

1 **KRONENBERGER ROSENFELD, LLP**
2 Karl S. Kronenberger (Bar No. 226112)
3 karl@kr.law
4 Katherine E. Hollist (*pro hac vice* forthcoming)
5 kate@kr.law
6 Leah Rosa Vulić (Bar No. 343520)
7 leah@kr.law
8 150 Post Street, Suite 520
9 San Francisco, CA 94108
10 Telephone: (415) 955-1155
11 Facsimile: (415) 955-1158

8 **POLLOCK COHEN LLP**
9 Raphael Janove (*pro hac vice* forthcoming)
10 rafi@pollockcohen.com
11 Adam Pollock (*pro hac vice* forthcoming)
12 adam@pollockcohen.com
13 George Krebs (*pro hac vice* forthcoming)
14 gkrebs@pollockcohen.com
15 111 Broadway, Ste. 1804
16 New York, NY 10006
17 Telephone: (212) 337-5361

JAY KUMAR LAW
Jay Kumar (*pro hac vice* forthcoming)
jay@jaykumarlaw.com
73 W. Monroe Street, Suite 100
Chicago, IL 60603
Telephone: (312) 767-7903

14 *Attorneys for Plaintiffs and the Proposed Classes*

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

17 **YOVANNI YANEZ, AND EMELYN**
18 **MATOS**, on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 v.

22 **FUNPLUS INTERNATIONAL AG**, a
23 Swiss public limited company, and
24 **KINGSGROUP HOLDINGS**, a Cayman
25 Islands corporation,

26 Defendants.

Case No. 4:23-cv-2667

CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL

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1 Plaintiffs Yovanni Yanez ("Yanez") and Emelyn Matos ("Matos") (each a "Plaintiff"
2 and, collectively, "Plaintiffs") on behalf of themselves and all others similarly situated, by
3 and through their attorneys, for their Complaint against FunPlus International AG and
4 KingsGroup Holdings (collectively, "Defendants" or "FunPlus") allege, on knowledge as to
5 their own actions, the investigation of Plaintiff's counsel, and otherwise upon information
6 and belief, as follows:

7 **PRELIMINARY STATEMENT**

8 1. This is a class action lawsuit against FunPlus for falsely advertising price
9 discounts for in-game purchases and other deceptive and unfair business practices in its
10 mobile application game (or "app"), Frost & Flame: King of Avalon ("KOA"). KOA is among
11 the highest grossing mobile strategy games across both Apple and Android devices, with
12 over 100 million downloads and an estimated revenue in excess of \$80 million per month.

13 2. Since its 2016 inception, KOA has generated over a billion dollars in revenue
14 by offering players "microtransactions"—the ability, while in the game, to make discrete in-
15 app purchases of in-game valuables necessary to level up one's account. These in-app
16 purchases, or "packs," generally range in price from \$0.99 to \$99.99 each.

17 3. However, in its direct marketing to consumers (including representations
18 made at the time of purchase), FunPlus advertises false former prices to induce players
19 into believing they must act quickly to take advantage of a limited-time sale price.

20 4. Since KOA launched in 2016 and continuing to the present day, FunPlus
21 deceives consumers by offering specific limited-time "bonuses" that purport to massively
22 discount the price of its in-game goods. It uses strikethrough pricing and percentages to
23 trick consumers into believing they are benefitting from limited-time promotions that
24 substantially increase the value of their in-game purchases, especially in relation to
25 purchases made by competing players. These purported savings are false, however,
26 because the original pricing that these ads reference are fabricated.

27 5. These advertisements have run for years. But at no point, let alone within
28 three months of the advertised discounts, have these in-game items ever actually been

1 offered at a non-discounted price—i.e., without their “limited-time” discounts. In other
 2 words, FunPlus never sells these items at their “original” price. It offers false discounts
 3 from an original price that did not exist, and its players bought packs on “sale” that were
 4 the same prices they would ordinarily pay.

5 6. Furthermore, the advertised “original” pricing does not reflect the prevailing
 6 market retail pricing for these virtual in-game items, which have no real-world value and
 7 whose pricing is entirely determined by FunPlus.

8 7. The Federal Trade Commission (“FTC”) describes these kinds of false former
 9 pricing schemes as deceptive:

10 One of the most commonly used forms of bargain advertising is to offer a
 11 reduction from the advertiser’s own former price for an article. If the former
 12 price is the actual, bona fide price at which the article was offered to the
 13 public on a regular basis for a reasonably substantial period of time, it
 14 provides a legitimate basis for the advertising of a price comparison. Where
 15 the former price is genuine, the bargain being advertised is a true one. If, on
 16 the other hand, the former price being advertised is not bona fide but fictitious
 17 – for example, where an artificial, inflated price was established for the
 18 purpose of enabling the subsequent offer of a large reduction – the “bargain”
 19 being advertised is a false one; the purchaser is not receiving the unusual
 20 value he expects. In such a case, the “reduced” price is, in reality, probably
 21 just the seller’s regular price.

22 16 C.F.R. §233.1(a).

23 8. California statutory and regulatory law also expressly forbid such pricing
 24 schemes. Specifically, Cal. Bus. & Prof. Code §17501 states:

25 No price shall be advertised as a former price of any advertised thing, unless
 26 the alleged former price was the prevailing market price as above defined
 27 within three months next immediately preceding the publication of the
 28 advertisement or unless the date when the alleged former price did prevail is
 clearly, exactly and conspicuously stated in the advertisement.

9. Defendants’ tactics to induce players to spend tens, if not hundreds, of
 thousands of dollars each on purchases fall directly within the dark patterns—manipulative
 design practices—the FTC identified in its September 2022 report, *Bringing Dark Patterns*
 to Light.¹

¹ FTC Staff Report, *Bringing Dark Patterns to Light* (Sept. 14, 2022), available at
 Case No. 4:23-cv-2667

1 False Limited Availability Packs (defined below) which he otherwise would not have
2 purchased had he known about the deceptive advertising which he reasonably relied upon
3 in making those purchases. He was further double charged for purchases.

4 19. Plaintiff Emelyn Matos is a resident of New York. She began playing KOA
5 around 2018. She purchased False Strikethrough Packs, False Percentage Packs, and
6 False Limited Availability Packs (defined below) which she otherwise would not have
7 purchased had she known about the deceptive advertising which she reasonably relied
8 upon in making those purchases.

9 20. FunPlus was founded in California, apparently with the name Halfquest, and
10 has since gone through various iterations of names including “FunPlus” and “KingsGroup”.
11 On information and belief, FunPlus has offices in San Francisco, San Mateo, and Irvine,
12 California. Its high-level executives are also located in California, including: (a) Yitao Guan,
13 a resident of Menlo Park and FunPlus International’s co-founder and Chief Technology
14 Officer; (b) Andy Zhong a/k/a Yingwu Zhong, a resident of San Francisco and co-founder
15 and Chief Executive Officer; (c) Jeremy Horn, a resident of Los Angeles and VP Head of
16 Innovation; (d) Wei Wang, a resident of Irvine and Chief Creative Officer; and (e) Michael
17 Tong, a resident of San Francisco and Chief Strategy Officer.

18 21. Defendant FunPlus International AG (“FunPlus International”) is a Swiss
19 public limited company. FunPlus International was previously known as (i) KingsGroup
20 Europe SA, (ii) KingsGroup International AG, and (iii) KingsGroup International SA. Its
21 directors include Yingwu Zhong (a/k/a Andy Zhong).

22 22. Defendant KingsGroup Holdings is a Cayman Islands corporation. Yingwu
23 Zhong (a/k/a Andy Zhong) is one of its two directors.

24 23. Defendants have operated through an opaque corporate structure. On
25 information and belief, Defendants conduct business or have conducted business through
26 (i) Funplus Interactive USA Inc. d/b/a FunPlus Interactive USA LLC, a Delaware company
27 with its principal place of business in San Francisco, California; and (ii) Imagendary USA,
28 LLC f/k/a FunPlus Interactive USA LLC f/k/a KingsGroup USA, LLC, a Delaware company,

1 with its principal place of business in San Francisco, California.

2 24. This Court has jurisdiction over this action under the Class Action Fairness
3 Act of 2005. Pursuant to 28 U.S.C. §1332(d)(2), this Court has original jurisdiction because
4 the aggregate claims of the putative class members exceed \$5 million, exclusive of interest
5 and costs, and at least one of the members of the proposed classes is a citizen of a
6 different state than Defendants.

7 25. This Court has personal jurisdiction over Defendants because they have
8 offices and key executives in this District, committed the tortious acts alleged herein in this
9 District, regularly conduct business in this District, and have extensive contacts with this
10 forum.

11 26. Venue is proper in this District under 28 U.S.C. §1391(b)(2), in that a
12 substantial part of the events or omissions giving rise to the claim occurred in this District.

13 27. In addition, venue is proper in this District under 28 U.S.C. §1391(b)(1), in
14 that all Defendants reside in this District and are subject to this Court's personal jurisdiction.

15 28. In the alternative, venue is proper in this District under 28 U.S.C. §1391(b)(3),
16 to the extent there is no district in which an action may otherwise be brought under 28
17 U.S.C. §1391(b)(1) – (2), because Defendants are subject to this Court's personal
18 jurisdiction.

19 **INTRADISTRICT ASSIGNMENT**

20 29. Because a substantial part of the events which give rise to Plaintiffs' claims
21 occurred in San Francisco and San Mateo counties, pursuant to Local Civil Rule 3-2, this
22 action should be assigned to the San Francisco or Oakland Division.

23 **FACTUAL ALLEGATIONS**

24 30. KOA is a mobile application strategy game developed and operated by
25 Defendants and available on iPhone and Android devices through the Apple App Store
26 and Google Play platforms, respectively. KOA is a fantasy, medieval, strategy, and
27 resource management game. Aside from the fact that the aesthetics and story of the game
28 feature knights, dragons, and evil ice creatures, it otherwise possesses nearly identical



1 gameplay and monetization features to other resource management games developed by
2 Defendants, such as State of Survival, and Guns of Glory.

3 31. Beginning in 2016, KOA has consistently been among the most downloaded
4 mobile game apps on the Apple and Android app stores, having been downloaded over
5 100 million times by 2022.

6 32. KOA belongs to a category of apps known as “freemium” apps. A freemium
7 app is one in which users do not have to pay to play a fully functional game—the game is
8 free to download and start playing.

9 33. The term freemium is a misnomer, however, as users are given multiple
10 purchase opportunities, known as microtransactions or in-app purchases (“IAPs”), to
11 augment their playing experience. Users can buy in-game currency, weapons, garments,
12 and even time.

13 34. The popularity of freemium apps featuring in-app purchases has
14 skyrocketed. In 2022, 97% of apps in the Google Play app store were free-to-download.²
15 Even so, in-app purchases accounted for 48.2% of mobile app earnings.³ KOA has
16 generated over one billion dollars since its creation.

17 35. Because users can try the app for free, freemium apps acquire new users
18 more rapidly than purchase-to-play apps. Enabling microtransactions at various points
19 throughout game play allows users time to develop app loyalty and engagement before
20 having to pay anything. The continued microtransactions also remove the upper limit of
21 user spending.⁴

22 36. Most of freemium app revenue is generated by big-spending “whales.” In
23 2017, just 6% of customers on Apple’s App Store accounted for 88% of all spending on
24
25
26

27 ² <https://www.statista.com/statistics/263797/number-of-applications-for-mobile-phones>.

28 ³ <https://www.businessofapps.com/guide/in-app-purchases>.

⁴ Savannah Wei Shi, et al., *From Minnows to Whales: An Empirical Study of Purchase Behavior in Freemium Social Games*, Int’l J. of Elec. Com. (2015).

1 games.⁵

2 37. KOA has generated well over a billion dollars in revenue since its inception.
3 It makes this revenue by offering players in-app purchases. These purchases include
4 building material, hero “badges,” speed-ups, and other valuables. An “in-app purchase”
5 refers to a financial transaction initiated from within the mobile application itself. The most
6 common form of in-app purchases is for bundled groups of resources, or “packs,” generally
7 ranging in price from \$0.99 to \$99.99 each.

8 38. Players engage in “microtransactions” to make in-app purchases containing
9 items that are necessary to progress their account further and maintain competitiveness
10 with other players. This business model contrasts with that of many other popular free apps
11 which offer only non-essential or cosmetic items for purchase. Because KOA offers in-app
12 purchases that advance one’s account in direct proportion to the amount of money spent
13 by a player and confer advantages not reasonably attainable by in-game labor alone, it is
14 most accurately classified as a “Pay to Win” mobile game.

15 39. In other words, a player who spends money in the game will be more
16 powerful in relation to players who choose not to spend money in the game. The game
17 leverages this by bombarding players with advertisements and invitations to buy additional
18 packs and resources whenever they reach a point in the game where their progress has
19 stalled. The game’s model is designed to create a sense of urgency around the purchase
20 of in-game resources, and KOA further capitalizes on this sense of urgency by suggesting
21 that purchases are limited-time offerings made available at a substantial discount.

22 40. The strategies described above to induce players to spend upwards of
23 hundreds of thousands of dollars each are a few of the many deceitful tactics, known as
24 “dark patterns,” employed within KOA. “Dark patterns” refer to “a[ny] user interface
25 carefully crafted to trick users into doing things they might not otherwise do,” causing
26 players to “engage accidentally or unwittingly in monetization activities thereby generating

27 ⁵ *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 954 (N.D. Cal. 2021), *aff’d in part*,
28 *rev’d in part and remanded on other grounds*, No. 21-16506, 2023 WL 3050076 (9th Cir.
Apr. 24, 2023)

1 more income for the developer.”⁶

2 41. As the computer and behavioral scientist Chris Lewis⁷ writes, “[t]hese dark
3 patterns violate user expectations by encouraging them to give up or jeopardize some
4 resource to an extent that they were not expecting (time, money, social capital).”⁸

5 42. Indeed, and as further described below, many of KOA’s tactics to induce
6 players to spend over a billion dollars on a “free game” fall directly within the dark patterns
7 the FTC identified in its September 2022 report, *Bringing Dark Patterns to Light*.⁹

8 43. Prior to downloading KOA, the “Pay-to-Win” nature of the game is withheld
9 or obscured from promotional material directed at potential consumers through various
10 social media channels. Defendants invest in producing highly elaborate advertisements
11 that suggest a fast-paced game with rousing visuals. For example, in one cinematic
12 advertisement, Defendants feature the actor Orlando Bloom, who formerly played the
13 fantasy role of Legolas in Lord of the Rings, dramatically slaying enemy knights while
14 desperately attempting to wake up a human player in the middle of the night in order to
15 pick up his mobile phone and assist in the fight.

16 44. Once a player downloads the game, they are placed automatically into a
17 specific “Kingdom,” or server, along with several thousand players who also created their
18 accounts at a similar period in time. In stark contrast to the advertisement featuring Mr.
19 Bloom, a player exists merely as a castle upon a mostly visually-simple, two-dimensional,
20 and inert map. They are immediately tasked with upgrading the level of their “Stronghold”
21 within their city, and the buildings within it. They must do this to strengthen their combat
22 abilities and therefore maintain a competitive position among other players in the server.

23 45. The purpose of the game is to advance the strength of one’s city by
24

25 ⁶ Dan Fitton, Janet C Read, *Creating a Framework to Support the Critical Consideration*
26 *of Dark Design Aspects in Free-to-Play Apps*, Assoc. for Computing Machinery 407
(2019), available at <https://dl.acm.org/doi/pdf/10.1145/3311927.3323136>.

27 ⁷ Chris Lewis, *Irresistible Apps: Motivational Design Patterns for Apps, Games, and Web-*
28 *based Communities* (1st ed. 2014).

⁸ Lewis, *supra* note 17 (internal quotations omitted).

⁹ FTC Staff Report—Bringing Dark Patterns to Light.

1 upgrading buildings, locating and upgrading heroes, training a large number of strong
2 troops, and maintaining a dragon. The players join large allegiances of other players that
3 compete for dominance within the kingdom through various in-game events.

4 46. In order to progress past a certain level in the game, it is necessary to
5 purchase in-app “packs” that contain the required items to level up one’s account in the
6 game. These essential items require spending real money, as they are otherwise only
7 available in insufficient amounts through in-game labor alone.

8 47. After a few days of playing and regularly making upgrades, the cost to
9 acquire the materials needed to make subsequent upgrades increases exponentially.

10 48. In other words, KOA is made up of feedback loops—the output of the system
11 becomes the input for the next iteration of the system. Every action made in the game thus
12 gives the user access to future actions, giving users a sense of player progress and
13 motivation.

14 49. At the beginning of the game the time between input and output is immediate
15 and allows the user to complete the next action right away. But as the user performs more
16 actions and levels up in the game, the time between input and output increases. There
17 comes a point in the game where the user can no longer advance due to the time required
18 to complete the next action. At this point, without making an in-app purchase, the user is
19 at a standstill.

20 50. Because users are so accustomed to short wait times or using the speed up,
21 skip, or coin (spending in-game resources) features, by the time this standstill occurs (that
22 is, if no additional purchases are made) a user is predisposed to make in-app purchases.

23 51. For example, to upgrade one’s Stronghold to level 2 costs a trivial number of
24 resources acquired with no labor because sufficient quantities are possessed upon
25 account creation. The upgrade is also completed instantly with one click. But subsequent
26 upgrade costs increase exponentially, with latter levels costing hundreds of millions of
27 resources. Once initiated, these latter upgrades take real-world **weeks** to complete, unless
28 players purchase construction speed-up boosters. For example, after a player gathers the

1 necessary resources to advance from Stronghold level 49 to 50 and clicks “upgrade,” the
2 completion time is 81 days 16 hours, 59 minutes, and 48 seconds.

3 52. If a player does not make any purchases in the game, it would require **years**
4 of playing two hours each day, 365 days a year, to gather the necessary resources to
5 upgrade their Stronghold to 50.

6 53. Defendants build off the compulsive feedback loops that their game
7 intentionally creates to induce Plaintiffs and other players to spend upwards of hundreds
8 of thousands of dollars each.¹⁰ KOA reminds players that instead of devoting countless
9 hours to progress in the game, they can simply purchase packs. The game designs these
10 upgrades to lure players into spending money on resources.

11 54. These upgrades all cost players real currency. The packs necessary for
12 these upgrades are generally offered at the following prices: \$99.99, \$49.99, \$19.99,
13 \$9.99, \$4.99, \$1.99, and \$0.99. The advertisements for a particular pack at different pricing
14 levels usually have similar graphical advertisements but contain varying amounts of items
15 in proportion to their price.

16 55. To acquire the resources necessary to reach Stronghold level 30, a player
17 would need to spend approximately \$1,400 on packs. However, this cost is never made
18 clear to the player because Defendants know that players would not be willing to pay
19 \$1,400 if they were aware of the total cost up front. After all, these are players who

20 _____
21 ¹⁰ KOA also employs compulsion loops, a sinister-sounding term for a simple process. To
22 create a compulsion loop, game developers make users anticipate a reward, such as a
23 more powerful sword or the prospect of traveling to a new game area. Next, users are
24 given a challenge, such as killing monsters or solving a puzzle. By completing the
25 challenge, the user earns their anticipated reward, which in turn presents or unlocks more
26 challenges for yet more rewards (e.g., the new game area includes a new quest giver).
27 Compulsion loops can lead to compulsive behavior. Adrian Hon, *You’ve Been Played: How*
28 *Corporations, Governments, and Schools Use Games to Control Us All*, p. 144. KOA
likewise employs treatmills, a refinement of compulsion loops, where incremental gains are
constantly doled out, with the intention of engaging players indefinitely. Treatmills are
designed to ensure the game occupies an enormous amount of a user’s time, stays
relevant as long as possible, and as a result maximizes the time where a user might refer
the game to a friend. Games can easily consume hundreds of hours of users’ time by
incrementally unlocking a few more secrets and a few more power-ups after every loop.
Id. at 152.

1 specifically selected a free-to-play game instead of spending \$20 to \$60 on a traditional
2 video game that is available for one-time purchase, and with the same mechanics.

3 56. Knowing this, Defendants instead leverage the incremental upgrade system
4 to spread this total cost over numerous separate upgrades, all while keeping consumers
5 in the dark. There is no in-game mechanism to review one's purchase history or the total
6 amount one has spent. Upgrade costs are only shown for those upgrades for which the
7 player is currently eligible, meaning Defendants hide the explosive exponential costs of in-
8 game upgrades until the game's players have already invested months of time and money
9 into the game.

10 57. Once players are fully invested, Defendants then use packs to create a false
11 sense of urgency and scarcity to pressure players into making several dozen smaller
12 purchases over a period of days, weeks, or months.

13 58. In other words, at no point are players told it will cost them \$1,400 to upgrade
14 their Stronghold to level 30. Instead, they are bombarded with an endless series of
15 advertisements urgently offering limited-time sales, each providing the opportunity to
16 purchase just the incremental resources needed at the time to reach the next level of
17 upgrade.

18 59. Defendants follow this model intentionally to foster dangerous consumer
19 behaviors that ultimately result in more purchases, at the expense of its players.

20 60. Research into microtransactions and human behavior shows that a critical
21 link between microtransaction purchases and problem gaming behavior (*i.e.*, behavior
22 associated with gambling addiction) forms with high frequency purchases.¹¹ Of note, "Both
23 classical and operant conditioning theories suggest that more frequent events or quicker
24 pay out frequencies could increase the likelihood of problematic microtransaction purchase
25 behavior and problem gambling symptoms through reinforcement."¹²

26 _____
27 ¹¹ Erin Gibson et. al, *The relationship between videogame micro-transactions and problem*
gaming and gambling: A systematic review, 131 Computers in Human Behavior 107219

28 ¹² *Id.*

1 61. Thus, by luring players into making several smaller, time-sensitive purchases
2 of purportedly high-value packs, Defendants specifically intend to foster addictive
3 behaviors by luring consumers into dangerous spending habits.

4 62. As a result of Defendants' predatory monetization schemes and false
5 advertising, numerous players, like Plaintiffs, end up spending tens of thousands—if not
6 hundreds of thousands—of dollars on KOA.

7 63. As an editorial in the Society for the Study of Addiction has observed:

8 Predatory monetization schemes in video games are purchasing systems
9 that disguise or withhold the long-term cost of the activity until players are
10 already financially and psychologically committed. Such schemes contribute
11 to the increasing similarity of gaming and gambling and the potential for
12 financial harm for those with Internet gaming disorder.

13 . . .

14 Game monetization schemes have become increasingly sophisticated and
15 have been featured more prominently within popular on-line games. In our
16 view, some of these schemes could be considered predatory. Predatory
17 monetization schemes typically involve in-game purchasing systems that
18 disguise or withhold the true long-term cost of the activity until players are
19 already financially and psychologically committed. Such schemes are
20 designed to encourage repeated player spending using tactics or elements
21 that may involve, either singularly or in combination, limited disclosure of the
22 product; intrusive and unavoidable solicitations; and systems that manipulate
23 reward outcomes to reinforce purchasing behaviors over skillful or strategic
24 play. Such strategies may exploit inequalities in information between
25 purchaser and provider, such as when the industry uses knowledge of the
26 player's game-related preferences, available funds and/or playing and
27 spending habits, to present offers predetermined to maximize the likelihood
28 of eliciting player spending.¹³

64. Layered on top of its predatory and addictive monetization schemes, KOA
relies on four primary categories of deceptive pack advertisements within KOA: (a) packs
that offer the illusion of price discounts through the strikethrough graphics, hereafter
referred to as "False Strikethrough Packs"; (b) packs that falsely advertise that a pack
contains extra value by containing an extra percentage increase value relative to normal
versions of the same pack, hereafter referred to as "False Bonus Packs"; (c) packs that

¹³ <https://onlinelibrary.wiley.com/doi/epdf/10.1111/add.14286>.

1 falsely allege the limited availability of purchases, hereafter referred to as “False Limited
2 Availability Packs”; and (d) items that “randomly” generate an in-game prize once
3 purchased, hereafter referred to as “Loot Boxes.” Any deceptively advertised pack can
4 belong to more than one of these categories simultaneously or may be deceptive for a
5 separate reason outside of the ones belonging to the four main categories.

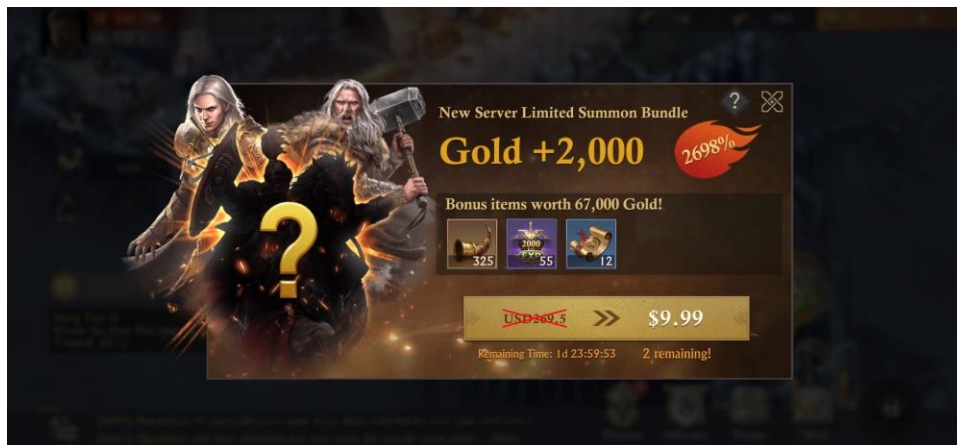
6 65. However, these advertisements are false, deceptive, and intended to mislead
7 players into making in-app purchases that they otherwise would not have made.

8 66. Defendants falsely promote these packs as being on sale or discounted by
9 misrepresenting that such packs are currently being offered at a lower price than normal,
10 include limited-time bonuses that purport to substantially increase the value of the packs,
11 or have limited availability. Since the game pits players against each other, there is
12 significant pressure on players to take advantage of these limited-time offerings so that
13 they can gain a competitive edge against opponents who presumably are left to pay full
14 price.

15 67. Additionally, the advertisements mislead players into believing they will find
16 themselves at a competitive *disadvantage* if they do not purchase packs now, since they
17 will be left paying full price for items their opponents were able to purchase at a discount.

18 **False Strikethrough Packs**

19 68. The False Strikethrough Packs display an advertised price for which the pack
20 is currently offered. On the left side of the arrow graphic is a significantly higher price struck
21 through with a red “X”. The advertisements suggest that the pack was formerly offered at



1 the higher price but is now heavily discounted.

2 69. However, these packs were in fact never offered at the advertised former
3 reference price.

4 70. There are dozens of False Strikethrough Packs sold at multiple pricing tiers,
5 including: “New Server Limited Summon Bundle,” packs that purport to offer in-game
6 resources across the \$4.99, \$9.99, and \$19.99 pricing tiers. None of these packs were
7 ever offered at the former reference prices.

8 71. Defendants use false reference pricing schemes to increase sales because
9 they know these reference prices influence purchasing decisions, as consumers want
10 bargains. Fake discounting and false reference prices are widely recognized to be powerful
11 tools in convincing customers to make purchases, and this issue has been studied
12 repeatedly. As one recent research study from the Harvard Business School summarized:

13 Taken together, evidence from our analysis of observational transaction data
14 and our laboratory experiment suggests that fake prices provide sellers with
15 a powerful tool to enhance demand, but one that may come at the expense
16 of misleading consumers about products’ true initial selling prices.
17 Consumers take initial prices as signals of product quality and rate offers as
18 being better deals the higher these initial prices are with respect to present
19 selling prices. Accordingly, fake prices have the highest influence on
20 purchase likelihood for less-informed consumers.

19 . . .

20 By definition, a fake price offers a fake discount—a discount that does not
21 represent a decrease from some previous selling price but, rather, the
22 difference between the current selling price and a fake introductory price.
23 There is much existing literature on the impact of discounts on consumer
24 behavior beyond . . .¹⁴

23 72. Defendants had actual knowledge that the False Strikethrough Packs
24 contained false or misleading representations as to their former prices. Defendants
25 designed and promoted these advertisements from 2016 until the present day, as the

26 _____
27 ¹⁴ Donald Ngwe, *Fake Discounts Drive Real Revenues in Retail*, Harvard Business
28 School Working Paper (2018) (available at
https://www.hbs.edu/ris/Publication%20Files/18-113_16977967-84c0-488d-96e5-ffba637617d9.pdf)

1 practice of offering these deceptive packs continues.

2 73. The price at which a pack is obtained is a material consideration when
3 reasonable players, including Plaintiffs, decide to make purchases. Players seek to
4 maximize the amount of items obtained from the pack for the lowest cost. Defendants
5 deceive players into taking advantage of discounts so that players believe they may
6 achieve a competitive advantage on the mistaken belief that other players may have to
7 pay the substantially higher non-discounted price for the same number of items.

8 74. Plaintiffs and the Classes reasonably relied on the “strikethrough” pricing
9 when purchasing numerous False Strikethrough Packs. Had Plaintiffs known the
10 “strikethrough” pricing was false, Plaintiffs would not have purchased many of the False
11 Strikethrough Packs that they purchased.

12 75. If Plaintiffs and the Classes could ever have reasonably realized that the
13 False Strikethrough Packs were never sold at the original reference price, such realization
14 would have occurred only after enough game play that Defendants would have already
15 achieved their goal of establishing addictive spending habits. Thus, to the extent Plaintiffs
16 or any of the Classes continued to make purchases after developing an understanding that
17 the packs were never offered at the original price, this was the calculated and intended
18 result that Defendants sought when engaging in this deceptive and unfair practice in the
19 first place.

20 **False Bonus Packs**

21 76. The False Bonus Packs also falsely advertise that a pack possesses extra
22 value by containing a specific percentage increase in items or resources relative to normal
23 versions of the same pack. The false percentage is indicated by a large and attention-
24 grabbing bubble in the pack’s graphical advertisement that contains a quantitative claim
25 regarding the increase in value of this pack relative to packs which are not on sale.
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77. For example, the Primal Dragon Scale Special Bundle pack is offered with a graphical image of a red bubble containing “2423%”—indicating to a reasonable consumer that this specific pack is discounted because it contains a 2423% increase in the value or quantity of items contained within it when compared to a Primal Dragon Scale Special Bundle pack without such a representation.

78. Defendants intentionally designed the packs to mislead players into believing that the packs represented a sale value, including both a false original reference price and an illusory increase in value, to induce those players to purchase the packs. Defendants knowingly took those ordinary item packs and simply placed a percentage graphic on the ad copies without altering anything else.

79. Defendants have been promoting these False Bonus Packs from 2016 until present day, as the practice continues.

80. Plaintiffs all reasonably relied on the percentage graphics on the False Bonus Packs as a material consideration in purchasing those packs. Had the Plaintiffs known the packs were not actually on sale in the manner represented, they would not have purchased the False Bonus Packs.

False Limited Availability Packs

81. The False Limited Availability Packs indicate that a particular pack can only be purchased a finite number of times within the server. For example, text underneath a pack advertisement may say “Only 1 remaining!” These advertisements create a sense of

1 artificial scarcity whereby players are pressured into purchasing packs containing valuable
2 items to enhance their accounts, ostensibly to simultaneously deprive competitors from
3 accessing the same packs.



12 82. As shown above, Defendants also use graphics indicating a “Remaining
13 Time” during which the pack will remain available to create a false sense of scarcity with
14 its users.

15 83. However, Defendants’ representations as to the scarcity of the packs are
16 false. Other players are also able to purchase these packs even if another player buys all
17 of the supposedly remaining packs. Furthermore, the player who purchased the False
18 Limited Availability Pack is often offered the same pack to purchase again, especially at
19 the \$99.99 pricing tier.

20 84. Defendants intentionally designed the packs to mislead players into believing
21 that the packs were limited in availability. Defendants knowingly added a message to
22 players communicating an artificial scarcity to induce them to purchase the packs
23 immediately.

24 85. These false and deceptive tactics of scarcity and urgency are effective dark
25 patterns.

26 86. As the FTC explained, “SCARCITY” includes variants such as the “False Low
27 Stock Message” (e.g., “Only 1 left in stock—order soon”), which falsely claim inventory is
28 low. This message “[c]reate[s] pressure to buy immediately.”



1 87. “URGENCY” includes variants such as the “Baseless Countdown Timer”
 2 (“Offer ends in 00:59:48”), which shows a clock that goes away or resets when it times out;
 3 “False Limited Time Message” (“Deal ends soon”), which presents a meaningless deadline
 4 that resets when reached; or “False Discount Claims” (“Sale”). All of these variants create
 5 pressure to buy immediately.

6 88. Plaintiffs all reasonably relied on the textual advertisements of supposed
 7 scarcity accompanying the ad copy as a material consideration in purchasing those packs.
 8 Had the Plaintiffs known the packs were not actually scarce or limited, they would not have
 9 purchased the False Limited Availability Packs.

10 **Loot Boxes**

11 89. Amplifying the addictive features of KOA, Defendants also entice players to
 12 purchase Loot Boxes.

13 90. The use of Loot Boxes within KOA and other freemium games encourages
 14 further and unregulated problem gambling behavior¹⁵ by providing players with the
 15 opportunity to purchase items that yield randomized awards—mirroring gambling through
 16 uncertainty in the outcomes of spending.

17 91. Loot Boxes allow players to purchase virtual “chances” to win rare in-game
 18 items, but most players win only common virtual items, which can often be purchased for
 19 far less than what the players spend on a “chance” at rare in-game loot.

20 92. While this may sound similar to traditional gambling games, Loot Boxes
 21 contain only virtual items and not physical objects, and therefore are generally not subject
 22 to laws that typically apply to gambling activities.

23 93. Loot Boxes are classified as a type of “monetary dark pattern,” and as such
 24 KOA, “a video game that employs loot boxes[,] is just utilizing the ‘monetized rivalries’ dark
 25

26 ¹⁵ Matthew E. Perks, “Regulating In-Game Monetization: Implications of Regulation on
 27 Games Production,” (2021), available at
 28 https://www.jstor.org/stable/pdf/j.ctv1hp5hqw.14.pdf?refreqid=excelsior%3Ae35b9894f003556c7dff9d435726e0dc&ab_segments=0%2Fbasic_search_gsv%2Fcontrol&origin=&acceptTC=1, p. 221.

1 pattern”—the exploitation of user competitiveness which encourages players to spend
2 money they would not otherwise spend, in order to achieve status.¹⁶

3 94. Further, academic literature on the subjects of predatory monetization and
4 addiction to loot-box-microtransactions suggests that there is a link between chance-based
5 gambling and player behavior on these apps. Studies in psychology show that loot box
6 consumption mimics gambling as it involves the betting and spending of real currency for
7 unpredictable in-game rewards, with the ambiguity of the valuation for in-game vs. real-
8 world currency making this a habit that is easy to fall into.¹⁷

9 95. The similarities between gambling and Loot Boxes are especially dangerous
10 for individuals who are already problem gamblers, as the high degree of likeness to other
11 forms of gambling may cause them “to spend large amounts of money on buying loot boxes
12 in games, just as they would spend large amounts of money on other forms of gambling.”¹⁸

13 96. This is particularly problematic because studies have repeatedly confirmed
14 that problematic and pathological gambling habits develop at a higher rate among those
15 who participate in virtual, online gambling activities.¹⁹

16 97. Additionally, younger individuals (those under 30 and, in particular, those
17 under 18) are particularly susceptible to developing problematic gambling pathologies,
18 including gambling addiction.²⁰

19 _____
20 ¹⁶ Lewis, *supra* note 17.

21 ¹⁷ Tom Brock, Mark Johnson, *The Gamblification of Digital Games*, 21 J. Consumer
22 Culture (2021) available at
23 <https://journals.sagepub.com/doi/full/10.1177/1469540521993904>.

24 ¹⁸ David Zendle, Paul Cairns, *Video Game Loot Boxes are Linked to Problem Gambling:
25 Results of a Large-scale Survey*, PLOS ONE (2018), available at
26 <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0206767>.

27 ¹⁹ See, e.g., Brunelle, Leclerc, Cousineau, Dufour, Gendron, & Martin, *Internet gambling,
28 substance use, and delinquent behavior: An adolescent deviant behavior involvement
pattern*, 26 Psych of Addictive Behaviors 365-70 (2012), available at
<https://doi.org/10.1037/a0027079>.

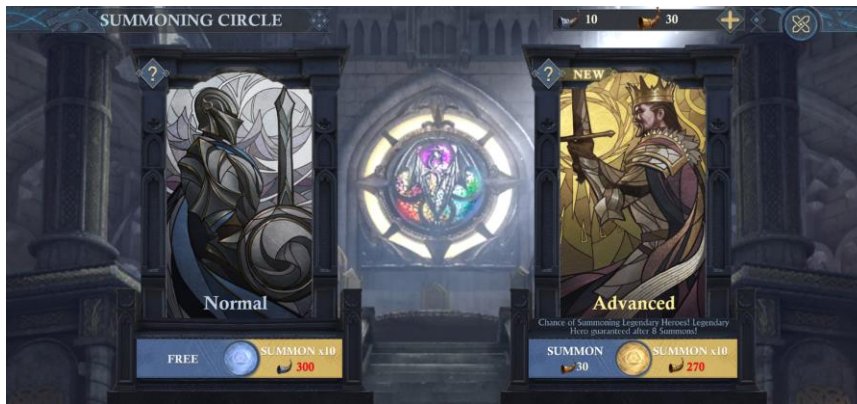
²⁰ See Kristjansdottir *et al*, *Internet gambling and problem gaming among 13 to 18 year old
adolescents in Iceland*, 9 Int'l J. Mental Health & Addiction 257 (2011), available at
<https://doi.org/10.1007/s11469-010-9280-7>; Gainsbury *et al*, *The Impact of Internet
Gambling on Gambling Problems: A Comparison of Moderate-Risk and Problem Internet
and Non-Internet Gamblers*, 27(4) Psychology of Addictive Behaviors (2013), available at
<https://psycnet.apa.org/fulltext/2013-05953-001.pdf>.



1 98. KOA, which is marketed to individuals 13 and older, leverages these
 2 predispositions to foster addiction and other pathological behaviors with its chance-based
 3 loot box system.

4 99. Upon information and belief, Defendants are aware of the addictive nature of
 5 Loot Boxes and have designed KOA specifically to leverage consumer psychology in an
 6 effort to maximize consumer addiction and promote virtual gambling.

7 100. KOA employs Loot Boxes in the form of its “Summoning Circle,” where
 8 players encounter a graphical depiction of two different heroes: “Normal” and “Advanced,”
 9 with the “Advanced” summons requiring premium currencies:



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 26 101. Specifically, “Advanced” mode requires a player to obtain “Gold Summoning
 27 Horns,” which the game describes as being “[u]sed to summon Heroes in the Summoning
 28 Circle”:

1 102. Within the Summoning Circle, there is no published drop rate that is readily
 2 apparent. Instead, players must intuit that they should tap on the intentionally unobtrusive
 3 “?” at the top left of each hero’s portrait. Doing so takes them to a screen that, at first blush,
 4 continues to suggest that summoning will yield a hero:



12 103. The “Summoning Preview” depicts only a list of heroes, with no bar, arrows,
 13 or other indicator for players to scroll. Only by tapping and dragging on the screen would
 14 a player discover that, in fact, the Summoning Circle also drops hero “fragments” (puzzle
 15 pieces that, eventually, can be combined into a hero once a player has acquired enough).

16 104. All of this is an intentional design by Defendants to disguise the fact that **in**
 17 **the vast majority of cases, summoning a “hero” in the Summoner’s Circle will not**
 18 **summon a hero at all.** In fact, despite the deceptive graphics, the description of the “Gold
 19 Summoning Horn,” and the misleading pop-up, the odds of obtaining **any** hero when using
 20 the Summoning Circle’s “Advanced” mode to summon heroes are only 22.65%--less than
 21 one in four.

22 105. That fact is particularly poignant when one notes that even the most house-
 23 friendly slot machines in the country have a payout rate of approximately 80%.²¹

24 CLASS ALLEGATIONS

25 106. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3),
 26 on behalf of themselves and the following proposed “Global Class”:

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28 ²¹ See Slot Machine Payback Statistics, American Casino Guide, *available at*
<https://www.americancasino.com/info/slot-machine-payback-statistics>.

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All persons, within the applicable statute of limitations, who purchased False Strikethrough Packs, False Bonus Packs, False Limited Time Availability packs, and/or Loot Boxes, and/or such subclasses as the Court may deem appropriate.

107. Plaintiff Yovanni Yanez also brings this action on behalf of himself and on behalf of the following subclass (the “California Class”):

All persons in California, within the applicable statute of limitations, who purchased False Strikethrough Packs, False Bonus Packs, False Limited Time Availability packs, and/or Loot Boxes and/or such subclasses as the Court may deem appropriate.

108. Plaintiff Emelyn Matos also brings this action on behalf of herself and on behalf of the following subclass (the “New York Class”):

All persons in New York, within the applicable statute of limitations, who purchased False Strikethrough Packs, False Bonus Packs, False Limited Time Availability packs, and/or Loot Boxes, and/or such subclasses as the Court may deem appropriate.

109. Excluded from the proposed Classes are Defendants and their employees, officers, directors, legal representatives, heirs, successors, subsidiaries, and affiliates, and the judicial officers and their immediate family members and associated court staff assigned to this case, as well as all persons who make a timely election to be excluded from the proposed Classes.

110. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence they would use to prove those elements in individual actions alleging the same claims.

111. This action meets all applicable standards of Fed. R. Civ. P. 23 for class certification, in that Plaintiffs can demonstrate the elements delineated below.

112. **Numerosity**. The members of the proposed Classes are so numerous and geographically dispersed that individual joinder of all proposed class members is impracticable. See Fed. R. Civ. P. 23(a)(1). While Plaintiffs believe that there are hundreds of thousands of members of the proposed Classes, the precise number of class members

1 is unknown, but may be ascertained from Defendants' books and records. On information
2 and belief, Defendants maintain a list of users that includes personal information for the
3 user including their email addresses, whether they have made in-app purchases, and
4 which in-app purchases they have made.

5 113. Applying a reasonable and prudent person standard to the users of KOA
6 under the same or similar circumstances, each user would qualify to be a class member
7 requesting the right to cancel and obtain refunds on their in-app purchases. Any
8 reasonable and prudent person under the same or similar circumstances wants to have
9 the flexibility to disaffirm an in-app purchase that was made while believing that the packs
10 they purchased were part of a sale or promotion but, in reality, were not.

11 114. **Commonality and Predominance.** This action involves common questions
12 of law and fact, which predominate over any questions affecting individual class members.
13 See Fed. R. Civ. P. 23(a)(2) and (b)(3). These include, without limitation:

- 14 a. Whether Defendants engaged in the conduct alleged in this Complaint;
- 15 b. Whether Defendants violated the applicable statutes alleged herein;
- 16 c. Whether Defendants designed, advertised, marketed, distributed, sold, or
17 otherwise placed KOA into the stream of commerce in the United States;
- 18 d. Whether Defendants' conduct emanated from the State of California;
- 19 e. Whether Plaintiffs and the class members are injured and harmed directly by
20 Defendants' false advertising designed to entice users into making in-app
21 purchases they otherwise would not have made;
- 22 f. Whether Plaintiffs and the class members are entitled to damages due to
23 Defendants' conduct as alleged in this Complaint, and if so, in what amounts;
24 and
- 25 g. Whether Plaintiffs and members of the Classes are entitled to equitable relief,
26 including, but not limited to, restitution or injunctive relief as requested in this
27 Complaint.

28 115. **Typicality.** Plaintiffs' claims are typical of the putative class members' claims

1 because, among other things, all such class members were comparably injured through
2 Defendants' wrongful conduct as described above. See Fed. R. Civ. P. 23(a)(3).
3 Defendants' creation and display of its misleading advertisements is uniform for all
4 Plaintiffs and class members.

5 116. **Adequacy**. Plaintiffs are adequate proposed class representatives because
6 their interests do not conflict with the interests of the other members of the proposed
7 Classes they seek to represent, because they have retained counsel competent and
8 experienced in complex class action litigation, and because they intend to prosecute this
9 action vigorously. The interests of the proposed Classes will be fairly and adequately
10 protected by Plaintiffs and their counsel. See Fed. R. Civ. P. 23(a)(4).

11 117. **Declaratory and Injunctive Relief**. Defendants have acted or refused to act
12 on grounds generally applicable to Plaintiffs and the other members of the proposed
13 Classes, thereby making appropriate final injunctive relief and declaratory relief, as
14 described below, with respect to the proposed Classes as a whole. See Fed. R. Civ. P.
15 23(b)(2). Defendants' wrongful conduct alleged herein is grounded in the creation and
16 dissemination of their pack offerings in-game, which are displayed uniformly. Plaintiffs' and
17 the class members' injuries are real, immediate, and ongoing. Plaintiffs and class members
18 seek injunctive and declaratory relief from Defendants.

19 118. **Superiority**. A class action is superior to any other available means for the
20 fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be
21 encountered in the management of this class action. The damages or other financial
22 detriment suffered by Plaintiffs and putative class members are relatively small compared
23 to the burden and expense that would be required to individually litigate their claims against
24 Defendants, so it would be impracticable for members of the proposed Classes to
25 individually seek redress for Defendants' wrongful conduct.

26 119. Applying the principles of equity or balance of equities, expecting an
27 individual Plaintiff who is at a disadvantage with limited resources and spending capacity,
28 and with minimal negotiating power, if any, to litigate claims against Defendants,

1 multibillion-dollar corporations that have immense resources and deep pockets, would be
2 unfair. Class actions are a necessary and essential means to provide for public interest
3 litigations with checks and balances to curtail deceptive practices by powerful private
4 corporations, including Defendants.

5 120. There is no special interest in class members individually controlling the
6 prosecution of separate actions. And even if class members could afford individual
7 litigation, the court system could not. Individualized litigation creates a potential for
8 inconsistent or contradictory judgments, and it increases the delay and expense to all
9 parties and the court system. By contrast, the class action device presents far fewer
10 management difficulties and provides the benefits of single adjudication, economy of scale,
11 and comprehensive supervision by a single court. See Fed. R. Civ. P. 23(b)(3).

12 **CALIFORNIA LAW APPLIES TO ALL CLASSES**

13 121. California's substantive laws apply to every class member, regardless of
14 where the class member resides.

15 122. California's substantive laws may be constitutionally applied to the claims of
16 Plaintiffs and the Classes under the Due Process Clause, 14th Amend. §1, and the Full
17 Faith and Credit Clause, Art. IV §1 of the U.S. Constitution. California has significant
18 contacts, or significant aggregation of contacts, to the claims asserted by Plaintiffs and all
19 class members, thereby creating state interests that ensure that the choice of California
20 state law is not arbitrary or unfair.

21 123. FunPlus and its various operating entities were founded in California.
22 FunPlus maintains offices in California, and its co-founders and key executives reside in
23 California. On information and belief, Defendants' principal places of business are located
24 in California. FunPlus conducts substantial business in California. Therefore, California has
25 an interest in regulating Defendants' conduct under its laws.

26 124. FunPlus's decision to reside in California and avail itself of California's laws,
27 and to engage in the challenged conduct from and emanating out of California, renders the
28 application of California law to the claims herein constitutionally permissible.

1 125. California is also the state from which Defendants’ alleged misconduct and
2 false statements emanated. This conduct similarly injured and affected Plaintiffs and all
3 other class members.

4 126. The application of California laws to the Classes is also appropriate under
5 California’s choice of law rules because California has significant contacts to the claims of
6 Plaintiffs and the proposed Classes, and California has a greater interest in applying its
7 laws here than any other interested state.

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of California’s Unfair Competition Law (“UCL”)**

10 **Cal. Business & Professions Code §§17200 *et seq.***

11 **(By Plaintiffs, individually and on behalf of All Classes)**

12 127. Plaintiffs incorporate by reference all allegations in this Complaint and restate
13 them as if fully set forth herein.

14 128. The UCL defines unfair business competition to include any “unlawful, unfair
15 or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or misleading”
16 advertising. Cal. Bus. & Prof. Code §17200.

17 129. A business act or practice is “unlawful” under the UCL if it violates any other
18 law or regulation.

19 130. A business act or practice is “unfair” under the UCL if the reasons,
20 justifications, and motives of the alleged wrongdoer are outweighed by the gravity of the
21 harm to the alleged victims.

22 131. A business act or practice is “fraudulent” under the UCL if it is likely to deceive
23 members of the consuming public.

24 132. Defendants have violated the “unlawful” prong under the UCL and have
25 engaged in “unfair, deceptive, untrue or misleading” advertising.

26 133. The Federal Trade Commission Act prohibits “unfair or deceptive acts or
27 practices in or affecting commerce” (15 U.S.C. §45(a)(1)) and specifically prohibits false
28 advertisements. 15 U.S.C. §52(a). FTC Regulations describe false former pricing

1 schemes—similar to Defendants’ False Strikethrough Packs and False Bonus Packs in all
2 material respects—as deceptive practices that would violate the FTC Act.

3 134. 16 C.F.R. §233.1 states:

4 (a) One of the most commonly used forms of bargain advertising is to offer a
5 reduction from the advertiser’s own former price for an article. If the former price is
6 the actual, bona fide price at which the article was offered to the public on a regular
7 basis for a reasonably substantial period of time, it provides a legitimate basis for
8 the advertising of a price comparison. Where the former price is genuine, the
9 bargain being advertised is a true one. If, on the other hand, the former price being
10 advertised is not bona fide but fictitious—for example, where an artificial, inflated
11 price was established for the purpose of enabling the subsequent offer of a large
12 reduction—the “bargain” being advertised is a false one; the purchaser is not
13 receiving the unusual value he expects. In such a case, the “reduced” price is, in
14 reality, probably just the seller’s regular price.

15 (b) A former price is not necessarily fictitious merely because no sales at the
16 advertised price were made. The advertiser should be especially careful, however,
17 in such a case, that the price is one at which the product was openly and actively
18 offered for sale, for a reasonably substantial period of time, in the recent, regular
19 course of his business, honestly and in good faith—and, of course, not for the
20 purpose of establishing a fictitious higher price on which a deceptive comparison
21 might be based. And the advertiser should scrupulously avoid any implication that
22 a former price is a selling, not an asking price (for example, by use of such language
23 as, “Formerly sold at \$ _____”), unless substantial sales at that price were actually
24 made.

25 135. California law also prohibits false former pricing schemes. Cal. Bus. & Prof.
26 Code §17501, entitled “Value determinations; Former price advertisements,” states:

27 For the purpose of this article the worth or value of any thing advertised is the
28 prevailing market price, wholesale if the offer is at wholesale, retail if the offer is at
retail, at the time of publication of such advertisement in the locality wherein the
advertisement is published.

No price shall be advertised as a former price of any advertised thing, unless the
alleged former price was the prevailing market price as above defined within three
months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly, and
conspicuously stated in the advertisement.

136. As further detailed in the Second Claim for Relief below, California’s False
Advertising Law also prohibits a business from “[a]dvertising goods or services with intent
not to sell them as advertised,” Cal. Civ. Code §1770(a)(9), and prohibits a business from
“[m]aking false or misleading statements of fact concerning reasons for, existence of, or

1 amounts of price reductions.” Id. §(a)(13).

2 137. Defendants’ False Strikethrough Packs, False Bonus Packs, False Limited
3 Availability Packs, and Loot Boxes violate the unlawful prongs of the UCL since they violate
4 16 C.F.R. §233.1, Cal. Bus. & Prof. Code §17501, and Cal. Civ. Code §§1770(a)(9) and
5 (a)(13).

6 138. The False Bonus Packs misrepresent the existence of a sale whereby
7 players can allegedly purchase more items and resources from a pack than they normally
8 could for the same price.

9 139. Defendants’ use of the False Bonus Packs violates 15 U.S.C. §45(a)(1), 15
10 U.S.C. §52(a), and the FTC Guidelines published in Title 16, Code of Federal Regulations,
11 Section 233.

12 140. Defendants also violated and continue to violate Cal. Bus. & Prof. Code
13 §17501, and Cal. Civ. Code §1770, sections (a)(9) and (a)(13), by advertising false
14 discounts from purported former prices that were, in fact, not the prevailing market prices
15 within three months preceding the publication and dissemination of advertisements
16 containing the false former prices.

17 141. Defendants have also violated the “unfair” prong of the UCL by falsely
18 representing that its consumers received a discount from a referenced “original” former
19 price of its False Strikethrough Packs where, in fact, Defendants set an arbitrary price for
20 the goods contained in these packs and then falsely represented the packs had ever been
21 offered for sale without their supposed discount.

22 142. Additionally, Defendants have violated the “unfair” prong of the UCL by
23 falsely representing that their False Bonus Packs contained unique and specific increases
24 in items or resources when, in fact, they contained the same resources and in-game items
25 as they always do.

26 143. Defendants have also violated the “unfair” prong of the UCL by engaging in
27 predatory practices designed to foster gambling addiction in consumers, in that they: (a)
28 deploy their microtransactions in a way specifically designed to ensnare players into

1 addictive spending habits; (b) falsely create a sense of urgency, scarcity, and value in order
2 to secure addictive high frequency microtransactions, such as by deploying Loot Boxes,
3 which exploit user competitiveness and foster addiction; and (c) use incremental cost step-
4 ups to prevent players from realizing the true cost of the game and how much they have
5 spent. Defendants' goals in engaging in these practices are far outweighed by the harm
6 they cause.

7 144. These acts and practices are unfair because they were likely to cause
8 consumers to falsely believe that Defendants were offering value, discounts, or bargains
9 from the prevailing market value or worth of the products sold that do not, in fact, exist. As
10 a result, purchasers (including Plaintiffs) reasonably understood that they were receiving
11 valuable price reductions on purchases of in-game items. This, in turn, has induced
12 reasonable purchasers to buy such products from Defendants that they would not have
13 otherwise purchased.

14 145. The gravity of the harm to Plaintiffs and members of the Classes resulting
15 from these unfair acts and practices outweighs any conceivable reasons, justifications, or
16 motives that Defendants may have had for engaging in such deceptive acts and practices.

17 146. Additionally, Defendants have violated the "fraudulent" prong of the UCL
18 because their marketing and advertising materials included false "original" prices for their
19 False Strikethrough Packs, and because these same materials also suggested that the
20 offers in the False Bonus Packs and False Limited Availability Packs were unique, limited,
21 and would no longer be available at those price points following the conclusion of its sale
22 events. In actuality, the packs never contained the limited-time deals or discounts they
23 purported to offer.

24 147. Defendants' acts and practices deceived Plaintiffs and the Classes at large.
25 Specifically, Plaintiffs and the Classes relied on these misleading and deceptive
26 representations regarding the limited-time bonuses they could expect to receive in the
27 packs. Each of these representations and deceptions played a substantial role in Plaintiffs'
28 decisions to purchase the packs, and Plaintiffs would not have done so in the absence of

1 such representations.

2 148. Plaintiffs and the Classes never received the benefit of their bargains with
3 Defendants, in that the “discounted” resources offered for sale in the packs did not give
4 them the anticipated competitive edge against their opponents. Competitors could simply
5 purchase packs at the same false sale pricing, or with the same number of items, or the
6 same pack availability, notwithstanding Defendants’ representations that these were
7 limited-time offers.

8 149. Similarly, players who purchased the False Bonus Packs and the False
9 Strikethrough Packs defensively (to protect against becoming overpowered by opponents
10 who they believed had been able to take advantage of the purportedly limited-time
11 bonuses) were deprived of the benefit of their bargains, because the threat itself was a
12 fabrication. There was never a risk of falling behind due to a player’s failure to purchase
13 items at their discounted price, because the price was always discounted.

14 150. As a result of these violations under each of the fraudulent, unfair, and
15 unlawful prongs of the UCL, Defendants have been unjustly enriched at the expense of
16 Plaintiffs and members of the proposed Classes. Specifically, Defendants have been
17 unjustly enriched by obtaining revenues and profits that they would not otherwise have
18 obtained absent their false, misleading, and deceptive conduct.

19 151. Through their unfair acts and practices, Defendants have improperly
20 obtained money from Plaintiffs and the class members. As such, Plaintiffs request that this
21 Court cause Defendants to restore this money to Plaintiffs and all class members, and to
22 enjoin them from continuing to violate the UCL, and/or from violating the UCL in the future.
23 Otherwise, Plaintiffs, the class members, and members of the general public may be
24 irreparably harmed and/or denied an effective and complete remedy if such an order is not
25 granted.

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SECOND CLAIM FOR RELIEF

Violation of California’s False Advertising Law (“FAL”)

Cal. Business & Professions Code §§17500 *et seq.*

(By Plaintiffs, individually and on behalf of All Classes)

152. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

153. The FAL prohibits unfair, deceptive, untrue, or misleading advertising, including, but not limited to, false statements as to worth, value, and former price.

154. Furthermore, the FAL provides that: “No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.” Cal. Bus. & Prof. Code §17501.

155. The False Strikethrough Packs and the False Bonus Packs misrepresent the existence of a sale whereby players can allegedly purchase packs at a discounted price, or with an increased percentage of items or resources. The False Limited Availability Packs misrepresent the exclusive nature, and therefore competitive value, of the packs.

156. Through their unfair acts and practices, Defendants have improperly obtained money from Plaintiffs and the class members. As such, Plaintiffs request that this Court cause Defendants to restore this money to Plaintiffs and all class members, and to prevent Defendants from continuing to violate the FAL, and/or from violating the FAL in the future. Otherwise, Plaintiffs, the class members, and members of the general public may be irreparably harmed and/or denied an effective and complete remedy if such an order is not granted.

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THIRD CLAIM FOR RELIEF

Violation of the California Consumers Legal Remedies Act (“CLRA”)

Cal. Civ. Code. §§1750 et seq.

(By Plaintiffs, individually and on behalf of All Classes)

157. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

158. Plaintiffs and the other class members are consumers within the meaning of Cal. Civ. Code §1761(d) and have engaged in a transaction within the meaning of Cal. Civ. Code §§1761(e) and 1770.

159. Defendants are “persons” within the meaning of Cal. Civ. Code §§1761(c) and 1770, and they sell “goods or services” within the meaning of Cal. Civ. Code §§1761(a)–(b) and 1770.

160. KOA and the in-app purchases are a “good” or “service” within the meaning of Cal. Civ. Code. §§1761(a) and (b).

161. Defendants have violated Cal. Civ. Code. §1770(a)(5)’s proscription against representing that goods have characteristics, uses, benefits, or quantities that they do not have. The False Limited Availability Packs represent that they have the benefit of conferring a competitive advantage, but those benefits are illusory.

162. Defendants have violated Cal. Civ. Code. §1770(a)(9)’s proscription against advertising goods or services with intent not to sell them as advertised. The False Bonus Packs falsely advertise that a pack of goods has extra value by containing a significant increase in items or resources relative to normal versions of the same pack. The False Limited Availability Packs falsely indicate that a particular pack can only be purchased a finite number of times by competing players.

163. Defendants have violated Cal. Civ. Code. §1770(a)(13)’s proscription against making false or misleading statements of fact concerning reasons for, existence of, or amounts of, price reductions by misrepresenting the existence of discounts via False Strikethrough Packs, misrepresenting the existence of special sales through their False

1 Bonus Packs, and misrepresenting the exclusive nature, and therefore competitive value,
2 of the packs through their False Limited Availability Packs.

3 164. Defendants have violated Cal. Civ. Code. §1770(a)(14)'s proscription against
4 representing that a transaction conferred rights or obligations that it did not have. The False
5 Limited Availability Packs falsely represent that the purchase confers the right of a
6 competitive advantage, which it does not.

7 165. Defendants have violated Cal. Civ. Code. §1770(a)(16)'s proscription against
8 representing that the subject of a transaction has been supplied in accordance with a
9 previous representation when it has not by misrepresenting that the purchasers have
10 received a competitive advantage in the game by purchasing "sale" and "limited
11 availability" items.

12 166. Defendants have violated Cal. Civ. Code. §1770(a)(17)'s proscription against
13 representing that the consumer will receive an economic benefit, if the earning of the
14 benefit is contingent on an event to occur subsequent to the consummation of the
15 transaction, by misrepresenting that the purchaser of False Limited Availability Packs
16 would receive an economic benefit (i.e., more goods than other players) and therefore a
17 competitive advantage as compared to players who did not take advantage of limited-
18 availability sales. The economic benefit is contingent on other players not purchasing those
19 same packs, but there is not actually a limited supply of packs.

20 167. Plaintiffs and the other class members suffered actual damages as a direct
21 and proximate result of the Defendants' actions, concealment, and/or omissions in the
22 advertising, marketing, and promotion of their in-app purchases, in violation of the CLRA,
23 as evidenced by the substantial sums Defendants pocketed from Plaintiffs and the class
24 members.

25 168. Plaintiffs, on behalf of themselves and the class members, demand judgment
26 against Defendants for injunctive relief and attorney's fees.

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FOURTH CLAIM FOR RELIEF

Fraud

(By Plaintiffs, individually and on behalf of All Classes)

169. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

170. Defendants represented to all Plaintiffs that various purchased packs were on sale in that they were offered at a lower price than normal, that certain packs were offered with an increased percentage of items and resources compared to their normal counterparts, and that pack purchases were only available in limited quantities.

171. These representations were false because the packs were never offered at higher prices, the increased percentage versions of the packs were identical to their normal counterparts, the packs were not actually available in scarce quantities to other players in the State or to the individual player making the purchases, and the stated number of other players that had purchased the packs was fictitious.

172. Defendants intentionally designed the graphical images on the advertisements to attract Plaintiffs to the enticing but false claims regarding the existence of sales, item and resource bonuses, and artificial scarcity.

173. Plaintiffs reasonably relied upon the claims made in Defendants' advertisements in deciding to purchase the aforementioned packs.

174. Upon purchasing the packs, Plaintiffs were harmed because, had Plaintiffs known Defendants' claims were false, they would not have made those purchases.

175. Plaintiffs' reliance on Defendants' misrepresentations in their pack advertisements was a substantial factor in causing harm to Plaintiffs.

176. Defendants' conduct has therefore caused and is causing immediate and irreparable injury to Plaintiffs and the class members and will continue to both damage Plaintiffs and the class members and deceive the public unless enjoined by this Court.

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FIFTH CLAIM FOR RELIEF

Unjust Enrichment

(By Plaintiffs, individually and on behalf of All Classes)

177. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

178. Defendants misrepresented the value of the items or resources purchased in the False Strikethrough Packs, False Bonus Packs, False Limited Availability Packs, and/or Loot Boxes or any packs for which Plaintiffs were double charged.

179. Plaintiffs spent tens, if not hundreds, of thousands of dollars each on items and resources, induced by Defendants.

180. It would be unfair for Defendants to keep the money spent without compensating Plaintiffs.

SIXTH CLAIM FOR RELIEF

(Violation of N.Y. Gen. Bus. Law §§349 & 350)

(By Emelyn Matos, individually and on behalf of the New York Class)

181. Plaintiffs incorporate by reference all allegations in this Complaint and restate them as if fully set forth herein.

182. Plaintiff Emelyn Matos hereby brings this Claim, under New York General Business Law §§349 & 350, against both Defendants on behalf of herself and the New York Class.

183. Defendants' conduct was misleading, deceptive, unlawful, fraudulent, and unfair by virtue of offering False Strikethrough Packs, False Bonus Packs, and False Limited Availability Packs as in-app purchases for sale through the KOA app.

184. Defendants caused to be disseminated through New York State and elsewhere, through advertising, marketing, and other publications, statements that were untrue and misleading, and which they knew were untrue and misleading.

185. Defendants' misrepresentations were material and substantially uniform in content, presentation, and impact upon consumers at large. Consumers were and continue

1 to be exposed to Defendants’ material misrepresentations.

2 186. Plaintiffs and the class members have been injured by Defendants’ deceptive
3 acts or practices.

4 187. Plaintiffs and the class members have no adequate remedy at law.

5 188. Defendants’ conduct has caused and is causing immediate and irreparable
6 injury to Plaintiffs and the Classes and will continue to both damage Plaintiffs and the
7 Classes and deceive the public unless enjoined by this Court.

8 189. Any person who has been injured by reason of any violation of NY GBL §349
9 may bring an action in his or her own name to enjoin such unlawful acts or practices, an
10 action to recover their actual damages or \$50, whichever is greater, or both such actions.
11 The court may, in its discretion, increase the award of damages to an amount not
12 exceeding three times the actual damages, in addition to \$1,000 per violation, if the court
13 finds that a defendant willfully or knowingly violated this section. The court may award
14 reasonable attorney’s fees to a prevailing plaintiff.

15 190. Pursuant to NY GBL §350(e), Plaintiff and the New York Class seek
16 monetary damages (including actual damages, or \$500, whichever is greater, and
17 minimum, punitive, or treble and/or statutory damages pursuant to NY GBL §350(a1)),
18 injunctive relief, restitution, and disgorgement of all monies obtained by means of
19 Defendants’ unlawful conduct, interest, and attorney’s fees and costs.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs, on behalf of themselves and the proposed Classes, pray
22 for relief and judgment against Defendants as follows:

23 (a) Certifying the Classes pursuant to Rule 23 of the Federal Rules of Civil
24 Procedure, appointing Plaintiffs as representatives of the Classes, and designating
25 Plaintiffs’ counsel as class counsel;

26 (b) Awarding Plaintiffs and the class members compensatory damages and
27 actual damages in an amount exceeding \$5,000,000, to be determined by proof;

28 (c) Awarding Plaintiffs and the class members appropriate relief, including actual

- 1 and statutory damages;
- 2 (d) For punitive damages;
- 3 (e) For civil penalties;
- 4 (f) For declaratory and equitable relief, including a declaration that Defendants
- 5 violated and have continued to violate California’s UCL, the FAL, and the CLRA, and an
- 6 injunction requiring Defendants to comport with California Business & Professions Code
- 7 §§17200, *et seq.*, and restitution and disgorgement;
- 8 (g) For an order enjoining Defendants from continuing to engage in the wrongful
- 9 acts and practices alleged herein;
- 10 (h) Awarding Plaintiffs and the class members the costs of prosecuting this
- 11 action, including expert witness fees;
- 12 (i) Awarding Plaintiffs and the class members’ reasonable attorney’s fees and
- 13 costs as allowable by law;
- 14 (j) Awarding Plaintiffs and the class members reasonable attorney’s fees
- 15 pursuant to Cal. Civ. Proc. Code 1021.5, as this lawsuit seeks the enforcement of an
- 16 important right affecting the public interest and satisfies the statutory requirements for an
- 17 award of attorney’s fees;
- 18 (k) Awarding Plaintiffs and the class members reasonable attorney’s fees and
- 19 costs, as well as injunctive relief, pursuant to the CLRA;
- 20 (l) Awarding pre-judgment and post-judgment interest; and
- 21 (m) Granting any other relief as this Court may deem just and proper.

22
23 Respectfully Submitted,

24 DATED: May 30, 2023

KRONENBERGER ROSENFELD, LLP

25
26 By: s/ Karl S. Kronenberger
Karl S. Kronenberger

27 *Attorneys for Plaintiffs and the Proposed*
28 *Classes*



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POLLOCK COHEN LLP

Raphael Janove
rafi@pollockcohen.com
Adam Pollock
adam@pollockcohen.com
George Krebs
gkrebs@pollockcohen.com
111 Broadway, Ste. 1804
New York, NY 10006
Telephone: (212) 337-5361
pro hac vice forthcoming

JAY KUMAR LAW

Jay Kumar
jay@jaykumarlaw.com
73 W. Monroe Street, Suite 100
Chicago, IL 60603
Telephone: (312) 767-7903
pro hac vice forthcoming

*Attorneys for Plaintiffs and the Proposed
Classes*

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their undersigned counsel, hereby demand a trial by jury for all questions of fact that can be decided by a jury in the above-entitled action.

Respectfully Submitted,

DATED: May 30, 2023

KRONENBERGER ROSENFELD, LLP

By: s/ Karl S. Kronenberger
Karl S. Kronenberger

Attorneys for Plaintiffs and the Proposed
Classes



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