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13
 14 **SUPERIOR COURT OF CALIFORNIA**
 15 **FOR THE COUNTY OF LOS ANGELES**

16 D.D., individually and on behalf of all others
 17 similarly situated,

18 Plaintiff,

19 v.

20 NIAN TIC, INC.,

21 Defendant.

Case No. **23STCV03241**

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

6 **NATURE OF THE CASE**

7 1. This is a putative class action brought by Plaintiff and all others similarly situated
8 who disaffirm their entire contracts with Defendant.

9 2. Plaintiff and the putative class have suffered injury due to illegal and misleading
10 trade practices by Defendant in marketing and selling in-game items and in-game currency for its
11 popular online video game, Pokémon Go (hereinafter, “*Pokemon*”). These items and in-game
12 currency are frequently purchased by minors who were unable to exercise their unrestricted rights
13 under state laws to rescind contracts into which they entered with Defendant.

14 3. Plaintiff and the putative class were also injured because their contracts with Niantic
15 were void *ab initio* as a matter of California law.

16 4. Niantic is a provider of socially connected video games on the internet. Niantic
17 allows for free downloads of video game applications including *Pokemon*, *i.e.*, video game
18 software that users download on computing device platforms.

19 5. Plaintiff brings this action for declaratory and equitable relief under Cal. Bus. &
20 Prof. Code § 17200 *et seq.* (the “UCL”), for Declaratory Relief and/or for Unjust Enrichment.

21 6. This is a class action on behalf of a class of all persons in the United States who,
22 while under the age of 18, had a *Pokemon* account that they used to play the game on any device,
23 in any mode, and exchanged in-game virtual currency for any in-game benefit, or purchased virtual
24 currency or any other in-game benefit for use within *Pokemon*.

25 **JURISDICTION AND VENUE**

26 7. This Court has subject matter jurisdiction over this class action. This Court has
27 personal jurisdiction over the parties because Plaintiff submits to the jurisdiction of the Court and
28 because Defendant, at all times relevant hereto, has systematically and continually conducted, and

1 continues to conduct, business in this State. This Court also has personal jurisdiction over the
2 Defendant because a substantial part of the events, omissions, and acts giving rise to the claims
3 herein occurred in this County.

4 8. This Court is the proper venue for this action under the California Code of Civil
5 Procedure § 395.5 because a substantial part of the events, omissions, and acts giving rise to the
6 claims herein occurred in this county.

7 **PARTIES**

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

9 10. Plaintiff D.D. is a minor and a resident of Los Angeles, California. Plaintiff D.D.,
10 under his own name and using his own money, made multiple in-game *Pokemon* purchases. His
11 most recent purchases occurred in approximately December 2020. Plaintiff D.D. no longer plays
12 the *Pokemon* video game and will not play the *Pokemon* video game in the future.

13 11. Defendant Niantic, Inc., is a Delaware corporation with its headquarters and
14 principal place of business located in San Francisco, California, and has regularly engaged in
15 business in this County. Defendant directs the marketing and development of its products and
16 services, including the subject *Pokemon* video game, and the illegal and unfair conduct stemming
17 therefrom, from its headquarters located in California.

18 **GENERAL BACKGROUND**

19 **A. *Pokemon***

20 12. *Pokemon* is an online augmented reality video game in which players use mobile
21 devices with GPS to locate, capture, train, and battle virtual creatures, called Pokémon, which
22 appear as if they are in the player's real-world location.

23 13. *Pokemon* has become one of the most played games on the planet, with more than
24 147 million monthly active users.

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

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

3 16. However, while *Pokemon* can be played without making in-game purchases, the
4 social nature of the game exacerbates the need for players, especially impressionable minors, to
5 make in-game purchases. Players are left with little choice but to make in-game purchases in order
6 to meaningfully enjoy the game and avoid lack of progression.

7 ***1. PokéCoins***

8 17. Niantic derives most of its *Pokemon*-related revenue through the sale of
9 "PokéCoins" or "PokeCoins," *Pokemon*'s in-game currency. PokeCoins are an in-game currency
10 created by Defendant solely for the *Pokemon* game, and are used by players to purchase
11 equipment, tools, clothing, characters, "loot boxes" (items granting additional gameplay
12 opportunities), and expanded virtual storage for items within the *Pokemon* virtual world.

13 18. Critically, PokeCoin purchases are non-refundable, regardless of whether the
14 purchaser is a minor, or whether the minor's parent or guardian has for any reason changed their
15 mind about their purchase.

16 19. While users can earn PokeCoins in-game instead of purchasing them for money,
17 earning PokeCoins in the game is a difficult, time consuming, and inconsistent process due to the
18 amount of playtime required and the randomness at which PokeCoins are offered as rewards.
19 Further, Defendant artificially caps the total amount of PokeCoins that a player can earn in one day
20 at 50 PokeCoins. By making PokeCoins inordinately difficult and time consuming to earn,
21 Defendant creates a "paywall" to induce players to purchase PokeCoins instead of earning them.

1 20. The smallest amount of PokeCoins a player can currently purchase is 100
2 PokeCoins for \$0.99. However, Defendant encourages players to purchase larger quantities of
3 PokeCoins by providing discounts on larger amounts. For example, as shown below, a player
4 could purchase a whopping 14,500 PokeCoins for \$99.99.



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

1 22. Defendant also encourages player spending by varying the exchange rate at which
2 PokeCoins are purchased in different transaction sizes. While 100 PokeCoins can currently be
3 purchased for \$0.99 – an exchange rate of approximately 101 PokeCoins per dollar, a player who
4 purchases 14,500 PokeCoins in a single transaction is charged \$99.99, an exchange rate of
5 approximately 145 PokeCoins per dollar.

6 23. Finally, Defendant induces players into making more purchases by making the
7 purchase process incredibly easy. Once a player enters and saves a payment method, that player
8 can purchase PokeCoins at any time almost instantly. In practice, this means minors whose parents
9 enter and save their credit cards into a *Pokemon* account can use their parents’ credit cards to make
10 an endless number of purchases. The ease of purchase combined with the constant cycle of
11 introducing new items and time-sensitive “events” results in more purchases.

12 24. Members of Congress have expressed concern about Defendant’s practices.
13 Specifically, in a letter released to the public, Congresswoman Lori Trahan, Congresswoman
14 Kathy Castor and Senator Edward J. Markey, have asked Defendant to “make changes to [its]
15 product or service’s design or data collection” to address “Loot boxes ... [that] encourage[e]
16 purchase before a child knows what the ‘bundle’ contains— akin to gambling.” *See Ex. A.*

17 2. *Pokemon Loot Boxes*

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

23 26. Defendant’s “eggs” and the related “incubators” fit this definition. “Eggs” are free
24 to acquire but the virtual creatures within them need to be “hatched,” or unlocked, by walking
25 specific distances in the real world. A player can hatch one egg at a time using the game’s
26 “infinite” incubator, or purchase and stack additional limited-use “incubators” to hatch up to eight
27 more eggs at once. Finally, the top tier of paid “incubator” additionally offers the ability to hatch
28 Pokémon at a faster rate.



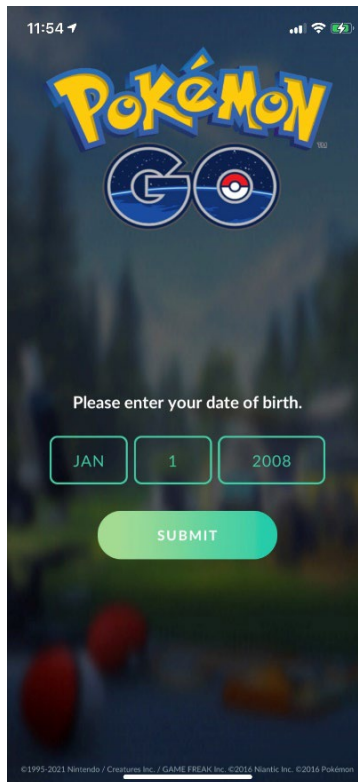
27. This system was created to capitalize on and encourage addictive behaviors, akin to gambling. Minors are especially susceptible to these addiction-enhancing elements of game design. The experience of acquiring surprise rewards and the associated excitement of uncovering unexpected in-game items holds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

28. Defendant still takes in large amounts of money from in-game purchases and utilizes ever-changing “events” that introduce new Pokémon for players to pursue.

29. Furthermore, *Pokemon* still fails to provide an unrestricted right to seek refunds of any in-game purchases made by minors.

1 3. ***Pokemon In-App Purchases***

2 30. While on its face it appears that Niantic requires that its Terms of Use be accepted
3 by legal adults 18 years and older, Niantic targets minors. An agreement that explicitly requires
4 acceptance by an adult cannot apply to a minor, and minors have a legal right to disaffirm contracts
5 into which they enter. In fact, Niantic allows minors to make purchases even after informing
6 Niantic that they are below the age of 18. When setting up their account, the first action players
7 take is to provide Niantic with their date of birth:



20 31. Minors make in-app purchases from Niantic, including, for example, purchasing
21 PokeCoins to use for in-game items and gameplay. Minors wanting to refund their in-app
22 purchases have no means within the game to request a refund. Niantic’s Terms of Use explicitly
23 state “that all sales by us to you of Virtual Money and Virtual Goods are final and that we will not
24 permit exchanges or refunds for any unused Virtual Money or Virtual Goods once the transaction
25 has been made.”¹

26
27
28 ¹ <https://nianticlabs.com/terms/en/>.

1 32. Defendant maintains both possession and control over the in-app virtual currency
2 and items that users purchase.

3 33. Specifically, Defendant claims “the right to offer, modify, eliminate, and/or
4 terminate Virtual Money, Virtual Goods, the Content, and/or the Services, or any portion thereof,
5 at any time, without notice or liability to you.” **Ex. B** at pg. 8.

6 34. 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 35. Minors make PokeCoin purchases without understanding the amounts of actual
9 money involved to-date, that day, that week, or that month. Minors often make PokeCoins
10 purchases through their parents’ credit cards and debit cards that were already stored on various
11 gaming platforms. Parents and guardians who store credit card information in a gaming platform
12 likely do not realize that those to whom they give access to the platform can use that credit card to
13 make in-game purchases.

14 36. Plaintiff and minor Class members have made purchases from Niantic through
15 third-party marketplaces. Gift cards are available for use on those marketplaces and minors who
16 receive these gift cards for birthdays, etc., have been able to use their own money to purchase
17 PokeCoins (as opposed to parental money charged on credit cards). Minor Class members who
18 wanted to cancel those own-money purchases were not allowed to do so under Niantic’s or the
19 third-party marketplaces’ non-refundable policies.

20 37. Prior to making the in-app purchases, minors are generally not aware of the
21 nonrefundable policy for in-app purchases. Plaintiff and minor Class members are not buyers who
22 would look for refund policy options at the time of purchase.

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

26 39. After making those purchases within the *Pokemon* ecosystem, minors who attempt
27 to request refunds will find that none of the purchases could be refunded. Without hiring counsel,
28

1 minor Class members and their guardians are not aware of a minor’s right to disaffirm and get
2 refunds on in-app purchases.

3 **4. Niantic Induces Minors to Make Frequent In-App**
4 **Purchases**

5 40. Niantic induces minors to make purchases by its operation of PokeCoins currency
6 within the *Pokemon* ecosystem and by promoting deals and price-cuts on different purchases that
7 appear very enticing to minors.

8 41. Niantic induces minors by concealing the terms of the in-app purchase at the time of
9 purchase by not displaying non-refundability or by displaying non-refundability in very small font.

10 42. Niantic induces in-app purchases by allowing one-click and easy to make in-app
11 purchases within *Pokemon*.

12 43. Niantic does not give minors enough information to make reasonable and prudent
13 choices with in-app purchases.

14 44. Niantic further induces frequent in-app purchases by constantly pushing newer
15 content and time-sensitive “events.”

16 45. By operation and policies of the *Pokemon* ecosystem, Niantic is benefiting by luring
17 minors into making in-app purchases that test the tolerance levels of parents. In many instances,
18 parents ignore these expenses as one-time expenses at the early stages of using *Pokemon*. By
19 disallowing refunds in the *Pokemon* ecosystem, while also making one-click purchases in the same
20 ecosystem easy, Niantic is running an unfair system that prevents minors from electing to utilize
21 their absolute right to disaffirm their contracts with Defendant.

22 **5. Niantic Misleads or Misrepresents Information Related to**
23 **In-App Purchases**

24 46. Niantic misleads or misrepresents the applicable law for transactions including in-
25 app purchases with minors. Niantic knows that in the state of California, and in most states
26 nationwide, the law allows minors to disaffirm contracts. Niantic also knows that a minor can
27 disaffirm contracts without any restrictions; the law permits a minor to do so. Yet, Niantic operates
28 a non-refund policy that misleads, misrepresents, and does not acknowledge a minor’s right to get a
refund.

1 56. While *Pokemon* requires that its Terms of Use be accepted by a legal adult over the
2 age of 18 to play the game, Defendant failed to implement sufficient mechanisms for parental
3 consent controls and does not put any procedure in place for minors to consent to the Terms of Use
4 through their adult guardian prior to downloading and playing *Pokemon*. In fact, despite the Terms
5 of Use, Defendant encourages and permits minors to make purchases even after minors inform
6 Defendant about their ages, which the game requires them to do prior to playing.

7 57. Plaintiff does not recollect seeing, reading, or agreeing to Defendant’s or any third
8 party’s Terms of Use prior to playing *Pokemon*, and his guardians also did not see, read, or agree to
9 the terms.

10 58. As a result, Plaintiff made several in-game purchases that were labeled non-
11 refundable using his own and his guardians’ funds.

12 59. Had Defendant provided proper parental control and age verification features,
13 Plaintiff would not have been able to make any of the purchases that he did. And had Defendant
14 permitted Plaintiff to disaffirm his contracted purchases prior to filing this lawsuit, he would have
15 done so.

16 60. Plaintiff made several in-app purchases, including, for example, Event Bonuses and
17 New Trainer Boxes. He wanted to disaffirm the in-app purchases related to these purchases and
18 request a refund. After retaining counsel, Plaintiff and his counsel sought to obtain a refund, but
19 discovered Plaintiff was not allowed to do so within the *Pokemon* ecosystem because according to
20 Niantic, these purchases are non-refundable.² Plaintiff’s attempt to request a refund would thus be
21 futile.

22 61. Plaintiff made PokeCoin purchases without understanding the amounts involved in
23 actual money to-date, that day, that week or that month.

24 62. Plaintiff has made PokeCoin purchases through his parents’ credit cards and debit
25 cards that were available from his gaming platforms.

26
27 ² See <https://nianticlabs.com/terms/en/> (“You agree that all sales by us to you of Virtual Money and
28 Virtual Goods are final and that we will not permit exchanges or refunds for any unused Virtual
Money or Virtual Goods once the transaction has been made.”).

1 63. Plaintiff has used his own money to make purchases from Defendant using gift
2 cards received on social occasions including birthdays. He used gift cards on more than one
3 occasion. Subsequent to the purchases, Plaintiff wanted to cancel those purchases but was not
4 allowed to do so under Niantic's non-refundable policy.

5 64. Prior to making the in-app purchases, Plaintiff was not aware of the non-refundable
6 policy. Plaintiff and Class members are not buyers who would look for refund policy options at the
7 time of purchase.

8 65. Plaintiff's parents and/or guardians did not receive any notifications of the in-app
9 purchases from Niantic.

10 66. Before hiring counsel in this action, neither Plaintiff nor his parents and/or
11 guardians were aware of a minor's right to disaffirm and get refunds on any and all in-app
12 purchases without any restrictions.

13 67. Plaintiff relied on Niantic's misrepresentations regarding non-refundability for
14 purchases.

15 68. Plaintiff has not been able to earn sufficient PokeCoins within the game without
16 making in-app purchases. Plaintiff made in-app purchases using Plaintiff's own money through
17 credit cards, debit cards, or gift cards.

18 69. Niantic induces minors to make purchases by its operation of PokeCoins currency
19 within the *Pokemon* ecosystem as outlined above.

20 70. Plaintiff has made purchases after viewing promotional events. Plaintiff has made
21 one-click purchases.

22 71. Plaintiff did not have information on his own purchase history or summary of
23 amounts already spent with in-app purchases.

24 72. Plaintiff has felt dissatisfied with purchases that he made when he was attempting to
25 obtain rare Pokémon promoted in a limited-time events, but was unable to do so.

26 73. In many instances, during the use of *Pokemon*, Plaintiff's parents and/or guardians
27 reviewed their credit cards, debit cards and bank account information months after the purchases
28 occurred.

CLASS ALLEGATIONS

1
2 74. Plaintiff seeks to represent a class defined as: All persons in the United States who
3 made a purchase in Pokémon Go while under the age of 18.

4 75. Specifically excluded from the Class are Defendant, Defendant’s officers, directors,
5 agents, trustees, parents, children, corporations, trusts, representatives, employees, principals,
6 servants, partners, joint ventures, or entities controlled by Defendant, and their heirs, successors,
7 assigns, or other persons or entities related to or affiliated with Defendant and/or Defendant’s
8 officers and/or directors, the judge assigned to this action, and any member of the judge’s
9 immediate family.

10 76. Subject to additional information obtained through further investigation and
11 discovery, the foregoing definitions of the Class may be expanded or narrowed by amendment or
12 amended complaint.

13 77. **Numerosity.** On information and belief, tens of thousands of consumers fall into
14 the definitions of the Class. Members of the Class can be identified through Defendant’s records,
15 discovery, and other third-party sources.

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

- 19 a. Whether Defendant's failure to provide a method for minors or their
20 guardians to disaffirm any purchases violated their consumer rights;
- 21 b. Whether Plaintiff and other Class members’ contracts with Defendant were
22 void *ab initio*; and
- 23 c. Whether Plaintiff and the other Class members are entitled to other relief.

24 79. **Typicality.** Plaintiff’s claims are typical of the claims of the other members of the
25 Class in that, among other things, all Class members were similarly situated and were comparably
26 injured through Defendant’s wrongful conduct as set forth herein. Further, there are no defenses
27 available to Defendant that are unique to Plaintiff.

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

3 86. Minors may disaffirm or a guardian may disaffirm a contract on behalf of a minor
4 within a reasonable amount of time of turning 18. By no later than the filing date of this lawsuit,
5 Plaintiff disaffirmed all in-app purchases made through *Pokemon* to-date and requested a refund.
6 Plaintiff seeks injunctive relief on behalf of the Class for future and prospective transactions on the
7 *Pokemon* video gaming platform and ecosystem to allow for refunds on all in-app purchases
8 without restrictions.

9 87. Plaintiff thus disaffirmed his entire agreement with Niantic at the time he filed this
10 complaint.

11 88. The contracts between Defendant and the members of the Class who are minors are
12 voidable - a fact that Defendant denies, as evidenced by its denial of the Class's right to be
13 refunded in its Terms of Use.

14 89. Accordingly, there is an actual controversy between the parties, requiring a
15 declaratory judgment.

16 90. This claim for declaratory judgment seeks a determination by the Court that: (a) this
17 action may proceed and be maintained as a class action; (b) the sales contracts between Defendant
18 and Class members who are minors, relating to the purchase of in-game currency, are voidable at
19 the option of those Class members or their guardians; (c) an award of reasonable attorneys' fees
20 and costs of suit to Plaintiff and the Class is appropriate; and such other and further relief as is
21 necessary and just may be appropriate as well.

22 91. Plaintiff has no adequate remedy at law for this claim. There is no commensurate
23 legal remedy for avoidance of Plaintiff's contract. Alternatively, legal remedies available to
24 Plaintiff are inadequate because they are not "equally prompt and certain and in other ways
25 efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937); *see also*
26 *U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) ("the 'mere existence' of a possible
27 legal remedy is not sufficient to warrant denial of equitable relief"); *Quist v. Empire Water Co.*,
28 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”).

4 92. Plaintiff also lacks an adequate remedy at law to prevent future harm.

5 93. This claim for declaratory judgment seeks a determination by the Court that: (a) this
6 action may proceed and be maintained as a class action; (b) the sales contracts between Defendant
7 and Class members who are minors, relating to the purchase of in-game currency and virtual items,
8 are voidable at the option of those Class members or their guardians; (c) an award of reasonable
9 attorneys’ fees and costs of suit to Plaintiff and the Class is appropriate; and such other and further
10 relief as is necessary and just may be appropriate as well.

11 **COUNT II**
12 **Declaratory Judgment On Minor’s Inability To Contract For Personal Property Not In Their**
13 **Immediate Possession Or Control**
14 **(On Behalf Of Plaintiff And The Class)**

14 94. The foregoing allegations are hereby reincorporated by reference as if fully restated
15 herein.

16 95. As described above, Defendant contracted with Plaintiff and the Class members,
17 who are minors and/or were minors at the time they made in-app purchases.

18 96. Defendant’s contracts with minor Plaintiff and Class members include contracts for
19 the purchases of PokeCoins and virtual items.

20 97. California law recognizes both “intangible personal property” and “tangible
21 personal property.” *See, e.g.*, CA REV & TAX § 6011(10)(A)-(C); CA REV & TAX § 6016.

22 98. According to California Law, a “minor cannot ... [m]ake a contract relating to any
23 personal property not in the immediate possession or control of the minor.” CA FAM § 6701.

24 99. Both PokeCoins and any virtual item sold to Plaintiff and Class members are
25 personal property.

26 100. According to Defendant’s Terms of Use, Defendant explicitly maintains possession
27 and/or control over the PokeCoins and virtual items sold to Plaintiff and the Class Members as
28 discussed *supra*.

1 101. Thus, according to California law, the contracts for these purchases are void and
2 Plaintiff and Class members are entitled to a refund of the consideration paid under their contracts
3 with Defendant.

4 102. Defendant disputes that these contracts are void – as evidenced by the fact that
5 Defendant’s Terms of Use claim that all purchases are non-refundable and the fact that Defendant
6 does not maintain any mechanism for users who contracted with Defendant as minors to obtain
7 refunds.

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

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

19 105. Plaintiff also lacks an adequate remedy at law to prevent future harm.

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21 action may proceed and be maintained as a class action; (b) the sales contracts between Defendant
22 and Class members who are minors, relating to the purchase of in-game currency and virtual items,
23 are void; (c) an award of reasonable attorneys’ fees and costs of suit to Plaintiff and the Class is
24 appropriate; and such other and further relief as is necessary and just may be appropriate as well.

COUNT III
Violation Of The California Business & Professional Code §17200
(On Behalf Of Plaintiff And The Class)

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

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

109. Defendant's conduct is unlawful under Bus. & Prof. Code § 17200 *et seq.* ("UCL") because it (1) is in violation of the minor's right to disaffirm contract as discussed above, and (2) because Defendant has made contracts with minors that are void *ab initio* under California law.

110. Defendant's conduct described herein is "unfair" under Bus. & Prof. Code § 17200 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 Plaintiff, the Class, and the public. Defendant engages in unfair practices by actively advertising, marketing and promoting *Pokemon* as "free" with the intent to induce minors to purchase Game Currency in a manner likely to deceive the minors while denying minors their right to disaffirm their contracts as is required by California law, and by making contracts with minors that are void *ab initio* under California law.

111. Defendant was aware that minors are a significant population of the individuals who play its *Pokemon* game 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.

112. Defendant did not make Plaintiff 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 *Pokemon* video game that would have prevented Plaintiff and the

1 other Class members from making the purchases that they did, or would have otherwise allowed
2 them to seek a refund for their purchases.

3 113. Defendant intentionally and knowingly did not give information that refunds are
4 allowed for minors without any restrictions under applicable law. Such representations and
5 omissions misled Plaintiff and Class members and are likely to mislead the public.

6 114. Plaintiff relied on Defendant's omissions in that he was unaware that he could
7 disaffirm his contracts with Niantic and receive refunds.

8 115. Defendant knew or should have known that its representations regarding the in-app
9 purchases were false, deceptive, and misleading, and that its conduct was illegal.

10 116. Defendant's conduct described herein constitutes an unfair business practice
11 because it violates public policy and is immoral, unethical, oppressive, unscrupulous, and/or
12 substantially injurious to consumers, and any utility of such practices is outweighed by the harm
13 caused to consumers, including to Plaintiff, the Class, and the public. Defendant engages in unfair
14 practices by denying minors their unrestricted rights to disaffirm contracts and seek refunds, and by
15 forming contracts with minors that are void *ab initio* under California law.

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

18 118. As a direct and proximate cause of Defendant's deceptive and unfair trade practices,
19 Plaintiff and the other members of the Class, suffered detriment.

20 119. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an injunction enjoining
21 Defendant from continuing to engage in the conduct described above, or any other act prohibited
22 by law.

23 120. Additionally, Plaintiff and the Class members seek an order requiring Defendant to
24 pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

25 121. Plaintiff has no adequate remedy at law for this claim. There is no commensurate
26 legal remedy for Plaintiff's requested relief under this count. Alternatively, legal remedies
27 available to Plaintiff are inadequate because they are not "equally prompt and certain and in other
28 ways efficient" as equitable relief. *American Life Ins. Co. v. Stewart*, 300 U.S. 203, 214 (1937);

1 *see also U.S. v. Bluit*, 815 F. Supp. 1314, 1317 (N.D. Cal. Oct. 6, 1992) (“the ‘mere existence’ of a
2 possible legal remedy is not sufficient to warrant denial of equitable relief”); *Quist v. Empire Water*
3 *Co.*, 2014 Cal. 646, 643 (1928) (“The mere fact that there may be a remedy at law does not oust the
4 jurisdiction of a court of equity. To have this effect, the remedy must also be speedy, adequate, and
5 efficacious to the end in view ... It must reach the whole mischief and secure the whole right of the
6 party in a perfect manner at the present time and not in the future”).

7 **PRAYER FOR RELIEF**

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

- 10 A. For an order certifying the Class and naming Plaintiff as the representative for the
11 Class and Plaintiff’s attorneys as Class Counsel;
- 12 B. For an order issuing a declaratory judgment that the sales contracts between
13 Defendant and Plaintiff and the minor Class members are voidable;
- 14 C. For an order issuing a declaratory judgment that the sales contracts between
15 Defendant and Plaintiff and the minor Class members were void *ab initio*;
- 16 D. For an order declaring that Defendant’s conduct violates the laws referenced herein;
- 17 E. For an order finding in favor of Plaintiff and the Class on all counts asserted herein;
- 18 F. For injunctive relief as the Court may deem proper; and
- 19 G. For an order awarding Plaintiff and the Class their reasonable attorneys’ fees and
20 expenses and costs of suit.

21 **DEMAND FOR TRIAL BY JURY**

22 Plaintiff demands a trial by jury of any and all issues in this action so triable.

23
24 Dated: February 14, 2023

Respectfully submitted,

25 **BURSOR & FISHER, P.A.**

26
27 By: _____



L. Timothy Fisher

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