C-30.2, including, without limitation, ss. 6-8, 19(d)-(e) and 93;
 - (c) The Business Practices Act, S.M. 1990-1991, c. 6 as amended, including, without limitation, ss. 2-3, 5, and 23;
 - (d) The Consumer Product Warranty and Liability Act, S.N.B. 1978, c. C-18.1, including, without limitation, ss. 10, 11, 15, and 27;
 - (e) The Consumer Protection Act, R.S.N.S. 1989, c. 92, including, without limitation, ss. 16 and 26(3)(d)-(f) and (h);
 - (f) The Business Practices Act, R.S.P.E.I. 1988, c. B-7, as amended, including, without limitation, ss. 2, 3 and 4;

- (g) The Consumer Protection and Business Practices Act, S.N.L. 2009, c. C-31.1, including, without limitation, ss. 7, 8, 9 and 10;
- (h) The Consumer Protection Act 2002, S.O. 2002, c. 30, as amended, including, without limitation, ss. 9(2), 14-15, 17 and 18;
- (i) The Consumers Protection Act, RSY 2002, c 40, including, without limitation, ss. 58(e) and (h);
- (j) The Consumer Protection Act, RSNWT 1988, c C-17, including, without limitation, ss. 70(e)and (h); and
- (k) Section 70 of the Consumer Protection Act, RSNWT (Nu) 1988, c C-17, including, without limitation, ss. 70(e) and (h).

Unjust Enrichment

- 70. Epic Games has been unjustly enriched as a result of its unlawful conduct as described herein. But for their unlawful conduct, Epic Games would not have received the revenue it did receive from the Accidental Purchaser Class Members. The Defendants have been enriched by the amount of revenue that they received from the Accidental Purchaser Class.
- 71. Accidental Purchaser Class Members have suffered a corresponding deprivation.
- 72. There is no juristic reason why the Defendants' enrichment should be permitted, including at equity, under contract or pursuant to any statutory obligations.
- 73. Accidental Purchaser Class Members are entitled to restitution or disgorgement of the profits that the Defendants have generated from these Class Members' in-game purchases.

The Minor Purchaser Class

Contracts with Minors are Unenforceable

74. The Addictive Elements, the dark patterns, the Refund Policy and other design elements were included by Epic Games in Fortnite to maximize the profit Epic Games could extract from Minor Purchaser Class Members without care or regard to the interests of those Class Members.
75. Epic Games was able to exploit the Addictive Elements and the dark patterns to extract as much money from players and guardians of players of Fortnite as possible. In turn, by adopting its Refund Policy, Epic Games ensured that it would retain all of this deceptively earned revenue.
76. The Defendants knew or ought to have known that children in the Minor Purchaser Class:
 - (a) were members of a recognized and identifiable class of vulnerable consumers who receive certain protections by statute; and
 - (b) were, by virtue of their age, less able to protect their own interests and in particular, were not able to meaningfully consent to purchases of V-Bucks or in-game items.
77. Each time an in-game purchase was made by a minor, it was an instance of a fresh contract with one or more of the Defendants.
78. All contracts that the Defendants entered into with a minor are unenforceable.
79. All transactions entered into between the Defendants, or any of them, and the Minor Purchaser Class Members, should be set aside as they are unconscionable.
80. The Minor Purchaser Class Members seek restitution for all revenue gained by the Defendants as a result of expenditures made by these Class Members for V-Bucks or in-game items.

Unjust Enrichment

81. Epic Games has been unjustly enriched as a result of its unlawful conduct as described above. But for their unlawful conduct, Epic Games would not have received the revenue it did receive from the Minor Purchaser Class Members. The Defendants have been enriched by the amount of revenue that they received from the Minor Purchaser Class.
82. Minor Purchaser Class Members have suffered a corresponding deprivation.
83. There is no juristic reason why the Defendants' enrichment should be permitted, including at equity, under contract or pursuant to any statutory obligations. Any contracts that the Defendants purport to have with minors are void.
84. Minor Purchaser Class Members are entitled to restitution or disgorgement of the profits that the Defendants have generated from these Class Members' in-game purchases.

Disgorgement

85. Minor Purchaser Class Members are entitled to disgorgement of all of the Defendants' profits resulting from purchases made by minors

The Defendants' unlawful and wrongful conduct conferred a benefit on the Defendants in the form of profits that they would not have received otherwise.

86. The Defendants' unlawful and wrongful conduct was intentional, deceptive, and has been ongoing since Fortnite was first released into the market in January, 2017. The Defendants knew they were causing significant harm to Minor Purchaser Class Members.
87. The Class Members have a legitimate interest in preventing the Defendants from weaponizing the Collected User Information against them to generate profits through the enhancement of the Addictive Elements and dark patterns in Fortnite.

88. An award of compensatory damages would not be an adequate remedy and would fail to deter the Defendants, who have demonstrated that they have and will continue to harm minors who play Fortnite in order to maximize their profits.
89. The restitution or disgorgement sought is appropriately assessed on an aggregate basis.

Breaches of Consumer Protection Legislation

90. Minor Purchaser Class Members resident in British Columbia are “consumers” within the meaning of Section 1(1) of the BPCPA and the Defendants are “suppliers” within the meaning of Section 1(1) of the BPCPA. All transactions with the Defendants, including through the Epic Games Store and any in-game purchases made while a B.C. Class Member was playing Fortnite are “consumer transactions” within the meaning of Section 1(1) of the BPCPA.
91. Minor Purchaser Class Members resident in Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, are consumers located in those provinces for the purposes of the Equivalent Consumer Protection Legislation. The Defendants carried on business in those Provinces and were, among other things, suppliers for the purposes of the Equivalent Consumer Protection Legislation.
92. Epic Games intentionally or recklessly incorporated and continued to adapt Addictive Elements and the dark patterns into the Fortnite UX. These elements of Fortnite, and the conduct of Epic Games in creating this design, constitute unfair, unconscionable, and deceptive acts or practices under the BCPCA and Equivalent Consumer Protection Legislation.
93. Epic Games breached Sections 4 and 9 of the BPCPA and the B.C. Minor Purchaser Class Members rely on Sections 10, 12 and 171 of the BPCPA for the relief requested. The Plaintiffs claim against each of the Defendants for contravention of consumer protection legislation and remedies as follows:

- (a) a declaration that the Defendants' conduct constitutes "unconscionable acts or practices" contrary to s. 9 of the BPCPA and an order pursuant to s. 172(3) of the BPCPA that Class Members are entitled to damages under s. 171 of the BPCPA; and
 - (b) a declaration that the Defendants' conduct constitutes "deceptive acts or practices" contrary to s. 4 of the BPCPA and an order pursuant to s. 172(3) of the BPCPA that the Class Members are entitled to damages under s. 171 of the BPCPA.
94. The Minor Purchaser Class Members also advance claims pursuant to the Equivalent Consumer Protection Legislation, including any rights of rescission, damages, disgorgement or equitable relief under each Act. The Minor Purchaser Class Members rely on the same provisions as the Accidental Purchaser Class Members set out in paragraphs 72-73.

The Addiction Class

Negligent Design

95. The Defendants owed a duty to users of Fortnite to exercise reasonable care in its design and marketing so that Fortnite was not an addictive or harmful product.
96. Without limitation, this duty of care required the Defendants to:
- (a) identify whether any particular player was a minor or an adult person when playing Fortnite and moderate the use of dark patterns responsibly;
 - (b) warn the Class Members and the general public when the Defendants became aware of any risks associated with the playing of Fortnite, including the risk of developing an adverse dependency on Fortnite;
 - (c) use reasonable care when designing and developing the Addictive Elements and dark patterns into Fortnite, especially given that the Defendants knew that children would be playing Fortnite;

- (d) provide education on gaming addiction and the design of the Fortnite UX to players and guardians of children who downloaded Fortnite in a clear and concise manner;
 - (e) monitor a user's game-play and send notifications to the user suggesting that breaks be taken, and/or imposing a limit on the total amount of time that a child can play Fortnite in a day; and
 - (f) exercise reasonable care when advertising Fortnite directly to children through any media.
97. The Defendants breached the duty of care they owe to Members of the Addiction Class by:
- (a) failing to create or develop a method by which the age of a player could be verified;
 - (b) failing to use age-verification with a view to the health and well-being of the player;
 - (c) failing to warn the Class Members of the risk of harm that may result from playing Fortnite, including warning them that they may develop an addiction to the game;
 - (d) intentionally or recklessly enhancing the impact of dark patterns and the Addictive Elements of the game, including for minor children playing Fortnite;
 - (e) failing to monitor users' game play and send notifications to the user suggesting that breaks be taken, and/or imposing a limit on the total amount of time that a child can play Fortnite in a day;
 - (f) failing to provide proper education and information to players and their guardians regarding gaming addiction and how to utilize that information to mitigate the adverse effects of playing Fortnite; and

(g) intentionally marketing the game to children through a variety of different media.

98. At all material times, the Defendants were aware that the design of the Fortnite UX incorporated the Addictive Elements and dark patterns and that as a result of these elements, there was a substantial likelihood of harm to the Addiction Class Members.

99. The Defendants could have mitigated the adverse impact of the Addictive Elements and dark patterns by incorporating controls into Fortnite but they have consistently refused to do so, choosing profit over the well-being of their customers, including the mental and physical health of children, at every opportunity.

Failure to Warn

100. As the manufacturers of Fortnite, Epic Games had an ongoing duty to warn the Addiction Class Members of any dangers inherent in the use of Fortnite

101. Epic Games failed to warn users, including children and their guardians, adequately or at all about the risks and harms which arise from ordinary and foreseeable use of Fortnite. These risks and harms were known to the Defendants but not known to the users of Fortnite. In particular, the Defendants failed to warn users about specific risks associated with Fortnite and defects in its design, including the Addictive Elements and dark patterns.

102. While failing to warn users of the known risks of using Fortnite, the Defendants, through the ESA, represented to the Plaintiff and others users that Fortnite was safe, that it promoted healthy benefits for young users, and that long-term, frequent, prolonged use of it was harmless.

Intentional Infliction of Mental Suffering

103. Epic Games designed the Fortnite UX and Addictive Elements, including the dark patterns, with the intention of causing harm to Fortnite players.

104. Epic Games' conduct was calculated and intended to cause Fortnite players to become addicted to Fortnite. Epic Games knew that some Fortnite players would become addicted, and that this addiction would cause them harm.

105. Epic Games showed a reckless disregard for the mental health of Fortnite players, particularly children who they knew were especially vulnerable to the psychological techniques they used.

106. Members of the Addiction Class suffered mental and emotional distress, anxiety, depression, addiction and other losses and damages because of Epic Games' flagrant and intentional conduct.

Damages

~~103.~~107. Members of the Addiction Class have suffered harm as a result of the wrongful conduct of the Defendants. They are entitled to general and special damages as a result.

~~104.~~108. The damages suffered by the Plaintiffs and the Class Members of the Addiction Class include but are not limited to:

- (a) psychological and physical injuries;
- (b) special damages for medical expenses and other out of pocket expenses related to addiction treatment for Fortnite;
- (c) past and future income loss and loss of earning capacity;
- (d) cost of future care; and
- (e) such other losses and damages as will be proven at the trial of this action.

~~105.~~109. The damages suffered by the Plaintiffs and the Class Members of the Addiction Class were reasonably foreseeable to the Defendants at all material times.

Health Care Cost Recovery

~~106-110.~~ The Addiction Class Members rely upon health and hospital insurance legislation in British Columbia and similar legislation elsewhere and claim health care costs incurred for their care and paid by provincial and territorial governments as a result of the wrongdoing of the Defendants:

- (a) on behalf of the Province of British Columbia, the Plaintiffs claim the past and future cost of providing "health care services" under the *Health Care Costs Recovery Act*, SBC 2008, c 27, ss 1-3 and 7 and the *Health Care Costs Recovery Regulation*, BC Reg 397/2008, s 3;
- (b) on behalf of His Majesty the King in right of Alberta and the Minister of Health of Saskatchewan, the Plaintiffs claim the direct and indirect costs of past and future "health services" under the *Crown's Right of Recovery Act*, SA 2009, c C-35, ss 1, 2(1) and 38 and the *Crown's Right of Recovery Regulation*, Alta Reg 87/2012, s 3; and *The Health Administration Act*, RSS 1978, c H-0.0001, s 19;
- (c) on behalf of the Minister of Health of Manitoba, the Plaintiffs claim the past and future cost of "insured hospital, medical, and other services under the *Health Services Insurance Act*, R~~CC~~SM 1987, c H35, ss 2, 97 and the *Medical Services Insurance Regulation*, Man Reg 49/93, s 1;
- (d) on behalf of His Majesty the King in right of the Province of Nova Scotia, the Plaintiffs claim the past and future cost of "insured hospital services", and other care, services, and benefits under the *Health Services and Insurance Act*, RSNS 1989, c 197, ss 2 and 18;
- (e) on behalf of His Majesty the King in right of the Province of New Brunswick, the Plaintiffs claim the cost of "entitled services" under the *Health Services Act*, R~~S~~NB 2014, c 112, ss 1 and 3 and *General Regulation*, NB Reg 84-115, s 2 and Schedule II;

- (f) on behalf of the Government of Yukon, and the Ministers of Health of the Northwest Territories and Nunavut, the Plaintiffs claim the cost of providing "insured services", including in-patient and out-patient services under the *Hospital Insurance Services Act*, RSY 2002, c 112, ss 1 and 10-11, and the *Yukon Hospital Insurance Services Regulations*, YCO 1960/35, s 2; the *Hospital Insurance and Health and Social Services Administration Act*, and RSNWT 1988, c T-3, ss 1 and 19-20, and the *Hospital Insurance Regulations*, RRNWT 1990, c T-12, s 1; and
- (g) on behalf of the Ontario Health Insurance Plan, the Minister of Health and Wellness of Prince Edward Island, and the Crown in right of Newfoundland and Labrador, the Plaintiffs claim the cost of "insured services" under the *Health Insurance Act*, RSO 1990, c H.6, ss 1, 11.2, and 30-31 and *General*, RRO 1990, Reg 552; the *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8, ss 1 and 14, and *General Regulations*, PEI Reg EC539/63, s 1; and the *Medical Care and Hospital Insurance Act*, SNL 2016, c M-5.01, ss. 41-42 and 44, and the *Hospital Insurance Regulations*, CNLR 742/96, s 2.

Punitive Damages

~~407.111.~~ Epic Games knowingly designed and developed Fortnite to be as addictive as possible, including by using the Addictive Elements and dark patterns. At all material times the Defendants knew that these design elements would or were likely to cause the Plaintiffs and the Class Members damages and harm. In addition, Epic Games has knowingly processed various transactions without the express authorization of a payment account holder and designed various elements of the game to ensure that it extracts as much money as possible from its users and their guardians, even if those users purchase in-game items by mistake.

~~408.112.~~ Since the release of Fortnite in January 2017, Epic Games has prioritized their profits over the mental and physical health of its users, including the millions

of children who play Fortnite. The Defendants have shown a callous disregard and a complete lack of care for the Plaintiff and the Class Members of all Classes.

~~409.113.~~ This conduct is deserving of condemnation and calls for an award of punitive damages to express society's condemnation of corporate conduct that prioritizes profit over the health and safety of children, and to achieve both specific and general deterrence in the interests of protecting users of video game users from future harm.

Jurisdiction

~~410.114.~~ The Plaintiffs and Class Members rely on ss. 13, 7 and 10 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 and plead that there is a real and substantial connection between the subject matter of this action and the Province of British Columbia for the following reasons:

- (a) Fortnite was played by the Plaintiffs in British Columbia;
- (b) the subject matter of the claim includes restitutionary remedies claimed on behalf of persons in British Columbia;
- (c) this claim pleads breaches of the *BPCPA*;
- (d) the Defendants carry on business in British Columbia and the head office of Epic Canada ULC is located in Vancouver, British Columbia;
- (e) the Plaintiffs reside in British Columbia; and
- (f) the Plaintiffs damages were sustained in British Columbia.

411.115. In light of the foregoing, the Plaintiffs and the Class Members ask that this action be tried in the City of Vancouver in the Province of British Columbia.

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Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 19/APR/2023 17/MAR/2023

for


Counsel for the Plaintiffs
Jamie Thornback

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The Plaintiffs claim the right to serve this pleading/petition on the Defendants outside British Columbia on the ground that:

The Plaintiff has at all material times have been a resident of British Columbia and has suffered loss ~~in British Columbia~~ as a result of a tort committed in British Columbia. The case also relates to contracts performed in British Columbia. The Supreme Court of British Columbia has jurisdiction with respect to this matter and the Plaintiffs plead the *Court Jurisdiction and Proceedings Transfer Act*, 2003, SBC Chapter 28 ~~and amendments thereto~~, in particular s. 10(e) and (g).

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This is a proposed class action relating to harms suffered by the class as a result of playing the video game Fortnite: Battle Royale.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)

- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

1. Class Proceedings Act, R.S.B.C. 1996, c. 50;
2. Health Care Cost Recovery Act, S.B.C. 2008, c. 27
3. Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2